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Pages 1–384

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Contents

Federal Register

Vol. 64, No. 1

Monday, January 4, 1999

Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register

Vol. 64, No. 1

Monday, January 4, 1999

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

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1788

RIN 0572–AA86

RUS Fidelity and Insurance Requirements for Electric and Telecommunications Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is streamlining its fidelity and insurance requirements for electric and telecommunications systems. The rule was last revised in 1986, and the revisions are intended to update requirements. The rule provides a flexible approach to insurance that protects the government's security interest in mortgaged assets and conforms to today's business practices.

DATES: Effective date January 4, 1999.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, Room 4034 South Bldg., 1400 Independence Avenue, SW., Washington, DC 20250–1522. Telephone: 202–720–0736. FAX: 202–720–4120. E-mail: fheppe@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A final rule related notice entitled ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034) determined that RUS loans and loan guarantees were not covered by Executive Order 12372.

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effort will be given to this rule, and, in accordance with section 212(c) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(c)), appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

RUS has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS electric and telecommunications programs provide loans to borrowers at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements. Moreover, this action offers borrowers increased flexibility in determining the appropriate insurance coverage for their organizations which further offsets economic costs.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.850, Rural Electrification Loans and Loan Guarantees, 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

National Performance Review

The regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Information Collection and Recordkeeping Requirements

The recordkeeping and reporting requirements contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control numbers 0572–0032 and 0572–0031. Send questions or comments regarding any aspect of this collection of information, including suggestions for reducing the burden, to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW., Washington, DC 20250–1522.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

The Rural Utilities Service (RUS) makes and guarantees loans to furnish and improve electric and telecommunications service in rural areas pursuant to the Rural Electrification Act of 1936, as amended, (7 U.S.C. 901 *et seq.*) (RE Act). The security for these loans is generally a first mortgage on the borrower's electric or telecommunications system. In order to maintain the security for government loans, the RUS debt covenants require

borrowers to maintain adequate levels of fidelity and insurance coverage. Such coverage is generally carried by any prudent business and required by any prudent lender.

RUS regulations implementing these fidelity and insurance requirements, 7 CFR part 1788, were last issued in 1986. Since that time, the business and regulatory environment of electric and telecommunications utilities have undergone rapid change, and the experience and sophistication of RUS financed systems have increased. RUS has published a number of regulations updating and streamlining various requirements. The regulation is part of this overall effort to modernize requirements in order to improve the delivery of customer service.

On October 8, 1998 RUS published a proposed rule at 63 FR 54385. One comment was received. That comment was favorable to the rule as published and suggested no changes in the rule.

Consequently, RUS is publishing the final rule with no changes from the proposed rule.

Electric distribution borrowers having the form of mortgage found in 7 CFR part 1718 are currently subject to provisions similar to subpart A of this part. All other borrowers are required to make the first certification under subpart A of this rule at the end of the first complete calendar year after the effective date of this rule. It is contemplated that an insurance provision similar to subpart A of this rule will be included in all telecommunications mortgages executed by RUS after the effective date of this rule and that all borrowers receiving a telecommunications loan or loan guarantee after such effective date will be required to execute such a mortgage. A provision has been included in subpart A that places a requirement on borrowers concerning the reporting of irregularities that is similar to the requirement on Certified Public Accountants in 7 CFR part 1773.

Subparts B and C of this rule will apply to the first contracts covered by the rule that borrowers enter into after the effective date of this rule.

List of Subjects in 7 CFR Part 1788

Electric power, Insurance, Loan programs—communications, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

For the reasons set forth in the preamble, RUS amends 7 CFR Chapter XVII by revising part 1788 to read as follows:

PART 1788—RUS FIDELITY AND INSURANCE REQUIREMENTS FOR ELECTRIC AND TELECOMMUNICATIONS BORROWERS

Subpart A—Borrower Insurance Requirements

Sec.

Subpart B—Insurance for Contractors, Engineers, and Architects, Electric Borrowers

Subpart C—Insurance for Contractors, Engineers, and Architects, Telecommunications Borrowers

Authority: 7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*; 7 U.S.C. 6941 *et seq.*

Subpart A—Borrower Insurance Requirements

§ 1788.1 General and definitions.

(a) The standard forms of documents covering loans made or guaranteed by the Rural Utilities Service contain provisions regarding insurance and fidelity coverage to be maintained by each borrower. This part implements those provisions by setting forth the requirements to be met by all borrowers.

(b) As used in this part:

Borrower means any entity with any outstanding loan made or guaranteed by RUS.

Irregularity has the meaning found in § 1773.2.

Loan documents means the loan agreement, notes, and mortgage evidencing or used in conjunction with an RUS loan.

Mortgage means the mortgage, deed of trust, security agreement, or other security document securing an RUS loan.

Mortgaged property means any property subject to the lien of a mortgage.

RUS means the Rural Utilities Service and includes the Rural Telephone Bank.

RUS loan means a loan made or guaranteed by RUS.

(c) RUS may revise these requirements on a case by case basis for borrowers with unusual circumstances.

§ 1788.2 General insurance requirements.

(a) Borrowers will take out, as the respective risks are incurred, and maintain the classes and amounts of insurance in conformance with generally accepted utility industry standards for such classes and amounts of coverage for utilities of the size and character of the borrower and consistent with Prudent Utility Practice. Prudent Utility Practice shall mean any of the practices, methods, and acts which, in the exercise of reasonable judgment, in light of the facts, including but not limited to, the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry in the case of an electric borrower or of the telecommunications industry in the case of a telecommunications borrowers prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result consistent with cost-effectiveness, reliability, safety, and expedition. It is recognized that Prudent Utility Practice is not intended to be limited to optimum practice, method, or act to the exclusion of all others, but rather is a spectrum of possible practices, methods, or act which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with cost-effectiveness, reliability, safety, and expedition.

(b) The foregoing insurance coverage shall be obtained by means of bond and policy forms approved by regulatory authorities having jurisdiction, and, with respect to insurance upon any part of the mortgaged property securing an RUS loan, shall provide that the insurance shall be payable to the mortgagees as their interests may appear by means of the standard mortgagee clause without contribution. Each policy or other contract for such insurance shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least 30 days after written notice to each mortgagee of suspension, cancellation, or termination.

(c) In the event of damage to or the destruction or loss of any portion of the mortgaged property which is used or useful in the borrower's business and which shall be covered by insurance, unless each mortgagee shall otherwise agree, the borrower shall replace or restore such damaged, destroyed, or lost portion so that such mortgaged property

shall be in substantially the same condition as it was in prior to such damage, destruction, or loss and shall apply the proceeds of the insurance for that purpose. The borrower shall replace the lost portion of such mortgaged property or shall commence such restoration promptly after such damage, destruction, or loss shall have occurred and shall complete such replacement or restoration as expeditiously as practicable, and shall pay or cause to be paid out of the proceeds of such insurance form all costs and expenses in connection therewith.

(d) Sums recovered under any policy or fidelity bond by the borrower for a loss of funds advanced under a note secured by a mortgage or recovered by any mortgagee or holder of any note secured by the mortgage for any loss under such policy or bond shall, unless applied as provided in the preceding paragraph, be used as directed by the borrower's mortgage.

(e) Borrowers shall furnish evidence annually that the required insurance and fidelity coverage has been in force for the entire year, and that the borrower has taken all steps currently necessary and will continue to take all steps necessary to ensure that the coverage will remain in force until all loans made or guaranteed by RUS are paid in full. Such evidence shall be in a form satisfactory to RUS. Generally a certification included as part of the RUS Financial and Statistical Report filed by the borrower annually (RUS Form 7 or Form 12 for electric borrowers, RUS Form 479 for telecommunications borrowers, or the successors to these forms) is sufficient evidence of this coverage.

§ 1788.3 Flood insurance.

(a) Borrowers shall purchase and maintain flood insurance for buildings in flood hazard areas to the extent available and required under the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*) The insurance should cover, in addition to the building, any machinery, equipment, fixtures, and furnishings contained in the building.

(b) The National Flood Insurance Program (see 44 CFR Part 59 *et seq.*) provides for a standard flood insurance policy; however, other existing insurance policies which provide flood coverage may be used where flood insurance is available in lieu of the standard flood insurance policy. Such policies must be endorsed to provide:

(1) That the insurer give 30 days written notice of cancellation or nonrenewal to the insured with respect to the flood insurance coverage. To be effective, such notice must be mailed to both the insured and RUS and other mortgagees if any and must include information as to the availability of flood insurance coverage under the National Flood Insurance Program, and

(2) That the flood insurance coverage is at least as broad as the coverage offered by the Standard Flood Insurance Policy.

§ 1788.4 Disclosure of irregularities and illegal acts.

(a) Borrowers must immediately report, in writing, all irregularities and all indications or instances of illegal acts in its operations, whether material or not, to RUS and the Office of the Inspector General (OIG). See 7 CFR 1773.9(c)(3) for OIG addresses. The reporting requirements for borrowers are the same as those for CPA's set forth in § 1773.9

(b) Borrowers are required to make full disclosure to the bonding company of the dishonest or fraudulent acts.

§ 1788.5 RUS endorsement required.

In the case of a cooperative or mutual organization, RUS requires that the following:

Endorsement Waiving Immunity From Tort Liability'' be included as a part of each public liability, owned, non-owned, hired automobile, and aircraft liability, employers' liability policy, and boiler policy:

The Insurer agrees with the Rural Utilities Service that such insurance as is afforded by the policy applies subject to the following provisions:

1. The Insurer agrees that it will not use, either in the adjustment of claims or in the defense of suits against the Insured, the immunity of the Insured from tort liability, unless requested by the Insured to interpose such defense.

2. The Insured agrees that the waiver of the defense of immunity shall not subject the Insurer to liability of any portion of a claim, verdict or judgment in excess of the limits of liability stated in the policy.

3. The Insurer agrees that if the Insured is relieved of liability because of its immunity, either by interposition of such defense at the request of the Insured or by voluntary action of a court, the insurance applicable to the injuries on which such suit is based, to the extent to which it would otherwise have been available to the Insured, shall apply to officers and employees of the Insured in their capacity as such; provided that all defenses other than immunity from tort liability which would be available to the Insurer but for said immunity in suits against the Insured or against the Insurer under the policy shall be available to the Insurer with respect to such officers and employees in suits against such officers and employees or against the Insurer under the policy.

§ 1788.6 RUS right to place insurance.

If a borrower fails to purchase or maintain the required insurance and fidelity coverage, the mortgagees may place required insurance and fidelity coverage on behalf and in the name of the borrower. The borrower shall pay the cost of this coverage, as provided in the loan documents.

§§ 1788.6—1788.10 [Reserved]

Subpart B—Insurance for Contractors, Engineers, and Architects, Electric Borrowers

§ 1788.11 Minimum insurance requirements for contractors, engineers, and architects.

(a) Each electric borrower shall include the provisions in this paragraph in its agreements with contractors, engineers, and architects, said agreements that are wholly or partially financed by RUS loans or guarantees. The borrower should replace ''Contractor'' with ''Engineer'' or ''Architect'' as appropriate.

1. The Contractor shall take out and maintain throughout the period of this Agreement insurance of the following minimum types and amounts:

a. Worker's compensation and employer's liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to workers' compensation laws of the governing State, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

b. Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

c. Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, non-owned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million each occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

2. The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in paragraphs (a)(1)(b) and (a)(1)(c) of this section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

3. The Owner shall be named as Additional Insured on all policies of insurance required in (a)(1)(b) and (a)(1)(c) of this section.

4. The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Contractor shall furnish the Owner a certificate evidencing compliance with the foregoing requirements that shall provide not less than 30 days prior written notice to the Owner of any cancellation or material change in the insurance.

(b) Electric borrowers shall also ensure that all architects and engineers working under contract with the borrower have insurance coverage for Errors and Omissions (Professional Liability Insurance) in an amount at least as large as the amount of the architectural or engineering services contract but not less than $500,000.

(c) The borrower may increase the limits of insurance if desired.

(d) The minimum requirement of $1 million of public liability insurance does not apply to contractors performing maintenance work, janitorial-type services, meter reading services, rights-of-way mowing, and jobs of a similar nature. However, borrowers shall ensure that the contractor performing the work has public liability coverage at a level determined to be appropriate by the borrower.

(e) If requested by RUS, the borrower shall provide RUS with a certificate from the contractor, engineer, or architect evidencing compliance with the requirements of this section.

§ 1788.12 Contractors' bonds.

Electric borrowers shall require contractors to obtain contractors' bonds when required by part 1726, Electric System Construction Policies and Procedures, of this chapter. Surety companies providing contractors' bonds shall be listed as acceptable sureties in the U.S. Department of Treasury Circular No. 570. The circular is maintained through periodic publication in the **Federal Register** and is available on the Internet under ftp://ftp.fedworld.gov/pub/tel/sureties.txt, and on the Department of the Treasury's computer bulletin board at 202–874–6817.

Subpart C—Insurance for Contractors, Engineers, and Architects, Telecommunications Borrowers

§ 1788.46 General.

This subpart sets forth RUS policies for minimum insurance requirements for contractors, engineers, and architects performing work under contracts which are wholly or partially financed by RUS loans or guarantees with telecommunications borrowers.

§ 1788.47 Policy requirements.

(a) Contractors, engineers, and architects performing work for borrowers under construction, engineering, and architectural service contracts shall obtain insurance coverage, as required in § 1788.48, and maintain it in effect until work under the contracts is completed.

(b) Contractors entering into construction contracts with borrowers shall furnish a contractors' bond, except as provided for in § 1788.49, covering all of the contractors' undertaking under the contract.

(c) Borrowers shall make sure that their contractors, engineers, and architects comply with the insurance and bond requirements of their contracts.

§ 1788.48 Contract insurance requirements.

Contracts entered into between borrowers and contractors, engineers, and architects shall provide that they take out and maintain throughout the contract period insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, non-owned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(d) When a borrower contracts for the installation of major equipment by other than the supplier or for the moving of major equipment from one location to another, the contractor shall furnish the borrower with an installation floater policy. The policy shall cover all risks of damage to the equipment until completion of the installation contract.

§ 1788.49 Contractors' bond requirements.

Construction contracts in amounts in excess of $250,000 for facilities shall require contractors to secure a contractors' bond, on a form approved by RUS, attached to the contract in a penal sum of not less than the contract price, which is the sum of all labor and materials including owner-furnished materials installed in the project. RUS Form 168b is for use when the contract exceeds $250,000. RUS Form 168c is for use when the contractor's surety has accepted a Small Business Administration guarantee and the contract is for $1,000,000 or less. For minor construction contracts under which work will be done in sections and no section will exceed a total cost of $250,000, the borrower may waive the requirement for a contractors' bond.

§ 1788.50 Acceptable sureties.

Surety companies providing contractors' bonds shall be listed as acceptable sureties in the U.S. Department of Treasury Circular No. 570. The circular is maintained through periodic publication in the **Federal Register** and is available on the Internet under ftp://ftp.fedworld.gov/pub/tel/sureties.txt, and on the Department of the Treasury's computer bulletin board at 202–874–6817.

§§ 1788.51—1788.53 [Reserved]

§ 1788.54 Compliance with contracts.

It is the responsibility of the borrower to determine, before the commencement of work, that the engineer, architect, and the contractor have insurance that complies with their contract requirements.

§ 1788.55 Providing RUS evidence.

When RUS shall specifically so direct, the borrower shall also require the engineer, the architect, and the contractor, to forward to RUS evidence of compliance with their contract representative of the insurance company and include a provision that no change in or cancellation of any policy listed in the certificate will be made without the prior written notice to the borrower and to RUS.

Dated: December 24, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–34778 Filed 12–31–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 98–086–2]

Validated Brucellosis-Free States; Alabama

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 brucellosis regulations concerning the interstate movement of swine by adding Alabama to the list of validated brucellosis-free States. We have determined that Alabama meets the criteria for classification as a validated brucellosis-free State. The interim rule relieved certain restrictions on the interstate movement of breeding swine from Alabama.

EFFECTIVE DATE: The interim rule was effective on August 21, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Taft, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–4916.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on August 21, 1998 (63 FR 44776–44777, Docket No. 98–086–1), we amended the brucellosis regulations in 9 CFR part 78 by adding Alabama to the list of validated brucellosis-free States in § 78.43.

Comments on the interim rule were required to be received on or before October 20, 1998. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive 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 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 78 and that was published at 63 FR 44776–44777 on August 21, 1998.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 24th day of December 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–34745 Filed 12–31–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 98–101–2]

Validated Brucellosis-Free States; South Carolina

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 brucellosis regulations concerning the interstate movement of swine by adding South Carolina to the list of validated brucellosis-free States. We have determined that South Carolina meets the criteria for classification as a validated brucellosis-free State. The interim rule relieved certain restrictions on the interstate movement of breeding swine from South Carolina.

EFFECTIVE DATE: The interim rule was effective on October 7, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Taft, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–4916.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on October 7, 1998 (63 FR 53781–53783, Docket No. 98–101–1), we amended the brucellosis regulations in 9 CFR part 78 by adding South Carolina to the list of validated brucellosis-free States in § 78.43.

Comments on the interim rule were required to be received on or before December 7, 1998. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive 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 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and that was published at 63 FR 53781–53783 on October 7, 1998.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 24th day of December 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–34744 Filed 12–31–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–72–AD; Amendment 39–10967; AD 98–26–24]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737–100 and –200 series airplanes, that

currently requires replacement of certain outboard and inboard wheel halves with improved wheel halves; cleaning and inspecting certain outboard and inboard wheel halves for corrosion, missing paint in large areas, and cracks; and repair or replacement of the wheel halves with serviceable wheel halves, if necessary. That AD was prompted by a review of the design of the flight control systems on Model 737 series airplanes. This amendment requires that the actions be accomplished in accordance with revised service information. The actions specified by this AD are intended to prevent failure of the wheel flanges, which could result in damage to the hydraulics systems, jammed flight controls, loss of electrical power, or other combinations of failures; and consequent reduced controllability of the airplane.

DATES: Effective February 8, 1999.

The incorporation by reference of Allied Signal Service Bulletin 737–32–026, dated June 27, 1988, including Attachment 1, dated January 17, 1978, and Attachment 2, dated June 27, 1988, is approved by the Director of the Federal Register as of February 8, 1999.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 16, 1997 (62 FR 43067, August 12, 1997).

ADDRESSES: The service information referenced in this AD may be obtained from Allied Signal Aerospace Company, Bendix Wheels and Brakes Division, South Bend, Indiana 46624; and Bendix, Aircraft Brake and Strut Division, 3520 Westmoor Street, South Bend, Indiana 46628–1373. 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: David Herron, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2672; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–17–01, amendment 39–10102 (62 FR 43067, August 12, 1997), which is applicable to certain Boeing Model 737–100 and -200 series airplanes, was published in the **Federal Register** on July 9, 1998 (63 FR 37072). The action proposed to continue to require replacement of certain outboard and inboard wheel halves with improved wheel halves; cleaning and inspecting certain outboard and inboard wheel halves for corrosion, missing paint in large areas, and cracks; and repair or replacement of the wheel halves with serviceable wheel halves, if necessary. The action also proposed to require that the actions be accomplished in accordance with revised service information.

Comments

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

The commenters support the proposed rule.

Explanation of Changes Made to This Final Rule

The notice of proposed rulemaking (NPRM) references Allied Signal Service Bulletin No. 737–32–026, dated June 27, 1998, including Attachment 1, dated January 17, 1978, and Attachment 2, dated June 27, 1988, as the appropriate source of service information for accomplishment of the actions specified in paragraph (a)(1) of the NPRM. However, the FAA intended to give credit to any operator that may have accomplished the actions previously in accordance with Allied Signal Service Bulletin No. 737–32–026, dated April 26, 1988 (which was referenced as the appropriate source of service information for accomplishment of certain actions in AD 97–17–01). Reference to Allied Signal Service Bulletin No. 737–32–026, dated April 26, 1988, was inadvertently omitted from paragraph (a)(1) of the NPRM. Therefore, the FAA has revised the final rule to specify that accomplishment of the actions specified in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this AD in accordance with Allied Signal Service Bulletin No. 737–32–026, dated April 26, 1988, or Allied Signal Service Bulletin No. 737–32–026, dated June 27, 1988, including Attachment 1, dated January 17, 1978, and Attachment 2, dated June 27, 1988; prior to the effective date of this AD; is acceptable for compliance with the applicable requirements of this AD.

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 change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 634 Model 737–100 and –200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 241 airplanes of U.S. registry will be affected by this AD.

Because this AD merely requires that the actions currently required by AD 97–17–01 be accomplished in accordance with revised service information, the AD adds no additional costs and requires no additional work to be performed by affected operators. The current costs associated with this amendment are reiterated in their entirety (as follows) for the convenience of affected operators.

The FAA estimates that it will take approximately 4 work hours per airplane to accomplish the required replacement of wheel halves, at an average labor rate of $60 per work hour. Required parts will cost approximately $20,212 per airplane. Based on these figures, the cost impact of the required replacement on U.S. operators is estimated to be $4,928,932, or $20,452 per airplane.

The FAA also estimates that it will take approximately 2 work hours per airplane to accomplish the required cleaning and inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required cleaning and inspection on U.S. operators is estimated to be $28,920, or $120 per airplane.

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 removing amendment 39–10102 (62 FR 43067, August 12, 1997), and by adding a new airworthiness directive (AD), amendment 39–10967, to read as follows:

98–26–24 Boeing: Amendment 39–10967. Docket 98–NM–72–AD. Supersedes AD 97–17–01, Amendment 39–10102.

Applicability: Model 737–100 and –200 series airplanes equipped with Bendix main wheel assemblies having part number (P/N) 2601571–1, 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 (c)(1) 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 wheel flanges, which could result in damage to the hydraulics systems, jammed flight controls, loss of electrical power, or other combinations of failures; and consequent reduced controllability of the airplane; accomplish the following:

Note 2: Allied Signal, Aircraft Landing Systems, Service Information Letter (SIL) #619, dated February 26, 1997, is an additional source of service information for appropriate wheel half serial numbers.

(a) For airplanes equipped with a Bendix main wheel assembly having P/N 2601571–1 with an inboard wheel half with serial number (S/N) B–5898 or lower, or S/N H–1721 or lower; or with an outboard wheel half with S/N B–5898 or lower, or S/N H–0863 or lower; accomplish the following:

(1) Within 180 days after September 16, 1997 (the effective date of AD 97–17–01, amendment 39–10102, 62 FR 43067), and thereafter at each tire change until the replacement required by paragraph (b) of this AD is accomplished: Accomplish the actions specified in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this AD, in accordance with the Accomplishment Instructions of Allied Signal Service Bulletin No. 737–32–026, dated April 26, 1988, or Allied Signal Service Bulletin No. 737–32–026, dated June 27, 1988, including Attachment 1, dated January 17, 1978, and Attachment 2, dated June 27, 1988. After the effective date of this AD, only Allied Signal Service Bulletin No. 737–32–026, dated June 27, 1998, including Attachment 1, dated January 17, 1978, and Attachment 2, dated June 27, 1988, shall be used.

(i) Clean any inboard and outboard wheel half specified in paragraph (a) of this AD. And

(ii) Inspect the wheel halves for corrosion or missing paint. If any corrosion is found, or if any paint is missing in large areas, prior to further flight, strip or remove paint, and remove any corrosion. And

(iii) Perform an eddy current inspection to detect cracks of the bead seat area.

(2) If any cracking is found during the inspections required by this paragraph, prior to further flight, repair or replace the wheel halves with serviceable wheel halves in accordance with procedures specified in the Component Maintenance Manual.

(b) For airplanes equipped with a Bendix main wheel assembly having P/N 2601571–1 with an inboard wheel half with S/N B–5898 or lower, or S/N H–1721 or lower; or with an outboard wheel half with S/N B–5898 or lower, or S/N H–0863 or lower; accomplish the following: Within 2 years after September 16, 1997, accomplish the actions specified in paragraphs (b)(1) and (b)(2) of this AD, in accordance with Bendix Service Information Letter 392, Revision 1, dated November 15, 1979. Accomplishment of the replacement constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(1) Remove any inboard wheel half specified in paragraph (b) of this AD, and replace it with an inboard wheel half having P/N 2607046, S/N 5899 or greater, or S/N H–1722 or greater. And

(2) Remove any outboard wheel half specified in paragraph (b) of this AD, and replace it with an outboard wheel half having P/N 2607047, S/N B–5899 or greater, or S/N H–0864 or greater.

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 97–17–01, amendment 39–10102, are approved as alternative methods of compliance with this AD.

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

(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) Except as provided by paragraph (a)(2) of this AD, the actions shall be done in accordance with Bendix Service Information Letter 392, Revision 1, dated November 15, 1979; Allied Signal Service Bulletin No. 737–32–026, dated April 26, 1988; or Allied Signal Service Bulletin No. 737–32–026, dated June 27, 1998; including Attachment 1, dated January 17, 1978, and Attachment 2, dated June 27, 1988; which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–6	Original	June 27, 1988.
Attachment 1		
7–14	Original	January 17, 1978.
Attachment 2		
15	Original	June 27, 1988.

(1) The incorporation by reference of Allied Signal Service Bulletin 737–32–026, dated June 27, 1988, including Attachment 1, dated January 17, 1978, and Attachment 2, dated June 27, 1988, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Bendix Service Information Letter 392, Revision 1, dated November 15, 1979; and Allied Signal Service Bulletin No. 737–32–026, dated April 26, 1988; was approved previously by the Director of the Federal Register as of September 16, 1997 (62 FR 43067, August 12, 1997).

(3) Copies may be obtained from Allied Signal Aerospace Company, Bendix Wheels and Brakes Division, South Bend, Indiana 46624; and Bendix Aircraft Brake and Strut Division, 3520 Westmoor Street, South Bend, Indiana 46628–1373. 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.

(f) This amendment becomes effective on February 8, 1999.

Issued in Renton, Washington, on December 17, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–34097 Filed 12–31–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–44]

Remove Class D Airspace; Fort Leavenworth, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which removes Class D airspace at Fort Leavenworth, KS.

DATES: The direct final rule published at 63 FR 57585 is effective on 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 18, 1998 (63 FR 57585). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 28, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on December 11, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–34772 Filed 12–31–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–58]

Amendment to Class E Airspace; Dubuque, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Dubuque Regional Airport, Dubuque, IA. A review of the Class E airspace area for Dubuque Regional Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) and comply with the criteria of FAA Order 7400.2D.

DATES: *Effective date:* 0901 UTC, March 25, 1999.

Comments for inclusion in the Rules Docket must be received on or before February 2, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–58, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Dubuque, IA. A review of the Class E airspace for Dubuque Regional Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. the criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Dubuque Regional Airport, IA, will provide additional controlled airspace for aircraft operating under IFR and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, 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. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the

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

Comments Invited

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

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

Comments wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–58.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ACE IA E5 Dubuque, IA [Revised]

Dubuque Regional Airport, IA
(Lat. 42°24′11″ N., long. 90°42′33″ W.)
Dubuque VORTAC
(Lat. 42°24′05″ N., long. 90°42′33″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Dubuque Regional Airport and within 2.6 miles each side of the 321° radial of the Dubuque VORTAC extending from the VORTAC to 7 miles northwest of the airport and within 3 miles each side of the 133° radial of the Dubuque VORTAC extending from the VORTAC to 13.5 miles southeast of the airport and within 3 miles each side of the 189° radial of the Dubuque VORTAC extending from the VORTAC to 7.4 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on December 11, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–34776 Filed 12–31–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–43]

Amendment to Class E Airspace; Meade, KS; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This document confirms the effective date of a direct final rule which revises the Class E airspace at Meade, KS, and corrects the geographic coordinates of the Airport Reference Point (ARP) for Meade Municipal Airport as published in the direct final rule.

DATES: The direct final rule published at 63 FR 54350 is effective on 0901 UTC, January 28, 1999.

This correction is effective on January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: On October 9, 1998, the FAA published in the **Federal Register** a direct final rule; request for comments which revises the Class E airspace at Meade, KS (FR Document 98–27249, 63 FR 54350, Airspace Docket No. 98–ACE–43). An error was subsequently discovered in the geographic coordinates for the Meade Municipal Airport ARP. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that this correction will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects

the geographic coordinates of the Meade Municipal Airport ARP and confirms the effective date of the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written averse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 28, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction

In rule FR Doc. 98–27249 published in the **Federal Register** on October 9, 1998, 63 FR 54350, make the following correction to the Meade, KS, Class E airspace designation incorporated by reference in 14 CFR 71.1:

§ 71.1 [Corrected]

ACE KS E5 Meade, KS [Corrected]

On page 54351, in the third column, under Meade Municipal Airport, KS correct ''(lat. 37°16′37″ N., long. 100°21′23″ W.) to read ''(lat. 37°16′46″ N., long. 100°21′23″ W.)''

Issued in Kansas City, MO on December 1, 1998.

Bryan H. Burleson,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–34774 Filed 12–31–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–52]

Amendment to Class E Airspace; Perry, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Perry Municipal Airport, Perry, IA. A review of the Class E airspace area for Perry Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument flight Rules (IFR) and comply with the criteria of FAA Order 7400.2D.

DATES: *Effective date:* 0901 UTC, March 25, 1999.

Comments for inclusion in the Rules Docket must be received on or before January 28, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–52, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT:

Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Perry, IA. A review of the Class E airspace for Perry Municipal Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Perry Municipal Airport, IA, will provide additional airspace for aircraft operating under IFR and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, 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. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendments will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response in this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–52.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ACE IA E5 Perry, IA [Revised]

Perry Municipal Airport, IA
(Lat 41°49′41″N., long. 94°09′36″W.)
Perry NDB
(Lat. 41°49′50″N., long. 94°09′38″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Perry Municipal Airport and within 2.6 miles each side of the 151° bearing from Perry NDB extending from the 6.4-mile radius to 7 miles southeast of the airport and within 2.6 miles each side of the 316° bearing from the Perry NDB extending from the 6.4-mile radius to 7 miles northwest of the airport, excluding that airspace within the Des Moines, IA, and the Jefferson, IA, Class E5 airspace.

* * * * *

Issued in Kansas City, MO, on December 7, 1998.

Jack L. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–34771 Filed 12–31–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–57]

Amendment to Class E Airspace; Fort Madison, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Fort Madison Municipal Airport, Fort Madison, IA. A review of the Class E airspace are for Fort Madison Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) and comply with the criteria of FAA Order 7400.2D.

DATES: 0901 UTC, March 25, 1999.

Comments for inclusion in the Rules Docket must be received on or before February 2, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–57, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E Airspace at Fort Madison, IA. A review of the Class E airspace for Fort Madison Municipal Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Fort Madison Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, 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. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower

altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–57.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.0F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ACE IA E5 Fort Madison, IA [Revised]

Fort Madison Municipal Airport, IA
(Lat. 40°39′33″ N., long. 91°19′37″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Fort Madison Municipal Airport and within 1.8 miles each side of the 078° bearing from the Fort Madison Municipal Airport extending from the 6.4-mile radius to 8.2 miles northeast of the airport.

* * * * *

Issued in Kansas City, MO, on December 11, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–34770 Filed 12–31–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–46]

Revision of Class E Airspace; Hugo, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

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

EFFECTIVE DATE: The direct final rule published at 63 FR 55531 is effective 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 16, 1998 (63 FR 55531). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 28, 1999. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX on December 22, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–34769 Filed 12–31–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–45]

Establishment of Class E Airspace; Oak Grove, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

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

EFFECTIVE DATE: The direct final rule published at 63 FR 55530 is effective 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 16, 1998 (63 FR 55530). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 28, 1999. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Forth Worth, TX, on December 22, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–34768 Filed 12–31–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–44]

Establishment of Class E Airspace; Carrizo Springs, Glass Ranch Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which establishes Class E airspace at Carrizo Springs, Glass Ranch Airport, TX.

EFFECTIVE DATE: The direct final rule published at 63 FR 50992 is effective 0901 UTC, January 28, 1999.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 24, 1998 (63 FR 50992). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 28, 1999. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on December 22, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–34766 Filed 12–31–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 300

[Docket No. 980602143–8309–02; I.D. 040197B]

RIN 0648–AI99

High Seas Fishing Compliance Act; Vessel Identification and Reporting Requirements; OMB Control Numbers

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement vessel identification and reporting requirements under the High Seas Fishing Compliance Act (HSFCA). This rule requires vessels possessing permits issued under the HSFCA to be marked for identification purposes and to report their catches and effort when fishing on the high seas. This action is necessary to comply with the HSFCA.

DATES: Effective February 3, 1999.

ADDRESSES: Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; Southeast Region, NMFS, 9721 Executive Center Drive, N., St. Petersburg, FL 33702; Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; Northwest Region, NMFS, 7600 Sand Point Way, NE., BIN C15700, Bldg. 1, Seattle, WA 98115; Alaska Region, NMFS, 709 West Ninth Street, Suite 401, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, (301) 713–2276.

SUPPLEMENTARY INFORMATION: The HSFCA (16 U.S.C. 5501 *et seq.*) implements the United Nations Food and Agriculture Organization (FAO) Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Agreement). The HSFCA requires U.S. vessels fishing on the high seas to possess a permit issued under the HSFCA. As used in the HSFCA, the term ''high seas'' means the waters beyond the territorial sea or exclusive economic zone (or the equivalent) of any nation, to the extent that such territorial sea or exclusive economic zone (or the equivalent) is recognized by the United States. Additional information on the Agreement and the HSFCA is published at 61 FR 11751, March 22, 1996, and 61

FR 35548, July 5, 1996. Regulations at 50 CFR part 300, subpart B govern permit application and issuance procedures under the HSFCA.

The HSFCA also prescribes that licensed U.S. vessels operating on the high seas be marked for identification purposes and report their catches on the high seas. A proposed rule to implement vessel identification and reporting requirements was published at 63 FR 34624, June 25, 1998. The proposed rule requested public comments. No comments were received.

NMFS has endeavored to minimize duplication of reporting requirements and to ensure that, to the extent practicable, the regulations issued by this action are consistent with regulations implementing fishery management plans (FMPs) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq*.) and regulations implementing other Federal fishery management statutes (e.g., regulations implementing the Antarctic Marine Living Resources Convention Act).

NMFS proposed to implement vessel identification requirements under the HSFCA by considering licensed vessels that are already marked according to regulations implementing Federal fishery statutes as being appropriately marked for purposes of the HSFCA. For vessels not so marked, NMFS proposed to specify identification requirements for licensed vessels based on the FAO Standard Specifications for the Marking and Identification of Fishing Vessels. The proposed vessel identification regulations are adopted as final without change.

NMFS proposed to implement vessel reporting requirements under the HSFCA by considering vessel operators already reporting high seas catch and effort in conformity with regulations implementing Federal fishery statutes as meeting HSFCA reporting requirements. It was proposed that vessel operators not already so reporting be required to meet HSFCA reporting requirements by completing gear-specific logs, to be available from NMFS Regional Administrators (see **ADDRESSES**), except that vessel operators in the albacore fishery of the Pacific Ocean would meet their HSFCA reporting requirements by completing the ''U.S. Pacific Albacore Logbook,'' to be available from the NMFS Southwest Regional Administrator (see **ADDRESSES**). The proposed vessel reporting regulations are adopted as final without change.

Sources for listed reporting forms for specified fisheries may be found in the applicable implementing regulations; the ''U.S. Pacific Albacore Logbook'' may be obtained from the NMFS Southwest Region (see **ADDRESSES**); gear-specific log forms (consisting of forms for the following gear types: Longline/gillnet, purse seine, troll/pole and line, trawl, trap, mothership and ''other'') may be obtained from the NMFS Regional Office (see **ADDRESSES**) from which a vessel's HSFCA permit was issued.

NMFS also proposed to revise the existing regulations to clarify the conditions under which a U.S. vessel is eligible for a permit and the scope of permit sanction authority under the HSFCA. The proposed revisions regarding permit eligibility and sanction authority are adopted as final without change.

Operators of U.S. vessels fishing on the high seas are reminded of their responsibility under the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq*.) to report all incidental injuries and mortalities of marine mammals that occur as a result of commercial fishing operations. MMPA reporting forms and additional information about the MMPA can be obtained through NMFS Regional Offices (see **ADDRESSES**).

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

This rule contains two collection-of-information requirements subject to the Paperwork Reduction Act. These collection-of-information requirements have been approved by the Office of Management and Budget (OMB). The first collection-of-information requirement pertains to vessel identification requirements for vessels not already marked for identification purposes in accordance with the implementing regulations of a FMP or Federal fishery management statute. The collection of this information has been approved under OMB control number 0648–0348. The second collection-of-information requirement pertains to reporting of catch and effort by those vessels not otherwise required to report high seas catches and effort. The collection of this information has been approved under OMB control number 0648–0349.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act unless that collection-of-information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 300

Exports, Fisheries, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: December 24, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR Chapter IX and 50 CFR Chapter III are amended as follows:

15 CFR Chapter IX

PART 902— NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq*.

2. In § 902.1, paragraph (b), the table is amended by adding in the left column under 50 CFR, in numerical order, ''300.14'' and ''300.17'', and in the right column, in corresponding positions, the control numbers ''–0348'' and ''–0349'', as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648–)
* * * * *	
50 CFR	

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648–)
* * * * *	
300.14	–0348
300.17	–0349
* * * * *	

50 CFR Chapter III

PART 300—INTERNATIONAL FISHERIES REGULATIONS

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

Authority: 16 U.S.C. 5501 *et seq.*

4. In § 300.13, (a)(1) introductory text is revised to read as follows:

§ 300.13 Vessel permits.

(a) * * *

(1) Any high seas fishing vessel of the United States is eligible to receive a permit under this subpart, unless the vessel was previously authorized to be used for fishing on the high seas by a foreign nation, and —

* * * * *

5. In § 300.14, the section heading is revised, and text is added to read as follows:

§ 300.14 Vessel identification.

(a) *General.* A vessel permitted under this subpart must be marked for identification purposes in accordance with this section.

(b) *Marking.* Vessels must be marked either:

(1) In accordance with vessel identification requirements specified in Federal fishery regulations issued under the Magnuson-Stevens Act or under other Federal fishery management statutes; or

(2) In accordance with the following identification requirements:

(i) A vessel must be marked with its IRCS, or, if not assigned an IRCS, must be marked (in order of priority) with its Federal, state, or other documentation number appearing on its high seas fishing permit;

(ii) The markings must be displayed at all times on the vessel's side or superstructure, port and starboard, as well as on a deck;

(iii) The markings must be placed so that they do not extend below the waterline, are not obscured by fishing gear, whether stowed or in use, and are clear of flow from scuppers or overboard discharges that might damage or discolor the markings;

(iv) Block lettering and numbering must be used;

(v) The height of the letters and numbers must be in proportion to the size of the vessel as follows: for vessels 25 meters (m) and over in length, the height of letters and numbers must be no less than 1.0 m; for vessels 20 m but less than 25 m in length, the height of letters and numbers must be no less than 0.8 m; for vessels 15 m but less than 20 m in length, the height of letters and numbers must be no less than 0.6 m; for vessels 12 m but less than 15 m in length, the height of letters and numbers must be no less than 0.4 m; for vessels 5 m but less than 12 m in length, the height of letters and numbers must be no less than 0.3 m; and for vessels under 5 m in length, the height of letters and numbers must be no less than 0.1 m;

(vi) The height of the letters and numbers to be placed on decks must be no less than 0.3 m;

(vii) The length of the hyphen(s), if any, must be half the height (h) of the letters and numbers;

(viii) The width of the stroke for all letters, numbers, and hyphens must be h/6;

(ix) The space between letters and/or numbers must not exceed h/4 nor be less than h/6;

(x) The space between adjacent letters having sloping sides must not exceed h/8 nor be less than h/10;

(xi) The marks must be white on a black background, or black on a white background;

(xii) The background must extend to provide a border around the mark of no less than h/6; and

(xiii) The marks and the background must be maintained in good condition at all times.

6. In § 300.15, paragraph (c) is added to read as follows:

§ 300.15 Prohibitions.

* * * * *

(c) Use a high seas fishing vessel on the high seas that is not marked in accordance with § 300.14.

7. Section 300.16 is revised to read as follows:

§ 300.16 Penalties.

(a) Any person, any high seas fishing vessel, the owner or operator of such vessel, or any person who has been issued or has applied for a permit, found to be in violation of the Act, this subpart, or any permit issued under this subpart will be subject to the civil and criminal penalty provisions, permit sanctions, and forfeiture provisions prescribed by the Act, 15 CFR part 904 (Civil Procedures), and other applicable laws.

(b) Permits under this subpart may be subject to permit sanctions prescribed by the Act, 15 CFR part 904 (Civil Procedures), and other applicable laws if any amount in settlement of a civil forfeiture imposed on a high seas fishing vessel or other property, or any civil penalty or criminal fine imposed on a high seas fishing vessel or on an owner or operator of such a vessel or on any other person who has been issued or has applied for a permit under any fishery resource statute enforced by the Secretary, has not been paid and is overdue.

8. In § 300.17, the section heading is revised, and text is added to read as follows:

§ 300.17 Reporting.

(a) *General.* The operator of any vessel permitted under this subpart must report high seas catch and effort information to NMFS in a manner set by this section. Reports must include: identification information for vessel and operator; operator signature; crew size; whether an observer is aboard; target species; gear used; dates, times, locations, and conditions under which fishing was conducted; species and amounts of fish retained and discarded; and details of any interactions with sea turtles or birds.

(b) *Reporting options.* (1) For the following fisheries, a permit holder must maintain and submit the listed reporting forms to the appropriate address and in accordance with the time limits required by the relevant regulations:

(i) Antarctic—CCAMLR Logbook (50 CFR 300.107);

(ii) Atlantic—Fishing Vessel Log Reports (50 CFR 648.7(b));

(iii) Atlantic Pelagic Longline—Longline Logbook (50 CFR 630.5);

(iv) Atlantic Purse Seine—Purse Seine Logbook (50 CFR 285.54);

(v) Pacific Pelagic Longline—Longline Logbook (50 CFR 660.14(a));

(vi) Eastern Pacific Purse Seine—IATTC Logbook (50 CFR 300.22); or

(vii) Western Pacific Purse Seine—South Pacific Tuna Treaty Logbook (50 CFR 300.34).

(2) For the albacore troll fisheries in the North and South Pacific, a permit holder must report high seas catch and effort by maintaining and submitting the log provided by the Regional Administrator, Southwest Region, NMFS.

(3) For other fisheries, a permit holder must report high seas catch and effort by maintaining and submitting records, specific to the fishing gear being used, on forms provided by the Regional Administrator of the NMFS Region which issued the permit holder's HSFCA permit.

(c) *Confidentiality of statistics.* Information submitted pursuant to this subpart will be treated in accordance with the provisions of 50 CFR part 600 of this title.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Voting by Interested Members of Self-Regulatory Organization Governing Boards and Committees

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') has adopted a new Regulation 1.69 that implements the statutory directives of Section 5a(a)(17) of the Commodity Exchange Act (''CEA'') as it was amended by Section 217 of the Futures Trading Practices Act of 1992 (''FTPA'').[1]

New Commission Regulation 1.69 requires self-regulatory organizations (''SRO'') to adopt rules prohibiting governing board, disciplinary committee and oversight panel members from deliberating or voting on certain matters where the member has either a relationship with the matter's named party in interest or a financial interest in the matter's outcome. This final rulemaking also has amended Commission Regulations 1.41 and 1.63 to make modifications made necessary by new Commission Regulation 1.69.

EFFECTIVE DATE: March 5, 1999.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Acting Associate Director, or Martha A. Mensoian, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION

I. Introduction

Section 217 of the FTPA amended Section 5a(1)(17) of the CEA to ''provide for the avoidance of conflict of interest in deliberations by the governing board and any disciplinary and oversight committee.'' [2] On May 3, 1996, the Commission published for pubic comment in the **Federal Register** a proposed new Regulation 1.69 and related amendments to existing Commission Regulations 1.41 and 1.63 which would have required SROs to adopt rules prohibiting governing board, disciplinary committee and oversight panel members from deliberating and voting on certain matters where the member had either a relationship with the matter's named party in interest or a financial interest in the matter's outcome.[3] In response to that proposed rulemaking release, the Commission received letters from eleven commenters. After reviewing those comments, the Commission decided to incorporate into its rulemaking many of the suggestions made by the commenters and to issue for pubic comment re-proposed versions of Regulation 1.69 and amended Regulations 1.41 and 1.63. The Commission published its re-proposed rulemaking in the **Federal Register** on January 23, 1998.[4] That release extensively discusses the comments that were made on the originally proposed rulemaking, indicates whether and how the re-proposed rulemaking responds to the comments and explains the Commission's reasons for proposing a re-proposed version of the rulemaking. The comment period for the re-proposed rulemaking expired on March 25, 1998.

II. Comments Received

The Commission received ten comment letters in response to its re-proposed rulemaking. The comment letters were submitted by five futures exchanges (the Chicago Board of Trade (''CBT''), the Chicago Mercantile Exchange (''CME''), the Coffee, Sugar & Cocoa Exchange, Inc. (''CSCE''), the Minneapolis Grain Exchange (''MGE''), and the New York Mercantile Exchange (''NYMEX'')); a futures clearing organization (the Board of Trade Clearing Corporation (''BOTCC'')); two trade associations (the Futures Industry Association (''FIA'') and the National Grain Trade Council (''NGTC'')); a futures commission merchant (American Futures Group, Inc. (''AFG'')) and Mr. Evan Tucker, an individual who was formerly an associated person with AFG.

The Commission has carefully reviewed these comments and has decided to issue new Regulation 1.69 and amended Regulations 1.41 and 1.63 as final with certain modifications from the re-proposed version of the rulemaking. The following sections of this release analyze the Commission's final rulemaking. Each section describes a provision of the Commission's reproposed rulemaking, discusses comments which were made on that particular provision, indicates how the provision has been adopted in the final rulemaking, and explains the Commission's rationale for adopting the provision. (For ease of reference, the re-proposed rulemaking will be referred to as the ''proposed'' rulemaking throughout the remainder of this release.)

III. Final Rulemaking

A. Definitions (Regulation 1.69(a))

1. Disciplinary Committee (Regulation 1.69(a)(1))

As proposed, Regulation 1.69(a)(1) defined ''disciplinary committee'' to mean ''any person or committee of persons, or any subcommittee thereof'' that is authorized by an SRO ''to issue disciplinary charges to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof'' in any case involving a violation of an SRO's rules. The proposed definition excluded persons who were individually authorized by an SRO to impose sanctions summarily for decorum-type rule violations. CBT, CME, CSCE, FIA and NYMEX each commented that the definition should exclude any person or committee of persons that summarily imposed minor disciplinary fines. These commenters contended that imposing conflict of interest restrictions on anyone taking summary actions, whether a single person or a committee, would be cumbersome for SROs to implement.

The Commission has reviewed these comments and concurs that applying conflict of interest requirements to SRO disciplinary authorities when they take summary actions for minor rule violations could be administratively burdensome and might hamper the SROs' ability to take quick, decisive actions in these circumstances. Accordingly, the Commission has determined to establish a disciplinary committee definition that would exclude committees and persons who summarily issue minor penalties for violating rules regarding ''decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions or other similar activities.''

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[1] Pub. L. No. 102–546, section 217, 106 Stat. 3590 (1992).

[2] For the purposes of this release, the term ''committee'' generally will be used to include governing boards, disciplinary committees and oversight panels unless otherwise specified.

[3] 61 FR 19869 (May 3, 1996).

[4] 61 FR 3492 (Jan. 23, 1998).

2. Family Relationship (Regulation 1.69(a)(2))

As further discussed below, proposed Regulation 1.69(b)(1)(i)(E) prohibited committee members from deliberating and voting on committee matters in which they had a ''family relationship'' with the matter's named party in interest. For these purposes, proposed Regulation 1.69(a)(2) defined ''family relationship'' to mean a person's ''spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.''

CBT commented that the inclusion of ''former spouses'' in the definition ran counter to the approach taken in proposed Regulation 1.69(b)(1)(i)(D) where conflicts of interests were limited to current, ''ongoing'' business relationships with the named party in interest. The Commission believes that the two types of relationships cited by the CBT are distinguishable. The rationale for limiting conflict of interest requirements to committee members with ''ongoing'' business relationships is that, when a member and a matter's named party in interest have an ongoing business relationship, a committee action that could impact the party financially also could redound to the financial advantage or disadvantage of anyone who is doing business with the party at that point in time, including the committee member. Once a business relationship between two parties no longer exists, however, presumably the financial health of the two parties no longer has any degree of interdependence. By contrast, a committee member's relationship with a former spouse may have emotional and financial implications that continue after their marriage, especially if there is any sort of monetary support arrangement between the former spouses. Accordingly, the Commission has determined to include former spouses in the final definition of family relationship and to adopt the definition as proposed.

3. Governing Board (Regulation 1.69(a)(3))

As proposed, Regulation 1.69(a)(3)'s definition of ''governing board'' included any SRO ''board of directors, board of governors, board of managers, or similar body, or any subcommittee thereof,'' such as an executive committee that was authorized to ''take action or to recommend the taking of action'' on behalf of its SRO. The CBT commented that the definition should not include governing board subcommittees because any potential harm from any conflict of interest on such a subcommittee would be cured by the fact that its actions would be subject to the independent review and oversight of a governing board. The Commission believes that, although board subcommittee actions usually have to be ratified by governing boards, oftentimes recommendations of such subcommittee are the primary influence on board decision. Accordingly, in order to advance the integrity of the SRO committee decision-making process, the Commission has decided to apply its conflict of interest restrictions to governing board subcommittees and to adopt the same governing board definition as proposed.

4. Oversight Panel (Regulation 1.69(a)(4))

In the proposed rulemaking, the Commission defined ''oversight panel'' as an SRO committee authorized to ''recommend or establish policies or procedures with respect to the [SRO's] surveillance, compliance, rule enforcement, or disciplinary responsibilities.'' [5] The CBT and NYCE commented that this definition was too broad and should not include committees which recommend policies as such a definition would deter people, inside and outside of the futures industry, from serving on task forces and planning committees that formulate ideas that are helpful to the SROs.

The Commission believes that SRO policies with respect to surveillance, compliance, rule enforcement and disciplinary responsibilities are an integral part of the self-regulatory process and that persons who are entrusted with recommending such policies should be free from conflicts of interests. Accordingly, the Commission has decided to adopt the proposed definition of oversight panels.

5. Member's Affiliated Firm (Regulation 1.69(a)(5))

Under proposed Regulation 1.69(a)(5), a ''member's affiliated firm'' was defined as any firm at which a committee member was either: (1) A principal, as defined by Regulation 3.1(a), or (2) an employee. The term became operative under proposed Regulation 1.69(b)(2)(iii) which required SROs to review positions at a committee member's ''affiliated firm'' when determining whether the member had a direct and substantial financial interest in the outcome of a significant action. CME commented that the ''member's affiliated firm'' definition should be limited to firms where the member was a principal. CME contended that firms which employ committee members should not be included in the definition as firm employees have much less knowledge regarding their firms' positions than do principals. The Commission believes the potential for a committee member to be influenced by an employment relationship is sufficient to warrant his or her disqualification from deliberating and voting on significant actions which might impact the member's employer. Many firm employees have as much knowledge of their firm's positions as do the firm's principals. In fact, the Commission believes that in some instances an employment relationship may have an even greater influence on a committee member than an ownership relationship in that employees may be under the control of their employing firm. Accordingly, the Commission has determined not to modify this aspect of the definition of ''member's affiliated firm'' but rather to adopt the definition as proposed.

6. Named Party in Interest (Regulation 1.69(a)(6))

In its proposed rulemaking, the term ''named party in interest'' was defined to mean a party who was ''the subject of any matter being considered'' by an SRO committee. In its comment letter, CBT suggested that ''named party in interest'' be defined to mean a ''person who is identified by name to a governing board, disciplinary committee or oversight panel as the subject of a matter to be considered by it.'' The Commission believes the CBT's suggestion would help to clarify the named party in interest definition. Accordingly, the Commission has adopted the substance of CBT's proposed definition with the modification that the provision include any ''person or entity'' that is identified by name as a subject of a committee action. In adopting this definition of ''named party in interest,'' the Commission reminds the SROs that it would be inconsistent with the intent of Regulation 1.69 for SROs to shield the identities of named parties in interests from committee members in order to circumvent the conflict of interest requirements.

7. Self-Regulatory Organization (Regulation 1.69(a)(7))

Proposed Regulation 1.69 defined SROs to include exchanges, clearing organizations and registered futures associations (''RFAs'')(with RFAs being excluded from the definition for the purposes of Regulation 1.69(b)(2)

[5] *See* proposed Commission Regulation 1.69(a)(4).

''financial interest'' conflicts of interest). BOTCC and CBT both objected to the inclusion of clearing organizations in the definition of SRO on the ground that CEA Section 5a(a)(17), Regulation 1.69's statutory enabling provision, only applies to contract markets and not clearing organizations.

The Commission believes that BOTCC's and CBT's suggestions would lead to significant inconsistencies in the application of Regulation 1.69. Some contract markets have in-house clearing organizations (*e.g.*, CME and NYMEX), while other contract markets are cleared by independent clearing organizations (*e.g.*, CBT and CSCE). Applying Regulation 1.69 to clearing organizations, as well as contract markets, would ensure that there would not be differing treatment of contract markets based on whether or not they had an in-house or independent clearing mechanism.

The Commission notes that, while CEA Section 5a(a)(17) only specifies ''contract markets,'' the provision also requires that its conflict of interest restrictions shall apply to committees handling certain types of margin changes. Margin levels in the futures industry are established by both contract markets and clearing organizations. The Commission also notes that there have been previous occasions when CEA requirements for contract markets have been applied to clearing organizations. For example, Section 5a(a)(12)(A) of the CEA mandates Commission review of ''contract market'' rules while Commission Regulation 1.41, which establishes procedures for Commission review of proposed rules, specifically includes clearing organizations within its definition of contract markets for these purposes. In addition, clearing organizations already are subject to regulatory requirements that are comparable to Regulation 1.69 such as Regulation 1.41(f)'s emergency action provisions and Regulation 1.63's prohibition on committee service by persons with disciplinary histories.

For each of the above reasons, the Commission has determined that it is appropriate to make clearing organizations subject to Regulation 1.69 and to include them in the definition of SRO.

8. Significant Actions (Regulation 1.69(a)(8))

Proposed Regulation 1.69(b)(2) applied conflict of interest restrictions to SRO committees whenever they considered any significant action. The term ''significant action'' was proposed to mean: (1) Actions or rule changes that address Regulation 1.41(a)(4) non-physical emergencies; (2) margin changes that respond to extraordinary market conditions, such as ''an actual or attempted corner, squeeze, congestion or undue concentration of positions''; and (3) margin changes that are likely to have a substantial effect on contract prices of any contract traded or cleared at the particular SRO. BOTCC and CBT commented that this provision should track the language of the CEA and that, accordingly, the rulemaking should pertain only to those contract market margin changes that respond to extraordinary market conditions that are likely to have a substantial effect on contract prices.

The Commission believes that margin changes that are made in response to corners, squeezes, congestion, or undue concentrations of positions serve important market integrity purposes and that committee members should not be influenced by their personal interests when considering such decisions. Accordingly, the Commission has determined not to reduce the scope of the significant action definition, but rather to adopt the provision as it was proposed.

B. Self-Regulatory Organization Rules (Regulation 1.69(b))

Proposed Commission Regulation 1.69(b) required SROs to adopt rules prohibiting committee members from deliberating and voting on certain types of matters as to which they had conflicts of interest. Proposed Regulation 1.69(b)(1) restricted committee participation for members who had a relationship with a matter's named party in interest. Proposed Regulation 1.69(b)(2) restricted committee participation for members who had a ''direct and substantial financial interest'' in certain types of committee actions that do not require prior Commission review and approval. Proposed Commission Regulations 1.69(b)(1) and (2) also mandated certain procedures that SROs must follow when making a determination as to the existence of a conflict of interest.

1. Conflict of Interest Due to a Relationship With Named Party in Interest (Regulation 1.69(b)(1))

a. Nature of Relationship (Regulation 1.69(b)(1)(i))

Under proposed Regulation 1.69(b)(1)(i), SRO committee members were required to abstain from deliberating and voting on any matter where they had a significant relationship with the ''named party in interest.'' These relationships would include family, employment, broker association and ''significant, ongoing business'' relationships. In its comment letter, the CBT noted that CEA Section 5a(a)(17) limits this abstention requirement to ''confidential'' deliberations and voting. Accordingly, CBT suggested that Regulation 1.69(b)(1)(i) should be revised to conform with Section 5a(a)(17) in this regard.

Although the CEA only mandates that, at a minimum, committee members must abstain from confidential deliberations on matters in which they have a relationship with a named party in interest, the Commission believes that adopting a more prophylactic approach in these types of matters would ensure that SRO committees could not undermine the intent of this provision by declaring ''open'' committee meetings in lieu of applying conflict of interest restrictions. Accordingly, the Commission has decided to adopt Regulation 1.69(b)(1)(i) as proposed and to apply its requirements to all committee deliberations, regardless of whether they are confidential or not.

CME, CSCE and NYMEX commented that the Commission should clarify Regulation 1.69(b)(1)(i) so that it does not apply to committee actions such as price change register revisions and the certification of the late submission of pit cards. The commenters contended that these situations already are addressed by their own existing procedures and that, accordingly, a Commission rulemaking in this area would be an unnecessary administrative encumbrance.

The fact that these commenters already have their own conflict of interest requirements for price change register revisions and late pit card certifications does not obviate the need for the Commission to establish an industry-wide standard in this area. In addition, the existence of such requirements at these exchanges also would seem to contradict the contention that Commission-established requirements would be administratively cumbersome to enforce. Accordingly, in connection with this provision, the Commission wishes to clarify that, if a particular, identifiable person approaches an SRO committee member to request sign-off on a price change register revision or a late pit card certification, Regulation 1.69(b)(1) should apply, and the committee member should abstain from handling the matter if his or her relationship with

the requesting member falls within the parameters of Regulation 1.69(b)(1)(i).[6]

The Commission recognizes that a floor committee would not be subject to Regulation 1.69(b)(1)'s requirements when taking summary disciplinary actions for minor rule violations,[7] while the same committee would be subject to Regulation 1.69(b)(1)'s requirements when taking actions such as price change register revisions and the certification of the late submission of pit cards. This distinction reflects the important regulatory interests implicated by these latter actions but not summary actions for minor rule violations.

AFG and Mr. Tucker each suggested that regulation 1.69(b)(1)(i)'s restrictions should extend to relationships where a committee member and a matter's named party in interest may have shared liability for facts that are under consideration by a committee. AFG and Mr. Tucker indicated that their suggestions were prompted by a particular SRO enforcement case in which a member of the disciplinary committee hearing the case potentially shared liability with the case's named party. The Commission believes that the proposed provision would be difficult to formulate and would likely be overbroad in application. In addition, the types of relationships described by the commenters would probably qualify as employment or significant business relationships and, thus, would already appear to qualify as one of Regulation 1.69(b)(1)(i)'s list of disqualifying relationships.

MGE commented that, because of its small size, some of its broker associations contain practically all of the exchange's floor brokers and consequently, under proposed Regulation 1.69(b)(1)(i)(C), a large number of MGE committee members would be disqualified in matters where a floor broker was a named party in interest. In order to address possible hardships that Regulation 1.69 may impose on smaller futures exchanges, the Commission has decided to consider granting small exchanges exemptions from certain provisions of Regulation 1.69 on a case-by-case basis. In making a request for such an exemption, the requesting exchange must: (1) Demonstrate that the pertinent provision of Regulation 1.69 would create a material hardship and (2) provide for alternative procedures that are not inconsistent with the policy considerations underlying Regulation 1.69.

b. Disclosure of Relationship (Regulation 1.69(b)(1)(ii))

Proposed Regulation 1.69(b)(1)(ii) required that SRO committee members disclose to the appropriate SRO staff whether they had any one of the relationships listed in Regulation 1.69(b)(1)(i) with respect to a matter's named party in interest. No commenter addressed this provision, and the Commission has determined to adopt Regulation 1.69(b)(1)(ii) as proposed.

c. Procedures for Determination (Regulation 1.69(b)(1)(iii))

Proposed Regulation 1.69(b)(1)(iii) required that SROs establish procedures for determining whether committee members had a disqualifying relationship with a matter's named party in interest. The provision mandated that the determination must be based upon: (1) information provided by the committee members to the appropriate SRO staff (Regulation 1.69(b)(1)(iii)(A)), and (2) ''any other source of information that is reasonably available'' to the SRO (Regulation 1.69(b)(1)(iii)(B)).

The CBT, CSCE and NYMEX each proposed amendments to the clause covering ''any other source of information reasonably available'' to the SRO. CBT suggested that SROs be able to rely upon ''any information of which the [SRO] has actual knowledge.'' CSCE suggested that SROs be able to rely upon ''any information otherwise known to the SRO in the ordinary course of business.'' Finally, NYMEX proposed that SROs be permitted to rely upon information in their membership and broker association files.

The Commission believes that CBT's and CSCE's respective proposed changes could create an undesirable incentive for SROs to remain ignorant of their committee members' relationships. On the other hand, the Commission believes that NYMEX's proposed change is too limited in that it would permit SROs to overlook committee member information they may hold somewhere other than in their membership or broker association files.

In order to avoid the ambiguities and compliance issues created by proposed Regulation 1.69(b)(1)(iii)(B)'s knowledge standard, the Commission has determined to establish a more defined, narrower scope for SRO reviews undertaken to determine whether committee members have a conflict of interest with a named party in interest. Accordingly, in addition to the particular information required to be provided to SROs by committee members pursuant to Regulation 1.69(b)(1)(iii)(A), final Regulation 1.69(b)(1)(iii)(B) requires that SROs review information that is ''held by and reasonably available'' to them.

NYMEX also suggested that SROs be permitted to take into account the ''exigency'' of a committee action in determining what type of information to review when assessing committee member relationships with named parties in interest. The Commission has determined to adopt NYMEX's suggestion and has incorporated an ''exigency'' modifier into final Regulation 1.69(b)(1)(iii). The Commission notes that the revision parallels what proposed Regulation 1.69(b)(2)(iv) already provided in connection with SRO determinations of conflict due to financial interests in significant actions.

2. Conflict of Interest Due to a Financial Interest in a Significant Action (Regulation 1.69(b)(2))

Proposed Regulation 1.69(b)(2) required committee members to abstain from ''significant actions'' by their committees, as that term is defined in Regulation 1.69(a), if the member knowingly had a direct and substantial financial interest in the outcome of the matter.

While most of the comments addressing proposed Commission Regulation 1.69(b)(2) focused on the provisions that mandated SRO procedures for implementing this provision, *See* Regulations 1.69(b)(2)(ii) through (iv), MGE and NGTC both contended that Regulation 1.69(b)(2)'s basic restriction would adversely impact small exchanges. They commented that small exchanges often have a single dominant contract that most of the exchange members (and hence most committee members) trade. According to these commenters, apply Regulation 1.69(b)(2) to significant actions concerning these contracts would cause a large number of committee members to abstain and would cripple the decisionmaking ability of small exchange committees.

The Commission is prepared to consider granting small exchanges exemptions from Regulation 1.69(b)(2), on a case-by-case basis. In applying for such an exemption, an exchange must: (1) Demonstrate that Regulation 1.69(b)(2) would create a material hardship (*e.g.*, an exchange that has a single large contract which is traded by a large majority of its members), and (2) provide for alternative procedures that

[6] The Commission notes that committees which act in these capacities would qualify as oversight panels under Regulation 1.69(a)(4), rather than disciplinary committees or governing boards.

[1] *See* discussion of Regulation 1.69(a)(1)'s definition of disciplinary committee in Section III.A.1 above.

are not inconsistent with the policy considerations underlying Regulation 1.69(b(2).

a. Nature of Interest (Regulation 1.69(b)(2)(i))

Proposed Commission Regulation 1.69(b)(2)(i) required that SRO committee members abstain from committee deliberations and voting on certain matters in which they ''knowingly [had] a direct and substantial financial interest.'' The proposed restriction applied whenever a committee considered significant actions.[8] No commenter addressed this provision in particular. Accordingly, the Commission has determined to adopt Regulation 1.69(b)(2)(i) as proposed. In adopting this provision, however, the Commission emphasizes that Regulation 1.69(b)(2)(i) itself states that the bases for a committee member's direct and substantial financial interest in a significant action are limited to exchange and non-exchange positions that ''reasonably could be expected to be affected by the action.'' SROs should follow this standard in establishing the level of disclosure made by committee members pursuant to Regulation 1.69(b)(2)(ii) and the level of position review made by them and their staffs pursuant to Regulations 1.69(b)(2) (iii) and (iv).[9]

b. Disclosure of Interest (Regulation 1.69(b)(2)(ii))

Proposed Regulation 1.69(b)(2)(ii) required that, prior to the consideration of a significant action, committee members must disclose to appropriate SRO staff prescribed position information that was ''known'' to the committee member.

BOTCC, CBT, CME and FIA each suggested that Regulation 1.69 specifically permit a committee member to recuse himself/herself from deliberating and voting on a matter without having to make the required disclosure pursuant to Regulation 1.69(b)(2)(ii). The commenters' suggestions are consistent with the Commission's original intent in proposing Regulation 1.69(b)(2)(ii). Accordingly, the Commission has made responsive changes to the final provision.

[8] The definition of such significant actions is established by final Regulation 1.69(a)(8) and is discussed above in Section III.A.8.

[9] BOTCC, CBT and CME each requested clarification on this particular point in their respective comment letters.

c. Procedure for Determination (Regulation 1.69(b)(2)(iii))

In determining a committee member's financial interest in a significant action, proposed Regulation 1.69(b)(2)(iii) (A) through (D) required SROs to review certain types of positions held at the SRO by the member, the member's affiliated firm, and customers of the member's firm in any contract that could be affected by the committee's significant action. In addition, Regulation 1.69(b)(2)(iii)(E) required SROs to review ''any other types of positions, whether at that [SRO] or elsewhere,'' that the SRO ''reasonably expect[ed] could be affected by the significant action.''

CBT commented that the review of positions held outside of the particular SRO should be limited to positions owned or controlled by the committee member himself or herself and should not include outside positions held by the member's firm or customers of the member's firm. The Commission concurs with this suggestion insofar as it pertains to positions held outside of an SRO by customers of a committee member's firm. Such positions would be both difficult to ascertain and would be less likely to influence a committee member's decisionmaking. In contrast, positions held by a committee member are certainly less difficult to ascertain, and both positions held by a member and in the proprietary accounts of a member's affiliated firm are more likely to influence a committee member's decisionmaking. Accordingly, the Commission has amended final Regulation 1.69(b)(2)(iii)(E) to require SRO review of outside positions held in a member's personal accounts or the proprietary accounts of a member's affiliated firm.

CME suggested that it was not necessary to have an SRO conduct the same level of review for positions held outside of the SRO as for positions held at the SRO and that Regulation 1.69(b)(2)(iii) should be appropriately amended. The Commission does not believe that it is appropriate to establish some lessened level of review standard for positions held outside of the subject SRO. Regulation 1.69(b)(2) already includes provisions that serve the same purpose. For example, Regulation 1.69(b)(2)(i) limits the bases for conflict of interest determinations to positions that ''reasonably'' could be expected to be affected by a significant action. In addition, Regulation 1.69(b)(2)(iv) states that SROs may take into account ''the exigency of the significant action'' when undertaking a review of the various sources of information to be considered when making a conflict of interest determination.

d. Bases for Determination (Regulation 1.69(b)(2)(iv))

Proposed Regulation 1.69(b)(2)(iv) specified what sources of information SROs should rely upon in determining whether a committee member had a conflict of interest in a significant action. Generally, the provision directed SROs to consult: (1) The most recent large trader reports and clearing records available to the SRO (Regulation 1.69(b)(2)(iv)(A)); (2) position information provided to the SRO by the committee member (Regulation 1.69(b)(2)(iv)(B)); and (3) any other source of information that was ''held by and reasonably available'' to the SRO, whether it be from inside or outside the SRO (Regulation 1.69(b)(2)(iv)(C)).

CBT and CSCE each suggested replacement language for Regulation 1.69(b)(2)(iv)(C)'s requirement that SROs consult ''any other source of information that is reasonably available'' to the SRO. CBT suggested that SROs be permitted to rely on ''any information of which the [SRO] has actual knowledge.'' CSCE suggested that SROs be able to rely on ''any information otherwise known to [the SRO] in the ordinary course of business.''

The Commission does not believe that either of these suggested review standards would be appropriate in that they could create a disincentive for SROs to remain apprised of their committee members' positions. The Commission has adopted an alternative revision to Regulation 1.69(b)(2)(iv)(C) which provides that SROs consult ''any other source of information that is held by and reasonably available'' to the SRO. The Commission notes that this revision parallels the standard which the Commission has adopted in Regulation 1.69(b)(1)(iii) with respect to information that SROs should consult in determining whether a committee member has a conflict due to a relationship with a matter's named party in interest.

3. Participation in Deliberations (Regulation 1.69(b)(3))

CEA Section 5a(a)(17) recognizes that in some instances a committee member with a conflict in a particular committee matter also might have special knowledge or experience regarding that matter. Accordingly, in a limited number of circumstances, proposed Commission Regulation 1.69(b)(3) permitted SRO committees to allow a committee member, who otherwise would be required to abstain from

deliberations and voting on a matter because of a conflict, to deliberate but not to vote on the matter. This ''deliberation exception'' was only made applicable to matters in which a committee member had a conflict of interest as the result of having a ''direct and substantial financial interest'' in the outcome of a vote on a significant action under Regulation 1.69(b)(2). Consistent with Section 5a(a)(17), proposed Regulation 1.69(b)(3)'s deliberation exception did not apply to matters in which a committee member had a conflict due to his or her relationship with a matter's named party in interest under Regulation 1.69(b)(1).

In determining whether to permit a ''conflicted'' committee member to deliberate on a matter, proposed Regulation 1.69(b)(3) required that the presiding committee consider a number of factors including: (1) Whether the member had unique or special expertise, knowledge or experience in the matter involved, and (2) whether the member's participation in deliberations would be necessary for the committee to obtain a quorum.[10] Proposed Regulation 1.69(b)(3)(iii) also required that when SRO committees determine whether to grant a deliberation exception, they ''must fully consider the position information'' which evidences the committee member's financial interest in the matter.

The Commission has decided to retain the basic requirements of proposed Regulation 1.69(b)(3)'s deliberation exception provision in this final rulemaking. The Commission believes that the provision strikes a reasonable balance between ensuring that SRO committees make well-informed decisions while minimizing the influence of a committee member's potential bias or self-interest in a matter.

Only two commenters addressed proposed Regulation 1.69(b)(3). Specifically, CBT and CSCE commented that Regulation 1.69(b)(3)(iii) should not be interpreted to mean that a member's precise position information must be disclosed to the entire SRO committee and that, instead, some sort of general summary of the member's positions should be sufficient disclosure.

The disclosure of a ''conflicted'' committee member's position information to the committee, pursuant to Regulation 1.69(b)(3)(iii), generally serves two purposes. First, it enables the committee to evaluate the depth of a committee member's financial interest in the outcome of a significant action and to balance whether his or her participation in deliberations would be worthwhile. Second, in the case of a committee member who receives a deliberation exception, the disclosure of the member's interest to his or her fellow committee members should help to mitigate any prejudicial influence such member's views could have on the other members during the course of deliberations. In light of this important need for accurate position information, the Commission does not believe that it would be appropriate for SRO committees to make deliberation exception determinations based upon a general summary of a conflicted member's position information. Accordingly, the Commission has not revised this provision in the final rulemaking.

4. Documentation of Determination (Regulation 1.69(b)(4))

Whenever an SRO committee made a conflict of interest determination, proposed Regulation 1.69(b)(4) required that certain information regarding the abstention determination be recorded. Such a record was required to indicate: (1) The committee members who attended the meeting (Regulation 1.69(b)(4)(i)), (2) the name of any committee member who was directed to abstain or who voluntarily recused himself or herself and the reasons why (Regulation 1.69(b)(4)(ii)), (3) a listing of the position information reviewed for each committee member (Regulation 1.69(b)(4)(iii)), and (4) in those instances when a committee member was granted a deliberation exception, a general description of the views expressed by the member during the committee's deliberations on the underlying significant action (Regulation 1.69(b)(4)(iv)).

The CSCE commented that, under the proposal, committee members who received a deliberation exemption would be ''chilled'' from expressing their opinions by the requirement that their views be particularly recorded. The Commission concurs with CSCE's comment and, accordingly, has deleted this requirement from final Regulation 1.69.

C. Amendments to Other Commission Regulations Made Necessary by Final Commission Regulation 1.69

Section 213 of the FTPA amended Section 5a(a)(12)(B) of the CEA to require that the Commission issue regulations establishing ''terms and conditions'' under which contract markets may take temporary emergency actions without prior Commission approval. Section 5a(a)(12)(B) and Regulation 1.41(f), the Commission's implementing regulation, require that any such temporary emergency action be adopted by a two-thirds vote of a contract market's governing board. In recognition of the fact that governing board members may be required to abstain from deliberations and voting on such actions under contract market rules implementing Regulation 1.69, the Commission, as part of its proposed conflict of interest rulemaking, proposed to amend Regulation 1.41(f) to provide that such abstaining board members not be included in determining whether a temporary emergency action has been approved by a two-thirds majority of a governing board. Abstaining board members are, however, included for quorum purposes so that the existence of conflicted members will not prevent a board from taking temporary emergency actions.

No commenters addressed this provision, and the Commission has determined to amend Regulation 1.41(f)(10) as proposed.

The Commission also proposed to amend Commission Regulation 1.63's definition of ''disciplinary committee'' so that it more closely conformed with Regulation 1.69's definition of the same term. As indicated above in Section III.A.1., the Commission now has revised Regulation 1.69(a)(1)'s definition of disciplinary committee to exclude committees and persons who summarily issue minor penalties for minor offenses regarding ''decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions or other similar activities.'' This revision was made in response to the concern that the application of conflict of interest requirements to SRO disciplinary authorities when they take summary actions for minor rule violations would be administratively burdensome and might hamper the SROs' ability to take quick and decisive actions in such circumstances. The same concerns are not presented by Regulation 1.63 which generally prohibits persons with disciplinary histories from serving on disciplinary committees for at least three years after the date of the

[10] The Commission, in its proposed rulemaking, indicated that it believed that, given the factors that must be considered, deliberation exception determinations should be made by the committee involved, rather than SRO staff. For any particular SRO committee matter, the committee members themselves would be in a better position than SRO staff to assess their individual levels of expertise in the matter and their need for input during deliberations from the committee member who otherwise would be required to abstain. The Commission continues to adhere to this view, and no commenters on the proposed rulemaking addressed this issue. Accordingly, final Regulations 1.69 specifically confers the responsibility for deliberation exception determinations on the SRO committee involved.

underlying disciplinary judgment or settlement agreement. Accordingly, the Commission has determined to adopt Regulation 1.63(a)(2)'s disciplinary committee definition as proposed. The definition is identical to Regulation 1.69's disciplinary committee definition, except that Regulation 1.63's definition does not exclude committees that handle summary disciplinary matters.

Finally, the CME in its comment on proposed Regulation 1.69 suggested that Commission Regulation 8.17(a)(1), which already imposes a general conflict of interest requirement on disciplinary committees, be amended to clarify that Regulation 1.69 pre-empts Regulation 8.17(a)(1). The Commission does not believe that compliance with Regulation 1.69 will necessarily constitute compliance with Regulation 8.17(a)(1). Specifically, instances when a disciplinary committee member is a witness to the alleged misconduct, testifies about the alleged misconduct or investigates the alleged misconduct would not constitute a conflict of interest pursuant to Regulation 1.69 but would possibly be a conflict of interest pursuant to Regulation 8.17(a)(1) requiring the member's recusal from the disciplinary committee. *See In the Matter of Malato,* [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,084, at 34,704 (CFTC Dec. 22, 1987). Accordingly, for these reasons, the Commission has determined not to amend Regulation 8.17(a)(1) as suggested by the CME.

D. Conclusion

The Commission believes that final Regulation 1.69 and the amendments to Regulation 1.41 and 1.63 meet the statutory directives of Section 5a(a)(17) of the CEA as it was amended by Section 217 of the FTPA. The rulemaking establishes guidelines and factors to be considered in determining whether an SRO committee member is subject to a conflict of interest which could potentially impinge on his or her ability to make fair and impartial decisions in a matter and, thus, warrants abstention from participation in committee deliberations and voting.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.* (1980), requires that agencies, in promulgating rules, consider the impact of those rules on small businesses. The Commission has previously determined that contract markets are not ''small entities'' for purposes of the RFA. 47 Fed. Reg. 18618, 18619 (Apr. 30, 1982). Furthermore, the then Chairman of the Commission previously has certified on behalf of the Commission that comparable rules affecting clearing organizations and registered futures associations did not have a significant economic impact on a substantial number of small entities. 51 FR 44866, 44868 (Dec. 12, 1986).

This rulemaking will affect individuals who serve on SRO governing boards, disciplinary committees and oversight panels. The Commission believes that this rulemaking will not have a significant economic impact on these SRO committee members. This rulemaking requires these committee members to disclose to their SROs certain information which is known to them at the time that their committees consider certain types of matters. The Commission believes that this requirement will not have any significant economic impact on such members because the information which they are required to provide should be readily available to them.

Accordingly, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to Section 3(a) of the RFA, 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. Agency Information Activities; Proposed Collection; Comment Request

When publishing final rules, the Paperwork Reduction Act of 1995 (''PRA'') (Pub. L. 104–13 (May 13, 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by PRA. In compliance with the Act, this final rule informs the public of:

(1) The reasons the information is planned to be and/or has been collected; (2) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency; (3) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden); (4) whether responses to the collection of information are voluntary, required to obtain or retain a benefit, or mandatory; (5) the nature and extent of confidentiality to be provided, if any; and (6) the fact that 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 Office of Management and Budget (''OMB'' control number.

The Commission previously submitted this rule in proposed form and its associated information collection requirements to OMB. OMB approved the collection of information associated with this rule on October 24, 1998, and assigned OMB control number 3038–0022, Rules Pertaining to Contract Markets and their Members, to the rule. The burden associated with this entire collection, including this final rule, is as follows:

Average burden hours per response: 788,857.

Number of respondents: 434,052.

Frequency of response: On occasion.

The burden associated with this specific final rule, is as follows:

Average burden hours per response: 2.00.

Number of respondents: 20.

Frequency of response: On occasion.

Persons wishing to comment on the information required by this final rule should contact the Desk Officer, CFTC, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW., Washington, DC 20581, (202) 418–5160.

List of Subjects in 17 CFR Part 1

Commodity futures, Contract markets, Clearing organizations, Members of contract market.

In consideration of the foregoing, and based on the authority contained in the Commodity Exchange Act and, in particular, Sections 3, 4b, 5, 5a, 6, 6b, 8, 8a, 9, 17, and 23(b) thereof, 7 U.S.C. 5, 6b, 7, 7a, 8, 13a, 12, 12a, 13, 21 and 26(b), the Commission hereby amends Title 17, Chapter I, Part 1 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. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Section 1.41 is amended by adding paragraph (f)(10) to read as follows:

§ 1.41 Contract market rules; submission of rules to the Commission; exemption of certain rules.

* * * * *

(f) * * *

(10) Governing board members who abstain from voting on a temporary emergency rule pursuant to § 1.69 shall not be counted in determining whether such a rule was approved by the two-

thirds vote required by this regulation. Such members can be counted for the purpose of determining whether a quorum exists.

3. Section 1.63 is amended by revising paragraph (a)(2) to read as follows:

§ 1.63 Service on self-regulatory organization governing boards or committees by persons with disciplinary histories.

(a) * * *

(2) *Disciplinary committee* means any person or committee of persons, or any subcommittee thereof, that is authorized by a self-regulatory organization to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions or to hear appeals thereof.

* * * * *

4. Section 1.69 is added to read as follows:

§ 1.69 Voting by interested members of self-regulatory organization governing boards and various committees.

(a) *Definitions.* For purposes of this section:

(1) *Disciplinary committee* means any person or committee of persons, or any subcommittee thereof, that is authorized by a self-regulatory organization to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof in cases involving any violation of the rules of the self-regulatory organization except those cases where the person or committee is authorized summarily to impose minor penalties for violating rules regarding decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions or other similar activities.

(2) *Family relationship* of a person means the person's spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.

(3) *Governing board* means a self-regulatory organization's board of directors, board of governors, board of managers, or similar body, or any subcommittee thereof, duly authorized, pursuant to a rule of the self-regulatory organization that has been approved by the Commission or has become effective pursuant to either Section 5a(a)(12)(A) or 17(j) of the Act to take action or to recommend the taking of action on behalf of the self-regulatory organization.

(4) *Oversight panel* means any panel, or any subcommittee thereof, authorized by a self-regulatory organization to recommend or establish policies or procedures with respect to the self-regulatory organization's surveillance, compliance, rule enforcement, or disciplinary responsibilities.

(5) *Member's affiliated firm* is a firm in which the member is a ''principal,'' as defined in § 3.1(a), or an employee.

(6) *Named party in interest* means a person or entity that is identified by name as a subject of any matter being considered by a governing board, disciplinary committee, or oversight panel.

(7) *Self-regulatory organization* means a ''self-regulatory organization'' as defined in § 1.3(ee) and includes a ''clearing organization'' as defined in § 1.3(d), but excludes registered futures associations for the purposes of paragraph (b)(2) of this section.

8 *(Significant action)* includes any of the following types of self-regulatory organization actions or rule changes that can be implemented without the Commission's prior approval:

(i) Any actions or rule changes which address an ''emergency'' as defined in § 1.41(a)(4)(i) through (iv) and (vi) through (viii); and,

(ii) Any changes in margin levels that are designed to respond to extraordinary market conditions such as an actual or attempted corner, squeeze, congestion or undue concentration of positions, or that otherwise are likely to have a substantial effect on prices in any contract traded or cleared at such self-regulatory organization; but does not include any rule not submitted for prior Commission approval because such rule is unrelated to the terms and conditions of any contract traded at such self-regulatory organization.

(b) Self-regulatory organization rules. Each self-regulatory organization shall maintain in effect rules that have been submitted to the Commission pursuant to Section 5a(a)(12)(A) of the Act and § 1.41 or, in the case of a registered futures association, pursuant to Section 17(j) of the Act, to address the avoidance of conflicts of interest in the execution of its self-regulatory functions. Such rules must provide for the following:

(1) Relationship with named party in interest—(i) Nature of relationship. A member of a self-regulatory organization's governing board, disciplinary committee or oversight panel must abstain from such body's deliberations and voting on any matter involving a named party in interest where such member:

(A) is a named party in interest;

(B) is an employer, employee, or fellow employee of a named party in interest;

(C) is associated with a named party in interest through a ''broker association'' as defined in § 156.1;

(D) has any other significant, ongoing business relationship with a named party in interest, not including relationships limited to executing futures or option transactions opposite of each other or to clearing futures or option transactions through the same clearing member; or,

(E) Has a family relationship with a named party in interest.

(ii) Disclosure of relationship. Prior to the consideration of any matter involving a named party in interest, each member of a self-regulatory organization governing board, disciplinary committee or oversight panel must disclose to the appropriate self-regulatory organization staff whether he or she has one of the relationships listed in paragraph (b)(1)(i) of this section with a named party in interest.

(iii) Procedure for Determination. Each self-regulatory organization must establish procedures for determining whether any member of its governing board, disciplinary committees or oversight committees is subject to a conflicts restriction in any matter involving a named party in interest. Taking into consideration the exigency of the committee action, such determinations should be based upon:

(A) information provided by the member pursuant to paragraph (b)(1)(ii) of this section; and

(B) any other source of information that is held by and reasonably available to the self-regulatory organization.

(2) Financial Interest in a Significant Action—(i) Nature of Interest. A member of a self-regulatory organization's governing board, disciplinary committee or oversight panel must abstain from such body's deliberations and voting on any significant action if the member knowingly has a direct and substantial financial interest in the result of the vote based upon either exchange or non-exchange positions that could reasonably be expected to be affected by the action.

(ii) Disclosure of Interest. Prior to the consideration of any significant action, each member of a self-regulatory organization governing board, disciplinary committee or oversight panel must disclose to the appropriate self-regulatory organization staff the position information referred to in paragraph (b)(2)(iii) of this section that is known to him or her. This

requirement does not apply to members who choose to abstain from deliberations and voting on the subject significant action.

(iii) Procedure for Determination. Each self-regulatory organization must establish procedures for determining whether any member of its governing board, disciplinary committees or oversight committees is subject to a conflicts restriction under this section in any significant action. Such determination must include a review of:

(A) gross positions held at that self-regulatory organization in the member's personal accounts or ''controlled accounts,'' as defined in § 1.3(j);

(B) gross positions held at that self-regulatory organization in proprietary accounts, as defined in § 1.17(b)(3), at the member's affiliated firm;

(C) gross positions held at that self-regulatory organization in accounts in which the member is a principal, as defined in § 3.1(a);

(D) net positions held at that self-regulatory organization in ''customer'' accounts, as defined in § 1.17(b)(2), at the member's affiliated firm; and,

(E) any other types of positions, whether maintained at that self-regulatory organization or elsewhere, held in the member's personal accounts or the proprietary accounts of the member's affiliated firm that the self-regulatory organization reasonably expects could be affected by the significant action.

(iv) Bases for Determination. Taking into consideration the exigency of the significant action, such determinations should be based upon:

(A) the most recent large trader reports and clearing records available to the self-regulatory organization;

(B) information provided by the member with respect to positions pursuant to paragraph (b)(2)(ii) of this section; and,

(C) any other source of information that is held by and reasonably available to the self-regulatory organization.

(3) Participation in Deliberations. (i) Under the rules required by this section, a self-regulatory organization governing board, disciplinary committee or oversight panel may permit a member to participate in deliberations prior to a vote on a significant action for which he or she otherwise would be required to abstain, pursuant to paragraph (b)(2) of this section, if such participation would be consistent with the public interest and the member recuses himself or herself from voting on such action.

(ii) In making a determination as to whether to permit a member to participate in deliberations on a significant action for which he or she otherwise would be required to abstain, the deliberating body shall consider the following factors:

(A) whether the member's participation in deliberations is necessary for the deliberating body to achieve a quorum in the matter; and

(B) whether the member has unique or special expertise, knowledge or experience in the matter under consideration.

(iii) Prior to any determination pursuant to paragraph (b)(3)(i) of this section, the deliberating body must fully consider the position information which is the basis for the member's direct and substantial financial interest in the result of a vote on a significant action pursuant to paragraph (b)(2) of this section.

(4) Documentation of Determination. Self-regulatory organization governing boards, disciplinary committees, and oversight panels must reflect in their minutes or otherwise document that the conflicts determination procedures required by this section have been followed. Such records also must include:

(i) the names of all members who attended the meeting in person or who otherwise were present by electronic means;

(ii) the name of any member who voluntarily recused himself or herself or was required to abstain from deliberations and/or voting on a matter and the reason for the recusal or abstention, if stated; and

(iii) information on the position information that was reviewed for each member.

Issued in Washington, D.C. on December 23, 1998, by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 98–34516 Filed 12–31–98; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 145 and 147

Commission Records and Information; Open Commission Meetings

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') adopts final rules relating to Commission records and information. The rules update and streamline procedures in light of the Commission's experience in the past several years and amend rules regarding open Commission meetings to conform to these modifications.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Eileen Donovan, Attorney-Advisor, Office of the Secretariat, (202) 418–5096, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Facsimile: (202) 418–5543. Electronic mail: secretary@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

By notice published at 61 FR 66949 on December 19, 1996, the Commission requested comments from the public regarding its proposal to modify its rules relating to Commission records and information. The proposal was based on the Commission's experience since the rules implementing the Freedom of Information Act (''FOIA''), 5 U.S.C. 552 (1997), had been revised October 5, 1989 and the Commission's desire to conform the rules to its practice and the Freedom of Information Reform Act of 1986 (Pub. L. 99–570, §§ 1801–1804). The Commission proposed modifying the terms of Section 145.5(g)(1) to conform to Exemption 7, 5 U.S.C. 552(b)(7), relating to requests for records compiled for law enforcement purposes, modifying the procedures regarding requests for confidential treatment and compilation of Commission records available to the public, increasing the schedule of fees, and changing the rule to reflect current addresses and telephone numbers. In response to its notice, the Commission received only one comment, which was submitted by the New York Mercantile Exchange (''NYMEX''). NYMEX expressed concern regarding one aspect of the proposed revision of 17 CFR 145.9(d)(7) and (e)(1).

Under the current scheme, when there is a FOIA request for materials for which confidential treatment has been sought under Section 145.9 by the submitter of the materials, the Assistant Secretary of the Commission for Freedom of Information, Privacy and Sunshine Acts Compliance, (''Assistant Secretary'') seemingly *must* require the submitter to file a detailed written justification of the confidential treatment request within ten days. However, in some cases the submitter's initial petition for confidential treatment of the information or its response to a prior FOIA request is so complete that the Assistant Secretary does not need supplemental information. The proposed modifications to Sections 145.9(d)(7)

and 145.9(e)(1) address release of information for which confidential treatment has been requested but as to which the Assistant Secretary determines that it is necessary for the submitter of the material to provide supplemental information justifying confidential treatment. As proposed, the rule provides that the Assistant Secretary will notify the submitter of the material that the requested information will be released after ten business days unless the submitter objects by providing a detailed written justification and that, absent a timely detailed written justification, the submitter will not be given an opportunity to appeal an adverse determination. NYMEX contends that ten business days may not provide a submitter with sufficient time to prepare and file a detailed written justification and urges the Commission to revise its proposal to permit a submitter to request an extension of the response period.

The Commission has decided to amend the proposed language to accommodate NYMEX's concern. Accordingly, in the final rule the Commission has inserted in Section 145.9(d)(7) ''Upon request and for good cause shown, the Assistant Secretary may grant an extension of such time,'' and in Section 145.9(e)(1) the Commission has inserted ''(unless under § 145.9(d)7) an extension of time has been granted).''

The Commission reviewed the proposed language in Sections 145.9(d)(4), 145.9(d)(6), 145.9(d)(7), and 145.9(d)(8) and determined that the language should be clarified. Therefore, the Commission redrafted those sections to make them clearer without changing the meaning of the proposed language substantially. Accordingly, the Commission determined that it was not necessary to request comment from the public regarding these modifications. The modifications are set forth below.

Section 145.9(d)(4) is modified by changing ''possible'' to ''practicable'' in the phrase ''at the time the information is submitted or as soon thereafter as possible''.

Section 145.9(d)(6) is redrafted as follows:

> A request for confidential treatment (as distinguished from the material that is the subject of the request) shall be considered a public document. When a submitter deems it necessary to include, in its request for confidential treatment, information for which it seeks confidential treatment, the submitter shall place that information in an appendix to the request.

Section 145.9(d)(7) is modified by inserting ''from the Assistant Secretary'' after ''On ten business days notice'' and before the comma.

Section 145.9(d)(8)(i) is redrafted as follows:

> Requests for confidential treatment for any reasonably segregable material that is not exempt from public disclosure under the Freedom of Information Act, as implemented in § 145.5, shall be summarily rejected under § 145.9(d)(9). Requests for confidential treatment of public information contained in financial reports as specified in § 1.10 shall not be processed. A submitter has the burden of specifying clearly and precisely the material that is the subject of the confidential treatment request. A submitter may be able to meet this burden in various ways, including:

Additionally, the Commission has modified proposed Section 145.5(g)(1)(i) ''Disclosure of nonpublic records.'' The proposed rule includes an exemption for records or information compiled for law enforcement purposes to the extent that the production of such information would interfere with enforcement activities undertaken by the listed entities. The list, as proposed, includes both ''foreign governmental authority'' and ''foreign futures or securities authority.'' It is unnecessary to include both terms because the term ''foreign governmental authority'' includes law enforcement activities undertaken by a foreign futures authority as defined by the Commodity Exchange Act or a foreign securities authority. Accordingly, the Commission is deleting the term ''foreign futures or securities authority'' from the final rule.

The Commission has also deleted Section 145.5(g)(2) which defines ''investigatory records'' form the final rule because Section 145.5(g)(1) renders it redundant and has renumbered Section 145.5(g) accordingly. Section 145.9(d)(10) is also deleted because it has been incorporated into Section 145.9(d)(4), and reference to it in Section 145.9(d)(1) has been revised accordingly.

II. Related Matter

Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.* (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined, pursuant to 5 U.S.C. 605(b), that Part 145 rules relating to Commission records and information do not have a significant economic impact on a substantial number of small business entities. Because they do not impose regulatory obligations on commodity professionals and small commodity firms and because, if instituted, the proposed corrections and amendments will expedite and improve the FOIA process, the Commission does not expect the final rule to have a significant economic impact on a substantial number of small business entities.

Accordingly, pursuant to Rule 3(a) of the RFA (5 U.S.C. 605(b)), the Chairperson, on behalf of the Commission, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

17 CFR Part 145

Confidential business information, Freedom of information.

17 CFR Part 17

Sunshine Act.

For the reasons set forth in the preamble, title 17, parts 145 and 147 are amended as follows:

PART 145—COMMISSION RECORDS AND INFORMATION

1. The authority for Part 145 is revised to read:

Authority: Pub. L. 99–570, 100 Stat. 3207; Pub. L. 89–554, 80 Stat. 383; Pub. L. 90–23, 81 Stat. 54; Pub. L. 98–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)); unless otherwise noted.

2. Section 145.5 is amended as set forth below:

a. In the introductory paragraph add a sentence to the end as set forth below.

b. Remove the introductory text of paragraph (d)(1).

c. In (d)(1)(i)(B) and (E) remove the following phrase: ''Provided, The procedure set forth in 17 CFR 1.10(g) is followed:''.

d. In (d)(1)(i)(C) and (D) remove the following phrase: '', provided the procedure set forth in § 1.10(g) of this chapter is followed''.

e. In (d)(1)(i)(F) remove the following phrase: '', if the procedure set forth in § 1.10(g) of this chapter is followed''.

f. In (d)(1)(i)(H) remove the following phrase: '', provided the procedure set forth in § 31.13(m) of this chapter is followed''.

g. Paragraph (g) is revised to read as set forth below.

§ 145.5 Disclosure of nonpublic records.

* * * Requests for confidential treatment of segregable public information will not be processed.

* * * * *

(g) Records or information compiled for law enforcement purposes to the extent that the production of such records or information:

(1) Could reasonably be expected to interfere with enforcement activities undertaken or likely to be undertaken by the Commission or any other authority including, but not limited to, the Department of Justice or any United States Attorney or any Federal, State, local, or foreign governmental authority or any futures or securities industry self-regulatory organization;

(2) Would deprive a person of a right to a fair trail or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques or procedures or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

* * * * *

§ 145.6 [Amended]

3. In § 145.6(a), remove the phrase ''(816) 374–6602'' and add in its place ''(816) 931–7600''; remove the phrase ''10880 Wilshire Blvd., suite 1005 Los Angeles, California 90024, Telephone: (310) 575–6783'' and add in its place ''10900 Wilshire Boulevard, Suite 400, Los Angeles, California 90024, Telephone: (310) 235–6783''.

4. Section 145.9 is amended as set forth below:

a. In (d)(1) remove the phrase ''(d)(10)'' and insert in its place ''(d)(4)''.

b. Remove (d)(10) and redesignate (d)(11) as (d)(10).

c. Revise paragraphs (d)(4), (6), (7), and (8) and the first sentence of (e)(1) to read as follows:

§ 145.9 Petition for confidential treatment of information submitted to the Commission.

* * * * *

(d) * * *

(4) A request for confidential treatment should accompany the material for which confidential treatment is being sought. If a request for confidential treatment is filed after the filing of such material, the submitter shall have the burden of showing that it was not possible to request confidential treatment for that material at the time the material was filed. A request for confidential treatment of a future submission will not be processed. All records which contain information for which a request for confidential treatment is made or the appropriate segregable portions thereof should be marked by the person submitting the records with a prominent stamp, typed legend, or other suitable form of notice on each page or segregable portion of each page stating ''Confidential Treatment Requested by [name].'' If such marking is impractical under the circumstances, a cover sheet prominently marked ''Confidential Treatment Requested by [name]'' should be securely attached to each group of records submitted for which confidential treatment is requested. Each of the records transmitted in this matter should be individually marked with an identifying number and code so that they are separately identifiable. In some circumstances, such as when a person is testifying in the course of a Commission investigation or providing documents requested in the course of a Commission inspection, it may be impractical to submit a written request for confidential treatment at the time the information is first provided to the Commission. In no circumstances can the need to comply with the requirements of this section justify or excuse any delay in submitting information to the Commission. Rather, in such circumstances, the person testifying or otherwise submitting information should inform the Commission employee receiving the information, at the time the information is submitted or as soon thereafter as practicable, that the person is requesting confidential treatment for the information. The person shall then submit a written request for confidential treatment within 30 days of the submission of the information. If access is requested under the Freedom of Information Act with respect to material for which no timely request for confidential treatment has been made, it may be presumed that the submitter of the information has waived any interest in asserting that the material is confidential.

* * * * *

(6) A request for confidential treatment (as distinguishing from the material that is the subject of the request) shall be considered a public document. When a submitter deems it necessary to include, in its request for confidential treatment, information for which it seeks confidential treatment, the submitter shall place that information in an appendix to the request.

(7) On ten business days notice from the Assistant Secretary, a submitter shall submit a detailed written justification of a request for confidential treatment, as specified in paragraph (e) of this section. Upon request and for good cause shown, the Assistant Secretary may grant an extension of such time. The Assistant Secretary will notify the submitter that failure to provide timely a detailed written justification will be deemed a waiver of the submitter's opportunity to appeal an adverse determination.

(8)(i) Requests for confidential treatment for any reasonably segregable material that is not exempt from public disclosure under the Freedom of Information Act, as implemented in § 145.5, shall be summarily rejected under § 145.9(d)(9). Requests for confidential treatment of public information contained in financial reports as specified in § 1.10 shall not be processed. A submitter has the burden of specifying clearly and precisely the material that is the subject of the confidential treatment request. A submitter may be able to meet this burden in various ways, including:

(A) Segregating material for which confidential treatment is being sought;

(B) Submitting two copies of the submission: a copy from which material for which confidential treatment is being sought has been obliterated, deleted, or clearly marked and an unmarked copy; and

(C) Clearly describing the material within a submission for which confidential treatment is being sought.

(ii) A submitter shall not employ a method of specifying the material for which confidential treatment is being sought if that method makes it unduly difficult for the Commission to read the full submission, including all portion claimed to be confidential, in its entirely.

* * * * *

(e) * * * (1) If the Assistant Secretary or his or her designee determines that a FOIA request seeks material for which confidential treatment has been requested pursuant to § 145.9, the Assistant Secretary or his or her designee shall require the submitter to file a detailed written justification of the confidential request within ten business days (unless under § 145.9(d)(7) an extension of time has been granted) of that determination

unless, pursuant to an earlier FOIA request, a prior determination to release or withhold the material has been made, the submitter has already provided sufficient information to grant the request for confidential treatment; or the material is otherwise in the public domain.* * *

* * * * *

Appendix A to Part 145—[Amended]

6. In Appendix A remove paragraph (b)(1) and redesignate paragraphs (b)(2) through (b)(13) as (b)(1) through (b)(12), respectively; and in paragraph (g) of Appendix A remove the phrase ''from the Division of Trading and Markets, Commodity Futures Trading Commission, 300 South Riverside Plaza, suite 1600 North, Chicago, Illinois 60606 or.''

7. Amend Appendix B to Part 145 by revising paragraph (a)(3) to read as follows:

Appendix B to Part 145—Schedule of Fees

(a) * * *

(3) The Commission uses a variety of computer systems to support its operations and store records. Older systems of records, particularly systems involving large numbers of records, are maintained on a mainframe computer. More recently, systems have been developed using small, inexpensive, shared computer systems to store records. Systems of use in particular programmatic and administrative operations may also store records on the workstation computers assigned to particular staff members. For searches of records stored on the Commission's mainframe computer, the use of computer processing time will be charged at $456.47 for each hour, $7.61 for each minute, and $0.1268 for each second of computer processing time indicated by the job accounting log printed with each search. When searches require the expertise of a computer specialist, staff time for programming and performing searches will be charged at $32.00 per hour. For searches of records stored on personal computers used as workstations by Commission staff and shared access network servers, the computer processing time is included in the search time for the staff member using that workstation as set forth in the other paragraphs under paragraph (a) of Appendix B.

* * * * *

PART 147—OPEN COMMISSION MEETINGS

8. The authority for part 147 continues to read:

Authority: Sec. 3(a), Pub. L. 94–409, 90 Stat. 1241 (5 U.S.C. 552b), sec. 101(a)(11), Pub. L. 93–463, 88 Stat. 1391 (7 U.S.C. 4a(j) (Supp. V, 1975)), unless otherwise noted.

§ 147.3 [Amended]

9. In § 147.3 make the following changes:

a. Remove the introductory text of paragraph (b)(4)(i).

b. In paragraphs (b)(4)(i)(A)(*2*) and (*5*) remove the following phrase: ''*Provided*, The procedure set forth in 17 CFR 1.10(g) is followed:''.

c. In paragraphs (b)(4)(i)(A)(*3*) and (*4*) remove the following phrase: '', provided, the procedure set forth in § 1.10(g) of this chapter is followed.''

d. In paragraph (b)(4)(i)(A)(*6*) remove the following phrase: '', if the procedure set forth in § 1.10(g) of this chapter is followed.''

e. In paragraph (b)(4)(i)(A)(*8*) remove the following phrase: ''provided the procedure set forth in § 31.13(m) of this chapter is followed.''

Issued by the Commission.

Dated: December 28, 1998.

Jean A. Webb,

Secretary of the Commission, Commodity Futures Trading Commission.

[FR Doc. 98–34732 Filed 12–31–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 123, 142, and 178

[T.D. 99–2]

RIN 1515–AC16

Land Border Carrier Initiative Program

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide for the Land Border Carrier Initiative Program (LBCIP), a program designed to prevent smugglers of illicit drugs from utilizing commercial land conveyances for their contraband. The program provides for agreements between carriers and Customs in which the carrier agrees to increase its security measures and cooperate more closely with Customs, and Customs agrees to apply, commensurate with the degree of carrier compliance with the terms of the agreement, special administrative provisions pertaining to penalty amounts and expedited processing of penalty actions if illegal drugs are found on a conveyance belonging to the participating carrier. Further, at certain, high-risk locations along the land border, an importer's continued use of the Line Release method of processing entries of merchandise is conditioned on the use of carriers that participate in the LBCIP. These regulatory changes are designed to improve Customs enforcement of Federal drug laws along the land border by enhancing its ability to interdict illicit drug shipments through additional trade movement information provided by common carriers that voluntarily choose to participate in the LBCIP.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Jim Kelly, Office of Field Operations, Anti-Smuggling Division, (202) 927–0458.

SUPPLEMENTARY INFORMATION:

Background

In 1984 Customs began an air and sea Carrier Initiative Program (CIP), in part because of Customs growing awareness of an increase in the smuggling of marijuana and cocaine in the South Florida area. Developed under Customs remission and mitigation of penalties authority pursuant to section 618 of the Tariff Act of 1930 (19 U.S.C. 1618), the CIP was grounded in the execution of written Carrier Initiative Agreements between Customs and the common carrier, whereby the carrier agrees to improve cargo and conveyance security, and Customs provides security and drug awareness training.

In 1986, Congress enacted the Anti-Drug Abuse Act of 1986 (Pub. L. 99–570, 100 Stat. 3207; 21 U.S.C. 801 note) (the 1986 Act) to, among other things, strengthen Federal efforts to improve the enforcement of Federal drug laws and enhance the interdiction of illicit drug shipments. Pursuant to the drug interdiction mandates contained in the 1986 Act, in 1995 Customs decided to expand the CIP to land border carriers to address the increasing drug smuggling threat along the southwest border.

This new Land Border Carrier Initiative Program (LBCIP) is designed to prevent smugglers of illicit drugs from utilizing commercial land conveyances for their contraband. The program solicits land and rail carriers to voluntarily enter into agreements with Customs in which the carrier agrees to increase its security measures and cooperate more closely with Customs in identifying and reporting suspected smuggling conduct in exchange for

which Customs agrees to provide training to carrier employees and drivers in the areas of cargo and personnel security, document review techniques, drug awareness, and conveyance search. Further, should illegal drugs be found aboard a conveyance belonging to a participating carrier, Customs agrees to apply, commensurate with the degree of carrier compliance with the terms of the agreement, special administrative provisions pertaining to penalty amounts and expedited processing of penalty actions.

In conjunction with implementing the LBCIP, Customs decided to tie the mutual benefits of Line Release processing to the security offered by the LBCIP at certain, high-risk locations along the southwest border. Thus, Customs planned to require at these designated locations that an importer's continued use of the Line Release method of processing entries of merchandise is conditioned on the use of carriers that participate in the LBCIP. Customs planned to publish a list of these high-risk locations along the southwest border in the **Federal Register.**

On December 30, 1997, Customs published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (62 FR 67765) that proposed to amend the Customs Regulations to provide for the LBCIP and to require that merchandise be transported by a LBCIP participant for merchandise to be processed through use of Line Release at certain high-risk locations. Customs stated in the BACKGROUND portion of the document its intention that the LBCIP would be implemented at the southwest border. Comments were solicited on the proposal. The comment period closed March 2, 1998; four comments were received. The comments and Customs responses are set forth below.

Analysis of Comments

Concerns With the LBCIP, in General

Comment: All of the commenters inquired if the LBCIP would be limited to the southwest border. Acknowledging that Customs stated its intention to limit the LBCIP to the Mexican border in the BACKGROUND portion of the NPRM, these commenters pointed out that the proposed regulations did not contain such a limitation and that Customs should clearly indicate in the regulatory text portion of the Final Rule document that the LBCIP will apply only to the Mexican border.

Customs Response: The whole reason for expanding the Carrier Initiative Program (CIP) to include land border carriers is to address the increased drug-smuggling threat to the United States. While that threat presently comes primarily from the southwest border, should that threat find other avenues for entering the U.S., *i.e.,* along the northern border, and if the regulations expressly restrict the LBCIP's application to the southern border, then Customs would not be able to employ the LBCIP as a law enforcement tool to counter the threat from the different direction. On reconsideration of the scope and benefits of the program, it makes more sense to make the program available to all interested carriers than to restrict the program's availability to one border area.

Accordingly, although it was Customs intention at the time it published the NPRM to implement the LBCIP only along the southwest border—where the drug threat to the United States is greatest—because of the interest raised in the comments concerning the application of special administrative provisions (see below), Customs will now make the program available to interested carriers at any Customs land border crossing point. Thus, no change will be made to § 123.71, which describes the LBCIP in general terms, to expressly limit the application of the LBCIP to the southwest border.

Comment: Two commenters inquired that if the LBCIP Agreements are only entered into with carriers on the southwest border, will the accompanying special administrative provisions pertaining to the assessment and mitigation of penalties for carriage of controlled substances apply only at the Mexican border, and not the Canadian border?

Customs Response: As mentioned above, because of comments concerned about the application of special administrative provisions, Customs has decided to expand the availability of the LBCIP to interested carriers at any land border crossing location. Accordingly, the issues of limited LBCIP participation and application of special administrative provisions are rendered moot.

Comment: One commenter wanted Customs to define a ''high-risk'' area in the regulations, stating that carriers need to know whether they are operating in such areas, which can effect carrier safety and security and impact operational efficiency. This commenter also inquired that should Canadian land border ports ever be designated as ''high risk'', will Customs afford Canadian carriers fair and appropriate notice so that they can meet the requirements of the LBCIP.

Along this line of inquiry, another commenter stated that compliance with the LBCIP is only a requirement for carriers participating in Line Release and that the LBCIP should remain a voluntary program for carriers not participating in Line Release.

Customs Response: These comments reveal a certain confusion concerning how the LBCIP is designed to operate as a voluntary, stand-alone program and how it interrelates with the Line Release-method of processing certain merchandise. As provided in proposed § 123.71, the LBCIP is a voluntary program—for carriers—designed to assist Customs in preventing the smuggling of controlled substances into the United States. The LBCIP is independent of Line Release processing, which is an automated method to expedite the release of certain shipments—for importers. However, at certain land border crossing locations, designated ''high risk'' by Customs, an importer's continued use of Line Release processing will be contingent on the importer's use of carriers that participate in the LBCIP. Accordingly, if there are no carriers at a designated high-risk area that participate in the LBCIP, then the importer cannot use the Line Release program.

''High-risk'' locations—where continued use of Line Release will be conditioned on the importer's use of carriers that participate in the LBCIP—currently designated by Customs are:

1. Calexico, CA;
2. Otay Mesa, CA;
3. Tecate, CA;
4. Douglas, AZ;
5. Nogales, AZ;
6. Brownsville, TX;
7. Del Rio, TX
8. Eagle Pass, TX;
9. El Paso, TX;
10. Hidalgo, TX, the cargo-processing center at Pharr;
11. Laredo, TX; and
12. Progreso, TX.

These ports of entry are designated as ''high risk'' based on seizure statistics. Additional areas designated by Customs as high risk will be identified in General Notices that will be published in the **Federal Register**. These notices will normally be published with a 30-day delayed effective date to give affected importers time to restructure their business interests.

Concerns With the Written Agreement; § 123.72

Comment: One commenter stated that a standard agreement should be used throughout the entire southwest border, and another commenter stated that port

directors should not have the ability to change the language in an agreement.

Customs Response: Since the drug threat is the focus of the program and not regional/local conditions, one standard agreement will be used in the LBCIP, and port directors will not have the ability to modify the language employed in agreements.

Comment: One commenter stated that Customs should clarify whether they want carriers or individual train crews, to enter into agreements with Customs. This commenter suggested that Customs should revise § 123.71 to make this clear.

Customs Response: As provided at proposed § 123.72, which pertains to the written agreement requirement, it is the commercial carriers (not the drivers of the conveyance) that are to enter into the written agreement with Customs. The statement in proposed § 123.71 that the LBCIP is a program designed to enlist the voluntary cooperation of the designated drivers of commercial entities as well as the commercial entities was merely to reflect that a participating carrier's commitment to the LBCIP includes the carrier being responsible, after designating drivers (or crews) for program participation, for adequately training the drivers (or crews) on how to identify and report suspected smuggling attempts. Accordingly, the carriers are, in effect, responsible for enlisting the cooperation of the drivers (or crews) they designate to be in the program. However, because language regarding drivers in §§ 123.71, 123.72, and 123.74 confused readers concerning whether Customs intends to enter into individual agreements with the drivers (or crew), these provisions will be revised to remove references to designated drivers.

However, because the cooperation of drivers is such an integral part of the program and with the revisions discussed above to §§ 123.71, 123.72, and 123.74, a new § 123.76 will be added that more fully explains how drivers fit into the program.

Comment: One commenter wants Customs to modify the written agreement provision (§ 123.72) to acknowledge that the training of railroad crews might impact existing labor agreements.

Customs Response: Since the LBCIP is a voluntary program, Customs finds the issue of labor agreements between carriers and its employees outside the scope of these regulations. Accordingly, no change will be made to § 123.72.

Comment: Concerned with the written agreement provision that requires carrier-participants to establish security procedures aimed at restricting access to transporting conveyances and preventing the unauthorized lading of illegal drugs while the conveyance is en route to the U.S., one commenter suggested that § 123.72(b) be revised to acknowledge the national limits incumbent on establishing such security measures.

Customs Response: Customs is well aware of the national limits/physical restraints faced by carrier-applicants in establishing the security measures provided for at § 123.72(b) and does not expect the carriers to do what is beyond their control. With the LBCIP being a cooperative venture between participant-carriers and Customs, Customs will of course work with particular carriers to establish those security procedures that are necessary and within the ability of the LBCIP participant to implement. Since the scope of the security burden on the carrier-participant is substantially less than that envisioned by the commenter, Customs sees no reason to revise the security requirements of § 123.72(b).

Comment: Two commenters wanted Customs to clarify what background checks need to be performed and on which employees. These commenters questioned which criminal records have to be checked—presumably this relates to records maintained by the resident country of the participant-carrier—and whether the ''all personnel designated to participate in the LBCIP'' language encompasses all employees who will handle a shipment from the time it crosses one border, traverses the U.S., and arrives at another border, and all employees in between. These commenters argued that the scope of such a provision would affect thousands, if not tens of thousands, of employees, and that the provision should be limited to new hires. Based on the magnitude of these concerns, two commenters stated that Customs paperwork assessment/recordkeeping burden is understated.

Customs Response: Section 123.72(c) provides, in part, that, to the extent permitted by law, participant-carriers are to conduct employment and criminal history record checks on all (not just newly hired) employees who will be designated to participate in the LBCIP. Customs contemplates within this context that a carrier-employer need not check the criminal histories of all employees as all employees will not be designated to be involved with the LBCIP. Involvement with the LBCIP would mean involvement with physically processing/transporting the merchandise that is to be exported to the United States. Further, Customs contemplates that the criminal records of all potential employees who may be involved with physically processing/transporting merchandise for export to the United States may not be accessible to the carrier-exporter despite the carrier-employer's best efforts. Thus, concerning the question of which criminal records have to be checked, a carrier-employer would be required to report to Customs any criminal activity concerning employees that are directly involved with the physical processing/transporting of merchandise exported to the United States, which the employer learns either through a search of accessible criminal records maintained by the country in which the employee is hired or through communication by the employee to the employer. Given the above, no change to § 123.72(c) will be made.

Regarding Customs assessment of the paperwork burden in applying for the LBCIP, since the scope of the background checks is more limited and reasonable than understood by the commenters, Customs does not believe that the time an average carrier will spend completing the application for LBCIP participation, providing background information on drivers designated for inclusion in the program, completing an affidavit of business character, and listing the conveyances that will be used will exceed one hour. However, because some carrier-applicants will experience a significant turnover in drivers, conveyances, and ownership, those applicants may have a greater paperwork burden—as much as 2 hours a week—in complying with the continuing reporting obligations of the program. Other carrier-applicants are so large and have so many drivers, they may fall outside the average. Accordingly, Customs will revise its paperwork estimates to fully account for this secondary reporting burden. The collection of information data previously submitted to the Office of Management and Budget has been revised to reflect an increase of 3 more hours per respondent. This increase is based on increased applicants and business turnover estimates, which impact both the initial paperwork requirement and the secondary reporting obligation.

Comment: One commenter wanted Customs to clarify the terms ''properly registered conveyances,'' *i.e.*, does it pertain to railcars or locomotives, and two commenters suggested that locomotive engineers be separately enumerated, rather than be collectively included with drivers.

Customs Response: For purposes of the written agreement, the term ''conveyance'' would include

locomotives—being the powered unit—rather than the railcars, which are non-powered, and the term ''drivers'' would include locomotive engineers—being the drivers of the powered conveyance. Concerning the ''proper registration'' of such conveyances, what is envisioned here is that the conveyance is registered with the appropriate government agency responsible for registering such conveyances in the country where the conveyance operates.

Customs believes that no change to § 123.72(d) is necessary.

Comment: One commenter wanted Customs to define the term ''dishonest conduct'' in the regulations.

Customs Response: Although not a term of art, the term ''dishonest conduct'' has been defined as an absence of integrity; a disposition to betray, cheat, deceive, lie, or defraud; and being untrustworthy. The meaning of the term extends beyond acts which would be criminal, and is not restricted to such conduct as would be criminal. However, the term does not necessarily include ''wrongful acts''. For example, a speeding violation in an automobile would be a wrongful act in law, but it does not constitute ''dishonest conduct''. The term ''dishonest conduct'' is designed, but not limited, to include any conduct or activity that bears on an individual's veracity, such as allegations/complaints of lying, misleading, or perjury. Examples of such conduct would include writing bad checks, misrepresenting employment history, and deceiving government agencies as to the nature of information. Customs does not believe that it is appropriate to define the term in the regulations.

Comment: Three commenters requested that § 123.72 be revised to delete references to principals, drivers, and conveyances, because such information is irrelevant. Further, these commenters stated that the five-day notification period for advising Customs concerning material changes in business organization, drivers, or conveyances serves no useful purpose and that this time-frame is too short anyway.

Customs Response: Customs believes that by receiving the names of the drivers and principal officers of the companies who apply to join the LBCIP, Customs is better able to make a determination about the threat posed by the drivers and companies and to make an informed decision about the suitability of the carriers and specific drivers for the program. Customs also believes that the five-day notification period is sufficient time for a carrier to advise Customs in writing by mail of material changes affecting a carrier's business organization, designated drivers or registered conveyances. Accordingly, no change to § 123.72 will be made.

Comment: One commenter wanted to delete language regarding the requirement to provide information about past business relations, and the necessity of providing information about ''dishonest conduct''. Another commenter wanted clearer language regarding the ''affidavit of business character'' requirement.

Customs Response: Because of the high-risk environment in which transportation companies sometime operate, Customs believes that it is imperative that principals of participating carriers submit an ''affidavit of business character'' and that information concerning ''dishonest conduct'' on the part of all designated participants be provided to Customs. This information will assist Customs in making informed decisions about a carrier's suitability for the program.

Concerns With the Revocation Procedure; § 123.75

Comment: One commenter argued that carriers should be provided with advance notice of revocation and given the opportunity to cure defaults prior to revocations. This commenter also questioned the scope of revocations, wanting to know if all Customs land border ports will be notified in the case of a revocation.

Customs Response: Because the LBCIP is a cooperative venture between Customs and participant-carriers, the on-going dialogue between Customs and the carrier will enable a carrier to be aware of Customs concerns regarding the carrier's operations and allow a carrier to explain or take remedial action to resolve a deficiency in the carrier's operations. However, in cases where immediate revocation is necessary, proposed § 123.75(c) details the appeal process to be followed by the subject carrier once a decision to immediately revoke the carrier's participation in the LBCIP has been made by a port director. Under this process, the subject participant-carrier may file a written appeal directly with the Assistant Commissioner of Field Operations within 10 days and receive a determination within 30 days of the appeal's receipt by the Assistant Commissioner. Customs believes that these time frames provide carriers with ample time to cure operational defects noted by Customs, and that the process will ensure uniformity regarding revocations.

Concerning the scope of revocations, decisions to immediately revoke a carrier-participant or individual driver would be effective at the national level; all land border ports would be notified.

Comment: One commenter felt that some misdemeanors, such as drunk driving, should not result in revocation.

Customs Response: Offenses such as drunk driving will not automatically result in revocation. The circumstances of such conduct, *i.e.*, did it occur as an incident to employment, will be fully considered by Customs before any action to institute revocation procedures is initiated.

Comment: One commenter wanted Customs to define ''misuse'' regarding authorized conveyances.

Customs Response: The term ''misuse'' of authorized conveyances means the unauthorized use of a carrier's conveyance by a designated driver, *e.g.*, making unscheduled stops/trips, and such other use as goes beyond the scope of the agreement entered into between the carrier and Customs.

Concerns Over Tying Line Release to LBCIP; §§ 123.71, 142.41, and 142.41

Comment: Two commenters did not see the value of linking the LBCIP to Line Release at ''high-risk'' areas.

Customs Response: Linking the LBCIP with Line Release at designated ''high-risk'' areas will aid Customs invaluably in its endeavor to thwart the smuggling of illicit drugs into the United States. The LBCIP is based on a mutual exchange of business information between a participant carrier and Customs: Customs receives participant-specific information regarding the participant's facilities, conveyances, drivers, and business structure; the carrier receives special training in the areas of cargo and personnel security standards, document review, drug awareness, and container/conveyance searches. Line Release, on the other hand, requires an importer to provide Customs with information regarding the merchandise being imported, the importer, and the shipper or manufacturer. Linking the LBCIP with Line Release merges the merchandise, importer, carrier, driver, and conveyance data together, thereby enhancing Customs ability to assess the threat of each Line Release-type commercial shipment more effectively. Accordingly, since Customs scrutiny of Line Release transactions would be enhanced if it possesses the information that LBCIP participants provide, it makes perfect sense at those LBCIP locations designated as ''high risk'' to condition an importer's continued use of Line Release on the use of carriers/drivers that participate in the LBCIP.

Conclusion

After careful consideration of all the comments received and further review of the matter, Customs has decided to adopt as a final rule with the modifications and changes discussed above and set forth below, the amendments to implement the LBCIP and tying Line Release privileges to LBCIP carriers/drivers at certain, high-risk locations. The document also identifies the high-risk locations where merchandise must be transported by carriers who are participants in the LBCIP in order for the merchandise to be processed through Line Release.

To reflect the paperwork requirements contained at § 123.73, part 178 of the Customs Regulations is also amended.

Regulatory Flexibility Act and Executive Order 12866

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities, because the amendments concern a voluntary program that will confer a benefit on the trade community. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This amendment does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Paperwork Reduction Act

The collection of information contained in these final regulations has been revised, reviewed, and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1515–0217. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in this final rule is at § 123.73. This information is required to improve Customs ability to interdict illicit drug shipments along the land border in cooperation with common carriers and their designated drivers who voluntarily participate in the LBCIP. This information will be used to process applications for voluntary participation in the Land Border Carrier Initiative Program. The likely respondents are commercial carrier organizations that engage in foreign commerce and trade along the land border of the United States.

The estimated average burden associated with the collection of information in this final rule is four hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Ave., N.W., Washington, D.C. 20229; and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 123

Administrative practice and procedure, Aliens, Canada, Common carriers, Customs duties and inspection, Forms, Imports, International boundaries, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Vehicles.

19 CFR Part 142

Bonds, Common carriers, Customs duties and inspection, Entry of merchandise, Forms, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Exports, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments To the Regulations

For the reasons stated above, parts 123, 142, and 178 of the Customs Regulations (19 CFR parts 123, 142, and 178) are amended as set forth below:

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 continues to read as follows, the specific authority citation for § 123.71 is removed, and specific authority citations for §§ 123.71 through 123.76 and for § 123.81 are added, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1624.

* * * * *

Sections 123.71–123.76 also issued under 19 U.S.C. 1618; Section 123.81 also issued under 19 U.S.C. 1595.

2. Subpart H is redesignated as subpart I and §§ 123.71 and 123.72 are redesignated as §§ 123.81 and 123.82 therein, respectively, and a new subpart H, consisting of §§ 123.71 through 123.76, is added to read as follows:

Subpart H—Land Border Carrier Initiative Program

Sec.

Subpart H—Land Border Carrier Initiative Program

§ 123.71 Description of program.

The Land Border Carrier Initiative Program (LBCIP) is a program designed to enlist the voluntary cooperation of commercial conveyance entities in Customs effort to prevent the smuggling of controlled substances into the United States. Participation in the LBCIP requires the land or rail commercial carrier to enter into a written agreement with Customs that describes the responsibilities of participants in the LBCIP. The agreement generally provides that the carrier agrees to enhance the security of its facilities and the conveyances employed to transport merchandise. The carrier also agrees to cooperate closely with Customs in identifying and reporting suspected smuggling attempts. In exchange for this cooperation, Customs agrees to provide training to carrier personnel in the areas of cargo and personnel security, document review techniques, drug awareness, and conveyance searches. Customs also agrees that should a controlled substance be found aboard a conveyance owned or operated by a participating carrier, special administrative procedures relating to the assessment and mitigation of drug-related penalties will be followed; the degree of compliance with the terms of the agreement will be considered as an additional positive mitigating factor in any seizure or penalties decision or recommendation. Lastly, at certain high-risk locations, for the use of Line Release, imported merchandise, which otherwise qualifies for Line Release entry (*see,* subpart D of part 142 of this chapter), must be transported over the border by carriers that participate in the LBCIP. The locations where the use of Line Release will be conditioned on participation in the LBCIP will be published in the **Federal Register**.

§ 123.72 Written agreement requirement.

Commercial carriers desiring to participate in the LBCIP shall enter into a written agreement with Customs regarding the mutual obligations of the carrier-participant and Customs. The terms and conditions in the written agreement shall generally provide that the carrier-applicant agrees:

(a) To participate in Customs training regarding cargo and personnel security, document review techniques, drug awareness, and conveyance searches;

(b) To establish security systems at the place of business for the safe storage and handling of cargo intended to be imported into the United States; and security procedures aimed at restricting access to transporting conveyances and preventing the unauthorized lading of illegal drugs while the conveyance is en route to the United States;

(c) To conduct, to the extent allowed by law, employment and criminal history record checks on all personnel designated to participate in the LBCIP and to exercise responsible supervision and control over those personnel;

(d) To ensure that only authorized drivers and properly registered conveyances are utilized in the transportation of merchandise into the United States, and to maintain current lists of such drivers and conveyances for Customs inspection upon request;

(e) To immediately report to the appropriate port director any criminal or dishonest conduct on the part of drivers designated to participate in the LBCIP, or attempts by others to impede, influence, or coerce the carrier or drivers into violating any United States law, including Customs regulations, especially those concerned with trafficking in illegal drugs; and

(f) To notify the appropriate port director in writing by mail within 5 days of any change in legal name, business address, business principals, ownership, drivers, or conveyances that affects the basis for continued participation in the LBCIP.

§ 123.73 Application to participate.

To request participation in the LBCIP, the carrier-applicant must submit an application containing the information requested in this section. The application must be accompanied by two copies of a LBCIP written agreement (see § 123.72 of this part; upon request, the local port director will provide copies of an unsigned written agreement) containing original signatures of corporate officers or owners of the common carrier. The application shall be prepared by the common carrier, be signed by corporate officers or owners, and submitted to the port director. If a submitted application does not provide all of the information specified in this section, the processing of the application will either be delayed or the application will be rejected. The application shall include the following information:

(a) *General business identification and site condition information.* The name and address of the commercial conveyance entity, the names of all principals or corporate officers, the name and telephone number of an individual to be contacted for further information, and a complete and detailed description of the premises where business operations are conducted, to include all working/storage areas and security features employed;

(b) *Designated driver information.* A listing of the drivers designated by the carrier who will be transporting merchandise into the U.S. The listing shall set forth the name(s), address(es), date of birth, nationality, driver's license number, and any other personal identifying information regarding the drivers listed, *e.g.,* social security number (if available), to enable Customs to conduct background checks and to aid Customs officers at the border crossing point in identifying individual LBCIP-authorized drivers;

(c) *Conveyance identification information.* A listing of the conveyances, *e.g.,* trucks and locomotives, that the carrier will utilize to transport merchandise into the U.S. The listing shall set forth the type and make of conveyances, country of registration and license number(s), conveyance-specific identifying markings, *e.g.,* vehicle identification numbers (VINs), and any other general conveyance identifying information, *e.g.,* weight, color, recognizable modifications, etc., to aid Customs officers at the border crossing point in identifying particular LBCIP-registered conveyances; and

(d) *Affidavit of business character.* A statement signed by the carrier-applicant which attests to each principal's or corporate officer's past and present business relations, *e.g.,* a list of past companies worked for and positions held, which fully explains the presence of any past or present crime involving theft or smuggling or investigations into such crimes, or other dishonest conduct on the part of a principal.

§ 123.74 Notice of selection; appeal of determination.

The information provided pursuant to paragraphs (b) through (d) of § 123.73 shall constitute the criteria used to evaluate the competency of the carrier-applicant to participate in the LBCIP. Following Customs evaluation of the information provided, Customs shall notify the carrier-applicant in writing of Customs determination as to whether the carrier-applicant is qualified to participate in the LBCIP. In cases of selection, Customs will sign and return one of the copies of the written agreement. In cases of nonselection, the written notice shall clearly state the reason(s) for denial and recite the applicant's appeal rights under paragraph (b) of this section.

(a) *Grounds for nonselection.* The port director may deny a carrier's application to participate in the LBCIP for any of the following reasons:

(1) Evidence of any criminal or dishonest conduct involving the carrier, a corporate officer, designated drivers, or other person the port director determines is exercising substantial ownership or control over the carrier operation or corporate officer;

(2) Evidence of improper use of designated conveyances;

(3) Evidence that the written agreement was entered into by fraud or misstatement of a material fact; or

(4) A determination is made that the grant of LBCIP privileges would endanger the revenue or security of the Customs area.

(b) *Appeal of determination.* Carrier-applicants not selected to participate in the LBCIP and who wish to appeal the decision shall either:

(1) Appeal the adverse determination in accordance with the appeal procedure set forth in § 123.75(c) of this part; or

(2) Cure any deficiency in the first application by submitting a new application to the port director who denied the previous application after waiting 60 days from the date of issuance of the first determination.

§ 123.75 Notice of revocation; appeal of decision.

(a) *Revocation.* The port director may immediately revoke a carrier's participation in the LBCIP and cancel the written agreement for any of the following applicable reasons:

(1) The selection and written agreement were obtained through fraud or the misstatement of a material fact by the carrier;

(2) The carrier, a corporate officer, or other person the port director determines is exercising substantial ownership or control over the carrier operation or corporate officer, is indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under

United States Federal or State law. In the absence of an indictment, conviction, or other legal process, the port director must have probable cause to believe the proscribed acts occurred;

(3) The carrier-participant allows an unauthorized person or entity to use its LBCIP certificate or other approved form of identification;

(4) The carrier-participant misuses authorized conveyances;

(5) The carrier-participant refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation;

(6) The carrier-participant fails to operate in accordance with the terms of the written agreement; or

(7) Continuation of LBCIP privileges would endanger the revenue or security of the Customs area in the judgment of the port director.

(b) *Notice.* When a decision revoking participation has been made, the port director shall notify the carrier-participant of the decision in writing. The notice of revocation shall clearly state the reason(s) for revocation and recite the applicant's appeal rights under paragraph (c) of this section.

(c) *Appeal of decision.* Carrier-participants that receive a notice of revocation and who wish to appeal the decision shall file a written appeal with the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, Washington, D.C. 20229, within 10 calendar days of receipt of the notice. The appeal shall be filed in duplicate and shall set forth the carrier's responses to the grounds specified by the port director in the notice. Within 30 working days of receipt of the appeal, the Assistant Commissioner, or his designee, shall make a determination regarding the appeal and notify the applicant in writing.

§ 123.76 Authorization by Customs for participants to use certain drivers.

(a) *Responsibilities of LBCIP participants.* An LBCIP participant is required, pursuant to § 123.73 of this part, to list the drivers designated to transport merchandise into the United States for the carrier to enable Customs to conduct background checks. An LBCIP participant is also required, pursuant to § 123.72 of this part, to conduct, to the extent allowed by law, employment and criminal history checks on all personnel designated to participate in the LBCIP; these personnel include drivers.

(b) *Authorization of drivers by Customs.* Customs may not approve a carrier for participation in the LBCIP if it determines that there is evidence that a driver designated by a carrier has been involved in criminal or dishonest conduct or it may request that the carrier not use that driver before approving the carrier for participation. Once a carrier has been accepted in the LBCIP, Customs may determine to cancel a particular driver's authorization to transport merchandise for a LBCIP carrier for the reasons set forth in paragraph (c) of this section.

(c) *Reasons for cancellation of driver's authorization.* Customs may cancel a driver's authorization to transport merchandise for an LBCIP participant for any of the following reasons:

(1) The designated driver is indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under United States Federal or State law. In the absence of an indictment, conviction, or other legal process, the port director must have probable cause to believe the proscribed acts occurred;

(2) The designated driver allows an unauthorized person or entity to use his LBCIP certificate or other approved form of identification;

(3) The designated driver misuses authorized conveyances;

(4) The designated driver refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation; or

(5) The designated driver fails to operate in accordance with the terms of the written agreement.

(d) *Notice; rights of driver.* (1) *If driver not acceptable to Customs at time of review of carrier's application.* When Customs notifies a carrier-applicant, pursuant to § 123.74 of this part, of its nonselection into the LBCIP because of conduct committed by a driver designated by the carrier or when Customs conditionally approves a carrier-applicant's participation in the LBCIP, but does not approve a driver designated on the application to be authorized to transport merchandise under the LBCIP, Customs will also notify the driver of the decision in writing and recite the driver's appeal rights under paragraph (e) of this section.

(2) *If driver's authorization cancelled.* When Customs makes a determination to cancel the authorization of a particular designated driver, pursuant to § 123.76(b) of this section, Customs will notify both the carrier-participant and the driver of the decision in writing; the notice to the driver will recite the driver's appeal rights under paragraph (e) of this section.

(e) *Appeal rights of drivers.* Drivers who receive a notice of nonselection or cancellation and who wish to appeal the decision shall file a written appeal with the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, Washington, D.C. 20229, within 10 calendar days of receipt of the notice. The appeal shall be filed in duplicate and shall set forth the driver's responses to the grounds specified by the port director in the notice. Within 30 working days of receipt of the appeal, the Assistant Commissioner, or his designee, shall make a determination regarding the appeal and notify the applicant in writing.

PART 142—ENTRY PROCESS

1. The authority citation for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 142.41 is amended by adding a sentence at the end to read as follows:

§ 142.41 Line Release.

* * * At certain high-risk locations along the land borders of the United States (the locations to be published in the **Federal Register**), which are approved by Customs for handling Line Release, the use of Line Release for particular shipments may be denied by Customs unless the imported merchandise is transported by carriers that participate in the Land Border Carrier Initiative Program (*see,* subpart H of part 123 of this chapter).

§ 142.47 [Amended]

3. In § 142.47, the first sentence of paragraph (b) is amended by removing the words ''because of an examination'' and adding, in their place, the words ''for the following reasons: because of an examination, because a carrier transporting the Line Release merchandise is not a participant in the Land Border Carrier Initiative Program (LBCIP), or because a driver or conveyance is not authorized in accordance with the LBCIP''.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding, in appropriate numerical order, a listing for § 123.73 to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB control No.

19 CFR Section	Description	OMB control No.
*	* * * *	*
§ 123.73 ...	Application to participate in the Land Border Carrier Initiative Program.	1515–0217
*	* * * *	*

Raymond W. Kelly,

Commissioner of Customs.

Approved: November 4, 1998.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–34675 Filed 12–31–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 97F–0504]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the expanded safe use of the butylated reaction product of *p*-cresol and dicyclopentadiene for use as an antioxidant in acrylonitrile/butadiene/styrene copolymers in contact with food. This action is in response to a petition filed by The Goodyear Tire and Rubber Co.

DATES: The regulation is effective January 4, 1999; submit written objections and request for a hearing by February 3, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 10, 1997 (62 FR 65084), FDA announced that a food additive petition (FAP 8B4561) had been filed by The Goodyear Tire and Rubber Co., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers* (21 CFR 178.2010) to provide for the expanded safe use of butylated reaction product of *p*-cresol and dicyclopentadiene for use as an antioxidant in acrylonitrile/butadiene/styrene copolymers in contact with food.

In the notice of filing for this additive, FDA announced that it had determined under § 25.32(i) (21 CFR 25.32(i)) that this action was of a type that did not individually or cumulatively have a significant effect on the human environment. Subsequently, during FDA's indepth review of the petition, the agency determined that the proposed use of the subject additive was for both single service food-packaging materials and repeat use articles. Therefore, at the agency's request, the petitioner provided an amended claim of categorical exclusion from the requirement to prepare an environmental assessment under both § 25.32(i) (single service food packaging) and (j) (repeated use articles).

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and (3) the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has determined under § 25.32(i) and (j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before February 3, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) in the entry for ''Butylated reaction product of *p*-cresol and dicyclopentadiene * * *'' by revising the entry under the heading ''Limitations'' to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * * *
Butylated reaction product of *p*-cresol and dicylopentadiene produced by reacting *p*-cresol and dicyclopentadiene in an approximate mole ratio of 1.5 to 1, respectively, followed by alkylation with isobutylene so that the butyl content of the final product is not less than 18 percent.	For use only: 1. As components of nonfood articles complying with §§ 175.105 and 177.2600(c)(4)(iii) of this chapter. 2. At levels not to exceed 1.0 percent by weight of acrylonitrile/butadiene/styrene copolymers. The finished copolymers may be used in contact with food of Types I, II, IV–B, VI–A, VI–B, VII–B, and VIII under conditions of use B through H, as described in tables 1 and 2 of § 176.170(c) of this chapter, and with food of Types III, IV–A, V, VI–C, VII–A, and IX under conditions of use C through G as described in tables 1 and 2 of § 176. 170(c) of this chapter.
* * *	* * * *

Dated: December 21, 1998.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–34734 Filed 12–31–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 2939]

Bureau of Consular Affairs; VISAS: Passports and Visas Not Required for Certain Nonimmigrants—VWPP

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: This final rule adopts the interim rules which added Andorra, Argentina, Australia, Belgium, Brunei, Denmark, Finland, Iceland, Ireland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, Slovenia and Spain as participating countries in the Visa Waiver Pilot Program (VWPP), eliminated probationary entry status.

DATES: The rule takes effect January 4, 1999.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Room L603–C, SA–1, Department of State, Washington, D.C. 20520–0106, (202) 663–1203.

SUPPLEMENTARY INFORMATION: This final rule amends Part 41, Title 22 of the Code of Federal Regulations concerning visas for nonimmigrants pursuant to section 217 of the Immigration and Nationality Act. Over the past several years the Department published the following interim rules amending 22 CFR 42.1(l):

(1) 56 FR 46716, September 13, 1991, which removed the eight-country cap and added Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino and Spain to the list of participating countries and extended the VWPP Program through September 30, 1994;

(2) 58 FR 40585, July 29, 1993, which added Brunei as a participating country;

(3) 60 FR 15872, March 28, 1995, which extended the program through September 30, 1996, created a probationary status for the VWPP and added Ireland as a country with probationary status;

(4) 61 FR 35628, July 8, 1996, which added Argentina;

(5) 61 FR 39318, July 29, 1996, which added Australia; and

(6) 62 FR 51030, September 30, 1997, which eliminated probationary entry status for countries, designated Ireland as a permanent participating country and added Slovenia to the VWPP.

Pub. L. 105–173, enacted on April 27, 1998, extends the Program through April 30, 2000.

Comments

Each of the six interim rules invited interested persons to submit written comments concerning these amendments. No comments were received. This rule makes final the above-listed interim rules.

Final Rule

This final rule implements the regulation as published on September 30, 1997 [62 FR 51030]. This regulation is being promulgated in conjunction with the Immigration and Naturalization Service (INS) because action by the Attorney General in consultation with the Secretary of State is required under section 217 of the INA, as amended. (See INS Rule also published in the **Federal Register** on December 30, 1998.)

As no comments were received, the interim rule published on September 30, 1997 [62 FR 51030] is incorporated herein as a final rule.

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

Accordingly, the interim rule amending 22 CFR part 41 which was published at 62 FR 51030 is adopted as a final rule without change.

Dated: November 16, 1998.

Nancy H. Sambaiew,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 98–34783 Filed 12–31–98; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–98–078]

RIN 2115–AE47

Drawbridge Operating Regulation; Bayou Lacombe, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Tammany Trace swing span drawbridge across Bayou Lacombe, mile 5.2, at Lacombe, St. Tammany Parish, Louisiana. This deviation allows the St. Tammany Parish Police Jury to close the bridge to navigation continuously from 6 a.m. on January 4, 1999 until 6 a.m. on January 16, 1999 and from 6 a.m. on January 18 until 12 p.m. on January 22,

1999, The bridge will operate normally from 6 a.m. on January 16, 1999 until 6 a.m. on January 18, 1999. This temporary deviation is issued to allow for cleaning and lubricating the drive gears and replacing the drive motor, a necessary maintenance operation. During the closure, the railroad rails and ties will be removed and the swing span deck will be paved with concrete, an operation necessary for converting the bridge from a railroad bridge to a pedestrian/bicycle bridge.

DATES: This deviation is effective from January 4, 1999 through January 22, 1999.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: The Bayou Lacombe Tammany Trace swing span drawbridge across Bayou Lacombe, mile 5.2, in Lacombe, St. Tammany Parish, Louisiana, has a vertical clearance of 5 feet above mean high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists of fishing vessels, sailing vessels, and other recreational craft. The St. Tammany Parish Policy Jury requested a temporary deviation from the normal operation of the bridge in order to accommodate the maintenance work and to convert the bridge from a railroad bridge to a bicycle/pedestrian bridge. The work involves cleaning, repairing and lubricating the drive gears, replacing the drive motor, removing the railroad rails and ties and resurfacing the swing span deck with concrete. This work is essential for the continued operation of the draw span, and it is necessary for converting the bridge from a railroad bridge to a bicycle/pedestrian bridge.

This deviation allows the draw of the Bayou Lacombe Tammany Trace swing span bridge across Bayou Lacombe, mile 5.2, at Lacombe to remain in the closed-to-navigation position from 6 a.m. on January 4, 1999 until 6 a.m. on January 16, 1999 and from 6 a.m. on January 18 until 12 p.m. on January 22, 1999.

This deviation will be effective from 6 a.m. on January 4, 1999 through 12 p.m. on January 22, 1999. Presently, the draw opens on signal at any time.

Dated: 16 December 1998.

Paul J. Pluta,

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

[FR Doc. 98–34763 Filed 12–31–98; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document describes the numerous amendments consolidated in the Transmittal Letter for Issue 54 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1. These amendments reflect changes in mail preparation requirements and other miscellaneous rules and regulations not previously published in the **Federal Register**.

EFFECTIVE DATE: January 10, 1999.

FOR FURTHER INFORMATION CONTACT: Anne Emmerth, (202) 268–2363.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual (DMM), incorporated by reference in title 39, Code of Federal Regulations, part 111, contains: the basic standards of the U.S. Postal Service governing its domestic mail services; descriptions of the mail classes and special services and conditions governing their use; and standards for rate eligibility and mail preparation. The document is amended and republished about every 6 months, with each issue sequentially numbered.

DMM Issue 54, the next edition of the DMM, is scheduled for release on January 10, 1999. The issue will contain all changes previously published in the **Federal Register** and all changes listed below, including the rate, fee, and classification changes that were published in the **Federal Register** on July 14, 1998 (63 FR 37946).

The following excerpt from section I010, Summary of Changes, of the transmittal letter for DMM Issue 54 covers the minor changes not previously described in final rules or in other interim or final rules published in the **Federal Register**. Announcements of these minor changes were first published in various issues of the Postal Bulletin, an official biweekly document published by the Postal Service. In addition, the revised table of contents of DMM Issue 54 is also presented.

Domestic Mail Manual Issue 54

Summary of Changes

Rate and Classification Changes Resulting From R97–1

The revised standards summarized in this section were published on July 14, 1998, in the **Federal Register** (63 FR 37946), as approved on June 29, 1998, by the Postal Service to implement the Decision of the Governors of the Postal Service in Postal Rate Commission Docket No. R97–1, Notice of the U.S. Postal Service's Filing of Proposed Postal Rate, Fee, and Classification Changes and Order Instituting Proceedings. Effective January 10, 1999.

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. C010 is amended to change Parcel Post weight limits and add the nonstandard surcharge for First-Class Mail. C050.5.0 and C050.6.0 are amended to add ''Nonmachinable'' to the title. C100.1.0 is amended to change the weight limit for First-Class Mail. C100.4.0 is amended to include keys and identification devices as items that may be considered nonstandard mail. C600.1.2 is amended to change the maximum weight for Parcel Post pieces mailed at the oversized rate. C600.1.2 also is amended to add a balloon rate for Parcel Post pieces that weigh less than 15 pounds but measure more than 84 inches in combined length and girth. C600.2.0 is amended to delete the nonstandard surcharge criteria that formerly applied to single-piece Standard Mail (A). C810.2.0 is amended to provide new maximum weights for automation heavy letters. C820.2.0 is amended to increase the maximum weight limit for First-Class automation flats. C840.8.0 is amended to add a stipulation for ZIP+4 barcodes for QBRM and other barcoded BRM. A new C850 is added to provide standards for Standard Mail (B) barcodes.

D Deposit, Collection, and Delivery

D010.1.1 is amended to remove single-piece rate Priority Mail. D010.1.2 is amended to exclude pieces mailed at new Parcel Post discounts from pickup service. D100 is amended to remove references to Presorted Priority Mail. D600.2.0 is amended to remove references to single-piece Standard Mail (A).

E Eligibility

E060.5.0 is amended to reflect the new 13-ounce weight limit for First-Class Mail. E060.12.0 is amended to remove references to single-piece Standard Mail (A). E110.4.0 is revised to delete references to Presorted Priority Mail. E120 is revised to remove references to Presorted Priority Mail and to add information on rates and fees applicable to keys and identification devices. E130 is amended for clarity and to add information on rates and fees applicable to keys and identification devices. E150 is added to provide information on qualified business reply mail. E211.14.0 is amended to delete references to single-piece Standard Mail (A). E230.1.0 and E230.3.0 through E230.5.0 are amended to provide for separate 5-digit and 3-digit rates for Periodicals and to show that the applicable 3-digit rates will apply to both unique and nonunique 3-digit ZIP Code areas. E230.6.0 is amended to allow In-County mail to qualify for high density carrier walk-sequence rates based on either a minimum of 125 pieces per route or 25% of the total active possible deliveries on the carrier route. E230.7.0 is amended to require documentation for pieces and copies mailed to all 3-digit destinations. E240.2.0 is amended to provide for separate 5-digit and 3-digit rates for Periodicals and to show that the applicable 3-digit rates will apply to both unique and nonunique 3-digit ZIP Code areas. E600 is amended throughout to delete references to single-piece Standard Mail (A) and to change the name ''nonautomation presort'' to ''Presorted'' or ''Presorted Standard.'' E612 is amended to change the weight breakpoints for the Standard Mail (A) minimum per piece rates, to require Standard Mail (A) mailed at a Standard Mail (B) rate to show the applicable Standard Mail (B) marking, and to move restrictions on use of special services from E612.4.1 to new section E612.4.10. E620 and E630 are reorganized so that E620 contains standards for Standard Mail (A) and E630 contains standards for Standard Mail (B). E620 is amended to add new minimum volume requirements for Presorted Standard mailings, to add provisions for mailing certain matter not eligible for Standard Mail (A) rates that bears Standard Mail (A) markings at the single-piece First-Class or Priority Mail rates, and to add provisions for the new residual shape surcharge. E630 is revised to add provisions for DSCF and DDU rates, OBMC Presort and BMC Presort discounts, oversized parcels, and balloon rate parcels. E630 is amended to add provisions for a barcoded discount for Standard Mail (B) rates. E630 is amended to change marking requirements for Standard Mail (B). E640 is amended to clarify that Nonprofit rate mail may qualify for automation rates. E651 is amended to clarify procedures for depositing mail. E652 is revised to add provisions for DSCF and DDU Parcel Post rates. E670 is amended to delete references to Presorted Priority Mail.

F Forwarding and Related Services

F010 is amended throughout to delete references to single-piece Standard Mail (A), to revise forwarding and related services for Periodicals and Standard Mail (A), and 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 amended to remove references to single-piece Standard Mail (A).

G General Information

G043 is amended to add names and addresses of organizations from whom barcode specifications and barcode grading requirements can be obtained.

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

M011.1.0 is amended to add the definition of an overflow sack for Parcel Post DSCF rate mailings and to amend the definition of a mailing. M012 is amended to change marking requirements for First-Class Mail and Standard Mail and to specify time frames for new marking requirements. In M032, Exhibit 1.3a is amended to show headings for new Periodicals rate levels and for new Parcel Post rates and to change the name ''bulk Bound Printed Matter'' to ''Presorted Bound Printed Matter.'' M033.1.0 is amended to reflect the new 13-ounce weight limit for First-Class Mail. M041 is amended to reflect requirements for new Standard Mail (B) rates. M045 is amended to add preparation requirements for new Standard Mail (B) rates. M050.4.0 is amended to reflect new documentation requirements for high density In-County Periodicals. M072.1.1 is amended for clarity. M072.2.5 is amended to delete references to ''Bulk Parcel Post,'' to rename ''bulk Bound Printed Matter'' as ''Presorted Bound Printed Matter,'' to add an exception to the zone separation requirement, and to add information on preparation of drop shipment mail for Parcel Post DSCF and DDU rates. M073 is amended to add information about permissibility and preparation requirements for combining Standard Mail (A) and Standard Mail (B) parcels in mailings qualifying for new Parcel Post rates. M120 is revised to delete the sections concerning Presorted Priority Mail. M130.2.0 and M130.3.0 are amended to revise their titles. M130.5.0 is amended to reflect the new 13-ounce weight limit for First-Class Mail. M200.3.0 is revised to require preparation of an SCF sack for nonletters, to delete the provisions for an optional origin/required entry 3-digit sack, and to add provisions for an optional origin/required entry SCF sack. M610 and M620 are revised to change ''nonautomation presort'' to ''Presorted,'' to amend references to E620 and E630, and to revise rate marking requirements, including time frames, for changing the ''Bulk Rate'' marking to ''Presorted Standard.'' M630 is amended to add preparation requirements for DSCF and DDU rates and Presorted Library Mail; to change ''nonautomation presort'' to ''Presorted'; to revise references to E620 and E630; and to amend marking requirements for all Standard Mail (B). M810 is reorganized and revised to clarify documentation requirements, 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, to delete the provisions for an optional origin/required entry 3-digit sack, and to add provisions for an optional origin/required entry SCF sack.

P Postage and Payment Methods

P011 is amended to delete references to single-piece Standard Mail (A). P012 is amended to standardize documentation for Periodicals by adding separate 5-digit and 3-digit rates for both automation and nonautomation and by adding new rate abbreviations for nonautomation 5-digit and 3-digit rates. P013 is amended to reflect payment for keys and identification devices at First-Class Mail and Priority Mail rates plus a $0.30 fee, to delete sections concerning computation of single-piece Standard Mail (A) rates, to revise the breakpoints for Standard Mail (A) rates, to delete references to Bulk Parcel Post, and to revise the term ''bulk Bound Printed Matter'' to ''Presorted Bound Printed Matter.'' P014.2.0 is amended to delete references to single-piece Standard Mail (A). P030.1.5 is amended to reflect the new 13-ounce

weight limit for First-Class Mail. P030.5.4 is amended to delete a reference to single-piece Standard Mail (A). P040.4.1 is amended to reflect the new rate marking requirements for First-Class Mail and Standard Mail and to delete examples for single-piece Standard Mail (A). P100 is amended to add payment provisions for mailing residual Standard Mail (A) pieces at single-piece First-Class or Priority Mail rates. P600 is amended to establish postage payment methods for Standard Mail (B) containing a combination of discounts, to delete information on payment and markings for single-piece Standard Mail (A), and to clarify that for mailings of identical weight Standard Mail (A) pieces postage may be affixed to all pieces in the mailing at the lowest rate in the mailing job. P750 is amended 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

R000, R100, R200, R500, R600, and R900 are revised in their entirety to reflect new rates and fees.

S Special Services

S010 is amended to add information on claims for bulk insurance service. S070 is amended to clarify applicability of Priority Mail Drop Shipment. S911 is amended to reflect changes to indemnity coverage for registered mail. S913 is revised to eliminate references to single-piece Standard Mail (A), to clarify insurance eligibility, and to include rules for bulk insurance service. S915.1.0 and S915.2.0 are amended for clarity. S917 is amended to delete availability of return receipt for merchandise with single-piece Standard Mail (A). S921 is amended to delete availability of COD with single-piece Standard Mail (A). S922 is amended to change references from BRMAS to QBRM, to remove eligibility requirements for BRMAS, and to require all BRM bearing barcodes to meet specified standards and requirements. S923 is amended to eliminate the return of merchandise return pieces at single-piece Standard Mail (A) rates, to prescribe new rates and corresponding markings for returned mailpieces, and to reflect new standards for use of registered mail with merchandise return service. S924 is amended to eliminate references to single-piece Standard Mail (A). S930 is amended to end availability of special handling service for single-piece Standard Mail (A) and to allow First-Class Mail and Priority Mail to receive special handling.

Advance Payment of Annual Fees

E110.4.1 is corrected to add information regarding First-Class Mail presort mailing fees that was inadvertently left out. Effective February 26, 1998 (PB 21966 (02–26–98)).

Ancillary Service Endorsements for Perishable Priority Mail

F010.5.1 and F030.5.3 are amended to allow use of the endorsement ''Change Service Requested'' with perishable matter (excluding live animals) mailed at Priority Mail rates under two conditions: (1) The mail participates in electronic Address Change Service (ACS) and the pieces bear the proper ACS codes, and (2) the pieces bear the marking ''Perishable.'' These amendments also exclude use of the endorsement ''Change Service Requested'' with live animals mailed at First-Class rates. Effective November 7, 1997 (PB 21958 (11–6–97)).

Ancillary Service Endorsements for Temporary Change-of-Address

F010.5.1 is amended to allow use of the endorsement ''Temp—Return Service Requested'' on First-Class Mail so that mailpieces may be forwarded to a temporary address when a temporary change-of-address notice is on file. Effective August 1, 1998 (PB 21977 (07–30–98)).

Application for Post Office Box or Caller Service

D910.2.2 is added and D910.2.3 is revised to require two forms of identification when applying for post office box or caller service. Effective July 31, 1998 (PB 21982 (10–8–98)).

Breast Cancer Research Semi-Postal Stamp

P014.1.1, P014.1.2, P014.1.5, and R000.4.0 are amended and P014.2.10 and P022.1.6 are added to establish terms and conditions for use and determination of value of the Breast Cancer Research Semi-Postal Stamp. Effective July 29, 1998 (PB 21976 (07–16–98)).

Customs Declarations for Military Mail

E010.2.6 is amended to clarify when customs declarations are required on mail sent between government agencies and APO and FPO ZIP Codes. Effective August 13, 1998 (PB 21978 (08–13–98)).

Disaster Field Office Meters

E060.7.1, G043, and P030 Exhibit 4.1 are amended and E060.7.11 is added to introduce a new style of meter indicia for federal government agency disaster field office use. Effective December 18, 1997 (PB 21961 (12–18–97)).

Elimination of Mixed ADC and Mixed BMC Pallets for Packages and Bundles

M020, M041, and M045 are revised to eliminate the options for mailers to place packages and bundles of Periodicals on mixed ADC pallets and to place packages and bundles of Standard Mail (A) and Standard Mail (B) on mixed BMC pallets. Effective October 4, 1998 (PB 21976 (07–16–98)).

M020 is amended to clarify the standards published in Postal Bulletin 21976 (07–16–98). (PB 21977 (07–30–98)).

Enclosures at Periodicals Rate

C200 is revised to remove the restriction that allows only a single sheet of printed matter containing information related exclusively to, and included with, a receipt or request or order for a subscription to the host publication; and to clarify that the receipt, request, or order for a subscription may be prepared as reply mail. Effective March 12, 1998 (PB 21967 (03–12–98)).

Experimental First-Class and Priority Mail Small Parcel Test Expires

G091 is deleted as a result of the expiration of the Experimental First-Class and Priority Mail Small Parcel Test on April 28, 1998. The four-cent per piece discount available to participants of the test will not be offered after April 28, 1998. Effective April 28, 1998 (PB 21970 (04–23–98)).

Group E Post Office Box Service

D910 is amended to clarify the standards for Group E post office box service. Effective July 2, 1998 (PB 21975 (07–02–98)).

Hazardous Materials Mailability Standards

C010, C021, C022, C023, C024, C050, and E110 are revised to clarify the standards for the mailability of hazardous materials. Effective April 9, 1998 (PB 21969 (04–09–98)).

C023 is amended to clarify the hazardous materials standards. This notice issues minor corrections to the DMM revisions published in Postal Bulletin 21969 (4–9–98). (PB 21970 (04–23–98)).

C023 is amended to clarify the hazardous materials standards. This notice issues minor corrections to the DMM revisions published in Postal Bulletin 21969 (04–09–98). (PB 21975 (07–02–98)).

C021 and C023 are amended to clarify the hazardous material standards. This

notice issues minor corrections to the DMM revisions published in Postal Bulletin 21969 (4–9–98). (PB 21978 (08–13–98)).

Labeling List Changes

L002, L003, L004, L005, L604, L801, and L803 are amended to reflect changes in mail processing operations. Effective May 21, 1998 (PB 21972 (05–21–98)).

L004 and L801 are amended to reflect changes in mail processing operations. Effective August 13, 1998 (PB 21978 (08-13–98)).

Locksmithing Devices

C024.10.5e is added to expand the list of permissible addressees who may receive locksmithing devices through the mail. Effective August 27, 1998 (PB 21979 (08–27–98)).

New Specifications for Automated Flats

C820.1.0 through C820.9.0, C840.3.0, M820.1.5 through M820.1.9, and R200 are revised and C820.3.0 and C820.4.0 are added to describe specifications for automated flats processed on FSM 1000 equipment. Effective October 4, 1998 (PB 21982 (10–08-98)).

Nondenominated Stamps in International Mail

P022.2.1 is revised to clarify that nondenominated stamps, except for precanceled stamps with rate markings, may be used for international mail. Effective August 13, 1998 (PB 21978 (08–13-98)).

Nonprofit Standard Mail Eligibility

E670.5.9 is added to facilitate acceptance at the Nonprofit Standard Mail rates of certain material requesting donations or payment of membership dues when ''premiums'' are provided in exchange for the donation or membership dues payment. Effective November 20, 1997 (PB 21959 (11–20–97)).

Periodicals Identification Statement

E211.10.4 is revised to allow publishers to print the Periodicals identification statement on one of the last three editorial pages when the publication is mailed with a First-Class Mail or Standard Mail (A) enclosure paid with permit imprint. M071.1.2 and P070.2.6 are revised to no longer require that a permit imprint be printed in the identification statement when the marking ''First-Class Mail Enclosed'' or ''Standard Mail (A) Enclosed'' is placed in the identification statement. Effective August 13, 1998 (PB 21978 (08–13–98)).

Permissible Mailpiece Components

C200.1.8 is revised to allow attachments to covers or protective covers of Periodicals publications that may consist of advertising, nonadvertising, or a combination of both when the publication is enclosed in a wrapper. Effective April 23, 1998 (PB 21970 (04–23–98)).

Plant-Verified Drop Shipment Forms

P750 and I021 are revised to describe the use of the new PS Form 8125-C and to eliminate references to PS Form 8125-PV. Effective January 10, 1999 (PB 21977 (07–30–98)).

Postage Meters Outside the Country

P030.2.2 and P030.2.4 are revised, and P030.2.11 is added to allow for the use of specifically approved postage meters outside the country. Effective April 9, 1998 (PB 21969 (04–09–98)).

Presort Requirements for Periodicals Mail

M011.1.2, M011.1.3, M032.1.3, M200.1.5, M200.3.1, M820.1.8, and M820.3.2 are revised and M200.1.6 and M820.1.9 are added to provide for optional preparation of a sectional center facility (SCF) level of sack for nonletter-size Periodicals mail. Effective January 5, 1998 (PB 21963 (01–15–98)).

Priority Mail Permit Indicia Content

P040.3.1 is revised to not require the words ''Priority Mail'' or ''Priority'' as part of the permit imprint indicia when using USPS-provided Priority Mail envelopes and containers. Effective July 2, 1998 (PB 21975 (07–02–98)).

Products Mailable at Nonprofit Standard Mail Rates

E670.5.11 (formerly E670.5.10) is revised to reflect an increase from $6.93 to $7.10 for low-cost products mailable at Nonprofit Standard Mail rates. Effective January 1, 1998 (PB 21966 (02–26–98)).

Revision for the Calculation of Delivery Point Barcode Information

C840.1.4 is amended to change the method by which delivery point barcode (DPBC) information is calculated. Effective July 31, 1998 (PB 21976 (07–16–98)).

System Certification Program Discontinued

P710.4.4, P720.2.5, and P730.2.3 are removed to reflect the discontinuation of Stage 1, System Certification Program. Effective December 18, 1997 (PB 21962 (01–01–98)).

Weight Per Copy for Periodicals

P013.1.3, P013.7.2, P013.7.3, and P200.2.5 are revised to reflect the weight per copy for Periodicals to include address labels and envelopes, wrappers, and sleeves enclosing individual copies, but to exclude extraneous material such as strapping and package wrap. Effective December 18, 1997 (PB 21961 (12–18–97)).

List of Subjects in 39 CFR Part 111

Postal Service.

In consideration of the foregoing, 39 CFR part 111 is amended as set forth below:

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, 3626, 5001.

2. The table at the end of § 111.3(f) is amended by adding at the end thereof a new entry to read as follows:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

(f) * * *

Transmittal letter for issue	Dated	Federal Register publication
* * * * *	*	*
54	January 10, 1999	63 FR [INSERT PAGE NUMBER].

3. Section 111.5 is revised to read as follows:

§ 111.5 Contents of the Domestic Mail Manual.

A ADDRESSING

A000 Basic Addressing

A010 General Addressing Standards
A040 Alternative Addressing Formats
A060 Detached Address Labels (DALs)

A800 Addressing for Automation

A900 Customer Support
A910 Mailing List Services
A920 Address Sequencing Services
A930 Other Services
A950 Coding Accuracy Support System (CASS)

C CHARACTERISTICS AND CONTENT

C000 General Information

C010 General Mailability Standards
C020 Restricted or Nonmailable Articles and Substances
- C021 Articles and Substances Generally
- C022 Perishables
- C023 Hazardous Materials
- C024 Other Restricted or Nonmailable Matter

C030 Nonmailable Written, Printed, and Graphic Matter
- C031 Written, Printed, and Graphic Matter Generally
- C032 Sexually Oriented Advertisements
- C033 Pandering Advertisements

C050 Mail Processing Categories

C100 First-Class Mail

C200 Periodicals

C500 Express Mail

C600 Standard Mail

C800 Automation-Compatible Mail

C810 Letters and Cards
C820 Flats
C830 OCR Standards
C840 Barcoding Standards
C850 Standard Mail (B) Barcode Standards

D DEPOSIT, COLLECTION, AND DELIVERY

D000 Basic Information

D010 Pickup Service
D020 Plant Load
D030 Recall of Mail
D040 Delivery of Mail
- D041 Customer Mail Receptacles
- D042 Conditions of Delivery

D070 Drop Shipment
- D071 Express Mail and Priority Mail
- D072 Metered Mail

D100 First-Class Mail

D200 Periodicals

D210 Basic Information
D230 Additional Entry

D500 Express Mail

D600 Standard Mail

D900 Other Delivery Services

D910 Post Office Box Service
D920 Caller Service
D930 General Delivery and Firm Holdout

E ELIBILITY

E000 Special Eligibility Standards

E010 Overseas Military Mail
E020 Department of State Mail
E030 Mail Sent by U.S. Armed Forces
E040 Free Matter for the Blind and Other Handicapped Persons
E050 Official Mail (Franked)
E060 Official Mail (Penalty)
E070 Mixed Classes
E080 Absentee Balloting Materials

E100 First-Class Mail

E110 Basic Standards
E120 Priority Mail
E130 Nonautomation Rates
E140 Automation Rates
E150 Qualified Business Reply Mail (QBRM)

E200 Periodicals

E210 Basic Standards
- E211 All Periodicals
- E212 Qualification Categories
- E213 Periodicals Mailing Privileges
- E214 Reentry
- E215 Copies Not Paid or Requested by Addressee
- E216 Publisher Records

E230 Nonautomation Rates
E240 Automation Rates
E250 Destination Entry
E270 Preferred Periodicals

E500 Express Mail

E600 Standard Mail

E610 Basic Standards
- E611 All Standard Mail
- E612 Additional Standards for Standard Mail (A)
- E613 Additional Standards for Standard Mail (B)

E620 Nonautomation Standard Mail (A) Rates
E630 Standard Mail (B)
E640 Automation Standard Mail (A) Rates
E650 Destination Entry
- E651 Regular, Nonprofit, and Enhanced Carrier Route Standard Mail
- E652 Parcel Post

E670 Nonprofit Standard Mail

F FORWARDING AND RELATED SERVICES

F000 Basic Services

F010 Basic Information
F020 Forwarding
F030 Address Correction, Address Change, FASTforward, and Return Services

G GENERAL INFORMATION

G000 The USPS and Mailing Standards

G010 Basic Business Information
- G011 Post Offices and Postal Services
- G013 Trademarks and Copyrights

G020 Mailing Standards
G030 Postal Zones
G040 Information Resources
- G041 Postal Business Centers
- G042 Rates and Classification Service Centers
- G043 Address List for Correspondence

G090 Experimental Classifications and Rates
- G092 Nonletter-Size Business Reply Mail

G900 Philatelic Services

L LABELING LISTS

L000 General Use

L002 3-Digit ZIP Code Prefix Matrix
L003 3-Digit ZIP Code Prefix Groups—3-Digit Scheme Sortation
L004 3-Digit ZIP Code Prefix Groups—ADC Sortation
L005 3-Digit ZIP Code Prefix Groups—SCF Sortation

L600 Standard Mail

L601 BMCs—Machinable Parcels
L602 BMCs/ASFs—DBMC Rates
L603 ADCs—Irregular Parcels
L604 Originating ADCs—Irregular Parcels
L605 BMCs—Nonmachinable Parcel Post

L800 Automation Rate Mailings

L801 AADCs—Letter-Size Mailings
L802 BMC/ASF Entry—Periodicals and Standard Mail (A)
L803 Non-BMC/ASF Entry—Periodicals and Standard Mail (A)

M MAIL PREPARATION AND SORTATION

M000 General Preparation Standards

M010 Mailpieces
- M011 Basic Standards
- M012 Markings and Endorsements
- M013 Optional Endorsement Lines
- M014 Carrier Route Information Lines

M020 Packages and Bundles
M030 Containers
- M031 Labels
- M032 Barcoded Labels
- M033 Sacks and Trays

M040 Pallets
- M041 General Standards
- M045 Palletized Mailings

M050 Delivery Sequence
M070 Mixed Classes
- M071 Basic Information
- M072 Express Mail and Priority Mail Drop Shipment
- M073 Combined Mailings of Standard Mail (A) and Standard Mail (B) Parcels
- M074 Plant Load Mailings

M100 First-Class Mail (Nonautomation)

M120 Priority Mail
M130 Presorted First-Class Mail

M200 Periodicals (Nonautomation)

M500 Express Mail

M600 Standard Mail (Nonautomation)

M610 Presorted Standard Mail (A)
M620 Enhanced Carrier Route Standard Mail
M630 Standard Mail (B)

M800 All Automation Mail

M810 Letter-Size Mail
M820 Flat-Size Mail

P POSTAGE AND PAYMENT METHODS

P000 Basic Information

P010 General Standards
- P011 Payment
- P012 Documentation

P013 Rate Application and Computation
P014 Refunds and Exchanges
P020 Postage Stamps and Stationery
P021 Stamped Stationery
P022 Adhesive Stamps
P023 Precanceled Stamps
P030 Postage Meters and Meter Stamps
P040 Permit Imprints
P070 Mixed Classes
P100 First-Class Mail
P200 Periodicals
P500 Express Mail
P600 Standard Mail
P700 Special Postage Payment Systems
P710 Manifest Mailing System (MMS)
P720 Optional Procedure (OP) Mailing System
P730 Alternate Mailing Systems (AMS)
P750 Plant-Verified Drop Shipment (PVDS)
P760 First-Class or Standard Mail Mailings With Different Payment Methods

R RATES AND FEES

R000 Stamps and Stationery
R100 First-Class Mail
R200 Periodicals
R500 Express Mail
R600 Standard Mail
R900 Services

S SPECIAL SERVICES

S000 Miscellaneous Services
S010 Indemnity Claims
S020 Money Orders and Other Services
S070 Mixed Classes
S500 Special Services for Express Mail
S900 Special Postal Services
S910 Security and Accountability
S911 Registered Mail
S912 Certified Mail
S913 Insured Mail
S914 Certificate of Mailing
S915 Return Receipt
S916 Restricted Delivery
S917 Return Receipt for Merchandise
S918 [Reserved]
S920 Convenience
S921 Collect on Delivery (COD) Mail
S922 Business Reply Mail (BRM)
S923 Merchandise Return Service
S924 Bulk Parcel Return Service
S930 Handling

I INDEX INFORMATION

I000 Information
I010 Summary of Changes
I020 References
I021 Forms Glossary
I022 Subject Index

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–34810 Filed 12–31–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300777; FRL–6052–5]

RIN 2070–AB78

Copper-ethylenediamine Complex; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of copper-ethylenediamine complex in or on potatoes when applied/used in accordance with good agricultural practice as an active ingredient in pesticide formulations as a desiccant/harvest aid. The Interregional Research Project Number 4 (IR–4) submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170) requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of Copper-ethylenediamine complex in or on potatoes.

DATES: This regulation is effective February 3, 1999. Objections and requests for hearings must be received by EPA on or before March 5, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300777], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300777], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp–docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300777]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney Jackson (PM5), Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–7610, e-mail: jackson.sidney@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 29, 1997 (62 FR 56179) (FRL–5749–7), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 announcing the filing of a pesticide tolerance petition by IR–4. This notice included a summary of the petition prepared by the Griffin Corporation. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of Copper-ethylenediamine complex.

I. Background and Statutory Authority

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special

consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...''

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

II. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by Copper-ethylenediamine complex are discussed below:

Copper-ethylenediamine complex and copper sulfate pentahydrate are the active ingredient components of INFERNO™ Plant Desiccant, a formulation containing 8% elemental copper. An identical product, KOMEEN® Aquatic Herbicide (EPA Reg. No. 1812–312), is approved for use in slow moving or quiescent bodies of water including potable water reservoirs. Copper sulfate pentahydrate is already exempt from the requirement of a tolerance according to 40 CFR 180.1001(b)(1).

Copper is ubiquitous in nature and is a nutritionally required element for plants and animals. The National Academy of Science has established a recommended daily dietary intake for copper. In addition, humans possess a natural efficient homeostatic mechanism for regulating copper body levels over a wide range of dietary intake. The toxicity of the copper ion is well-characterized in the published literature. There is no evidence of any chronic effects induced by dietary ingestion of copper unless the intake is of such enormous magnitude that there is a disruption of the natural homeostatic mechanism for controlling body levels. Consequently, there is no reason to expect that long–term exposure to the copper ion in the diet is likely to lead to adverse health effects.

The EPA toxicology database on copper-ethylenediamine complex shows this compound has similar toxicological properties to other copper compounds already exempt from the requirement of a tolerance such as copper hydroxide and cuprous oxide.

The Agency does not require subchronic, chronic, reproductive or developmental toxicity studies for the copper salts.

Results of a battery of acute toxicity studies show copper-ethylenediamine complex (Komeen) is slightly to moderately toxic upon acute oral, dermal and inhalation exposure, slightly irritating to the skin and moderately irritating to the eye.

In rats, the acute oral lethal dose (LD)$_{50}$ (95% confidence limits) for Komeen was 498 milligram (mg)/kilogram (kg) (349–710 mg/kg) for a Toxicity Category II classification.

The acute dermal LD_{50} in rabbits for Komeen was determined to be > 2,000 mg/kg (Toxicity Category III).

In acute inhalation studies with Sprague–Dawley rats, the lethal concentration (LC)$_{50}$ (95% confidence limits) for Komeen was 0.81 mg/liter(l) (0.26–1.37 mg/l).

In rabbit studies, Komeen was shown to be moderately irritating to the eye with all signs of ocular irritation cleared within 10 days of treatment (Toxicity Category III).

III. Aggregate Exposures

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

A. Dietary Exposure

1. *Food*. Based on the proposed used pattern of potato vine desiccation, minimal copper residues are expected to occur in potatoes and the dietary exposure would be negligible by comparison to the normal daily intake of copper. A single day's diet may contain 10 mg or more of copper. The daily recommended allowance of copper for adults nutritional needs is 2 mg.

Copper levels toxic to plants induce a chlorosis condition which causes decreased growth and yield before hazardous copper levels are reached. Since the INFERNO™ formulation will be applied to the potato vine above ground, the potato tubers below ground will not be directly treated. Moreover, copper is naturally found in several types of food, such as fruits and vegetables, at levels ranging from 0.3 to 3.9 ppm. The Agency believes that residues of copper, if any, in potatoes from pesticidal application of copper-ethylenediamine complex are not likely to exceed these naturally occurring levels. Additionally, the Agency has waived all residue chemistry study requirements for copper-ethylenediamine complex since copper is naturally occurring in plants and it is impossible to distinguish copper residues resulting from naturally occurring copper or copper-ethylenediamine complex.

2. *Drinking water exposure*. Copper is ubiquitous in the environment and found in natural water. Komeen is registered for use in water including potable water, livestock watering, fish hatcheries, etc. The average copper concentration in drinking water is 0.13 ppm. In 1991, the US EPA established a maximum contamination level (MCL) for copper in drinking water of 1.3 mg/l. The Agency believes that no impact on copper levels found naturally in water would occur as a result of potato vine desiccant use of copper-ethylenediamine complex.

B. Other Non-Occupational Exposure

Copper is registered for use as an aquatic herbicide for outdoor residential sites. Any contributions to aggregate exposure from this use would not be expected to be significant.

1. *Dermal exposure*. No significant dermal exposure would be expected to result from intended use of copper-ethylenediamine complex.

2. *Inhalation exposure*. Air concentrations of copper are relatively low. A study based on several thousand samples assembled by EPA's Environmental Monitoring Systems Laboratory showed copper levels ranging from 0.003 to 7.32 micrograms per cubic meter. Other studies indicate that air levels of copper are much lower. The Agency does not expect the air concentration of copper to be significantly effected by the use of copper-ethylenediamine complex on potatoes.

IV. Cumulative Effects

The Agency believes that copper has no significant toxicity to humans and that no cumulative adverse effects are expected from long–term exposure to copper salts. No other elements are expected to produce cumulative toxicity with copper-ethylenediamine complex.

V. Determination of Safety for U.S. Population, Infants and Children

Copper compounds such as copper sulfate pentahydrate are considered as Generally Recognized as Safe (GRAS) by the Food and Drug Administration. EPA has exempted various copper compounds from the requirement of a tolerance when used as aquatic herbicides (40 CFR 180.1021). Copper compounds are also exempt from the requirement of a tolerance when applied to growing crops when used as a plant fungicide in accordance with good agricultural practices (40 CFR 180.1001(b)(1)).

1. *U.S. population*. Copper is a component of the human diet and an essential element. Use of copper-ethylenediamine complex is not expected to increase the amount of copper in the diet as a result of potato vine desiccation.

2. *Infants and children*. Infants and children also require copper in their diets and EPA believes that no special sensitivity for this population subgroup would be expected as a result of the proposed use. Because of copper's low toxicity, EPA has not used a safety factor approach to analyzing the safety of copper-ethylenediamine complex used a potato vine desiccant. For similar reasons, an additional tenfold margin of safety is not necessary for the protection of infants and children.

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm to the general population, including infants and children, from aggregate exposure to Copper-ethylenediamine complex residues. Accordingly, EPA finds that exempting Copper-ethylenediamine complex from the requirement of a tolerance will be safe.

VI. Other Considerations

A. Endocrine Disruptors

Since copper is required for homeostasis, low copper dietary exposures would not be expected to result in any adverse endocrine effects. Moreover, the Agency has no information to suggest that copper will adversely affect the immune or endocrine systems. The Agency is not requiring information on the endocrine effects of copper at this time; Congress has allowed three (3) years after August 3, 1996, for the Agency to implement a screening program with respect to endocrine effects.

B. Analytical Method(s)

A practical analytical method for copper-ethylenediamine complex is not required for crop use since it is expected that no residues will occur in potatoes. Additionally, the Agency is establishing an exemption from the requirement of a tolerance without any numeric limitation; therefore, the Agency is not requiring an analytical method for enforcement purposes for copper–ethlenediamine complex.

C. Existing Tolerances

There are no existing tolerance(s) for copper-ethylenediamine complex.

D. International Tolerances

No maximum residue level has been established for copper-ethylenediamine complex by the Codex Alimentarius Commission.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d)and as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by Marach 5, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the hearing clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300777] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp–docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted diredtlly in writing. The official record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub.L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629), February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In additions, since tolerance exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

X. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: December 21, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

§ 180.1001 [Amended]

2. Section 180.1001 in subpart D is amended in paragraph (b)(1), by adding alphabetically ''copper-ethylenediamine complex,''.

[FR Doc. 98–34702 Filed 12–31–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 971229312–7312–01; I.D. 042398C]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Compensation for Collecting Resource Information

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

ACTION: Emergency rule; extension of expiration date.

SUMMARY: This action extends an existing emergency rule by which a vessel owner or operator, who has collected resource information according to NMFS-approved protocol, may be compensated with the opportunity to harvest fish in excess of current vessel limits and/or outside other restrictions. This emergency rule was intended to improve the types and amounts of scientific information available for use in stock assessments and management of the Pacific Coast groundfish fishery.

DATES: Effective January 4, 1999, the emergency rule published July 7, 1998, beginning at 63 FR 36614 is extended through July 2, 1999.

ADDRESSES: Copies of the environmental assessment/regulatory impact review are available from William Stelle, Jr., Administrator, Northwest Region, (Regional Administrator) NMFS, 7600 Sand Point Way NE., Seattle, WA 98115; or William T. Hogarth, Administrator, Southwest Region, (Regional Administrator) NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this emergency rule, including suggestions for reducing the burden, to one of the NMFS addresses and to the Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Katherine A. King at 206-526-6140.

SUPPLEMENTARY INFORMATION: NMFS is extending an emergency rule (63 FR 36614, July 7, 1998) which otherwise would expire on January 4, 1999. It allows owners or operators of vessels that collect resource information to be compensated with the opportunity to harvest fish in excess of current vessel limits and/or outside other restrictions (hereinafter ''compensated with fish''). NMFS is extending this rule under the Secretary's emergency rulemaking authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Section 305 (c)(3)(B). Amendment 11 to the Pacific Coast Groundfish Fishery Management Plan (PCGFMP), prepared by the Pacific Fishery Management Council (Council) and under review by NMFS, includes provisions that would continue this measure on a permanent basis. This action is necessary to support the 1999 resource surveys until regulations implementing Amendment 11 to the PCGFMP, if approved, become effective.

The Magnuson-Stevens Act, as amended on October 11, 1996, authorizes the Secretary of Commerce (Secretary) to use the private sector to provide vessels, equipment, and services necessary to survey fishery resources and to pay for surveys through the sale of fish taken during the survey or, if the quality or amount of fish is not adequate, on a subsequent commercial fishing trip (sec. 402(e)). Section 303(b)(11) of the Magnuson-Stevens Act enables the Secretary to ''reserve a portion of the allowable biological catch of the fishery for use in scientific research.'' A vessel that is chartered by NMFS to conduct resource surveys becomes a ''scientific research vessel'' as defined at 50 CFR 600.10, and it must not conduct commercial fishing on the same trip during which a resource survey is conducted.

Background

At its November 1997 meeting, the Council recommended that NMFS implement an emergency rule for 1998 that would allow owners or operators of vessels that collect resource information to be compensated with fish. At the time, the Council was in the developmental stages of Amendment 11, with the expectation that a portion of Amendment 11 would authorize the Council to allow small amounts of the allowable biological catches (ABC) of managed species to be reserved for use in scientific research and as compensation fish for that research. Because NMFS needed to use private vessels in its resource surveys in the summer and fall of 1998, emergency rule authorization was needed to make fish available as compensation for those vessels conducting the surveys before Amendment 11 could be approved. A proposed emergency rule with a request for public comments was published on May 15, 1998 (63 FR 27035). On July 1, 1998, the emergency rule in support of this action became effective (63 FR 36614, July 7, 1998). NMFS received one public comment, which was supportive of the action and resulted in no change to the emergency rule. This extension makes no change to the regulatory text for this rule, which is available at 50 CFR 660.350.

NMFS is committed to addressing concerns over the amount and accuracy of survey data used for stock assessment. However, Federal fiscal constraints have precluded gathering the information needed. The unavailability of the principal NOAA survey ship, Miller Freeman, has further restricted the agency's ability to gather data. To expand and improve information used in management of the groundfish fishery, the fishing industry, environmental groups, and NMFS actively explored ways to involve the fishing industry in gathering data. A result of this effort was the emergency rule to compensate a fishing vessel's owner or operator with fish for participating in collecting the resource information.

During 1998, compensation with fish was included as a component of contracts that NMFS awarded to commercial fishing vessels to conduct the annual slope survey. Implementation of these provisions has allowed NMFS to expand sampling and provide much needed data for groundfish stock assessments. Extending these provisions until Amendment 11 regulations become effective will allow NMFS to proceed with data collection programs during the winter and spring of 1999 that will provide additional data for groundfish stock assessment.

The process by which NMFS and the Council will approve the use of fish for compensation is described in the preamble of the emergency rule (63 FR 36614, July 7, 1998). In addition, detailed discussion on the compensation process for vessels conducting resource surveys, including the issuance of exempted fishing permits, the selection of commercial vessels, the adjustment of the ABCs to account for compensation fishing, and the retention of samples are included in the preamble to the emergency rule and is not restated in this extension.

Classification

This emergency rule has been determined to be not significant for purposes of Executive Order 12866.

This emergency rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). Notwithstanding any other

provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. The collection of this information has been approved by OMB under OMB control number 0648-0203 for Federal fishing permits. The public reporting burden for applications for exempted fishery permits is estimated at 1 hour per response; the burden for reporting by exempted fishing permittees is estimated at 30 minutes per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and revising the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB, Washington, DC 20503 (ATTN: NOAA Desk Officer).

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

Dated: December 28, 1998.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–34786 Filed 12–29–98; 2:24 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222314–8321–02; I.D. 121698B]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Interim 1999 Harvest Specifications

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

ACTION: Interim 1999 harvest specifications for groundfish and associated management measures.

SUMMARY: NMFS issues interim 1999 total allowable catch (TAC) amounts for each category of groundfish and specifications for prohibited species bycatch allowances for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to conserve and manage the groundfish resources in the GOA and is intended to implement the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Effective 0001 hrs, Alaska local time (A.l.t.), January 1, 1999, until the effective date of the final 1999 harvest specifications for GOA groundfish, which will be published in the **Federal Register**.

ADDRESSES: The preliminary 1999 Stock Assessment and Fishery Evaluation (SAFE) Report, dated September 1998, is available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252, telephone 907–586–7237. The Final Supplemental Environmental Impact Statement as well as an Environmental Assessment prepared for this action and the final 1999 GOA groundfish specifications may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99801–21668, Attn: Lori Gravel.

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

SUPPLEMENTARY INFORMATION:

Background

Federal regulations at 50 CFR part 679 that implement the FMP govern the groundfish fisheries in the GOA. The North Pacific Fishery Management Council (Council) prepared the FMP, and NMFS approved it under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 600.

The Council met October 7 to 12, 1998, to review scientific information concerning groundfish stocks. At that meeting, the Council adopted the preliminary SAFE Report for the 1999 GOA groundfish fisheries. The preliminary SAFE Report, dated September 1998, provides an update on the status of stocks. Copies of the preliminary SAFE Report are available for public review from the Council (see **ADDRESSES**). The Council recommended a preliminary total TAC of 327,046 metric tons (mt) and a preliminary total acceptable biological catch of 548,650 mt for the 1999 fishing year.

Under § 679.20(c)(1)(ii), NMFS published in the December 30, 1998 **Federal Register**, the proposed initial harvest specifications for groundfish and associated management measures in the GOA for the 1999 fishing year. That action discusses in detail the 1999 specification process, as well as 1999 proposed specifications, reserves, apportionments for groundfish, and PSC limits.

This action provides interim harvest specifications and apportionments thereof of GOA groundfish for the 1999 fishing year that will become available on January 1, 1999, and remain in effect until superseded by the final 1999 harvest specifications. NMFS notes that the Council, at its December 1998 meeting, requested NMFS to implement, by emergency interim rule, conservation measures to mitigate impacts of the GOA pollock fishery on Steller sea lions and their critical habitat. Prior to the opening of the 1999 pollock trawl fisheries, NMFS will implement measures necessary to ensure that the pollock trawl fisheries do not jeopardize the continued existence, or adversely modify the critical habitat, of Steller sea lions. NMFS will revise the pollock interim specifications accordingly.

Establishment of Interim TACs

Regulations at § 679.20(c)(2) require that one-fourth of each proposed TAC and apportionment thereof (not including the reserves and the first seasonal allowance of pollock), one-fourth of the proposed halibut prohibited species catch (PSC) amounts, and the proposed first seasonal allowance of pollock become available for harvest at 0001 hours, A.l.t., January 1, on an interim basis and remain in effect until superseded by the final harvest specifications.

On December 16, 1998, NMFS approved portions of Amendment 51 to the FMP, which allocate 100 percent of the pollock TAC and 90 percent of the Pacific cod TAC to vessels catching pollock and Pacific cod for processing by the inshore component. Ten percent of the Pacific cod TAC is allocated to vessels catching Pacific cod for processing by the offshore component.

The reserves for the GOA are 20 percent of the TAC amounts for pollock, Pacific cod, flatfish species, and the ''other species'' category. The GOA groundfish TAC amounts have been fully utilized since 1987. NMFS expects this trend to continue in 1999, and, with the exception of Pacific cod, has proposed reapportioning all the reserves to TAC.

The Pacific cod fishery in the GOA has become increasingly difficult to manage. The increased number of participants, unexpected increases in harvest rates, and unexpected shifts to other management areas and targets in the GOA have resulted in overharvests of Pacific cod in some areas. Therefore, NMFS proposed to initially reserve 20 percent of the Pacific cod TACs in the GOA as a management buffer to prevent exceeding the Pacific cod TAC.

With the exception of Pacific cod, the interim TAC amounts contained in Table 1 to this part reflect the

reapportionment of reserves back to the TAC.

Interim 1999 GOA Groundfish Harvest Specifications and Apportionments

Table 1 to this part provides interim TAC amounts, interim TAC allocations of Pacific cod to the inshore and offshore components, the first seasonal allowance of pollock in the combined Western and Central regulatory areas, and interim sablefish TAC apportionments to hook-and-line and trawl gear. These interim TAC amounts and apportionments become effective at 0001 hours, A.l.t., January 1, 1999. This table also lists inshore/offshore allocations of Pacific cod that will be effective under the final rule implementing the inshore/offshore allocations of Pacific cod authorized under Amendment 51 to the FMP that was approved by NMFS on December 16, 1998.

TABLE 1.—INTERIM 1999 TAC AMOUNTS OF GROUNDFISH FOR THE COMBINED WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYAK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA (GOA);[1 2] THE FIRST SEASONAL ALLOWANCES OF POLLOCK IN THE COMBINED W/C REGULATORY AREAS; INTERIM SABLEFISH TAC APPORTIONMENTS TO HOOK-AND-LINE (H/L) AND TRAWL (TRW) GEAR

Species	Area	Interim TAC (mt)
Pollock [3 4]		
	W (610)	7,450
	C (620)	12,510
	C (630)	9,830
Subtotal	W/C	29,790
	E	1,395
Total		31,185
Pacific cod [5]		
Inshore	W	4,171
Offshore	W	436
Inshore	C	7,510
Offshore	C	834
Inshore	E	211
Offshore	E	23
Total		12,523
Flatfish, Deep-water [6]		
	W	85
	C	923
	E	785
Total		1,793
Rex sole		
	W	298
	C	1,373
	E	618
Total		2,288
Flathead sole		
	W	500
	C	1,250
	E	510
Total		2,260
Flatfish, Shallow-water [7]		
	W	1,125
	C	3,238
	E	295
Total		4,658
Arrowtooth flounder		
	W	1,250
	C	6,250
	E	1,250
Total		8,750
Sablefish [8 9 10]		
H/L	W	N/A(368)
TRW	W	92
H/L	C	N/A(1,264)
TRW	C	316
TRW	E	75
H/L	WYak	N/A(543)
H/L	SEO	N/A(872)

TABLE 1.—INTERIM 1999 TAC AMOUNTS OF GROUNDFISH FOR THE COMBINED WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYAK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA (GOA);[1] [2] THE FIRST SEASONAL ALLOWANCES OF POLLOCK IN THE COMBINED W/C REGULATORY AREAS; INTERIM SABLEFISH TAC APPORTIONMENTS TO HOOK-AND-LINE (H/L) AND TRAWL (TRW) GEAR—Continued

Species	Area	Interim TAC (mt)
Total		3,530
Pacific ocean perch[11]		
	W	453
	C	1,650
	E	592
Total		2,694
Shortraker/rougheye[12]		
	W	40
	C	242
	E	115
Total		397
Rockfish, northern[13]		
	W	210
	C	1,037
	E	3
Total		1,250
Rockfish, other[14] [15]		
	W	5
	C	162
	E	375
Total		542
Rockfish, pelagic shelf[16]		
	W	155
	C	815
	E	250
Total		1,220
Rockfish, demersal shelf SEO[17]		
	SEO	140
Thornyhead rockfish		
	W	63
	C	178
	E	260
Total		500
Atka mackerel		
	GW	150
Other species[18]		3,893
GOA Total Interim TAC		78,462
(Interim TAC amounts have been rounded.)		

[1] Reserves have been reapportioned back to each species TAC and are reflected in the interim TAC amounts except for Pacific cod. (See § 679.20(a)(2).)

[2] See § 679.2 for definitions of regulatory area and statistical area. See Figure 3b to part 679 for a description of regulatory district.

[3] Pollock is apportioned to three statistical areas in the combined Western/Central Regulatory Area, and is further divided into three allowances of 25 percent, 35 percent, and 40 percent. The first allowances are in effect on an interim basis as of January 1, 1999. In the Eastern Regulatory Area, pollock is not divided into less than annual allowances, and one-fourth of the TAC is available on an interim basis.

[4] Under Amendment 51 of the FMP approved by NMFS on December 16, 1998, the pollock TAC in all regulatory areas will be allocated 100 percent to vessels catching groundfish for processing by the inshore component after subtraction of amounts that are determined by the Regional Administrator, NMFS, to be necessary to support the bycatch needs of the offshore component in directed fisheries for other groundfish species. At this time, these bycatch amounts are unknown and will be determined during the fishing year. (See § 679.20(a)(6)(ii)).

[5] The Pacific cod TAC in all regulatory areas is allocated 90 percent to vessels catching groundfish for processing by the inshore component and 10 percent to vessels catching groundfish for processing by the offshore component. (See § 679.20(a)(6)(iii).)

[6] ''Deep-water flatfish'' means Dover sole, Greenland turbot and deepsea sole.

[7] ''Shallow-water flatfish'' means flatfish not including ''deep-water flatfish'', flathead sole, rex sole, or arrowtooth flounder.

[8] Sablefish TAC amounts for each of the regulatory areas and districts are assigned to hook-and-line and trawl gear. In the Central and Western Regulatory Areas, 80 percent of the TAC is allocated to hook-and-line gear and 20 percent to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is assigned to hook-and-line gear. Five percent is allocated to trawl gear and may only be used as bycatch to support directed fisheries for other target species. (See § 679.20(a)(4).)

[9] The sablefish hook-and-line (H/L) gear fishery is managed under the Individual Fishing Quota (IFQ) program and is subject to regulations contained in subpart D of 50 CFR part 679. Annual IFQ amounts are based on the final TAC amount specified for the sablefish H/L gear fishery as contained in the final specifications for groundfish. Under § 679.7(f)(3), retention of sablefish caught with H/L gear is prohibited unless the harvest is authorized under a valid IFQ permit and IFQ card. In 1999, IFQ permits and IFQ cards will not be valid prior to the effective date of the 1999 final specifications. Thus, fishing for sablefish with H/L gear will not be authorized under these interim specifications. Nonetheless, interim amounts are shown in parentheses to reflect assignments of one-fourth of the proposed TAC amounts among gear categories and regulatory areas in accordance with § 679.20(c)(2)(i). See § 679.40 for guidance on the annual allocation of IFQ.

[10] Sablefish caught in the GOA with gear other than hook-and-line or trawl gear must be treated as prohibited species and may not be retained.

[11] ''Pacific ocean perch'' means *Sebastes alutus.*

[12] ''Shortraker/rougheye rockfish'' means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).

[13] ''Northern rockfish'' means *Sebastes polyspinis.*

[14] ''Other rockfish'' in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category ''other rockfish'' in the Southeast Outside District means slope rockfish.

[15] ''Slope rockfish'' means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegateu* (harlequin), *S. wilsoni* (pygmy), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), *S. babcocki* (redbanded), and *S. reedi* (yellowmouth).

[16] ''Pelagic shelf rockfish'' includes *Sebastes ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail). ''Offshore Pelagic shelf rockfish'' includes *S. ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

[17] ''Demersal shelf rockfish'' means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[18] ''Other species'' includes sculpins, sharks, skates, squid, and octopus. The TAC for ''other species'' equals 5 percent of the TAC amounts of target species.

Interim Halibut PSC Mortality Limits

Under § 679.21(d), annual Pacific halibut PSC mortality limits are established for trawl and hook-and-line gear and may be established for pot gear. The Council recommended that the 1998 halibut mortality limits be reestablished for 1999 because no new information was available. Consistent with 1998, the Council recommended exemptions for pot gear, jig gear, and the sablefish hook-and-line fishery from halibut PSC limits for 1999. The interim PSC limits take effect on January 1, 1999, and remain in effect until superseded by the final 1999 harvest specifications. The interim halibut PSC limits are: (1) 500 mt to trawl gear, (2) 75 mt to hook-and-line gear for fisheries other than demersal shelf rockfish, and (3) 2.5 mt to hook-and-line gear for the demersal shelf rockfish fishery in the Southeast Outside District.

Regulations at § 679.21(d)(3)(iii) authorize apportionments of the trawl halibut PSC limit allowance as bycatch allowances to a deep-water species complex; comprising rex sole, sablefish, rockfish, deep-water flatfish, and arrowtooth flounder, and to a shallow-water species complex; comprising pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species''. The interim 1999 apportionment for the shallow-water species complex is 417 mt and for the deep-water species complex is 83 mt.

NMFS will implement fishery closures for those fisheries where insufficient interim TAC exists to support a directed fishery. The closures will be implemented prior to the beginning of the 1999 fishing year.

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under E.O. 12866.

Pursuant to section 7 of the Endangered Species Act, NMFS completed a consultation on the effects of the pollock and Atka mackerel fisheries on listed and candidate species, including the Steller sea lion, and designated critical habitat. The biological opinion prepared for this consultation, dated December 3, 1998, concludes that the pollock fisheries in the Bering Sea/Aleutian Island Management Area, and the GOA jeopardize the continued existence of Steller sea lions and adversely modify their designated critical habitat. The biological opinion contains reasonable and prudent alternatives (RPAs) to mitigate the adverse impacts of the pollock fisheries on Steller sea lions. At its December meeting, the Council recommended specific measures necessary to implement the RPAs. On December 16, 1998, NMFS issued revised reasonable and prudent alternatives based on the Council's recommendations adopted during its December meeting, which adhere to the principles identified in the December 3, 1998, Biological Opinion. Prior to the start of the 1999 pollock fishery, NMFS will implement these measures through emergency rulemaking.

NMFS also initiated consultation on the effects of the 1999 GOA groundfish fisheries (excluding pollock) on listed and candidate species, including the Steller sea lion and listed seabirds, and on designated critical habitat. The biological opinion prepared for this consultation, dated December 22, 1998, concludes that groundfish fisheries in the GOA (excluding pollock) are not likely to jeopardize the continued existence of the listed and candidate species, or to adversely modify designated critical habitat.

The Assistant Administrator for Fisheries (AA), NOAA, finds for good cause under 5 U.S.C. 553(b)(B) that the need to establish interim total allowable catch level limitations and related management measures for fisheries in the GOA, effective on January 1, 1999, makes it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule. Likwise, the AA finds for good cause under 5 U.S.C. 553(d)(3) that the need to establish interim TAC levels and other management measures in the GOA, effective on January 1, 1999, makes it impractical and contrary to the public interest to delay the effective date of the limits and measures for 30 days. Regulations at § 679.20(c)(2) require NMFS to specify interim harvest specifications to be effective on January 1 and remain in effect until superseded by the final specifications in order for the GOA groundfish fishing season to begin on January 1 (see § 679.23). Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on January 1, which would result in unnecessary closures and disruption within the fishing industry. Because the stock assessment reports and other information concerning the fisheries in the GOA became available only recently, NMFS is not able to provide an opportunity for comment on the interim specifications. NMFS anticipates that the interim specifications will be in effect for only a short period of time before they are superseded by the final specifications. The proposed 1999 harvest specifications for groundfish of the GOA have been published in the

Federal Register on December 30, 1998, and provide the opportunity for public comment. The interim specifications will be effective January 1, 1999.

Because these interim specifications are not required to be issued with prior notice and opportunity for public comment, the analytical requirements of the Regulatory Flexibility Act do not apply. Consequently, no regulatory flexibility analysis has been prepared.

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

Dated: December 28, 1998.

Gary C. Matlock,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222313–8320–02; I.D. 122198A]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Area; Interim 1999 Harvest Specifications for Groundfish

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

ACTION: Interim 1999 harvest specifications for groundfish.

SUMMARY: NMFS issues interim 1999 total allowable catch (TAC) amounts for each category of groundfish, Community Development Quota (CDQ) amounts, and prohibited species catch (PSC) amounts for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to conserve and manage the groundfish resources in the BSAI and is intended to implement the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: The Interim Specifications are effective from 0001 hours, Alaska local time (A.l.t.), January 1, 1999, until the effective date of the final 1999 harvest specifications for BSAI groundfish, which will be published in the **Federal Register**.

ADDRESSES: The preliminary 1999 Stock Assessment and Fishery Evaluation (SAFE) Report, dated September 1998, is available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252, telephone 907–271–2809. The Final Supplemental Environmental Impact Statement as well as the Environmental Assessment (EA) for the 1999 Groundfish Harvest Specifications is available from the Alaska Region NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Shane Capron, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Federal regulations at 50 CFR part 679 that govern the groundfish fisheries in the BSAI implement the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP, and NMFS approved it, under the Magnuson-Stevens Fishery Conservation and Management Act. General regulations that also pertain to the U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council met in October 1998 to review scientific information concerning groundfish stocks. The Council adopted for public review the preliminary SAFE Report for the 1999 BSAI groundfish fisheries. The preliminary SAFE Report, dated September 1998, provides an update on the status of stocks. Copies of the SAFE Report are available from the Council (see **ADDRESSEES**). The preliminary TAC amounts for each species are based on the best available biological and socioeconomic information. The Council recommended a preliminary total acceptable biological catch (ABC) of 2,379,976 metric tons (mt) and a preliminary total TAC of 1,925,000 mt for the 1999 fishing year.

Under § 679.20(c)(1), NMFS published in the December 30, 1998 **Federal Register**, proposed harvest specifications for BSAI groundfish for the 1999 fishing year. That document contains a detailed discussion of the 1999 groundfish harvest specifications and of the proposed 1999 TACs, initial TACs (ITACs) and related apportionments, ABC amounts, overfishing levels, PSC amounts, and associated management measures of the BSAI groundfish fishery including detailed information on the implementation of the American Fisheries Act (AFA).

This action provides interim harvest specifications and apportionments thereof for BSAI groundfish for the 1999 fishing year that will become available on January 1, 1999, and remain in effect until superseded by the final 1999 harvest specifications.

NMFS notes that the Council at its December 1998, meeting requested NMFS to implement an emergency interim rule establishing conservation measures to mitigate impacts of the BSAI pollock fishery on Steller sea lions and their critical habitat. NMFS is currently preparing an emergency rule to implement parts of the Council's recommendations as well as other measures necessary to ensure that the pollock trawl fishery does not jeopardize the continued existence, or adversely modify the critical habitat, of Steller sea lions. These emergency measures will likely revise these interim specifications for pollock.

Establishment of Interim TACs

Fifteen percent of the TAC for each target species or species group, except for the hook-and-line and pot gear allocation of sablefish, is automatically placed in a non-specified reserve (§ 679.20(b)(1)). The remainder is the initial TAC (ITAC). The AFA supersedes this provision for pollock because the 1999 TAC for this species is required to be fully allocated among the CDQ program, incidental catch allowance, and inshore, catcher/processor, and mothership directed fishery allowances.

Regulations at § 679.20(b)(1)(iii) require that one-half of each TAC amount placed in the non-specified reserve be allocated to the groundfish CDQ reserve, and that 20 percent of the hook-and-line and pot gear allocation of sablefish, be allocated to the fixed-gear sablefish CDQ reserve. The AFA requires that 10 percent of the pollock TAC be allocated to a pollock CDQ reserve (section 206). The groundfish and pollock CDQ reserves are not further apportioned by gear. Fifteen percent of the groundfish CDQ reserve established for squid, arrowtooth flounder, and ''other species'' is apportioned to a non-specific CDQ reserve. Regulations governing the use and release of the non-specific CDQ reserve are found at § 679.31(g). Regulations at § 679.21(e)(1)(i) also require that 7.5 percent of each PSC limit, with the exception of herring, be withheld as prohibited species quota (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.

After subtraction of the CDQ reserves, 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.

Regulations at § 679.20(c)(2)(ii) require that one-fourth of each proposed ITAC amount and apportionment thereof (not including the first seasonal allowance of pollock), one-fourth of each prohibited species catch (PSC) allowance established under § 679.21, and the first seasonal allowance of pollock TAC become effective 0001 hours, A.l.t., January 1, on an interim basis and remain in effect until superseded by the final groundfish harvest specifications.

A proposed rule was published in the **Federal Register** on November 9, 1998, (63 FR 60288) that would implement measures to mitigate effects of the Atka mackerel fishery on Steller sea lion critical habitat. NMFS anticipates that a final rule will be effective by January 20, 1999, the start of the 1999 trawl season, that will seasonally apportion the Atka mackerel TACs and revise the interim specifications for this species.

Apportionment of Pollock TAC to Vessels Using Nonpelagic Trawl Gear

Regulations at § 679.20(a)(5)(i)(B) authorize NMFS, in consultation with the Council, to limit the amount of pollock that may be taken in the directed fishery for pollock using nonpelagic trawl gear. At its June 1998 meeting, the Council adopted management measures that, if approved by NMFS, would prohibit the use of nonpelagic trawl gear in the directed fishery for pollock and reduce specified prohibited species bycatch limits by amounts equal to anticipated savings in bycatch or bycatch mortality that would be expected from this prohibition. The Council did not take specific action to allocate zero amounts of pollock to the 1999 directed fishery for pollock with nonpelagic trawl gear under § 679.20(a)(5)(i)(B) because implementation of the Council's June action in time for the 1999 fishery was assumed.

NMFS recognizes that the Council's proposed prohibition on the use of nonpelagic trawl gear in the BSAI pollock fishery will not be effective in time for the 1999 pollock ''A'' season fishery that starts on January 20. Therefore, NMFS allocates 0 mt of the BSAI pollock TAC to the directed fishery for pollock with nonpelagic trawl gear. The action is necessary to reduce unnecessary bycatch in the 1999 pollock fishery and to carry out the Council's intent for this fishery. For further discussion of this action see the proposed 1999 harvest specifications for BSAI groundfish published in the **Federal Register** on December 30, 1998.

Interim 1999 BSAI Groundfish Harvest Specifications

Table 1 provides interim TAC and CDQ amounts and apportionments thereof. Regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for the non-trawl sablefish CDQ reserve or for sablefish managed under the Individual Fishing Quota (IFQ) management plan. As a result, fishing for the non-trawl allocation of CDQ sablefish and sablefish harvested with fixed gear is prohibited until the effective date of the Final 1999 Groundfish Specifications.

TABLE 1.—INTERIM 1999 TAC AMOUNTS FOR GROUNDFISH AND APPORTIONMENTS THERE FOR THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA [1] [2]

Species and component (if applicable)	Area and/or gear (if applicable)	Interim TAC	Interim CDQ
Pollock [2]			
Inshore	BS	197,012	
Catcher/processor	BS	157,610	
Mothership	BS	39,402	
CDQ	BS		46,575
Inshore	AI	10,067	
Catcher/processor	AI	8,054	
Mothership	AI	2,013	
CDQ	AI		2,380
Inshore	BogDist	423	
Catcher/processor	BogDist	338	
Mothership	BogDist	85	
CDQ	BogDist		100
Total Pollock		415,005	49,055
Pacific Cod [3]	Jig	893	
	H/L & Pot	22,759	
	Trawl C/Vs	10,487	
	Trawl C/Ps	10,487	
CDQ			3,938
Total Pacific cod		44,625	3,938
Sablefish [4] [5]	BS-Trawl	138	12
	BS–H/L & Pot	N/A	N/A
	AI-Trawl	73	6
	AI–H/L & Pot	N/A	N/A
Total Sablefish		211	18
Atka mackerel [6]	Western AI	5,738	506
	Central AI	4,760	420
	Eastern AI/BS	3,166	279
	Jig gear	32	
	Other gear	3,135	
Total Atka mackerel		13,664	1,205
Yellowfin sole	BSAI	46,750	4,125
Rock sole	BSAI	21,250	1,875

TABLE 1.—INTERIM 1999 TAC AMOUNTS FOR GROUNDFISH AND APPORTIONMENTS THERE FOR THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA [1] [2]—Continued

Species and component (if applicable)	Area and/or gear (if applicable)	Interim TAC	Interim CDQ
Greenland turbot	BS	2,136	188
	AI	1,052	93
Total Greenland turbot		3,188	281
Arrowtooth flounder	BSAI	3,400	255
Flathead sole	BSAI	21,250	1,875
Other flatfish [7]	BSAI	19,005	1,677
Pacific ocean perch	BS	298	26
	Western AI	1,186	105
	Central AI	733	65
	Eastern AI	652	57
Total Pacific ocean perch		2,869	253
Other red rockfish [8]	BS	57	5
Sharpchin/Northern	AI	899	79
Shortraker/Rougheye	AI	205	18
Other rockfish [9]	BS	78	7
	AI	146	13
Total other rockfish		224	20
Squid	BSAI	419	31
Other Species [10]	BSAI	5,483	411
Non-specified CDQ reserve [11]	BSAI		123
Total interim TAC		601,668	65,246

[1] Amounts are in metric tons. These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) area unless otherwise specified. With the exception of pollock, and for purposes of these specifications, the BS includes the Bogoslof District (BogDist).

[2] After subtraction of the pollock CDQ amount (10 percent of the TAC) and the incidental catch allowance (6 percent of the remainder of the TAC), the ITAC amounts of pollock for each subarea or district are then divided into A and B seasonal allowances. (See § 679.20(a)(5)(i).) For the BS subarea, the A and B seasonal apportionments are 45 and 55 percent of the pollock ITAC amounts, respectively. The AI subarea and the Bogoslof District receive 100 percent of their respective ITAC seasonal allowances during the A season with the remainder of the respective ITAC seasonal allowance during the B season. Component allocations of the ITAC amounts are 50 percent for the Inshore, 40 percent for listed catcher/processors, and 10 percent to vessels delivering to Motherships. The first seasonal allowance of the pollock component allocations are in effect on January 1 as an interim TAC. NMFS, under regulations at § 679.20(a)(5)(i)(B), allocates 0 mt of pollock to nonpelagic trawl gear. This action is based on Council intent to prohibit the use of nonpelagic trawl gear in 1999 because of concerns of unnecessary bycatch with bottom trawl gear in the pollock fishery.

[3] After subtraction of the reserves, the ITAC amount for Pacific cod is allocated 2 percent to vessels using jig gear, 51 percent to H/L gear, and 47 percent to Trawl. The Pacific cod allocation to trawl gear is split evenly between catcher vessels and catcher/processor vessels (See § 679.20(a)(7)(i)). Pacific cod ITAC seasonal apportionments to vessels using H/L or pot gear are not reflected in the interim TAC amounts. One-fourth of the ITAC gear apportionments are in effect on January 1 as an interim TAC.

[4] Sablefish gear allocations are as follows: In the BS subarea, trawl gear is allocated 50 percent and H/L and pot gear is allocated 50 percent of the TAC. In the AI subarea, trawl gear is allocated 25 percent, and H/L and pot gear is allocated 75 percent of the TAC (See § 679.20(a)(4)(iii) and (iv)). Fifteen percent of the sablefish trawl gear allocation is placed in the nonspecific reserve. One-fourth of the ITAC amount for trawl gear is in effect January 1 as an interim TAC amount.

[5] The sablefish H/L gear fishery is managed under the IFQ program and subject to regulations contained in subpart D of 50 CFR part 679. Twenty percent of the sablefish H/L and pot gear final TAC amount will be reserved for use by CDQ participants. (See § 679.31(c).) Existing regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for the CDQ sablefish reserve or for an interim specification for sablefish managed under the IFQ program. In addition, in accordance with § 679.7(f)(3), retention of sablefish caught with fixed gear is prohibited unless the harvest is authorized under a valid IFQ permit and IFQ card. In 1999, IFQ permits and IFQ cards will not be valid prior to the effective date of the 1999 final specifications. Thus, fishing for sablefish with fixed gear is not authorized under these interim specifications. See subpart D of 50 CFR part 679 and § 679.23(g) for guidance on the annual allocation of IFQ and the sablefish fishing season.

[6] Regulations at § 679.20 (a)(8) require that up to 2 percent of the Eastern AI area ITAC be allocated to the jig gear fleet. The amount of this allocation is 1 percent and was determined by the Council based on anticipated harvest capacity of the Jig gear fleet. The jig gear allocation is not apportioned by season.

[7] "Other flatfish" includes all flatfish species except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, arrowtooth flounder, and yellowfin sole.

[8] "Other red rockfish" includes shortraker, rougheye, sharpchin, and northern rockfish in the BS subarea.

[9] "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, sharpchin, northern, shortraker, and rougheye rockfish.

[10] "Other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus.

[11] Fifteen percent of the groundfish CDQ reserve established for squid, arrowtooth flounder, and "other species" is allocated to a non-specific CDQ reserve (§ 679.31(g)).

Pollock Allocations Under the AFA

The AFA specifies the manner in which the BSAI pollock TAC must be allocated among industry components. Under section 206 of the AFA, 10 percent of the BSAI pollock TAC is allocated as a directed fishing allowance to the CDQ program. The remainder of the BSAI pollock TAC, after the subtraction of an allowance for the incidental catch of pollock by vessels harvesting other groundfish species, is allocated: 50 percent to catcher vessels harvesting pollock for processing by the inshore component, 40 percent to listed catcher/processors and listed catcher vessels harvesting pollock for processing by listed catcher/processors in the offshore component, and 10 percent to catcher vessels harvesting pollock for processing by listed motherships in the offshore component (Table 1). For 1999, NMFS has proposed

an incidental catch allowance of 6 percent of the pollock TAC after subtraction of the 10 percent CDQ reserve. The considerations leading to this proposal are discussed in the proposed 1999 harvest specifications for BSAI groundfish which was published in the **Federal Register** on December 30, 1998.

The AFA also contains three specific pollock allocations that must be specified annually. First, paragraph 208(e)(21) of the AFA specifies that catcher/processors qualifying to fish for pollock under this paragraph are prohibited from harvesting in the aggregate a total of more than one-half (0.5) percent of the pollock allocated to vessels for processing by offshore catcher/processors. Second, section 210(c) of the AFA requires that not less than 8.5 percent of the pollock allocated to vessels for processing by offshore catcher/processors be available for harvest only by offshore catcher vessels harvesting pollock for processing by offshore catcher/processors listed in section 208(b). Third, section 210(e)(1) prohibits any particular individual, corporation, or other entity from harvesting a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery. The interim allocations and catch limits are equal to the proposed pollock ''A'' season specifications set out in Table 2 of the proposed specifications.

Interim Allocation of PSC Limits for Crab, Halibut, and Herring

Under § 679.21(e), annual PSC limits are specified for red king crab, *Chionoecetes (C.) bairdi* Tanner crab, and *C. opilio* crab in applicable Bycatch Limitation Zones (see § 679.2) of the BS subarea, and for Pacific halibut and Pacific herring throughout the BSAI. Regulations under § 679.21(e) authorize the apportionment of each PSC limit into PSC allowances for specified fishery categories. Under § 679.21(e)(1)(i), 7.5 percent of each PSC limit specified for halibut, crab, and salmon is reserved as a PSQ reserve for use by the groundfish CDQ program.

Regulations at § 679.20(c)(2)(ii) require that one-fourth of each proposed PSC and PSQ allowance be made available on an interim basis for harvest at the beginning of the fishing year, until superseded by the final harvest specifications. The fishery specific interim PSC allowances for halibut and crab are specified in Table 2 and are in effect at 0001 hours, A.l.t., January 1, 1999.

TABLE 2.—INTERIM 1999 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

Trawl Fisheries	Prohibited species and zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1[1]	C. opilio (animals) COBLZ[2]	C. bairdi (animals)	
					Zone 1[1]	Zone 2[1]
Yellowfin sole	232	66	4,625	759,656	63,898	221,487
Rock sole/oth.flat/flat sole[3]	184	5	24,688	187,313	68,462	73,829
RKCSS[4]	.....	.....	10,000	.....	.....	.....
Turbot/sablefish/arrowtooth[5]	.....	.....	.....	10,406	.....	.....
Rockfish	17	2	.....	10,406	.....	1,448
Pacific cod	358	5	3,469	31,219	30,808	40,327
Midwater trawl pollock	.....	305	.....	.....	.....	.....
Pollock/Atka/other[6]	81	38	3,469	41,625	10,269	97,198
Total Trawl PSC	873	421	46,250	1,040,625	173,437	434,288
Non-Trawl Fisheries						
Pacific cod	187					
Other non-trawl	21					
Groundfish pot & jig	exempt					
Sablefish hook & line	exempt					
Total Non-Trawl	208					
PSQ Reserve[7]	88	.....	3,750	84,375	14,063	35,212
Grand Total	1,169	421	50,000	1,125,000	187,500	469,500

[1] Refer to § 679.2 for definitions of areas.
[2] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at § 679.21(e)(7)(iv)(B).
[3] Rock sole, other flatfish, and flathead sole category.
[4] The Council at its October 1998 meeting allocated 10,000 red king crab to the RKCSS (§ 679.21(e)(3)(ii)(B)).
[5] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[6] Pollock other than pelagic trawl pollock, Atka mackerel, and ''other species'' fishery category.
[7] With the exception of herring, 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.

NMFS will issue fishery closures based on these interim specifications if the Regional Administrator, Alaska Region, NMFS, determines that interim TAC amounts are required as incidental catch to support other anticipated groundfish fisheries or if the PSC allowance for a fishery has been reached. NMFS may also issue other closures based on the final 1999 harvest specifications.

Protections for Other Fisheries Under the AFA

Section 211(b)(2)(A) of the AFA prohibits listed catcher/processors from harvesting more than a specified amount of each non-pollock groundfish species in the BSAI. Non-pollock groundfish that is delivered to listed catcher/processors by catcher vessels would be deducted from the open access groundfish allocations and would not be deducted from the 1999 interim harvest limits for the listed catcher/processors. Except for Atka mackerel, the catch limitations specified for the

listed catcher/processors are equivalent to the percentage of non-pollock groundfish harvested in the non-pollock fisheries by the listed catcher/processors and those listed under section 209 of the AFA during 1995, 1996, and 1997. The groundfish harvest amounts by these vessels in the BSAI from 1995 through 1997 are shown in Table 3. These data were used to calculate the relative amount of non-pollock groundfish TACs harvested by listed catcher/processors in the non-pollock fisheries, and then used to determine the proposed harvest limits for non-pollock groundfish by listed catcher/processors in the 1999 BSAI fisheries.

These annual limits may be higher than the interim TAC, which is 25 percent of the ITAC. If the interim TAC is less than the listed catcher/processor limit then the listed catcher/processors would be prohibited from exceeding a harvest amount greater than the interim TAC as specified in Table 1. However, listed catcher/processors are not restricted to 25 percent of their 1999 limit (Table 3) under the interim TAC specifications.

NMFS intends to establish by emergency rule inseason authority necessary to manage the harvest of groundfish by listed catcher/processors so that the 1999 non-pollock harvest limits are not exceeded. Under the emergency rule authority, NMFS likely will limit directed fishing by the listed catcher/processors to Atka mackerel, Pacific cod, and yellowfin sole. The interim 1999 harvest limits for other species may not be sufficient to allow for both a directed fishery and for incidental catch requirements in other directed fisheries. NMFS intends to manage conservatively the listed catcher/processor harvest limitations consistent with the intent of the AFA to limit the ability of these vessels to redistribute fishing effort into non-pollock fisheries in which they have not historically participated.

TABLE 3.—INTERIM HISTORICAL CATCH RATIO, 1999 AGGREGATE CATCH LIMITS, AND 1999 CATCH LIMITS FOR VESSELS LISTED UNDER SECTION 208 OF THE AMERICAN FISHERIES ACT [1]

Target species [2]	Area	1995–1997			1999 ITAC available to trawl C/Ps	1999 harvest limit [4]
		Total catch	Available TAC	Ratio [3]		
Atka mackerel [5]	Eastern AI/BS	.....	.....	.....	.....	.....
	Central AI	.....	.....	0.115	19,040	2,190
	Western AI	.....	.....	0.200	22,950	4,590
Arrowtooth flounder	BSAI	788	36,873	0.021	13,600	291
Other flatfish	BSAI	12,145	92,428	0.131	76,019	9,989
Flathead sole	BSAI	3,030	87,975	0.034	85,000	2,927
Greenland turbot	AI	31	6,839	0.005	4,208	19
	BSAI	168	16,911	0.010	8,543	85
Other species	BSAI	3,551	65,925	0.054	21,930	1,181
Pacific Cod trawl [6]	BSAI	13,547	51,450	0.263	41,948	11,045
Pacific ocean perch [7]	BSAI	58	5,760	0.010	1,190	12
	Central AI	95	6,195	0.015	2,933	45
	Eastern AI	112	6,265	0.018	2,610	47
	Western AI	356	12,440	0.029	4,743	136
Other rockfish	AI	95	1,924	0.049	582	29
	BS	39	1,026	0.038	314	12
Rock sole	BSAI	14,753	202,107	0.073	85,000	6,205
Sablefish trawl [8]	AI	1	1,135	0.001	293	0
	BS	8	1,736	0.005	553	3
Sharpchin/Northern	AI	1,034	13,254	0.078	3,596	280
Squid	BSAI	7	3,670	0.002	1,675	3
Shortraker/Rougheye	AI	68	2,827	0.024	314	8
Other red rockfish	BS	75	3,034	0.025	227	6
Yellowfin sole	BSAI	123,003	527,000	0.233	187,000	43,646

[1] The AFA specifies the manner in which the BSAI pollock TAC must be allocated among industry components and prohibits catcher/processors listed under paragraphs 1–20 of section 208(e) from exceeding the historical non-pollock harvest percentages by such catcher/processors and those listed under section 209 relative to the total available in the offshore component in BSAI groundfish fisheries in 1995, 1996, and 1997. Amounts are in metric tons.

[2] For further definitions of target species see Table 1.

[3] The ratio is calculated by dividing the total catch by the available TAC.

[4] The 1999 harvest limit for listed catcher/processors is calculated by multiplying the historic catch ratio by the 1999 proposed ITAC available to trawl catcher/processors.

[5] In section 211(b)(2)(C) of the AFA, catcher/processors listed in paragraphs 1–20 of section 208(e) are prohibited from harvesting Atka mackerel in excess of 11.5 percent of the available TAC in the Central Aleutian Islands area and 20 percent in the Western Aleutian Islands area. It is prohibited for listed catcher/processors to harvest Atka mackerel in the Eastern Aleutian Islands and Bering Sea subarea.

[6] For Pacific cod, 47 percent of the ITAC is allocated to trawl, and of that 50 percent is available for catcher/processors. Separate catcher/processor and catcher/vessel allocations became effective in 1997, therefore only data from 1997 was used to calculate the historic ratio.

[7] Apportionments to western, central, and eastern Aleutian Islands subareas began in 1996, therefore only data from 1996 and 1997 was used to calculate the historic ratio.

[8] 25 percent of the Sablefish ITAC is allocated to trawl in the AI subarea, 50 percent is allocated to trawl in the BS subarea.

Section 211(b)(2)(A) of the AFA prohibits listed catcher/processors from harvesting more than a specified amount of each prohibited species in the BSAI. These amounts are equivalent to the percentage of prohibited species bycatch limits harvested in the non-pollock fishery by the listed catcher/processors and those listed under section 209 during 1995, 1996, and 1997. Prohibited species amounts harvested by these catcher/processors in BSAI non-pollock fisheries from 1995 through 1997 is shown in Table 4. These data were used to calculate the relative

amount of prohibited species bycatch limits harvested by listed catcher/processors, and then used to determine the proposed prohibited species harvest limits for listed catcher/processors in the 1999 non-pollock fisheries. Regulations at § 679.21(e)(7)(vii) and (viii) do not provide for fishery-specific management of the salmon bycatch limits. Therefore, NMFS is not including salmon catch limits for the listed catcher/processors during 1999.

The Council at its November 1998 meeting proposed that prohibited species caught by listed catcher/processors and listed catcher vessels while fishing for pollock accrue against either the midwater pollock or the pollock/Atka mackerel/other species fishery categories (Table 2). However, PSC that is caught by listed catcher/processors participating in groundfish fisheries other than pollock (Table 3), shall accrue against the 1999 PSC limits for the listed catcher/processors as outlined in section 211(b)(2)(B) of the AFA (Table 4). The emergency rule being prepared by NMFS to manage the AFA harvest limitations specified for listed catcher/processors will provide authority to close directed fishing for groundfish to the listed catcher/processors once a 1999 PSC limitation listed in Table 4 is reached.

TABLE 4.—PROPOSED PSC LIMITS FOR VESSELS LISTED UNDER SECTION 208 OF THE AMERICAN FISHERIES ACT [1]

PSC species	1995–1997			1999 PSC available to C/Ps	1999 limit [3]
	PSC catch	Total PSC	Ratio [2]		
Halibut mortality	955	11,325	0.084	3,492	294
Herring	62	5,137	0.012	1,685	20
Red king crab	7,641	473,750	0.016	185,000	2,984
C. bairdi					
Zone 1	385,978	2,750,000	0.140	693,750	97,372
Zone 2	406,860	8,100,000	0.050	1,737,150	87,256
C. opilio	2,323,731	15,139,178	0.153	4,162,500	638,907

[1] The AFA specifies the manner in which the BSAI pollock TAC must be allocated among industry components and prohibits catcher/processors listed under sections 1–20 of section 208(e) from exceeding the historical harvest percentages of prohibited species by such catcher/processors and those listed under section 209 relative to the total available in the offshore component in BSAI groundfish fisheries in 1995, 1996, and 1997. Amounts are in metric tons.

[2] The ratio is calculated by dividing the PSC catch by the total PSC available.

[3] The 1999 prohibited species catch limit for listed catcher/processors is calculated by multiplying the historic ratio by the PSC available in 1999. The 1999 PSC limit is based on an annual amount and is not reduced on an interim basis.

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under E.O. 12866.

Pursuant to section 7 of the Endangered Species Act, NMFS has completed a consultation on the effects of the pollock and Atka mackerel fisheries on listed and candidate species, including the Steller sea lion, and designated critical habitat. The biological opinion prepared for this consultation, dated December 3, 1998, concludes that the pollock fisheries in the BSAI and the GOA jeopardize the continued existence of Steller sea lions and adversely modify their designated critical habitat. The biological opinion contains reasonable and prudent alternatives (RPAs) to mitigate the adverse impacts of the pollock fisheries on Steller sea lions. Specific measures necessary to implement the RPAs were discussed at the December 1998 Council meeting. On December 16, 1998, NMFS issued revised reasonable and prudent alternatives based on the Council's recommendations adopted during its December meeting, which adhere to the principles identified in the December 3, 1998, Biological Opinion. NMFS will implement measures necessary to comply with the RPAs prior to the start of the 1999 pollock trawl fishery. If these measures are not in place by the scheduled regulatory opening on January 20, 1999, then NMFS will close the pollock trawl fishery.

NMFS also initiated consultation on the effects of the 1999 BSAI groundfish fisheries (excluding pollock and Atka mackerel) on listed and candidate species, including the Steller sea lion and listed seabirds, and on designated critical habitat. The Biological Opinion prepared for this consultation, dated December 22, 1998, concludes that groundfish fisheries in the BSAI (excluding pollock and Atka mackerel) are not likely to jeopardize the continued existence of the listed and candidate species, or to adversely modify designated critical habitat.

NMFS has also initiated consultation on the effects of the 1999 BSAI groundfish fisheries on listed and candidate species, including the Steller sea lion and listed seabirds, and on designated critical habitat. This consultation will be concluded prior to the start of fishing on January 1, 1999, under the 1999 interim specifications. Pending determinations under this consultation, NMFS may initiate emergency rulemaking to mitigate any adverse impacts resulting from the BSAI groundfish fisheries on listed and candidate species and designated critical habitat.

The Assistant Administrator, NMFS (AA), finds for good cause under 5 U.S.C. 553(b)(B) that the need to establish interim total allowable catch levels and other management measures for fisheries in the BSAI, effective on January 1, 1999, makes it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule. Likewise, the AA finds for good cause under 5 U.S.C. 553(d)(3) that the need to establish interim TACs levels and other management measures in the BSAI, effective January 1, 1999, makes it impractical and contrary to the public interest to delay the effective date of the limits and measures for 30 days. Regulations at § 679.20(c)(2) require NMFS to specify interim harvest specifications to be effective on January 1 and remain in effect until superseded by the final specifications in order for the BSAI groundfish fishing season to begin on January 1 (see § 679.23). Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, which would result in unnecessary closures and disruption within the fishing industry. Because the stock assessment reports and other information concerning the fisheries in the BSAI became available only recently, NMFS is not able to provide an opportunity for comment on the interim specifications. NMFS anticipates that the interim specifications will be in

effect for only a short period of time before they are superseded by the final specifications. The proposed 1999 harvest specifications for groundfish of the BSAI were published in the **Federal Register** on December 30, 1998 and provide the opportunity for public comment. The interim specification will be effective January 1, 1999.

Because these interim specifications are not required to be issued with prior notice and opportunity for public comment, the analytical requirements of the Regulatory Flexibility Act do not apply. Consequently, no regulatory flexibility analysis has been prepared.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

Dated: December 28, 1998.

Gary C. Matlock,

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

[FR Doc. 98–34728 Filed 12–28–98; 4:23 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 64, No. 1
Monday, January 4, 1999

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Domestic Licensing of Production and Utilization Facilities; Public Workshop Meeting Cancellation

AGENCY: Nuclear Regulatory Commission.

ACTION: Cancellation of public workshop meeting.

SUMMARY: On December 3, 1998, 63 FR 66772 stated: ''The Commission has requested the staff to develop and assess options on incorporating risk insights in the Code of Federal Regulations 10 CFR 50.59. This regulation permits licensees to implement certain changes that do not require prior NRC approval. On or about December 19, 1998, the staff will place in the Public Document Room (PDR) a draft report that identifies options for incorporating risk insights into the existing 10 CFR 50.59 process. At the same time that the document is placed in the PDR, the staff will issue a notice to hold a public workshop on January 19, 1999, at the NRC auditorium, in Rockville, Maryland. That notice will also solicit comments on this program.''

This notice makes the following three changes to that previous notice: (1) The draft report that identifies options for incorporating risk insights into the existing 10 CFR 50.59 process will be placed in the PDR during the week of December 21, 1998, (2) the public workshop on January 19, 1999, is canceled, and (3) a future notice will be issued regarding the incorporation of risk insights into application of the requirements of 10 CFR Part 50. That future notice will incorporate the previous separately planned public comments and public meetings regarding the 10 CFR 50.59 process.

FOR FURTHER INFORMATION CONTACT: Jack Guttmann, 301–415–7732.

Dated at Rockville, Maryland, this 22nd day of December, 1998.

For the Nuclear Regulatory Commission.

Mary Drouin,

Acting Branch Chief, Probabilistic Risk Analysis Branch, Division of Systems Technology, Office of Nuclear Regulatory Research.

[FR Doc. 98–34790 Filed 12–31–98; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operation of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board proposes removing its rule governing safe deposit box service. This revision will eliminate an unnecessary section from the regulations.

DATES: Comments must be received on or before March 5, 1999.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may fax comments to (703) 518–6319. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Regina M. Metz, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA has a policy of continually reviewing its regulations to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' Interpretive Rulings and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations. Our review of § 701.30 of NCUA's regulations has revealed that this section is an unnecessary provision.

B. Proposed Rule

The proposed rule removes the section of the regulations regarding safe deposit box service. 12 CFR 701.30. The NCUA Board proposes removing this section to streamline the publication of the regulations. The deletion of § 701.30 does not affect the authority of federal credit unions to offer safe deposit box service.

C. Section 701.30 Analysis

Section 701.30 of NCUA's regulations provides that a federal credit union may lease safe deposit boxes to its members. The Board recommends removing § 701.30 because it is no longer necessary. Under the Federal Credit Union Act (the Act), federal credit unions have the power to exercise incidental powers that are necessary or requisite to enable them to carry on effectively the business for which they are incorporated. 12 U.S.C. 1757(17). Federal credit unions may lease safe deposit boxes to their members as part of routine services that federal credit unions can provide. The removal of § 701.30 would not affect this incidental authority.

D. Regulatory Procedures

1. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). NCUA has determined and certifies that this proposed rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, NCUA has determined that a Regulatory Flexibility analysis is not required.

2. Paperwork Reduction Act

This proposed rule to remove § 701.30 does not involve a collection of information under the Paperwork Reduction Act. Accordingly, NCUA has determined that a Paperwork Reduction analysis is not required.

3. Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed rule is to remove a current regulation that applies to federal credit unions, not federally insured state chartered credit unions. Therefore, NCUA has determined that the proposed rule does not constitute a ''significant regulatory action'' for purposes of the Executive Order.

List of Subjects in 12 CFR Part 701

Credit unions, Safe deposit box service.

By the National Credit Union Administration Board on December 17, 1998.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, the National Credit Union Administration proposes to amend 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§ 701.30 [Removed]

2. Part 701 is amended to remove § 701.30.

[FR Doc. 98–34030 Filed 12–31–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 713, 741

Organization and Operations of Federal Credit Unions; Fidelity Bond and Insurance Coverage for Federal Credit Unions; Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The NCUA is proposing to update, clarify, revise and redesignate its regulation that addresses the requirements for surety bond coverage for losses caused by credit union employees and officials and for general insurance coverage for losses caused by persons outside of the credit union, e.g., losses due to theft, holdup or vandalism. The proposed rule recasts the rule in plain English format and adds several previously approved bond forms to the regulation.

DATES: Submit comments on or before March 5, 1999.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Fax comments to (703) 518–6319. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, General Counsel, or Allan Meltzer, Associate General Counsel, at the above address, or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION: The Federal Credit Union Act sets forth statutory requirements for the bonding of credit union employees and appointed and elected officials. 12 U.S.C. 1761a, 1761b(2) and 1766(h). The NCUA Board is directed to promulgate regulations setting forth both the amount and character of bond requirements for employees and officials. The NCUA Board is also granted the following powers concerning bonding:

To approve bond forms;

To set minimum requirements for bond coverage;

To require such other surety coverage as the Board may determine to be reasonably appropriate;

To approve a blanket bond in lieu of individual bonds; and

To approve bond coverage in excess of minimum surety coverage.

In addition, NCUA's general rulemaking authority provides a statutory basis for both the bonding requirements of Section 701.20 and the insurance coverage requirements related to losses caused by persons outside the credit union. 12 U.S.C. 1766(a), 1789(a)(11).

NCUA has a policy of periodically reviewing its regulations to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' IRPS 87–2, Developing and Reviewing Government Regulations. As part of its regulatory review program, NCUA reviewed § 701.20 to determine whether the language of the regulation was clear and effective. As a result of that review, these amendments are proposed to increase regulatory effectiveness by making it easier for credit unions to understand the requirements regarding surety bonds and other insurance. The proposed rule also adds a number of bond forms which have been approved by the NCUA for use by federal credit unions.

In addition, when the original surety bond regulation was issued, no surety bond policy provided for an aggregate limit of liability. Most approved policies now provide for such a limit. The minimum required bond coverage provision of the proposed rule has been modified to clarify that the required dollar amount of coverage is for a single loss under the bond. Any aggregate limit of liability provided for in the policy must be for at least twice the single loss limit of liability.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). The NCUA Board has determined and certifies that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed amendment does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 12612

The NCUA Board has determined that the proposed rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.

List of Subjects

12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 713

Credit unions, Surety bonds.

12 CFR Part 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board this 17th day of December, 1998.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, it is proposed that 12 CFR chapter VII be amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Part 701 is amended by removing and reserving 701.20.

3. Part 713 is added to read as follows:

PART 713—FIDELITY BOND AND INSURANCE COVERAGE FOR FEDERAL CREDIT UNIONS

Sec.

Authority: 12 U.S.C. 1761a, 1761b, 1766(a), 1766(h), 1789(a)(11).

§ 713.1 What is the scope of this section?

This section provides the requirements for fidelity bonds for Federal credit union employees and officials and for other insurance coverage for losses such as theft, holdup, vandalism, etc., caused by persons outside the credit union.

§ 713.2 What are the responsibilities of a credit union's board of directors under this section?

The board of directors of each Federal credit union must at least annually review its fidelity and other insurance coverage to ensure that it is adequate in relation to the potential risks facing the credit union and the minimum requirements set by the Board.

§ 713.3 What bond coverage must a credit union have?

At a minimum, your bond coverage must:

(a) Come from a company holding a certificate of authority from the Secretary of the Treasury; and

(b Include fidelity bonds that cover fraud and dishonesty by all employees, directors, officers, supervisory committee members, and credit committee members.

§ 713.4 What bond forms may be used?

(a) The following basic bonds may be used without prior NCUA Board approval:

Credit union form No.	Carrier
Credit Union Blanket Bond Standard Form 23 of the Surety Association of America (revised May 1950)	Various.
Extended Form 23	USFG.
100	CUMIS (only approved for corporate credit union use).
200	CUMIS.
300	CUMIS.
400	CUMIS.
AIG 23	National Union Fire Insurance Co. of Pitts., PA.
Reliance Preferred Form 23	Reliance Insurance Company.
Form 31	ITT Hartford.
Form 24 with Credit Union Endorsement	Continental (only approved for corporate credit union use).
Form 40325	St. Paul Fire and Marine.
Form F2350	Fidelity & Deposit Co. Of Maryland.
Form 9993 (6/97)	Progressive Casualty Insurance Co.

(b) To use any of the following, you need prior written approval from the Board:

(1) Any other basic bond form; or

(2) Any rider or endorsement that limits coverage on approved bond forms.

§ 713.5 What is the required minimum dollar amount of coverage?

(a) The minimum required amount of fidelity bond coverage for any single loss is computed based on a Federal credit union's total assets.

Assets	Minimum bond
$0 to $10,000	Coverage equal to the credit union's assets.
$10,001 to $1,000,000	$10,000 for each $100,000 or fraction thereof.
$1,000,001 to $50,000,000	$100,000 plus $50,000 for each million or fraction over $1,000,000.
$50,000,001 to $295,000,000	$2,550,000 plus $10,000 for each million or fraction thereof over $50,000,000.
Over $295,000,000	$5,000,000.

(b) This is the minimum coverage required, but a Federal credit union's board of directors should purchase additional coverage when circumstances, such as cash on hand or cash in transit warrant.

(c) While the above is the required minimum amount of bond coverage, credit unions should maintain increased coverage equal to the greater of either of the following amounts within thirty days of discovery of the need for such increase:

(1) The amount of the daily cash fund, i.e. daily cash plus anticipated daily money receipts on the credit union's premises, or

(2) The total amount of the credit union's money in transit in any one shipment.

(3) Increased coverage is not required pursuant to this paragraph (c), however, when the credit union temporarily increased its cash fund because of unusual events which cannot reasonably be expected to recur.

(d) Any aggregate limit of liability provided for in a surety bond policy must be at least twice the single loss limit of liability.

(e) Any proposal to reduce your bond coverage must be approved in writing by the NCUA Board at least twenty days in advance of the proposed effective date of the reduction.

§ 713.6 What is the permissible deductible?

(a)(1) The maximum amount of allowable deductible is computed based on a Federal credit union's asset size, as follows:

Assets	Minimum bond
$0-$100,000	No deductibles allowed.
$100,001-$250,000	$1,000.
$250,001-$1,000,000	$2,000.
Over $1,000,001	$2,000 plus 1/1000 of total assets up to a maximum deductible of $200,000.

(2) The deductibles may apply to one or more insurance clauses in a policy. Any deductibles in excess of the above amounts must receive the prior written permission of the NCUA Board.

(b) A deductible may not exceed 10 percent of a credit union's Regular Reserve unless a separate Contingency Reserve is set up for the excess. In computing the maximum deductible, valuation accounts such as the allowance for loan losses cannot be considered.

§ 713.7 May the NCUA Board require a credit union to secure additional insurance coverage?

The NCUA Board may require additional coverage when the Board determines that a credit union's current coverage is inadequate. The credit union must purchase this additional coverage within 30 days.

PART 741—REQUIREMENTS FOR INSURANCE

4. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766 and 1781–1790. Section 741.4 is also authorized by 31 U.S.C. 3717.

§ 741.20 [Amended]

5. Section 741.201 (a) and (b) are amended by removing ''§ 701.20'' and adding ''Part 713'' in its place.

[FR Doc. 98–34031 Filed 12–31–98; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–54]

Proposed Amendment to Class E Airspace; Alliance, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend Class E airspace areas at Alliance Municipal Airport, Alliance, NE. The FAA has developed Nondirectional Radio Beacon (NDB) Runway (RWY) 12 and NDB RWY 30 Standard Instrument Approach Procedures (SIAPs) to serve Alliance Municipal Airport, NE. Controlled Class E surface area and Class E airspace extending upward from 700 feet Above Ground Level (AGL) is necessary to accommodate these SIAPs, and for Instrument Flight Rules (IFR) operations at this airport. The areas will contain the NDB RWY 12 and NDB RWY 30 in controlled airspace. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the NDB RWY 12 and NDB RWY 30 SIAPs, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: Comments must be received on or before January 15, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ACE–520, Federal Aviation Administration, Docket No. 98–ACE–54, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the office of the Manager, Airspace Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

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, 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–ACE–54.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the 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 NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to amend the Class E airspace areas at Alliance,

NE. The FAA has developed NDB RWY 12 and NDB RWY 30 SIAPs to serve Alliance Municipal Airport, Alliance, NE. The intended effect of this amendment at Alliance Municipal Airport, NE, will provide segregation of aircraft operating under Instrument Flight rules (IFR) from aircraft operating in visual weather conditions. The areas will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the areas or otherwise comply with IFR procedures. Class E airspace designated as a surface area for an airport are published in paragraph 6002, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed 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 proposed rule 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

Accordingly, pursuant to the authority delegated to me, 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 Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6002 Class E airspace designated as a surface area for an airport.

* * * * *

ACE NE E2 Alliance, NE

Alliance Municipal Airport, NE
(Lat. 42°03′12″N., long. 102°48′14″W.)
Alliance VOR/DME
(Lat. 42°03′20″N., long. 102°48′16″W.)
Alliance
(Lat. 42°02′35″N., long. 102°47′58″W.)
Within a 4.3-mile radius of Alliance Municipal Airport and within 2.5 miles each side of the 124° bearing from the Alliance NDB extending from the 4.3-mile radius to 7 miles southeast of the NDB and within 2.6 miles each side of the 145° radial of the Alliance VOR/DME extending from the 4.3-mile radius to 8.7 miles southeast of the VOR/DME and within 2.6 miles each side of the 302° radial of the Alliance VOR/DME extending from the 4.3-mile radius to 5.7 miles northwest of the VOR/DME and within 2.5 miles each side of the 318° bearing from the Alliance NDB extending from the 4.3-mile radius to 7 miles northwest of the NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ACE NE E5 Alliance, NE

Alliance Municipal Airport, NE
(Lat. 42°03′12″N., long. 102°48′14″W.)
Alliance VOR/DME
(Lat. 42°03′20″N., long. 102°48′16″W.)
Alliance NDB
(Lat. 42°02′35″N., long. 102°47′48″W.)
That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Alliance Municipal Airport and within 2.5 miles each side of the 124° bearing from the Alliance NDB extending from the 6.8-mile radius to 7 miles southeast of the NDB and within 3 miles each side of the 145° radial of the Alliance VOR/DME extending from the 6.8-mile radius to 10.5 miles southeast of the VOR/DME and within 2.5 miles each side of the 318° bearing from the Alliance NDB extending from the 6.8-mile radius to 7 miles northwest of the NDB and within 3 miles each side of the 302° radial of the Alliance VOR/DME extending from the 6.8-mile radius to 8.7 miles northwest of the VOR/DME.

* * * * *

Issued in Kansas City, MO, on November 19, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–34775 Filed 12–31–98; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 308

Pay-Per-Call Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of extension of comment period; change in date for public workshop; and availability of additional material.

SUMMARY: The Federal Trade Commission (''the Commission'' or ''FTC'') has extended the date by which comments must be submitted concerning the review of its Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 (''Pay-Per-Call Rule''). This document informs prospective commenters of the change and sets a new date of March 10, 1999 for the end of the comment period, and new dates of May 20 and 21, 1999 for the public workshop. This document also informs interested parties of typesetting errors in the Commission's Notice of Proposed Rulemaking (''NPRM'') on the Pay-Per-Call Rule. Finally, this document informs interested parties that, for the convenience of the commenters, certain materials that were cited in the NPRM will now be made available for public inspection at the address listed below.

DATES: Written comments will be received until the close of business on March 10, 1999. Notification of interest in participating in the public workshop must be submitted separately on or before March 10, 1999. The public workshop will be held at the Federal Trade Commission on May 20 and 21, 1999, from 9:00 a.m. until 5:00 p.m. each day.

ADDRESSES: Six paper copies of each written comment should be submitted to the Office of the Secretary, Room 159, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington,

DC 20580. If possible, comments should also be submitted in electronic form, pursuant to the instructions contained in the NPRM. Comments should be identified as ''Pay-Per-Call Rule Review—Comment. FTC File No. R6111016.'' Notifications of interest in participating in the public workshop should be addressed to Carole Danielson, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, DC 20580. Materials cited in the NPRM are available for public inspection at the FTC's Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Adam G. Cohen, (202) 326–3411, Marianne K. Schwanke, (202) 326–3165, or Carole I. Danielson, (202) 326–3115, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC.

SUPPLEMENTARY INFORMATION: On October 30, 1998, at 63 FR 58524, the Commission published a request for comment on its Notice of Proposed Rulemaking (''NPRM'') regarding proposed amendments to its Pay-Per-Call Rule. The Pay-Per-Call Rule governs the advertising and operation of pay-per-call services, and establishes billing dispute procedures for those services as well as for other telephone-billed purchases. The comment period is currently scheduled to close on January 8, 1999, and the public workshop is scheduled for February 25 and 26, 1999.

On December 14, 1998, a diverse group representing a broad cross-section of interests [1] filed a Joint Request for Extension of Comment Deadline, in which they requested an extension of the comment period by thirty (30) days to February 8, 1999. The parties indicated that additional time was required to prepare thorough, thoughtful responses to the comprehensive and complex set of proposals contained in the NPRM. Subsequently, the Commission received two additional requests for extension; the first also seeking an additional 30 days,[2] and the second seeking a 60-day extension of the comment period.[3]

The Commission is mindful of the need to resolve this matter expeditiously. However, the Commission is also aware that the issues raised by the NPRM are complex and it welcomes as much substantive input as possible to facilitate its decision-making process. Accordingly, in order to provide sufficient time for these and other interested parties to prepare useful comments, the Commission has decided to extend the deadline for comments by sixty (60) days, until March 10, 1999. The Commission has likewise rescheduled the public workshop for May 20 and 21, 1999.

It should be noted that the NPRM as published in the Federal Register on October 30, 1998, omitted italicization that the Commission had included in many places throughout the text for emphasis or organizational clarity. The italics were erroneously removed in the printing process. An accurate and properly italicized version of the Commission's NPRM is available in the Commission's Public Reference room and on the Commission's Web page, at www.ftc.gov. Commenters wishing to cite to the NPRM, however, should cite to the **Federal Register** version of the document.

Finally, for the convenience of interested parties, certain materials cited in the NPRM will be made available for public inspection at the FTC's Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, DC 20580. These materials include, but are not limited to, pleadings and other filings from Commission and state enforcement actions, as well as newspaper and magazine articles. In addition, the Commission may make available other materials that may be useful to commenters, such as consumer complaints. The Commission may continue to update these materials periodically, as appropriate.

List of Subjects in 16 CFR Part 308

Advertising, 900 telephone numbers, Pay-per-call services, Telephone, Telephone-billed purchases, Toll-free numbers, Trade practices.

Authority: Pub. L. 102–556, 106 Stat. 4181 (15 U.S.C. 5701, *et seq.*); Sec. 701, Pub. L. 104–104, 110 Stat. 56 (1996).

By the direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–34408 Filed 12–31–98; 8:45 am]

BILLING CODE 6750–01–M

[1] The Joint Request signatories include: the American Association of Retired Persons, the Billing Reform Task Force, the Coalition to Ensure Responsible Billing, AT&T Corp., the Promotion Marketing Association, and the Teleservices Industry Association.

[2] On December 15, 1998, a request for a 30-day extension was received from the law firm of Kelley Drye & Warren, LLP, on behalf of Cable & Wireless (West Indies) Ltd.

[3] The Electronic Commerce Association submitted a request on behalf of its members, on December 16, 1998, requesting a 60-day extension of the comment period.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. 98N–1111]

External Penile Rigidity Devices; Proposed Classification for the External Penile Rigidity Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to classify the generic type of external penile rigidity device including constriction rings, vacuum pumps, and penile splints for the management of erectile dysfunction. These devices fit on, over, or around the penis to support, promote, or maintain sufficient penile rigidity for sexual intercourse. Under the proposal, the external penile rigidity devices would be classified into class II (special controls). The agency is issuing in this document the recommendations of the Gastroenterology-Urology Advisory Panel regarding the classification of these devices. After considering public comments on the proposed classification, FDA will publish a final regulation classifying this device. This action is being taken to establish sufficient regulatory controls that will provide reasonable assurance of the safety and effectiveness of this device.

DATES: Written comments by April 5, 1999. See section V of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Documents Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Donald St. Pierre, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et. seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295) and the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629), established a comprehensive system for the regulation of medical devices intended for human

use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under the 1976 amendments, class II devices were defined as those devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish performance standards to provide such assurance. The SMDA broadened the definition of class II devices to mean those devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance. Special controls may include performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other appropriate actions the agency deems necessary (section 513 (a)(1)(B) of the act).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendment devices, are classified after FDA has met three requirements: (1) FDA has received a recommendation from a device classification panel (an FDA advisory committee); (2) FDA has published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) FDA has published a final regulation classifying the device. FDA has classified most preamendment devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendment devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendment device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Consistent with the act and the regulations, FDA consulted with the Gastroenterology-Urology Advisory Panel (the Panel), an FDA advisory committee, regarding the classification of these external penile rigidity devices. During a public meeting held Thursday, August 7, 1997, the Panel discussed the usage and history of external penile rigidity devices, specifically constriction rings, vacuum pumps, and penile splints used for the management of erectile dysfunction.

The panel discussed the usage and composition of each of these devices. Constriction rings are devices that are placed around the base of the erect penis for the duration of sexual intercourse to restrict the flow of venous blood leaving the penis. Constriction rings are usually elastic bands or adjustable loops, and they must be designed to include handles or tabs so that they can be readily removed from the penis.

Vacuum erection systems are devices consisting of vacuum pumps (either hand-operated or motorized) and penile cylinders. They produce an erection by creating a vacuum around the flaccid penis to induce passive blood flow into the penis, thus producing an erection. Once a satisfactory erection is obtained, the user often places a constriction ring around the base of the erect penis, prior to removing the vacuum cylinder, in order to maintain the erection.

Penile splints are rigid or flexible support structures that are externally attached to or placed along the penis to physically support the penis during sexual intercourse.

External penile rigidity devices are preamendment devices not included as part of the gastroenterology and urology devices that were classified in 1983. FDA has reviewed marketing applications for these devices through the premarket notification or 510(k) process.

The premarket notifications or 510(k) reviews involved verifying that the labeling of these devices adequately informs both patients and practitioners on their safe use. Additionally, the premarket notifications or 510(k) reviews ensure that the device has certain key safety features, such as handles on constriction rings for quick removal and safe limits on the maximum vacuum pressure that can be generated.

Pain and/or discomfort, bruising, hemorrhage and/or hematoma formation, penile injury, and penile gangrene (if blood flow is restricted too long) are risks and possible side effects associated with the use of these external penile rigidity devices.

Currently, these devices are offered both over the counter and by prescription. While the over the counter and prescription devices are similar, the differences distinguishing the over the counter and prescription devices are in their labeling and packaging.

II. Recommendation of the Panel

During the public meeting held on Thursday, August 7, 1997, the Panel made the following recommendation for the classification of external penile rigidity devices into class II.

A. Identification

Penile rigidity devices are generic external devices that include constriction rings, vacuum pumps, and penile splints for the management of erectile dysfunction. These devices fit on, over, or around the penis to support, promote, or maintain sufficient penile rigidity for sexual intercourse.

B. Recommended Classification of the Panel

The Panel recommended that external penile rigidity devices be classified into class II, special controls devices. Based on the available information, the Panel believes that, in addition to general controls, the following special controls regarding labeling recommendations are necessary to provide reasonable assurance of the safety and effectiveness of the external penile rigidity devices with regard to the identified risks to health of this device:

1. Labeling for the external penile rigidity device should include the device name, corporation name, address, telephone number, intended use, disposable/single use status (if applicable), a description of the device (including dimensional specifications), and directions for use;

2. The labeling should include the indications for use and identification of the population(s) for whom the device is appropriate;

3. The directions for use should contain comprehensive instructions on how to size, place, operate, remove, and clean the device;

4. The labeling should include the warning: ''If you cannot achieve an erection that is sufficient for sexual intercourse, see your doctor before using

this device to be sure that it will not aggravate another medical condition you might have. Also, your doctor will be able to check you for some of the most common causes of erection problems, such as diabetes, multiple sclerosis, cirrhosis of the liver, chronic kidney failure, or alcoholism.''; and

5. Relevant contraindications, warnings, and precautions should be included in the labeling of the device along with possible methods of resolution of the problems/risks associated with the use of the device. Specifically, we believe that the warning and cautionary statements listed in section II.B.1.2.and 3 of this document by device type should be addressed in the labeling for these devices using terminology well-understood by the average layperson as follows:

1. Information Relevant to Constriction Rings

Use of the device should be restricted to 30 minutes. Do not fall asleep wearing the constriction ring. Prolonged use of the constriction bands (i.e., without removal) may cause permanent injury to the penis.

Consult your physician should any complications occur and discontinue use of the device if such conditions persist.

The user should allow 60 minutes between uses.

Use the largest size constriction ring which maintains an erection.

Constriction rings should not be used under the influence of alcohol or drugs.

Constriction rings are not intended for use as a contraceptive/birth control.

Frequent use of constriction rings may result in bruising at the base of the penis (where the shaft of the penis meets the pubic area).

Do not use the device if you have a decreased ability to sense pain in the area of the penis because pain may occur as a warning sign that the device may be causing injury.

Do not use the device if you have insufficient manual dexterity to easily remove the device.

2. Information Relevant to Vacuum Pumps

Consult your physician should any complications occur and discontinue use of the device if such conditions persist.

The user should apply the minimum amount of vacuum pressure necessary to achieve an erection.

The user should stop using the vacuum pump if pain occurs.

Vacuum pumps should not be used under the influence of alcohol or drugs.

Use of a vacuum pump may bruise or rupture the blood vessels either immediately below the surface of the skin or within the deep structures of the penis or scrotum, resulting in hemorrhage and/or the formation of a hematoma.

Misuse of a vacuum pump may aggravate already existing medical conditions such as Peyronie's disease, priapism, and urethral strictures.

Misuse of the vacuum pump could result in swelling of the penis and/or serious permanent injury to the penis.

Do not use an electrically powered vacuum pump in or near water.

Vacuum pumps should not be used by men who take anticoagulants (blood thinners).

Vacuum pumps do not provide a satisfactory erection in every man. If erection satisfactory for intercourse is not achieved the user should consult with a physician familiar with such devices to determine the cause.

Do not use the device if you have a decreased ability to sense pain in the area of the penis, because pain may occur as a warning sign that the device may be causing injury.

3. Information Relevant to Penile Splints

Consult a physician if any injuries occur to either yourself or your sexual partner, and discontinue use of the device if such conditions persist.

C. Summary of Reasons for Recommendation

The Panel believes the external penile rigidity devices should be classified into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

D. Summary of Data Upon Which the Recommendation is Based

The panel based its recommendation on their knowledge and experience in addition to published literature on external penile rigidity devices (Refs. 2 through 4).

E. Risks to Health

Pain and/or discomfort, bruising, hemorrhage and/or hematoma formation, penile injury and penile gangrene (if blood flow is restricted too long) are risks and possible side effects associated with the use of these external penile rigidity devices. FDA believes, however, that the special controls regarding labeling recommendations will provide reasonable assurance of the safety and effectiveness of the external penile rigidity devices.

III. Proposed Classification

FDA agrees with the Panel recommendation for classification of these devices under class II. FDA believes the external penile rigidity devices should be classified into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday though Friday.

1. Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee transcript, August 7, 1997.

2. Lewis, J. H. et al., ''A way to help your patients who use vacuum devices,'' *Contemporary Urology*, vol. 3, No. 12: 15–24, 1991.

3. Montague, D. K. et al., ''Clinical Guidelines Panel on Erectile Dysfunction; Summary Report on the Treatment of Erectile Dysfunction,'' *Journal of Urology*, 156, 2007–2011, 1996.

4. ''NIH Consensus Statement–Impotence,'' National Institutes of Health, vol. 10, No. 4, 1992.

V. Proposed Effective Date

The agency proposes that any final rule that may issue based on this proposed rule become effective 30 days after its date of publication in the **Federal Register**.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize

net benefits (including potential economic, environmental, public health and safety and other advantages, distributive impacts, and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed rule does not impose any new requirements, it will impose no significant economic impact on any small entities. The agency certifies that this proposed rule, if issued, will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VIII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

IX. Submission of Comments

Interested persons may, on or before April 5, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted except individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 876 be amended as follows:

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Section 876.5020 is added to subpart F to read as follows:

§ 876.5020 External penile rigidity devices.

(a) *Identification*. An external penile rigidity device is a device intended to help manage erectile dysfunction. External penile rigidity devices consist of vacuum pumps, constriction rings, and penile splints. The vacuum pump has a cylinder that is placed over the penis and produces an erection by creating a vacuum around the penis. The constriction ring is placed around the base of the erect penis, keeping the blood in the penis and thus, maintaining the erection. Penile splints are rigid or flexible support structures that are externally attached to the penis to physically support the penis during sexual intercourse.

(b) *Classification*. Class II (special controls).

Dated: December 17, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–34733 Filed 12–31–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2560

RIN 1210–AA61

Public Hearing on Proposed Claims Procedures

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of public hearing.

SUMMARY: The purpose of this Notice is to inform interested persons that the Department of Labor will hold a public hearing on both February 17 and 18, 1999, and, if necessary, on February 19, 1999, regarding the adoption of regulations governing the processing of employee benefit plan claims under section 503 of the Employee Retirement Income Security Act of 1974, as amended, (ERISA). The Department published in the **Federal Register** proposed changes to the requirements governing the processing and appeal of claims by employee benefit plans under ERISA (63 FR 48390, September 9, 1998). The purpose of the public hearing is to obtain and consider further information and views on the proposed regulation and the effects of the proposed claim procedure changes on plans, plan participants, plan sponsors and service providers.

DATES: The public hearing is scheduled for February 17 and 18, 1999, and, if necessary, February 19, 1999. The hearing will begin at 10 a.m. on each of these days. Requests to testify at the hearing should be received by the Department no later than January 15, 1999. Oral statements will be limited to 10 minutes. Individuals with disabilities, who need special accommodations, should contact Jeffrey J. Turner by February 5, 1999, at the address below.

ADDRESSES: Requests to testify at the hearing should be submitted to: Jeffrey J. Turner, Office of Regulations and Interpretations, Room N–5669, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. All requests will be open to public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 from 8:30 a.m. to 5:30 p.m. The hearing will be held in the U.S. Department of Labor Auditorium, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Turner, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, at (202) 219–8671. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On September 9, 1998, the Department of Labor (the Department) published a notice of proposed rulemaking in the **Federal Register** (63 FR 48390) revising the minimum requirements for benefit claims procedures of employee benefit plans covered under Title I of the Employee Retirement Income Security Act (ERISA). In that notice, the Department invited interested persons to submit written comments concerning the proposed regulations on or before November 9, 1998. On October 30, 1998, in response to requests from the public for additional time to prepare comments, the Department extended the comment period through December 9, 1998 (63 FR 58335). A number of comments submitted in response to the solicitation for public comment requested that the Department hold a public hearing on proposed regulation. Because of the complexity and importance of the issues involved, the Department believes that it is appropriate to hold a public hearing on the proposed regulation. The information obtained from the hearing will assist the Department in assessing whether, and to what extent, the

proposed regulation should be modified in conjunction with the adoption of a final rule.

Notice of Public Hearing

Notice is hereby given that a public hearing regarding the Department of Labor's proposed claims procedure regulations (63 FR 48390, September 9, 1998) is scheduled for February 17 and 18, 1999, and, if necessary, February 19, 1999. The hearing will begin at 10:00 a.m. on each of these days. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Requests to testify should be submitted to the address identified above, no later than January 15, 1999. It is requested that persons testifying on behalf of plans, plan sponsors, and service providers be prepared to answer questions pertaining to specific claims processing procedures and practices (e.g., methods of notification, time frames, etc.) of their plans, their clients' plan(s) or their members' plans.

Signed at Washington, DC, this 23rd day of December, 1998.

Leslie B. Kramerich,

Deputy Assistant Secretary For Policy, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–34819 Filed 12–31–98; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–98–162]

RIN 2115–AE46

Special Local Regulations: Empire State Regatta, Albany, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the Special Local Regulations for the Empire State Regatta. This action is necessary to update the course location and effective period for this annual event. This action is intended to restrict vessel traffic in a portion of the Hudson River.

DATES: Comments must be received on or before March 5, 1999.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch (CGD01–98–162), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–98–162) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Albany Rowing Center sponsors this annual crewing race with approximately 300 rowers competing in this event. The sponsor expects no spectator craft for this event. The race will take place on the Hudson River in the vicinity of Albany, New York. The sponsor held the race in a new location in 1998 and is planning on holding the event in this new location in the future. This proposed new course provides better viewing for spectators on shore, and it is also easier for the sponsor to set up. The proposed regulated area encompasses all waters of the Hudson River from the Albany Rensselaer Swing Bridge, river mile 146.2, to Light 224 (LLNR 39015), river mile 147.5, located approximately 75 yards north of the I–90/Patroon Island Bridge. The new race course is 800 yards smaller than the current course.

The proposed effective period (§ 100.104(b)) states the event will be held on the first weekend of June. The current effective period states the event will be held on the first or second weekend of June. This proposed rule reduces uncertainty the current regulation causes regarding the date of the event. The special local regulations (§ 100.104(c)) remains unchanged.

Discussion of Proposed Rule

The proposed Special Local Regulation is for the Empire State Regatta held on the Hudson River in the vicinity of Albany, New York. The Special Local Regulations for this event are located at 33 CFR § 100.104. The sponsor held this event further north in 1998 from the area published in § 100.104 and is planning on holding the event in this new location in the future. This event will be held on the first weekend of June. The current regulation states the event will be held on the first or second weekend of June. This rule is proposed to change the course location and the event date published in § 100.104, provide for the safety of life on navigable waters during the event, and to give the marine community the opportunity to comment on the regulated area.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of the Hudson River during the race, the effect of this regulation will not be significant for several reasons: this is an annual marine event currently published in 33 CFR § 100.104, the limited amount of commercial traffic in this area of the

river, commercial vessels can plan their transits up the river around the time the regulated area is in effect as they will have advance notice of the event, it is an annual event with local support, the new course is 800 yards smaller than the current course, the event's course has only been moved 1600 yards north of the current regulated area, vessel traffic will still be able to transit the regulated area in accordance with 33 CFR § 100.104(c), and advance notifications will be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. § 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

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

Federalism

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

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

Proposed Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100—[AMENDED]

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

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

2. Revise § 100.104 (a) and (b) to read as follows:

§ 100.104 Empire State Regatta, Albany, New York

(a) *Regulated area.* All waters of the Hudson River between the Albany Rensselaer Swing Bridge, river mile 146.2, and Light 224, (LLNR 39015), river mile 147.5, located approximately 750 yards north of the I–90/Patroon Island Bridge.

(b) *Effective period.* This section is effective annually from 12 p.m. Friday through 7 p.m. Sunday, on the first weekend of June.

* * * * *

Dated: December 18, 1998.

R.M. Larrabee,

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

[FR Doc. 98–34764 Filed 12–31–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 210–0115; FRL–6214–3]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Antelope Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of revisions to the California State Implementation Plan (SIP) which concern the recission of administrative rules for the Antelope Valley Air Pollution Control District (AVAPCD). These rules concern conduct and procedure governing hearings by the governing board on permit appeals. The intended effect of this action is to bring the AVAPCD SIP up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act).

DATES: Written comments must be received by February 3, 1999.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Chief, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for recission from the Antelope Valley Air Pollution Control District (AVAPCD) portion of the California SIP include: AVAPCD Regulation XII, Rules of Practice and Procedures, consisting of: Rule 1201, Discretion to Hold Hearing; Rule 1202,

Notice; Rule 1203, Petitions; Rule 1204, Answers to Petitions; Rule 1205, Function of the Board; Rule 1206, Appearances; Rule 1207, Service and Filing; Rule 1208, Rejection of Documents; Rule 1209, Form and Size; Rule 1210, Copies; Rule 1211, Subpoenas; Rule 1212, Continuances; Rule 1213, Request for Continuances or Time Extensions; Rule 1214, Transcript and Record; Rule 1215, Conduct of Hearing; Rule 1216, Presiding Officer; Rule 1217, Disqualification of Hearing Officer or Board Member; Rule 1218, Ex Parte Communications; Rule 1219, Evidence; Rule 1220, Prepared Testimony; Rule 1221, Official Notice; Rule 1222, Order of Proceedings; Rule 1223, Prehearing Conference; Rule 1224, Opening Statements; Rule 1225, Conduct of Cross-Examination; Rule 1226, Oral Argument; Rule 1227, Briefs; Rule 1228, Motions; Rule 1229, Decisions; and Rule 1230, Proposed Decision and Exceptions. These rule recissions were adopted by the AVAPCD on October 21, 1997 and submitted by the California Air Resources Board to EPA on May 18, 1998.

II. Background

The Antelope Valley Air Pollution Control District (AVAPCD) was created pursuant to California Health and Safety Code (CHSC) section 40106 and assumed all air pollution control responsibilities of the South Coast Air Quality Management District (SCAQMD) in the Antelope Valley region of Los Angeles County,[1] effective July 1, 1997. AVAPCD is the successor agency to SCAQMD in the Antelope Valley portion of the Southeast Desert Modified Air Quality Maintenance Area. The SCAQMD rules and regulations remain in effect after July 1, 1997, until the AVAPCD rescinds them or adopts new rules and regulations to supersede them.

The rules being proposed for recission for AVAPCD were adopted by the SCAQMD for the purpose of establishing conduct and procedure governing hearings by its Governing Board on permit appeals. The rules were necessary to implement section 40509 of the CHSC which states, ''Any person may petition the South Coast district board to hold a public hearing on any application to issue or renew a permit.'' No other air district Governing Board has specific authority to hear appeals on permits. For all other districts, the authority for such appeals is vested with the hearing board of the district.

The newly formed AVAPCD is a ''county district'' pursuant to CHSC section 40106(d) and may not exercise powers granted exclusively to the SCAQMD Governing Board by CHSC section 40509. Regulation XII applies only to the SCAQMD Governing Board and not to any other air district board. Therefore, AVAPCD has rescinded Regulation XII, Rules of Practice and Procedure from the AVAPCD rulebook and the AVAPCD SIP.

Regulation XII (Rules 1201 to 1231) was approved into the SCAQMD SIP on September 9, 1980 (45 FR 30626) and September 28, 1981 (46 FR 47451). It became part of the AVACPD SIP when the AVAPCD was formed on July 1, 1997.

The State of California submitted many revised rules for incorporation into its SIP on May 18, 1998, including the rule recissions being acted on in this document. This document addresses EPA's proposed action for approving the recission of AVAPCD's Regulation XII, which includes Rules 1201 to 1230. The revision was adopted on October 21, 1997 by the Governing Board of the AVAPCD. These revisions were found to be complete on July 17, 1998 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[2] and are being proposed for recission from the SIP.

III. EPA Evaluation and Action

EPA has evaluated the submitted rule recissions and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, the recission of AVAPCD Regulation XII, Rules 1201 to 1230 is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

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

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

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of

[1] The Antelope Valley region of Los Angeles County is contained within the Federal area known as the Southeast Desert Modified Air Quality Management Area and the region identified by the State of California as the Mojave Desert Air Basin.

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations.

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

Dated: December 17, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 98–34820 Filed 12–31–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Chapter IV

[HCFA–3250–N2]

RIN 0938–AI92

Medicare Program; Negotiated Rulemaking; Coverage and Administrative Policies for Clinical Diagnostic Laboratory Tests; Announcement of Additional Public Meetings

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

ACTION: Notice of meetings.

SUMMARY: This notice announces additional public meetings of the Negotiated Rulemaking Committee on Coverage and Administrative Policies for Clinical Laboratory Tests. The Committee was mandated by section 4554(b) of the Balanced Budget Act of 1997, and established under the Federal Advisory Committee Act.

DATES: The meetings are scheduled as follows:

1. January 25, 1999, 9:00 a.m. to 5:00 p.m.

2. January 26, 1999, 9:00 a.m. to 2:00 p.m.

3. January 27, 1999, 8:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Jackie Sheridan, (410) 786–4635.

SUPPLEMENTARY INFORMATION: We published a notice in the **Federal Register** on June 3, 1998 (63 FR 30166) announcing the intent to form a negotiated rulemaking committee to provide advice and make recommendations to the Secretary on the content of a proposed rule that will establish national coverage and administrative policies for clinical laboratory tests payable under Part B of the Medicare program. The notice also announced the dates of the Committee meetings that began on July 13, 1998. The meetings were originally scheduled to end December 10, 1998.

The Committee will have an additional 3-day public meeting from 9:00 a.m. to 5:00 p.m. on January 25th, from 9:00 a.m. to 2:00 p.m. on January 26th, and from 8:00 a.m. to 4:00 p.m. on January 27, 1999. The opportunity for public comment will be at 9:00 a.m. on January 26th. The meetings will be held at the Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW, Washington, DC 20201.

The meetings are open to the public without advance registration. Public attendance at the meetings may be limited to space availability. During these meetings, the Committee will continue to address the issues within the scope of the negotiations as described in this document. More detailed information for each meeting will be available on the HCFA Internet Home Page (http://www.hcfa.gov/quality/qlty-8a) preceding each meeting date.

Authority: Federal Advisory Committee Act (5 U.S.C. App. 2)
(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 21, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–34740 Filed 12–31–98; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 177, 178, 180

[Docket No. RSPA–97–2718 (HM–225A)]

RIN 2137–AD07

Hazardous Materials: Safety Standards for Preventing and Mitigating Unintentional Releases During the Unloading of Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of negotiated rulemaking committee meetings.

SUMMARY: This document announces cancellation of a negotiated rulemaking advisory committee meeting scheduled for January 6–7, 1999 and addition of meeting dates for February 2–4, 1999 and March 2 and 3, 1999. This document is issued in accordance with the provisions of the Federal Advisory Committee Act. The purpose of these meetings is to negotiate recommendations for alternative safety standards for preventing and mitigating unintentional releases of hazardous materials during the unloading of cargo tank motor vehicles in liquefied compressed gas service. The public is invited to attend; an opportunity for members of the public to make oral presentations will be provided if time permits.

DATES: The February meeting will be from 8:30 a.m. to 4:00 p.m., February 2–3, 1999 and from 8:30 a.m. to 12:30 p.m. on February 4, 1999. The March meeting will be from 8:30 a.m. to 4:00 p.m. on March 2–3, 1999.

ADDRESSES: The meetings will take place at the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. The February 2–4 and March 2–3 meetings are scheduled in Room 10234.

FOR FURTHER INFORMATION CONTACT: Jennifer Karim or Susan Gorsky, (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, Department of Transportation. Facilitator: Philip J. Harter, The Mediation Consortium, (202) 887–1033.

SUPPLEMENTARY INFORMATION: On August 20, 1998 (63 FR 44601), RSPA published in the **Federal Register** a document announcing dates and locations for a series of negotiated rulemaking committee (the Committee) meetings. In the document, RSPA announced a meeting for January 6–7, 1999. During the December 1–2, 1998 meeting, the Committee agreed to cancel the January meeting and add meetings for February and March. The purpose of this document is to announce the cancellation of the January 6–7 meeting and the addition of meetings on February 2–4, 1999 and March 2–3, 1999.

This Committee has been established to develop recommendations for alternative safety standards for preventing and mitigating unintentional releases of hazardous materials during the unloading of cargo tank motor vehicles in liquefied compressed gas service. Meeting summaries and other relevant materials are placed in the public docket and can be accessed through (http://dms.dot.gov).

Issued in Washington, DC, on December 28, 1998, under authority delegated in 49 CFR Part 1.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards, Research and Special Programs Administration.

[FR Doc. 98–34737 Filed 12–31–98; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 64, No. 1

Monday, January 4, 1999

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—Survey of States on Their School Meals Initiative (SMI) Reviews

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. FNS wishes to examine whether data currently collected by States can be used to devise a nationwide estimate of the nutrient content of the meals that are offered under the school meals programs. Obtaining this estimate is necessary for FNS to monitor progress toward goals in its strategic plan.

DATES: Comments on this notice must be received by March 5, 1999 to be assured of consideration.

ADDRESSES: Send comments on this proposed collection of information to Matthew Sinn; Food and Nutrition Service; 3101 Park Center Drive; Room 208; Alexandria, VA 22302–1500. 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

When FNS requests approval for this information collection from the Office of Management and Budget (OMB), FNS will provide OMB with all comments received. All comments will thus become public documents.

FOR FURTHER INFORMATION CONTACT: Matthew Sinn, (703) 305–2133.

SUPPLEMENTARY INFORMATION:

Title: Survey of States on their School Meals Initiative Reviews.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: New collection of information.

Abstract: The Department of Agriculture's (USDA) Food and Nutrition Service (FNS) wishes to examine whether certain data currently collected by States can be used to devise a nationwide estimate of FNS's progress toward a goal in its strategic plan. The goal is that school meals be consistent with the Recommended Daily Allowances (RDA) and the Dietary Guidelines for Americans, i.e., the nutritional standards for school meals that were recently established by USDA's School Meals Initiative (SMI).

SMI is the umbrella term for all efforts and activities associated with updating the nutritional standards for school meals served pursuant to the National School Lunch and School Breakfast Programs. The primary goal of SMI was to make the nutritional standards for these meals consistent with the latest scientific evidence on proper nutrition for children. The legislative and regulatory history of SMI began when USDA published a proposed rule on June 10, 1994 (59 FR 30218), and culminated when the President signed the Healthy Meals for Children Act (Public Law 104–149) into law on May 29, 1996. The operational implementation of SMI began soon after and is ongoing.

States are required to assess nutritional compliance with school meals requirements of all their school food authorities (SFAs) (the legal entities, typically school districts, that operate the USDA school meals programs in schools). This proposed data collection is intended to inform FNS of the specific data States are collecting in their school meals nutrition compliance reviews so that FNS can determine whether this data is in such a form that it would allow FNS to derive from it national estimates of the nutrient content of meals analyzed in the reviews. This data collection will not ask States to provide their review data; rather, it will only ask States about the disposition and contents of their review data, where it is maintained, and how it is maintained (on paper, electronically, etc.).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 45 minutes per State.

Respondents: Respondents will be the persons or person in each State most knowledgeable of the specifics of school meals nutrition compliance reviews in that State.

Estimated Number of Respondents: There will be 51 respondents for the survey: the 48 contiguous States, Hawaii, Alaska, and the District of Columbia.

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 38 hours.

Copies of this information collection can be obtained from Matthew Sinn, Food and Nutrition Service, 3101 Park Center Drive, Room 208, Alexandria, VA 22302–1500.

Dated: December 14, 1998.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 98–34753 Filed 12–31–98; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Substitution of Donated Beef and Pork With Commercial Beef and Pork

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Food and Nutrition Service's (FNS) intent to implement a demonstration project to test program changes designed to improve the State processing of donated foods by allowing the substitution of donated beef and pork supplied by the Department of Agriculture (the Department)with

commercial beef and pork. FNS is invoking its authority under 7 CFR 250.30(t) to waive the current prohibition in 7 CFR 250.30(f)(1)(i) against the substitution of meat and poultry items and to establish the criteria under which substitution would be permitted. The Department will use the demonstration project results to further examine whether allowing this type of substitution will result in increased processor participation and provide a greater variety of processed end products to recipient agencies in a more timely manner and/or at lower costs.

DATES: The proposals described in this Notice may be submitted to FNS through June 30, 2000. The demonstration project runs until June 30, 2001.

ADDRESSES: Proposals should be sent to Les Johnson, Director, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Park Office Center, Room 501, 3101 Park Center Drive, Alexandria, Virginia 22302–1594.

FOR FURTHER INFORMATION CONTACT: David Brothers, Schools and Institutions Branch, at (703) 305–2644.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This notice has been determined to be not significant and therefore was not reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22675, May 31, 1984).

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and is thus exempt from the provisions of that Act.

Background

Section 250.30 of the current Food Distribution Program regulations (7 CFR Part 250) sets forth the terms and conditions under which distributing agencies, subdistributing agencies, and recipient agencies may enter into contracts with commercial firms for processing donated foods and prescribes the minimum requirements to be included in such contracts. Section 250.30(t) authorizes FNS to waive any of the requirements contained in 7 CFR Part 250 for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods.

Current Program Requirements

The State processing regulations at Section 250.30(f)(1)(i) currently allow for the substitution of certain donated food items with commercial foods, with the exception of meat and poultry. Section 250.30(g) provides that, when donated meat or poultry products are processed or when any commercial meat or poultry product is incorporated into an end product containing one or more donated foods, all of the processing shall be performed in plants under continuous Federal meat or poultry inspection, or continuous State meat or poultry inspection in States certified to have programs at least equal to the Federal inspection programs. In addition to Food Safety Inspection Service (FSIS) inspection, all donated meat and poultry processing must be performed under Agricultural Marketing Service (AMS) acceptance service grading.

Currently, only a few companies process donated beef and pork. Those processors have stated that the current policy prohibiting the substitution of donated beef and pork reduces the quantity of donated beef and pork they are able to accept and process during a given period. Processors must schedule production around deliveries of the donated beef and pork because those products are highly perishable. Some of the processors must schedule production around deliveries of donated beef and pork for up to 30 States. Vendors do not always deliver donated beef and pork to the processors as scheduled, causing delays in production. These delays may be alleviated if the processors can replace donated beef and pork with their commercial beef and pork.

Demonstration Project

From October 1, 1998 to June 30, 2001, the Department will operate a demonstration project under which it will permit selected processors to substitute donated beef and pork in the State processing program for commercial beef and pork. Processors may submit proposals and be approved to participate in the demonstration project during this time. FNS is invoking its authority under 7 CFR 250.30(t) to waive the current prohibition in 7 CFR 250.30(f)(1)(i) against substitution of beef and pork for purposes of this demonstration project.

The term substitution in 7 CFR 250.3 is defined to mean the replacement of donated foods with like quantities of domestically produced commercial foods of the same generic identity and equal or better quality.

FNS is soliciting interested beef and pork processors to submit written proposals to participate in the demonstration project. The following basic requirements will apply to the demonstration project:

- As with the processing of donated beef and pork into end products, AMS graders must monitor the process of substituting commercial beef and pork to ensure program integrity is maintained.
- Only bulk beef and pork delivered by USDA vendors to the processor will be eligible for substitution. No backhauled product will be eligible. (Backhauled product is typically frozen beef and pork in 9 pound chubbs delivered to schools which may be sent to processors for further processing at a later time.)
- Commercial beef and pork substituted for donated beef and pork must be certified by an AMS grader as complying with the same product specifications as the donated beef and pork. The age of any commercial product that is used in replacement for donated food may not exceed six months.
- Substitution of commercial beef and pork may occur in advance of the actual receipt of the donated beef and pork by the processor. However, no substitution may occur before the notice to deliver for that processor is issued by USDA. Lead time between the purchase and delivery of donated beef and pork may be up to five weeks. Any variation between the amount of commercial beef and pork substituted and the amount of donated beef and pork received by the processor will be adjusted according to guidelines furnished by USDA.
- Any donated beef and pork not used in end products because of substitution must only be used by the processor in other commercial processed products and cannot be sold as an intact unit. However, it may be used to fulfill other USDA contracts provided all terms of the other contract are met.
- The only regulatory provision or State processing contract term affected by the demonstration project is the prohibition on substitution of beef and pork (section 250.30(f)(1)(i) of the regulations). All other regulatory and contract requirements remain unchanged and must still be met by

processors participating in the demonstration project.

The demonstration project will enable FNS to evaluate whether to amend program regulations to allow the substitution of donated beef and pork with commercial beef and pork in the State processing program. Particular attention will be paid to whether such an amendment of the regulations would increase the number of processors participating, and whether it would increase the quantity of donated beef and pork that each processor accepts for processing. Further, FNS will attempt to determine whether the expected increase in competition and the expected increase in the quantity of donated beef and pork accepted for processing will enable processors to function more efficiently, producing a greater variety of processed end products more quickly and/or at lower costs.

Interested processors should submit a written proposal to FNS outlining how they plan to carry out the substitution while complying with the above conditions. The proposal must contain (1) a step-by-step description of how production will be monitored; and (2) a complete description of the records that will be maintained for (a) the commercial beef and pork substituted for the donated beef and pork and (b) the disposition of the donated beef and pork delivered by USDA. All proposals will be reviewed by representatives of the Food Distribution Division of FNS and by representatives of the AMS Livestock Division's Commodity Procurement Branch and Grading Branch. Companies approved for participation in the demonstration project will be required to enter into an agreement with FNS and AMS which authorizes the processor to substitute donated beef and pork with commercial bulk beef and pork in fulfilling any current or future State processing contracts during the demonstration project period. Participation in the demonstration project will not ensure that processors will be awarded any State processing contracts.

Dated: December 22, 1998.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 98–34789 Filed 12–31–98; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Types and Quantities of Agricultural Commodities Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, in Fiscal Year 1999

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: On Dec. 18, 1998, the President of the Commodity Credit Corporation, who is the Under Secretary of Agriculture for Farm and Agricultural Services, determined that an additional 2.5 million metric tons grain equivalent of wheat and wheat products that may be acquired by the Commodity Credit Corporation (CCC) under its surplus removal operations is available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1999. This determination increases the amount of wheat and wheat products available for donation overseas under section 416(b) during fiscal year 1999 to 5.0 million metric tons grain equivalent.

FOR FURTHER INFORMATION CONTACT: Ira Branson, Director, CCC Program Support Division, FAS, USDA, (202) 720–3573.

Dated: December 2, 1998.

Lon Hatamiya,

Vice President, CCC.

[FR Doc. 98–34754 Filed 12–31–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Georgia, Schneider (IN), Central Iowa (IA), Montana, Mid-Iowa (IA), and Oregon Areas and Request for Comments on the Georgia, Schneider, Central Iowa, Montana, Mid-Iowa, and Oregon Agencies

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in July, August, and September 1999. GIPSA is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the services provided by these currently designated agencies:

Georgia Department of Agriculture (Georgia);
Schneider Inspection Service, Inc. (Schneider);
Central Iowa Grain Inspection Service, Inc. (Central Iowa);
Montana Department of Agriculture (Montana);
Mid-Iowa Grain Inspection, Inc. (Mid-Iowa); and
Oregon Department of Agriculture (Oregon).

DATES: Applications and comments must be postmarked or sent by telecopier (FAX) on or before February 2, 1999.

ADDRESSES: Applications and comments must be submitted to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604. Applications and comments may be submitted by FAX on 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act.

1. Current Designations Being Announced for Renewal.

Official agency	Main office	Designation start	Designation end
Georgia	Tifton, GA	8/1/1996	7/31/1999

Official agency	Main office	Designation start	Designation end
Schneider	Lake Village, IN	8/1/1996	7/31/1999
Central Iowa	Des Moines, IA	9/1/1996	8/31/1999
Montana	Great Falls, MT	9/1/1996	8/31/1999
Mid-Iowa	Cedar Rapids, IA	10/1/1996	9/30/1999
Oregon	Pendleton, OR	10/1/1996	9/30/1999

a. Georgia. Pursuant to Section 7(f)(2) of the Act, the following geographic area, the entire State of Georgia, except those export port locations within the State which are serviced by GIPSA, is assigned to Georgia.

b. Schneider. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Illinois, Indiana, and Michigan, is assigned to Schneider.

In Illinois and Indiana:

Bounded on the North by the northern Will County line from Interstate 57 east to the Illinois-Indiana State line; the Illinois-Indiana State line north to the northern Lake County line; the northern Lake, Porter, Laporte, St. Joseph, and Elkhart County lines;

Bounded on the East by the eastern and southern Elkhart County lines; the eastern Marshall County line;

Bounded on the South by the southern Marshall and Starke County lines; the eastern Jasper County line south-southwest to U.S. Route 24; U.S. Route 24 west to Indiana State Route 55; Indiana State Route 55 south to the Newton County line; the southern Newton County line west to U.S. Route 41; U.S. Route 41 north to U.S. Route 24; U.S. Route 24 west to the Indiana-Illinois State line; and

Bounded on the West by Indiana-Illinois State line north to Kankakee County; the southern Kankakee County line west to U.S. Route 52; U.S. Route 52 north to Interstate 57; Interstate 57 north to the northern Will County line.

Berrien, Cass, and St. Joseph Counties, Michigan.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Cargill, Inc., and Farmers Grain, both in Winamac, Pulaski County, Indiana (located inside Titus Grain Inspection, Inc.'s area).

Schneider's assigned geographic area does not include the export port locations inside Schneider's area which are serviced by GIPSA.

c. Central Iowa. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Iowa, is assigned to Central Iowa.

Bounded on the North by U.S. Route 30 east to N44; N44 south to E53; E53 east to U.S. Route 30; U.S. Route 30 east to the Boone County line; the western Boone County line north to E18; E18 east to U.S. Route 169; U.S. Route 169 north to the Boone County line; the northern Boone County line; the western Hamilton County line north to U.S. Route 20; U.S. Route 20 east to R38; R38 north to the Hamilton County line; the northern Hamilton County line east to Interstate 35; Interstate 35 northeast to C55; C55 east to S41; S41 north to State Route 3; State Route 3 east to U.S. Route 65; U.S. Route 65 north to C25; C25 east to S56; S56 north to C23; C23 east to T47; T47 south to C33; C33 east to T64; T64 north to B60; B60 east to U.S. Route 218; U.S. Route 218 north to Chickasaw County; the western Chickasaw County line; and the western and northern Howard County lines.

Bounded on the East by the eastern Howard and Chickasaw County lines; the eastern and southern Bremer County lines; V49 south to State Route 297; State Route 297 south to D38; D38 west to State Route 21; State Route 21 south to State Route 8; State Route 8 west to U.S. Route 63; U.S. Route 63 south to Interstate 80; Interstate 80 east to the Poweshiek County line; the eastern Poweshiek, Mahaska, Monroe, and Appanoose County lines;

Bounded on the South by the southern Appanoose, Wayne, Decatur, Ringgold, and Taylor County lines;

Bounded on the West by the western Taylor County line; the southern Montgomery County line west to State Route 48; State Route 48 north to M47; M47 north to the Montgomery County line; the northern Montgomery County line; the western Cass and Audubon County lines; the northern Audubon County line east to U.S. Route 71; U.S. Route 71 north to U.S. Route 30.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Farmers Co-op Elevator Company, Chapin, Franklin County; and CENEX Land O'Lakes, Inc., Rockwell, Cerro Gordo County (located inside D. R. Schaal Agency's area).

Central Iowa's assigned geographic area does not include the following grain elevators inside Central Iowa's area which have been and will continue to be serviced by the following official agencies:

1. A. V. Tischer and Son, Inc.: Farmers Co-op Elevator, Boxholm, Boone County; and

2. Omaha Grain Inspection Service, Inc.: T&K Evans, Elliot, Montgomery County; and Hemphill Feed & Grain, and Hansen Feed & Grain, both in Griswold, Cass County.

d. Montana. Pursuant to Section 7(f)(2) of the Act, the following geographic area, the entire State of Montana, is assigned to Montana.

e. Mid-Iowa. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Iowa, is assigned to Mid-Iowa.

Bounded on the North by the northern Winneshiek and Allamakee County lines;

Bounded on the East by the eastern Allamakee County line; the eastern and southern Clayton County lines; the eastern Buchanan County line; the northern and eastern Jones County lines; the eastern Cedar County line south to State Route 130;

Bounded on the South by State Route 130 west to State Route 38; State Route 38 south to Interstate 80; Interstate 80 west to U.S. Route 63; and

Bounded on the West by U.S. Route 63 north to State Route 8; State Route 8 east to State Route 21; State Route 21 north to D38; D38 east to State Route 297; State Route 297 north to V49; V49 north to Bremer County; the southern Bremer County line; the western Fayette and Winneshiek County lines.

f. Oregon. Pursuant to Section 7(f)(2) of the Act, the following geographic area, the entire State of Oregon, except those export port locations within the State which are serviced by GIPSA, is assigned to Oregon.

2. Opportunity for designation. Interested persons, including Georgia, Schneider, Central Iowa, Montana, Mid-Iowa, and Oregon, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder.

DESIGNATION	TERM
Georgia	08/01/1999 to 7/31/2002.
Schneider	08/01/1999 to 7/31/2002.
Central Iowa	09/01/1999 to 8/31/2002.
Montana	09/01/1999 to 8/31/2002.
Mid-Iowa	10/01/1999 to 9/30/2002.
Oregon	10/01/1999 to 9/30/2002.

Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

3. Request for Comments. GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the Georgia, Schneider, Central Iowa, Montana, Mid-Iowa, and Oregon official agencies. Commenters are encouraged to submit pertinent data concerning the Georgia, Schneider, Central Iowa, Montana, Mid-Iowa, and Oregon official agencies including information concerning the timeliness, cost, quality, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: December 10, 1998.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 98–33928 Filed 12–31–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Alton (IL), Columbus (OH), and Farwell (TX) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act):

Alton Grain Inspection Department, Inc. (Alton);

Columbus Grain Inspection, Inc. (Columbus) and;

Farwell Grain Inspection, Inc. (Farwell).

EFFECTIVE DATE: February 1, 1999.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the August 3, 1998, **Federal Register** (63 FR 41224), GIPSA asked persons interested in providing official services in the geographic areas assigned to Alton Grain Inspection Department, Columbus, and Farwell to submit an application for designation. Applications were due by September 1, 1998. There were four applicants: Alton (a new corporation set up by Alton Grain Inspection Department), Missouri Department of Agriculture, Columbus, and Farwell. Columbus and Farwell, each applied for designation to provide official services in the entire area currently assigned to them. Alton and the Missouri Department of Agriculture applied for designation to provide official services in the Alton area.

Since Columbus and Farwell were the only applicants, GIPSA did not ask for comments on them.

In the August 3, 1998, **Federal Register**, GIPSA asked for comments on Alton Grain Inspection Department. In the October 1, 1998, **Federal Register** (63 FR 52678), GIPSA asked for comments on the applicants for the Alton area. There were six comments to the August 3, 1998, **Federal Register**: five from customers of Alton Grain Inspection Department and one from a tow boat operator, all supporting designation of Alton Grain Inspection Department, Inc. There were no comments to the October 1, 1998, **Federal Register**.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act and, according to Section 7(f)(1)(B), determined that Columbus and Farwell are able to provide official services in the geographic areas for which they applied and that Alton is better able to provide official services in the Alton area.

Effective February 1, 1999, and ending January 31, 2000, Alton is designated to provide official services in the Alton geographic area specified in the August 3, 1998, **Federal Register**. Effective February 1, 1999, and ending January 31, 2002, Columbus and Farwell are designated to provide official services in the geographic areas specified in the August 3, 1998, **Federal Register**.

Interested persons may obtain official services by contacting Alton at 314–978–1961, Columbus at 740–474–3519, and Farwell at 806–481–9052.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: December 10, 1998.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 98–33929 Filed 12–31–98; 8:45 am]

BILLING CODE 3410–EN–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 3, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service has been proposed for addition to Procurement List for production by the nonprofit agency listed:

Mail and Messenger Service, US Army Test and Evaluation Command, Aberdeen Proving Ground, Aberdeen, Maryland,
NPA: The Arc of Northern Chesapeake Region, Inc., Forest Hill, Maryland

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–34794 Filed 12–31–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: February 3, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 31, September 11, and November 20, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 F.R. 40877, 48696 and 64458) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Skid Board
1670–01–342–5913
Pad, Fingerprint
7520–00–117–5627

Services

Janitorial/Custodial, Defense National Stockpile Center, Baton Rouge Depot, 2695 N. Sherwood Forest Drive, Baton Rouge, Louisiana
Janitorial/Custodial, Portsmouth Naval Shipyard, Building 357, Kittery, Maine
Janitorial/Custodial, Basewide, Fort Detrick, Maryland

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–34795 Filed 12–31–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Encryption; Notice of Open Meeting

The President's Export Council Subcommittee on Encryption (PECSENC) will meet on January 15, 1999, at the Hewlett-Packard Company, Pacific Ocean Room, Building 47, 19447 Pruneridge Avenue, Cupertino, California, 95014. The Subcommittee provides advice on matters pertinent to policies regarding commercial encryption products.

Open Session: 9:00 a.m.–4:00 p.m.

1. Opening remarks by the Acting Chairman.

2. Presentation of papers or comments by the public.

3. Update on Bureau of Export Administration initiatives.

4. Issue briefings.

5. Open discussion.

The meeting is open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the PECSENC. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSENC members, the PECSENC suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, Advisory Committees, MS: 3886C, U.S. Department of Commerce, 15th St. & Pennsylvania Ave, NW, Washington, DC 20230.

For more information, contact Ms. Carpenter on (202) 482–2583.

Dated: December 29, 1998.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 98–34815 Filed 12–31–98; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–809]

Certain Cut-to-Length Carbon Steel Plate 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 9, 1998, the Department of Commerce (the Department) published the preliminary results of the 1996–97 administrative review of the antidumping duty order on certain cut-to-length (CTL) carbon steel plate from Mexico. This review covers one manufacturer/exporter of the subject merchandise. The period of review (POR) is August 1, 1996 through

July 31, 1997. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have not changed the results from those presented in our preliminary results of review.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Heather Osborne or Mike Heaney, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3019 or 482–4475, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR Part 351 (1998).

Background

On September 9, 1998, the Department published the preliminary results of the 1996–97 administrative review of the antidumping duty order on certain CTL carbon steel plate from Mexico. *See Preliminary Results of Antidumping Administrative Review, Certain Cut-to-Length Carbon Steel Plate from Mexico,* 63 FR 48181 (*Preliminary Results*). This review covers one manufacturer/exporter of the subject merchandise, Altos de Hornos de Mexico (AHMSA). The POR is August 1, 1996 through July 31, 1997. We gave interested parties an opportunity to comment on the preliminary results and held a public and closed hearing on November 4, 1998. The following parties submitted comments and/or rebuttals: Bethlehem Steel Corporation, Geneva Steel, Gulf Lakes Steel, Inc., of Alabama, Inland Steel Industries, Inc., Lukens Steel Company, Sharon Steel Corporation, and U.S. Steel Group (a unit of USX Corporation) (collectively the petitioners), and AHMSA.

The Department has now completed this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

The products covered in this review include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coil and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling''); for example, products which have been beveled or rounded at the edges. Excluded from this review is grade X–70 plate.

These HTS item numbers are provided for convenience and U.S. Customs purposes. The written descriptions remain dispositive.

Analysis of Comments Received

We invited interested parties to comment on our preliminary results. We received comments from AHMSA and the petitioners.

Comment 1: Reported Costs

AHMSA contends that the Department's rationale for using adverse facts available is refuted by statements in the Department's cost verification report which demonstrate that AHMSA's reported costs reconciled to its accounting records and financial statements. AHMSA cites to several statements in the cost verification report where the Department performed tests of specific cost data and traced that cost data to AHMSA's accounting records. AHMSA urges the Department to reexamine its own findings, as set forth in the cost verification report, and reconsider its conclusions. AHMSA contends that the cost data is verifiable.

Petitioners claim that the fact that certain of AHMSA's costs in the aggregate may have reconciled to AHMSA's financial statement does not suggest that AHMSA's control number (CONNUM)-specific costs were verified or reconciled to AHMSA's financial statements. Petitioners note that the verification report identifies specific costs which, in the aggregate, were verified, including the trace of trial balance accounts to financial statement line items. Citing to *Final Results of Antidumping Duty Administrative Review) Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany,* 56 FR 31692, 31707 (July 11, 1991), petitioners state that the verification of aggregate costs does not equate to the verification of CONNUM-specific costs.

Department's Position: We were unable to verify the CONNUM-specific costs reported by AHMSA. The individual verification procedures cited by AHMSA are tests of individual *elements* of the submitted data and do not, separately or combined, indicate that AHMSA correctly reported its cost data.

Section 773(f)(1)(A) of the Act specifically requires that costs be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. In accordance with the statutory directive, the Department will accept costs of the exporter or producer if they are based on records kept in accordance with GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise (i.e., the cost data can be reasonably allocated to subject merchandise). In determining if the costs were reasonably allocated to all products the Department will, consistent with section 773(f)(1)(A) of the Act, examine whether the allocation methods are used in the normal accounting records and whether they have been historically used by the company.

Before assessing the reasonableness of a respondent's cost allocation methodology, however, the Department must ensure that the aggregate amount of the reported costs captures all costs incurred by the respondent in producing the subject merchandise during the period under examination. This is done by performing a reconciliation of the respondent's

submitted cost of production (COP) and constructed value (CV) data to the company's audited financial statements, when such statements are available. Because of the time constraints imposed on verifications, the Department generally must rely on the independent auditor's opinion concerning whether a respondent's financial statements present the actual costs incurred by the company, and whether those financial statements are in accordance with GAAP of the exporting country. In situations where the respondent's total reported costs differ from amounts reported in its financial statements, the overall cost reconciliation assists the Department in identifying and quantifying those differences in order to determine whether it was reasonable for the respondent to exclude certain costs for purposes of reporting COP and CV.

Although the format of the reconciliation of submitted costs to actual financial statement costs depends greatly on the nature of the accounting records maintained by the respondent, the reconciliation represents the starting point of a cost verification because it assures the Department that the respondent has accounted for all costs before allocating those costs to individual products.

AHMSA, however, was unable to perform such a reconciliation. As discussed in *Comment 8* below, the Department found that AHMSA had failed to include costs incurred in its coke plants, sinter plant, blast furnaces, basic oxygen furnaces, and continuous casters. AHMSA incurred all of these costs in the production of the subject merchandise. These unreported costs were substantial and raise serious concerns about whether there are additional cost center costs related to the plate production process which were not reported by AHMSA and not discovered by the Department at verification.

Moreover, even if AHMSA had been able to reconcile its submitted costs to its financial statements, it still would have failed verification due to its failure to use its normal cost accounting system in developing its COP and CV data. AHMSA indicated in its questionnaire response that its normal cost accounting system, which AHMSA used to prepare its financial statements, is not maintained on the product-specific level requested by the Department. *See* AHMSA's Cost Questionnaire Response at D–46, D–47. Therefore, AHMSA claimed that it was necessary to use a separate costing model to develop such grade-specific COP and CV data. In an effort to verify AHMSA's statements that its normal cost accounting system did not capture costs at the product-specific level, the Department was obligated to review and evaluate AHMSA's normal cost accounting system. As explained in the preliminary results, AHMSA withheld its normal cost accounting system's product-specific cost records until the end of verification. *See Preliminary Results*, 63 FR at 48182, September 9, 1998. AHMSA's withholding of this data precluded us from verifying AHMSA's COP/CV data. However, we were able to determine that AHMSA's normal cost accounting system included grade-specific slab cost data (the process preceding the plate rolling process). This data was more detailed than and significantly different from the data submitted by AHMSA. Based on the foregoing, we determined that the data submitted by AHMSA was not based on the allocation methods AHMSA historically used in its normal cost accounting system, even though such data was available to AHMSA.

Comment 2: Verification

AHMSA argues that the purpose of the Department's verification is to verify the information submitted on the record. AHMSA claims the Department verifiers refused to examine the information that was prepared in advance by AHMSA to support its COP/CV information. AHMSA states the Department verifiers mistakenly concluded that AHMSA maintains only standard costs in its normal accounting system, and claims that the Department verifiers misunderstood its cost accounting system and the submitted data. AHMSA maintains that it used actual costs recorded in its normal accounting system to prepare its cost response, and that the Department's insistence on examining its standard costs was based upon a misunderstanding of AHMSA's accounting system.

Petitioners state that there is no basis for AHMSA's claim that the Department verifiers misunderstood its cost accounting system. Petitioners assert that the Department's verification report clearly indicates that it fully understood that AHMSA's normal accounting records included both actual and standard costs. Petitioners note that at verification the Department found that AHMSA has both a standard cost report and a version of the report that adjusts standard costs to actual costs. *See* Memorandum from Michael Martin to Christian Marsh, Verification Report on the Cost of Production and Constructed Value Data Submitted by Altos Hornos de Mexico, S.A. de C.V. (Cost Verification Report) at 21 (August 27, 1998). A public version of this report is available in Room B099 of the Main Commerce Building. (AHMSA references these reports in its brief to indicate that it maintains both standard and actual costs.)

Petitioners also note that in its questionnaire responses AHMSA described its normal cost accounting system as being based on standard costs which were adjusted to actual costs through the application of variances. Petitioners contest AHMSA's assertion that because AHMSA used actual average plate cost and not its standard costs in reporting CONNUM-specific costs, the Department was not obliged to examine AHMSA's standard cost build-ups during verification. Petitioners argue that without substantiation, the standard input factors could be manipulated to improperly shift plate costs to non-subject merchandise. Further, petitioners argue, the only way to rule out mis-allocations to non-subject merchandise was for the Department to review the standard usage factors compared to the actual consumption for AHMSA's steel grades. Accordingly, petitioners conclude that the standard cost build-ups were crucial to the verification because they identify the types of costs included in AHMSA's average plate cost calculation.

Department's Position: We agree with AHMSA that the purpose of verification is to verify the accuracy of information submitted on the record, and note that the Department verifiers adhered to this basic tenet during verification. However, as discussed in our response to *Comment 1*, it was necessary for the Department verifiers to fully understand AHMSA's normal cost and financial accounting systems before they could evaluate the reported product-specific costs. Therefore, it was crucial for the verifiers to review the costs as maintained in the normal cost accounting system. It was also essential that the Department verify AHMSA's claim that it had to resort to a system outside its normal cost accounting system to prepare the reported grade-specific COP and CV data because, as explained by AHMSA, its normal cost accounting system did not include grade-specific cost information at the level of specificity required by the Department. As noted in the verification report, we found that AHMSA's normal cost accounting system cost build-ups did in fact distinguish between the grades of product produced.

Additionally, the Department verifiers clearly understood AHMSA's normal accounting system and realized that it included both standard and actual costs. Moreover, it was clear from AHMSA's responses that AHMSA's normal cost

accounting system (used in the preparation of AHMSA's financial statements) is based on standard costs adjusted to actual costs through the application of variances. Thus, because the normal cost accounting system was based on standards, the Department was obliged to review the build-up of AHMSA's standard costs. Because AHMSA's normal cost accounting system was based on standard costs, there is no basis for AHMSA's assertion that it had to prepare the requested standard cost data for the first time during verification.

At verification the Department must review the normal financial and cost accounting systems before reviewing the reported cost allocation methodologies. The cost questionnaire and verification agenda are organized and presented so that the respondent is aware that it must use its normal books and records in preparing its response. Both the cost questionnaire and the verification agenda start with the explanation of the normal financial accounting system, then progress to the normal cost accounting system, and finally to the reported cost methodology. In this case the verifiers attempted to proceed in this fashion; however, they were hampered by AHMSA's refusal to provide the standard cost build-ups used to prepare the financial statements until late in the verification process.

As to the methods and techniques of verification, the Court of International Trade (CIT), in *Koenig & Bauer-Albert AG, et al.*, v. *United States*, 15 F. Supp. 2d 834 (CIT 1998), acknowledged that ''[c]ongress has afforded ITA a degree of latitude in implementing its verification procedures'' and that ''[t]he decision to select a particular method of verification rests solely within the agency's sound discretion. * * * If a reasonable standard is applied and the verification is supported by substantial evidence, the court will sustain the methodology.'' Consistent with its practice, the Department first attempted to review AHMSA's normal financial and cost accounting system. The problems encountered at this crucial first step were significant (*see* Cost Verification Report at 2) and resulted in AHMSA's failure of the cost verification. *See Preliminary Results*, 63 FR at 48182–84 (describing AHMSA's failure of the cost verification). Contrary to AHMSA's arguments, the Department cannot simply verify reported information in a vacuum. If reported cost information is not verifiably grounded in a respondent's normal books and records, it is meaningless to ''verify'' the reported information. This is because deviating from the product-specific costs recorded in a respondent's normal books and records can significantly distort reported COP and CV data. AHMSA's failure to use the product-specific costs recorded in its normal books and records prevents us from quantifying the magnitude of the distortions which exist in its submitted data. Under these circumstances, the Department's conduct of verification and verification findings are reasonable.

Comment 3: Use of Normal Cost Accounting System

AHMSA claims that, contrary to the statements in the Department's cost verification report, it did rely on its ''normal'' cost accounting system to prepare its COP and CV data. AHMSA states that it maintains both actual and standard costs in its normal cost accounting system. The actual costs tie to the cost of goods sold on the income statement, while the standard costs tie to the inventory value on the balance sheet.

For purposes of preparing its COP and CV information, AHMSA maintains that it reported the actual cost of producing plate, and then used its quarterly cost model to determine the costs of specific grades of plate. According to AHMSA, the Department incorrectly concluded that AHMSA did not rely on its ''normal'' cost accounting system because it failed to report standard costs.

AHMSA asserts it is being unfairly and improperly penalized because of the Department's misunderstanding of AHMSA's normal cost accounting system. AHMSA maintains that its normal cost accounting system comprises both actual and standard costs. AHMSA contends that the result is identical whether using standard costs adjusted for variances or actual costs. However, to comply with the verifiers' requests for standard cost build-ups, AHMSA claims it had to manually calculate these standard costs, delaying the verification. AHMSA contends that the Department's misunderstanding of its cost accounting system and the verifiers' insistence on reviewing AHMSA's standard costs resulted in the failed cost verification.

Petitioners note that AHMSA's method of deriving CONNUM-specific COPs and CVs involves two major steps. First, petitioners claim AHMSA derived an average cost for all plate based on standard costs adjusted for variances. Second, according to petitioners, AHMSA calculated the cost of specific plate grades using its costing model. In petitioners' view this resulted in CONNUM-specific costs that are significantly different than those recorded in its normal accounting records.

Petitioners contend that there is no basis for AHMSA's claim that the Department misunderstood its normal cost accounting system. Petitioners assert that the Department's verification report clearly indicates that AHMSA normally maintains both actual and standard costs. Petitioners claim that the Department's statement that AHMSA did not use its normal cost accounting system to prepare the submitted COP and CV data refers to AHMSA's use of a ''sales pricing model'' which AHMSA admittedly does not use in its normal accounting system. Regardless of the model's nomenclature, petitioners allege that it is disingenuous of AHMSA to suggest that the Department's statement refers to anything but AHMSA's cost/pricing model.

Department's Position: We disagree with AHMSA. The cost verification report accurately reflected the procedures performed and issues found during the verification. While AHMSA's reporting methodology may have relied on certain total actual costs from its accounting system in calculating the aggregate average cost of all plate, AHMSA did not rely on the allocation methodologies used in its normal cost accounting system, which are used to prepare the GAAP-based financial statements to calculate the reported product-specific costs. AHMSA concedes this point in its case brief at page 20.

Additionally, we disagree with AHMSA's assertion that the verifiers misunderstood its normal cost accounting system. To the contrary, the verifiers were fully aware that a standard cost accounting system and financial accounting system includes both the standard costs and actual costs. *See* response to Comment 2 above. We also disagree with AHMSA's assertion that it is being unfairly and improperly penalized for the Department's misunderstanding of its normal cost accounting system. AHMSA did not use its normal cost allocation methodology as the basis for its COP and CV submissions, as required by the Department. Therefore, we were obligated to reject in its entirety the cost data submitted by AHMSA.

Moreover, we disagree with AHMSA's claim that its methodology leads to the same result as would adjusting AHMSA's standard costs for variances. The Department's questionnaire requires respondents to report product-specific costs as defined by product characteristics identified by the Department. While AHMSA's contention that standard costs plus

variances are the same as actual costs may be true on an *overall* basis, it does not hold true in this instance for the CONNUM-specific cost data. The methodology used by AHMSA started with certain plate production costs *in total,* from which AHMSA calculated an average plate cost for all steel grades. AHMSA's cost model then attempted to differentiate grade-specific cost differences. The costs derived from the model were not representative of the more detailed costs maintained in AHMSA's normal cost accounting system, which includes grade-specific costs for different grades of steel slab.

As described in *Comment 1* above, the underlying basis for formatting AHMSA's COP/CV response should have been AHMSA's normal cost accounting system. The Department allows a respondent to deviate from its normal cost accounting system only if the normal cost accounting system does not allocate product-specific costs to the level of detail required or does not appropriately allocate costs to products, and only after consulting with representatives from the Department (*see* Questionnaire, Section D–III, Response Methodology). AHMSA deviated from its normal accounting system, and never discussed the deviation with the Department prior to filing its cost response. In its response, AHMSA claimed that it did not account for grade-specific cost differences in its accounting records; yet at verification, the Department found that in fact it did account for such differences. Therefore, the Department found AHMSA's reported product-specific costs were based on a methodology that was completely separate from AHMSA's normal cost accounting system.

Comment 4: Grade-Specific Slab Costs

AHMSA argues that it did not withhold information about its grade-specific slab costs from the verifiers. AHMSA insists that its questionnaire response at pages D–46 and D–47 indicated that the company maintains grade-specific costs for slab, but does not maintain grade-specific costs for plate. According to AHMSA, if the Department had wanted AHMSA to recalculate grade-specific plate costs using the grade-specific slab costs as the starting point, then it was incumbent upon the Department to notify AHMSA of this requirement prior to the verification. AHMSA argues that the methodology it employed to report its costs should not be considered unreasonable and inappropriate simply because the Department believes there is a more appropriate methodology for reporting costs.

Petitioners claim that AHMSA's failure to provide the standard cost build-ups prevented verification of its submitted CONNUM-specific costs. Petitioners argue that the average plate cost is a function of the standard costs that are used to produce the plate. Petitioners contend that it was imperative for the Department to review the underlying standard costs of slab to determine if the reported CONNUM-specific costs were consistent with costs actually incurred to produce the merchandise. Because AHMSA did not provide the standard cost build-ups until very late in the verification, petitioners argue the Department was deprived of its opportunity to examine the grade-specific slab costs normally maintained by AHMSA.

Department's Position: We agree with petitioners that AHMSA withheld from the Department information concerning its grade-specific slab costs. There is no record evidence supporting AHMSA's claim that AHMSA explained in its questionnaire response that grade-specific slab costs were maintained in its normal accounting system. The evidence cited to by AHMSA at pages D–46 and D–47 of its questionnaire response, where AHMSA asserts it ''notified'' the Department that the normal cost accounting system included grade-specific slab costs, reads:

> These actual costs are the costs recorded in AHMSA's plate mill cost center and include all costs incurred in prior production processes. Given AHMSA's accounting system, it is most appropriate to cost product at this level since slab is used to produce a number of different products, including many types of non-subject merchandise. Thus, the most accurate measure of the amount of slab (which is the compilation of all materials and other inputs up to that point in the production process) used to produce a ton of plate occurs at the plate mill cost center.

This cannot reasonably be construed as notification that AHMSA's normal cost accounting system included grade-specific slab costs. In fact, AHMSA's response arguably gave no indication that its normal cost accounting system was more detailed with respect to grade-specific slab costs. Had AHMSA provided the Department with a clear, complete, and accurate response to the questionnaire regarding its normal cost accounting system, we would have been able to address these concerns in a supplemental questionnaire.

Because AHMSA had described its normal cost accounting system as a standard cost system which was adjusted to actual costs through the application of variances, the verification agenda sent to AHMSA prior to the verification indicated that the Department would review the normal accounting system. This verification agenda included standard cost build-ups. The data withheld by AHMSA, and used by AHMSA in its normal accounting records, is clearly more detailed than the data submitted by AHMSA in its cost questionnaire response. Accordingly, there is no basis for AHMSA's assertion that it was obligated to use a methodology which was outside the normal cost accounting system to develop product-specific costs.

Comment 5: Reconciliation of Costs

AHMSA contends that the Department reconciled AHMSA's reported costs to its accounting system and to the audited financial statements. AHMSA explains that when the Department verifiers requested the general ledger in order to trace amounts from the trial balances, AHMSA did not understand what the Department wanted, because those specific amounts could not be seen directly in the general ledger. AHMSA acknowledges that the Department has the authority to review documentation other than that specified in the verification outline. However, AHMSA claims that it was wrong for the Department to conclude that AHMSA failed to reconcile its costs when it was able to tie its reported costs to the company's trial balances. AHMSA states that the Department's verification outline does not require that the trial balances be reconciled to the general ledger. Moreover, AHMSA contends that the statement in the verification report that the Department reconciled the total cost, which AHMSA identified as plate cost per the accounting system, to the total reported cost of manufacture (COM), refutes the Department's conclusion that AHMSA's costs could not be reconciled to its accounting records.

Petitioners disagree with AHMSA's claim that a reconciliation of its financial statement to its trial balances would be sufficient for its reported costs to verify. According to the petitioners, the verification of certain aggregate costs neither constitutes reconciliation of costs nor constitutes verification of AHMSA's CONNUM-specific plate costs.

Responding to AHMSA's claim that the agenda did not require the Department to trace the amounts from the trial balance to the general ledger, petitioners note that a company's general ledger links the individual trial balance amounts to the source documentation that substantiate the trial balance amounts. Additionally,

petitioners note that in *Toyota Motor Sales U.S.A., Inc.* v. *United States,* Slip Op. 98–95 (CIT July 2, 1998) the CIT upheld the Department's practice of using facts available when a respondent fails to provide basic accounting documentation such as expense ledgers.

Department's Position: We disagree with AHMSA's claim that a general ledger does not include amounts shown on a trial balance. To the contrary, the trial balance is simply a summary of the account balances from the general ledger. The general ledger contains transactions, and is the connection between the trial balance and the underlying source documents. Because AHMSA did not provide the general ledger, we were unable to make the connection between total amounts shown on the trial balance and the source documents.

Moreover, we disagree with AHMSA's assertion that its reported costs were reconciled to the financial statements. *See* complete discussion of this issue in *Comment 1* above. When we discovered that a significant percentage of costs were excluded from the reported costs, AHMSA attempted to distinguish total costs recorded for all products from total costs allocated to plate. *See Comment 8* below. The statement cited by AHMSA simply indicates that the total costs AHMSA allocated to plate were reconciled to the total reported COM (*i.e.,* multiplication of the reported per-unit COM and the production quantity).

Comment 6: Physical Characteristics Cost Differences

AHMSA claims that it informed the Department long before the start of the verification that its reported COP and CV amounts do not capture cost differences arising from products that undergo different levels of rolling or slitting. AHMSA contends that characteristics such as overruns vs. non-overruns, prime vs. non-prime, painted vs. non-painted, checkered vs. non-checkered, and scaled vs. non-scaled, are the same for all plate products produced by AHMSA. With respect to products of different widths and thicknesses, AHMSA contends that these cost differences are accounted for because its reported costs are calculated on a per-ton basis.

Petitioners contend that AHMSA's cost reporting methodology is inadequate because it did not reflect the level of CONNUM-specificity requested by the Department. Citing the cost verification report, petitioners state that thinner plates should incur greater costs because they require more processing. Noting that AHMSA's normal cost accounting system distinguished grade-specific slab costs, petitioners claim that AHMSA could have provided costs with greater product specificity if it had used its normal cost accounting system rather than its quarterly costing model. Additionally, petitioners state that AHMSA's failure to disclose accurately the level of product specificity maintained in its normal accounting system prevented the Department from notifying AHMSA of its response deficiency.

Department's Position: We agree with petitioners that AHMSA's cost reporting methodology inadequately accounted for CONNUM-specific cost differences. For steel grade differences, AHMSA used its cost model rather than its normal cost accounting system. *See Comment 3.* Moreover, we disagree with AHMSA's claim that its per-ton cost allocation reasonably accounts for cost differences attributable to differing widths and thicknesses. AHMSA's assertion that products with different width and thicknesses both share the same processing cost is contrary to our verification findings that thinner plate requires more processing than thicker plate. By allocating processing costs equally to all types of plate, regardless of its thickness, AHMSA significantly understated the processing cost on its thinner plate sizes.

Comment 7: Raw Material Consumption

AHMSA contends that, contrary to the conclusion of the cost verification report, the Department did in fact verify the actual materials consumption upon which AHMSA's reported costs are based. AHMSA claims that the monthly production reports included in one of the verification exhibits contains information on actual consumption of all raw material inputs used to produce plate.

Petitioners claim that AHMSA's refusal to provide the normal accounting system cost build-ups prevented the Department from verifying material costs.

Department's Position: We do not support AHMSA's claim that any number appearing on a verification exhibit is a verified number. Because AHMSA withheld standard cost build-ups which include standard usage and standard prices, we were unable to verify the consumption included in the reported costs to the consumption amounts reflected in AHMSA's normal cost accounting system.

Comment 8: Unreported Costs

In a letter submitted to the Department on June 8, 1998, AHMSA explained it found that certain depreciation and other expenses related to processes occurring prior to the plate mill cost center had been inadvertently omitted from the reported costs. AHMSA claims that the Department's verification finding of additional unreported depreciation costs was not discovered by the verifiers. Instead, AHMSA holds that the identified costs were submitted to the Department at the commencement of verification.

AHMSA maintains that it also inadvertently omitted certain fixed costs associated with these same processes. AHMSA declares that these additional unreported cost center costs were not found by the verifiers. AHMSA claims that it discovered these unreported cost centers, quantified them, and informed the Department verifiers of the missing additional fixed costs on the morning of the second day of verification. Additionally, AHMSA claims that its position is substantiated by record evidence. AHMSA contends that the omitted costs are shown in Verification Exhibit B14, AHMSA Total Cost Reconciliation, on the line ''additional fixed costs.''

Petitioners contend that the cost verification report clearly establishes that AHMSA failed to include a substantial portion of plate manufacturing costs.

Department's Position: AHMSA did not identify the cost centers in question at the onset of verification. While the Department verifiers were reviewing the cost center list and the corrections presented by AHMSA at the beginning of verification, the verifiers identified several cost centers which AHMSA had excluded from the reported costs. These cost centers relate to plate production incurred prior to the plate mill, and should have been included by AHMSA. During our review of AHMSA's cost centers, we asked AHMSA to quantify the costs incurred in those cost centers and to provide an allocation of those costs to plate. Only after we identified the cost centers and requested AHMSA to quantify the amounts, did AHMSA provide the data. The cost centers identified by the verification team were in addition to the cost centers AHMSA identified at the beginning of verification.

Comment 9: Possible Unreported Costs

AHMSA claims that the Department's assumption that there may be additional cost centers related to the production of plate which were neither included in the reported costs nor identified at verification is unwarranted. AHMSA contends that the Department could not have reconciled these costs to its accounting system if there were

additional missing fixed costs. AHMSA cites to the verification reports which states, ''We reconciled the total costs which AHMSA identified as plate cost per the accounting system, to the total reported COM (B14) * * *'' AHMSA concludes that the Department's statement that there could be other missing costs is illogical given that the Department verified its total reported COM.

Petitioners cite the verification report which states that the Department could not determine whether there were additional cost centers related to plate which were not included in the reported costs.

Department's Position: We disagree with AHMSA's statement that we performed an overall reconciliation of its total costs. As discussed in *Comment 5* above, the statement in the verification report only indicates that the total reported COMs (*i.e.*, multiplication of the per-unit COM and the production quantity) reconciled to the amounts AHMSA allocated to plate. However, it does not indicate that we were able to reconcile the total costs for all products to the total costs allocated to plate. *See Comment 1* above.

Comment 10: Comparison of Reported Costs to Standard Costs

AHMSA claims that the cost verification report incorrectly concluded that the actual costs AHMSA reported to the Department differed significantly from the standard costs reviewed by the Department at verification. Specifically, AHMSA contends that the Department's conclusion that AHMSA had understated its reported costs was erroneous based on the fact that the Department incorrectly compared the inventory cost for one discrete product to the reported average cost for all plate products. AHMSA maintains that it actually overstated its reported costs based on a comparison of the company's December 1996 average inventory value to the reported average POR plate cost.

Petitioners did not comment on this issue.

Department's Position: We disagree with AHMSA's claim that the actual costs it reported to the Department did not differ significantly from the standard costs reviewed by the Department at verification. A comparison of AHMSA's product-specific standard costs of production, as recorded in its normal accounting records for ten sampled products, to the reported per-unit costs for the same ten products, reveals significant differences in the per-unit costs between the reporting methodology and AHMSA's normal books and records (*see* Cost Verification Report at 2). This inconsistent difference in per-unit costs between its reporting methodology and its normal books and records supports the Department's contention that the cost model used by AHMSA to determine product-specific costs for its COP and CV response generated per-unit costs that differed significantly from those maintained in its normal accounting records.

Comment 11: Use of Facts Available

AHMSA contests the Department's characterization of the company as uncooperative and claims it did not withhold information. AHMSA claims to have complied with every request for information made by the Department. AHMSA notes that it submitted sales and expense data on over 25,000 home market plate sales during a 14-month period, and that it also submitted information indicating that it reported *all* home market plate sales of *all* plate products sold during the 12-month period of review and the two months following the last month in which AHMSA had sales.

As evidence of its cooperation, AHMSA notes that it reported the COP for every plate product sold in the home market during the 14-month period, which totaled over 200 different products, as well as CV information for merchandise exported to the United States.

AHMSA also notes that it allowed the Department to spend two full weeks at its Monclova, Mexico facility to verify its reported sales and cost data. AHMSA emphasizes that the submitted sales data was verified without any problems or discrepancies. AHMSA objects to the Department's statement that AHMSA failed to cooperate to the best of its ability, given the amount of information that it compiled and reported to the Department. Because AHMSA claims to have cooperated to the best of its ability, it disputes the Department's decision to apply adverse facts available in this case. Finally, as an alternative to total adverse facts available, AHMSA suggests that the Department use data contained in petitioners' sales-below-cost allegation to determine normal value. AHMSA further suggests that the Department base CV on the highest cost reported for any single plate product, and calculate a margin using the verified sales information and the highest reported cost.

Petitioners contend that the Department's practice is to use total adverse facts available in cases in which the absence of reliable cost data renders a respondent's entire response unusable. Petitioners argue that the Department's use of facts available in this case is consistent with its position in *Certain Cut-to-Length Carbon Steel Plate from Sweden: Final Results of Antidumping Administrative Review*, 62 FR 18396, 18398 (April 15, 1997).

Department's Position: Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), facts otherwise available in reaching the applicable determination. In this review AHMSA had described its normal cost accounting system as a standard cost system which was adjusted to actual costs through the application of variances. The verification agenda sent to AHMSA prior to the verification indicated that the Department would review the normal accounting system including the standard cost build-ups. As noted in the Cost Verification Report, AHMSA withheld from the Department this data which clearly indicated that its normal cost accounting system maintained more detailed costs than claimed in the cost questionnaire response (*i.e.*, the normal cost accounting system did include grade-specific costs). Therefore, AHMSA's claim that it had to use its model (a methodology which was outside the normal cost accounting system) to develop product-specific costs, was incorrect. Since AHMSA failed to provide the necessary information in the form and manner requested, and in some instances the submitted information was found to be inaccurate, we conclude that, pursuant to section 776(a) of the Act, use of facts otherwise available is appropriate.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and, to the extent practicable, shall provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department, subject to section 782(e), may disregard all or part of the original and subsequent responses, as appropriate. In this case, we were unable to inform AHMSA of its deficiency of not using its normal

accounting system to report grade-specific costs because, until verification, we relied upon AHMSA's claim that its normal standard cost accounting records did not account for grade-specific cost differences. At verification, after significant delays in providing its standard cost build-ups, we noted that AHSMA's standard cost accounting system did in fact account for grade-specific cost differences.

The Department rejects AHMSA's suggestion that we should determine normal value by relying on the data contained in the petitioners's sales-below-cost allegation. Although this information was sufficient to warrant a cost investigation, we have no assurance that petitioners' alleged costs capture all of AHMSA's costs. Because we could not confirm that the petitioners' cost allegation fully reflected AHMSA's costs, we could not determine whether sales were made above or below COP in this review. Similarly, we could not base CV on the highest cost reported by AHMSA for any single plate product because, as shown at verification, we could not verify the full extent of AHMSA's costs.

Comment 12: Use of Adverse Facts Available (FA)

AHMSA claims the Department's assertion that AHMSA failed to cooperate to the best of its ability is not supported by record evidence. Citing to the *Notice of Final Determination of Sales at Less than Fair Value: Grain-Oriented Electrical Steel from Italy,* 59 FR 33952 (July 1, 1994), AHMSA claims the Department's prior precedent suggests that despite a failed cost verification, AHMSA should not be considered uncooperative. Like the respondent in *Grain Oriented Electrical Steel from Italy,* AHMSA claims it responded to all information requests from the Department and permitted verification of its sales and cost data. Due to its degree of cooperation, AHMSA considers a determination based on total adverse FA to be unwarranted in this case.

Petitioners argue that the statute gives the Department ample discretion to draw an adverse inference where a respondent has failed to cooperate by not acting to the best of its ability. Petitioners claim that the Department could not verify AHMSA's information because AHMSA failed to provide necessary supporting documentation in a timely fashion, failed to provide CONNUM-specific costs, and omitted a significant portion of its total cost of manufacturing. Additionally, petitioners note that AHMSA submitted incomplete and erroneous responses to the Department's questionnaire.

Regarding whether the highest rate from the petition is the most appropriate adverse FA rate, petitioners cite section 776(b) of the Act, which allows the Department to use as FA information derived from a petition, a final determination, any previous administrative review, or any other information placed on the record.

Petitioners distinguish *Grain Oriented Electrical Steel from Italy* from the present case because the respondent in that case was considered cooperative, while AHMSA was determined not to have acted to the best of its ability.

Finally, citing *Notice of Final Results and Partial Rescission of Antidumping Administrative Review of Roller Chain, Other than Bicycle, from Japan,* 62 FR 60472 (November 10, 1997), petitioners note that when considering whether the FA selected are sufficiently adverse, a factor to consider is the extent to which a party may benefit from its own lack of cooperation.

Department's Position: We disagree with AHMSA's argument that the Department should not use an adverse inference in selecting FA. Section 776(b) of the Act provides that adverse inferences may be used when a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. As discussed in our positions in the comments above and in the verification report, AHMSA failed to use its normal cost accounting system to report the submitted COP and CV data and, as a result, failed to reconcile the reported costs to its normal cost accounting system. Moreover, the Department was unable to reconcile AHMSA's submitted costs to its financial statements because, among other issues, AHMSA failed to report costs from a number of relevant cost centers. Reporting of costs based on a respondent's normal books and records and reporting of all relevant costs are both central to the Department's cost questionnaire. By failing to comply with the information requests in the questionnaire and by failing to notify the Department or request assistance on these issues as instructed in the questionnaire, the Department finds that AHMSA failed to cooperate to the best of its ability. Furthermore, in certain instances, AHMSA failed to cooperate with even minimal requests for information at verification (such as presentation of its general ledger). Hence, an adverse inference is warranted.

The statute provides no clear obligation or preference for relying on a particular source in choosing information to use as adverse FA. In this case, as adverse FA we have used the highest rate from any prior segment of the proceeding, 49.25 percent. This rate was used as the best information available rate in the LTFV investigation and was based on information in the petition. As determined in *Certain Cut-to-Length Carbon Steel Plate from Sweden: Final Results of Antidumping Duty Administrative Review,* 62 FR 18396, 18398 (April 15, 1997), the Department may use as FA the final determination in the less-than-fair-value (LTFV) proceeding, even when the LTFV determination is based on best information available.

When making adverse inferences, the Statement of Administrative Action (SAA) authorizes the Department to consider the extent to which a party may benefit from its own lack of cooperation (SAA at 870). Because AHMSA's current cash deposit rate is 49.25 percent, the Department believes that assigning a 49.25 percent rate will prevent AHMSA from benefitting from its failure to respond to the Department's requests for information. Anything less than the current cash deposit rate would effectively reward AHMSA for not cooperating to the best of its ability. The cash deposit rate at the time AHMSA requested this review was 49.25 percent and we presume that the 49.25 percent rate is sufficiently adverse to induce cooperation in future segments of this proceeding. Generally in cases resulting in adverse determinations the assigned rate is greater than the current cash deposit rate. In this case, however, the only rate comparable to AHMSA's current cash deposit rate is the highest rate from the petition.

In *Grain Oriented Electrical Steel from Italy* the Department indicated that as best information available it would have used the higher of (1) the average of the margins alleged in the petition or (2) the calculated dumping margin for another respondent; however, it would not make an adverse inference that resulted in a rate lower than the current cash deposit rate for the company. Although in *Grain Oriented Electrical Steel from Italy* the Department deemed the respondent to be cooperative, despite a failed cost verification, it rejected in full the information submitted during the review and relied on the margin alleged in the petition. In this review, we also are rejecting in full the information submitted during the course of the review and instead are using the margin alleged in the petition. In contrast to *Grain Oriented Electrical Steel from Italy,* we do not consider AHMSA's efforts to comply with the

Department's requests, reflective of its ability to provide the information or its willingness to cooperate. It is not our practice to use dumping margins based on adverse FA that effectively reward a respondent's failure to cooperate to the best of its ability. Because we will not use a dumping margin based on adverse FA that is less than the current cash deposit rate, we determine the most appropriate rate to apply as adverse FA in this review is the rate from the LTFV investigation of 49.25 percent.

Comment 13: Corroboration

AHMSA states that if the Department maintains its position in the preliminary results and applies adverse FA, the Department must adequately corroborate the information. AHMSA claims that the Department took no affirmative action in the preliminary results to corroborate the information in the 1992 petition.

Petitioners consider the rate from the petition to be sufficiently probative, citing the *Final Results of Administrative Review in Certain Welded Stainless Steel Pipe from Taiwan,* 62 FR 37543 (July 13, 1997), where the Department determined that the highest margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.

Department's Position: We disagree with AHMSA's contention that the Department has not corroborated the facts available rate assigned to AHMSA. The 49.25 percent rate is based on the LTFV final determination, which in turn was based on information in the petition. Section 776(b) of the Act authorizes the Department to use as adverse FA information derived from, among other places, the petition or the final determination from the LTFV investigation. This type of information is considered secondary information. *See* SAA at 870; 19 CFR 351.308(c)(1).

Section 776(b) of the Act mandates that the Department, to the extent practicable, shall corroborate that secondary information from independent sources reasonably at its disposal. In accordance with the law, the Department, to the extent practicable, will examine the reliability and relevance of the information used. However, in an administrative review the Department will not engage in updating the petition to reflect the prices and costs that are found during the current review. Rather, corroboration consists of determining that the significant elements used to derive a margin in a petition are reliable for the conditions upon which the petition is based. With respect to the relevance aspect of corroboration, the Department will consider the information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant.

To corroborate the LTFV rate of 49.25 percent, we examined the basis of the rates contained in the petition. The U.S. price in the petition was based on actual prices from invoices, quotes to U.S. customers, and IM–145 import statistics. Additionally, the foreign market value was based on actual price quotations to home market customers, home market price lists, and published reports of domestic prices. Home market price quotations were obtained through a market research report. (*See Initiation of Antidumping Duty Investigations and Postponement of Preliminary Determinations: 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 Various Countries,* 57 FR 33488 (July 29, 1992).)

We were able to corroborate the 1991 fourth quarter average unit values listed in the petition by comparing these values to publicly available information compiled by the U.S. Census Bureau and made available by the International Trade Commission (ITC). The ITC reports quantity and value by HTS numbers. Using the same HTS numbers as listed in the petition (HTS 7208.42 and 7208.43), we divided the total quantity by the total volume for the fourth quarter 1991 and noted the average unit values were very similar to those reported in the original petition. In addition, export prices which are based on U.S. import statistics are considered corroborated. Price lists and published reports of domestic prices which support the petition margin are independent sources. With regard to the normal values contained in the petition, the Department was provided no useful information by the respondent or other interested parties and is aware of no other independent sources of information that would enable us to further corroborate the margin calculation in the petition. Furthermore, with respect to the relevance of the margin used for adverse FA, the Department stated in *Tapered Roller Bearings from Japan; Final Results of Antidumping Duty Administrative Review,* 62 FR 47454 (September 9, 1997), that it will consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse FA, the Department will disregard the margin and determine an appropriate margin. *See also Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review,* 60 FR 49567 (September 26, 1995). We have determined that there is no evidence on the record that would provide a more appropriate adverse FA rate than the petition rate.

Finally, we note that the SAA at 870 specifically states that where ''corroboration may not be practicable in a given circumstance,'' the Department may nevertheless apply an adverse inference. The SAA at 869 emphasizes that the Department need not prove that the facts available are the best alternative information. Therefore, based on our efforts, described above, to corroborate information contained in the petition, and mindful of the legislative history discussing FA and corroboration, we consider the petition margin we are assigning to AHMSA in this review as adverse facts available to be corroborated to the extent practicable.

Final Results of the Review

As a result of this review, we have determined that the following weighted-average dumping margin exists for the period August 1, 1996 through July 31, 1997:

Manufacturer/exporter	Period	Margin (percent)
AHMSA	8/1/96–7/31/97	49.25

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 normally calculate 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. Because we could not calculate a margin based on sales during the POR, and had to base the margin on adverse FA, we have determined that importer-specific duty assessments rates are not necessary for this review.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of certain CTL carbon steel plate 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 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 deposit rate for this case will continue to be 49.25 percent, the ''All Others'' rate in the LTFV investigation. These deposit requirements 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 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34 (1997). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: December 22, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–34799 Filed 12–31–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–484–801]

Electrolytic Manganese Dioxide From Greece: Notice of Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

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

ACTION: Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the antidumping duty administrative review of the antidumping duty order on electrolytic manganese dioxide from Greece. The period of review is April 1, 1997, through March 31, 1998.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Robin Gray, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3477 or (202) 482–4023, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act.

Extension of Time Limits for Preliminary Results

The Department of Commerce (the Department) has received a request to conduct an administrative review of the antidumping duty order on electrolytic manganese dioxide from Greece. On May 29, 1998, the Department initiated this administrative review covering the period April 1, 1997, through March 31, 1998.

Because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act (*see* Memorandum from Richard W. Moreland to Robert S. LaRussa, Extension of Time Limit for Administrative Review of Electrolytic Manganese Dioxide from Greece, December 30, 1998), the Department is extending the time limit for the preliminary results to April 29, 1999. The Department intends to issue the final results of review 120 days after the publication of the preliminary results. This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213 (h)(2).

Dated: December 23, 1998.

Laurie Parkhill,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 98–34800 Filed 12–31–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–818]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Sheet and Strip in Coils From the United Kingdom

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

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Rast at (202) 482–5811 or Nancy Decker at (202) 482–0196, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351, 62 FR 27296 (May 19, 1997).

Preliminary Determination

We preliminarily determine that stainless steel sheet and strip in coils (SSSS) from the United Kingdom is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of

the Tariff Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On June 30, 1998, the Department initiated antidumping duty investigations of imports of SSSS from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom. See Initiation of Antidumping Duty Investigations: Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom, 63 FR 37521, (July 13, 1998). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. On July 29, 1998, Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. (collectively ''petitioners'') filed comments proposing clarifications to the scope of these investigations. Also, from July through October 1998, the Department received numerous responses from respondents aimed at clarifying the scope of the investigations. See Memorandum to Joseph A. Spetrini, December 14, 1998.

During July 1998, the Department requested and received information from the U.S. Embassy in London to identify producers/exporters of the subject merchandise. On July 21, 1998, the Department also requested comments from petitioners, potential respondents, and the British Embassy in Washington regarding the criteria to be used for model matching purposes. On July 27, 1998, petitioners and a potential respondent, Avesta Sheffield Ltd. and Avesta Sheffield NAD, Inc. (collectively ''Avesta''), submitted comments on our proposed model matching criteria.

Also on July 24, 1998, the United States International Trade Commission (the Commission) notified the Department of its affirmative preliminary injury determination in this case.

The Department subsequently issued its antidumping questionnaire to Avesta and to Lee Steel Strip Ltd. (''Lee'') on August 3, 1998. The questionnaire was divided into five parts, in which we requested that Avesta and Lee respond to section A (general information, corporate structure, sales practices, and merchandise produced), section B (home market or third-country sales), section C (U.S. sales), and section D (cost of production/constructed value).

Avesta and Lee submitted their responses to section A of the questionnaire on September 8, 1998; Avesta's responses to sections B through D followed on September 28, 1998.

On September 8, 1998, Lee requested to be excused from being a mandatory respondent because it accounted for a minimal share of imports of subject merchandise. On September 10, 1998, petitioners stated that they did not object to Lee's request. On September 14, 1998, the Department granted Lee's request to withdraw from the investigation because of its minimal share of imports of subject merchandise (see Memorandum to Richard Weible, September 14, 1998). On September 21, 1998, the Department decided to (1) limit the examination of producers/exporters of subject merchandise, and (2) not investigate voluntary respondents in this investigation, as well as in the related investigations of Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, Mexico, South Korea, and Taiwan (see Memorandum to Joseph A. Spetrini, September 21, 1998).

Petitioners filed comments on Avesta's questionnaire responses on September 23 and October 13, 1998. We issued a supplemental questionnaire for section A to Avesta on October 9, 1998, and a supplemental questionnaire for sections B through D on October 28, 1998. Avesta responded to our supplemental questionnaire for section A on November 2, 1998, and to our supplemental questionnaire for sections B through D on November 23, 1998.

On August 28, 1998, Avesta requested that the Department exempt it from reporting certain U.S. resales of rejected merchandise. On September 4, 1998, petitioners argued that the Department should deny Avesta's request because these sales are needed for making a fair comparison of the company's U.S. and home market sales. On October 26, 1998, the Department indicated in a decision memorandum that Avesta should report these U.S. sales subject to its exclusion request. However, if the Department determines based on verification that Avesta's claims about the nature of the resales are correct, they will not be used in the final antidumping margin calculations. (See Memorandum to Joseph A. Spetrini, October 26, 1998.)

On October 6, 1998, petitioners made a timely request for a thirty-day postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Tariff Act. On October 23, 1998, we postponed the preliminary determination until no later than December 17, 1998. See Stainless Steel Sheet and Strip From Italy, France, Germany, Mexico, Japan, the Republic of Korea, the United Kingdom, and Taiwan; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations, 63 FR 56909 (October 23, 1998).

Scope of the Investigation

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing,

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

and is supplied as, for example, ''GIN6''.[5]

Period of Investigation

The period of investigation (POI) is April 1, 1997, through March 31, 1998.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to Section 735(a)(2) of the Tariff Act, on December 8 and 9, 1998, Avesta requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**, and request to extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) Avesta accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Fair Value Comparisons

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

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 Tariff 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.'' The URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. See Section 771(15) of the Tariff 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.

Transactions Investigated

For its home market and U.S. sales, Avesta reported the date of invoice as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale. Avesta stated that the invoice date best reflects the date on which the material terms of sale are established and that price and/or quantity can and do change between order date and invoice date. However, petitioners have alleged that the sales documentation indicates that the order date appears to be the date when the material terms of sale are set for the majority of Avesta's sales of SSSS. Given the relevance of petitioners comments and the nature of marketing these types of made-to-order products, petitioners claims have some merit. Consequently, on October 9 and 28, 1998, the Department requested that Avesta provide additional information concerning the nature and frequency of price and quantity changes occurring between the date of order and date of invoice. We also asked Avesta to report order date for all home market and U.S. sales and to ensure that all sales with order or invoice dates within the POI are reported. On November 2 and 23, 1998, Avesta reiterated that invoice date is the appropriate date of sale and stated that it is unable to gather the data within a reasonable period of time. Avesta did not report order date for home market sales. However, Avesta reported the order date for U.S. sales, including sales with order dates within the POI but invoices after the POI. The Department is preliminarily using the invoice date as the date of sale for both home market and U.S. sales. We intend to fully examine this issue at verification, and we will incorporate our findings, as appropriate, in our analysis for the final determination. If we determine that order confirmation is the appropriate date of sale, we may resort to facts available for the final determination to the extent that this information has not been reported.

In its September 28, 1998, response, Avesta noted that slabs, which are initially produced in the U.K., are hot-rolled outside of the U.K. (i.e., in Sweden), and then returned to the U.K. for annealing and pickling. Avesta asserts that hot-rolled merchandise, which is sold only in the home market, should be considered a product of Sweden and, thus, sales of hot-rolled merchandise should be excluded from the Department's analysis. Avesta also asserts that a small amount of merchandise reported in the U.S. and/or home market databases is: (1) hot-rolled and cold-rolled in Sweden, and then further cold-rolled, annealed and finally processed in the U.K. (affecting U.S. and home markets); and (2) hot-rolled and cold-rolled in Sweden and then further processed in the U.K. (affecting the home market). Avesta claims that this cold-rolled merchandise should also be considered a product of Sweden and, as such, it should be excluded from the Department's analysis. In Stainless Steel Plate from Sweden, we determined that hot bands rolled in Sweden from British slab are within the scope of that antidumping finding (see Memorandum to Joseph A. Spetrini, December 22, 1997, the public version of which is attached to our Preliminary Determination Analysis Memorandum, December 17, 1998). Therefore, we preliminarily determine, pending the results of verification, to exclude from our analysis (1) Avesta's hot-rolled sales, and (2) those sales of merchandise that are first cold-rolled in Sweden. The Department invites parties to submit information and comment on this issue. Interested parties are instructed to submit their comments, along with any additional supporting information, to the Department by January 7, 1998.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all products produced by the respondent covered by the description in the ''Scope of the Investigation'' section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

Level of Trade

In accordance with section 773(a)(1)(B) of the Tariff Act, to the extent practicable, we determine NV

[5] ''GIN4 Mo'', ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP it is the level of the sale from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer. If the sales being compared are at different LOTs, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the U.S. sales being compared, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act.

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

In the home market, Avesta made sales to distributors and end-users. The company claims five channels of distribution with respect to these sales: (1) mill ''super direct'' sales (i.e., sales shipped directly to affiliated and unaffiliated end-user customers and invoiced from the producing mill); (2) mill ''direct'' sales to unaffiliated distributor and end-user customers (i.e., sales shipped directly from the mill, using Avesta Sheffield Distribution Ltd. (AVSD), an affiliated sales company/ service center, as a sales agent); (3) AVSD ''service center distributor'' sales (i.e., the producing mills sell to AVSD, which resells the merchandise in original form or following further processing) ; (4) Billing Stainless, an affiliated sales company, sales (i.e., resales of offcuts and non-prime merchandise from the mills); and (5) AVSD consignment sales. Avesta claims that each channel of distribution represents a separate LOT. In the U.S. market, Avesta reported sales made to distributors and end-users, claiming three channels of distribution for these sales: (1) Mill ''direct'' sales (i.e., sales shipped directly from the mill to the unaffiliated U.S. distributor and end-user customers, using Avesta Sheffield, Inc. (ASI), an affiliated sales company, as a sales agent); (2) sales from warehouse stock which includes ASI ''master distributor'' sales; and (3) ASI consignment sales. Avesta claims two LOTs in the U.S.: (1) CEP sales; and (2) EP sales. The first channel of distribution (i.e., mill direct sales) includes both CEP and EP sales, while the other two channels of distribution (i.e., ASI master distributor and ASI consignment sales) consist solely of CEP sales. Avesta also asserts that prices charged to customers in the United States and in the United Kingdom tend to vary across channels of distribution and that these variations typically reflect differences in the selling activities performed. Avesta claims that CEP sales were made at a LOT comparable to ''super direct'' mill sales in the home market. Avesta requests that the Department make a LOT adjustment or, alternatively, grant a CEP offset to the extent ASI's CEP sales cannot be compared to sales at the same LOT.

In determining whether separate LOT actually existed in the home market, we first examined whether Avesta's sales involved different marketing stages (or their equivalent) and selling functions along the chain of distribution between Avesta and its unaffiliated customers. We found that Avesta provided no detailed narrative explanation supporting its claim that the channels of distribution represent different LOTs, nor did it explain why each of these channels represents a different stage of marketing. Normally, stages of marketing focus on whether sales are to service centers or end-users, in some instances taking into account whether or not sales are made through intermediate parties. On this basis, it appears that Avesta's mill super direct sales may be at a different stage of marketing than its other sales because these sales were sold directly from the mill to the unaffiliated customer, whereas sales through the other four channels of distribution involved an affiliated intermediary before going to the unaffiliated customer. This would indicate that Avesta has, at most, two home market LOTs, rather than five.

In further analyzing Avesta's LOT claims in the home market, we reviewed available information on the record about the company's selling functions at each marketing stage. Avesta identified 30 different selling functions (see Attachment SRA–5 of Avesta's November 2, 1998, supplemental section A response). We closely examined these functions and concluded that the following ten functions do not appear to be selling functions relevant to the Department's LOT analysis because they do not characterize significant services provided to customers: issuing purchase order confirmations; inputting orders; sending a mill certificate; sending packing lists; issuing invoices; buying coils from mills; acting as commission agent; buying merchandise on account; repacking; and issuing product brochures and data sheets. We also decided to combine several other functions because we found that they were not sufficiently different to warrant being treated as unique selling functions. Thus, we consolidated negotiating price/discounts/rebates to unaffiliated and affiliated customers and maintaining internal and external warehouses into two single categories. Similarly, we have combined several sales and marketing support functions (i.e., identifying customers, acting as mill and customer liaison, promoting new products, maintaining sales department, sales and marketing support, and developing sales strategies) into a single sales and marketing support selling function. As a result of our analysis, we concluded that Avesta performed 13 separate selling functions in its home market, rather than 30.

Next, we tested whether these selling functions are provided consistently across all five channels of distribution in the home market, finding that the following eight functions were provided across all channels of distribution: negotiating prices; performing credit checks; extending credit; collecting payment; assuming warranty obligations; maintaining inventory; arranging shipment logistics; and providing sales and marketing support. Of the remaining five selling functions, we noted the following differences: processing services are not provided on super direct and mill direct sales; warehousing services are not provided on mill direct sales; technical services and market research are not provided on Billing Stainless sales; and R&D is only provided on super direct sales.

In conclusion, while Avesta claimed differences in selling functions in connection with each channel of distribution, we find that the actual differences in selling functions between channels are relatively minor. Thus, we conclude that the company did not

adequately support these claims. Therefore, we preliminarily determine that only one LOT existed for Avesta in the home market.

In determining whether two LOTs existed in the U.S. market, as Avesta claims, we examined the selling functions performed by Avesta for both EP and CEP sales. According to Avesta, it provides no selling functions in support of its CEP sales, when the expenses associated with the sales by ASI to the unaffiliated buyer are excluded pursuant to the Department's practice. Avesta reported that the following selling functions were provided for EP sales: sales and marketing support (including negotiating prices); logistics; credit checks; credit; collecting payment; and assuming warranty obligations. Based on our analysis of the information on the record, we find that these functions were not provided for Avesta's CEP sales. Consequently, we determine that Avesta provided significantly different selling functions for its EP sales than it did on CEP sales.

In analyzing the differences between stages of marketing, we have also concluded that Avesta's EP and CEP sales are at two separate stages of marketing. See Preliminary Analysis Memorandum, December 17, 1998, a public version of which is on file in room B–099 of the main Commerce building. Based on our analysis, we have preliminarily determined that Avesta has two separate LOTs in the United States.

We next compared EP sales to home market sales to determine whether they were made at the same LOT. To perform this analysis, we compared the selling functions offered by Avesta on its EP sales to the functions performed by it on its home market sales. The information on the record indicates that, for both EP and home market transactions, Avesta performed numerous similar selling functions, such as sales and marketing support, negotiating prices, logistics, credit checks, extending credit, collecting payment and assuming warranty obligations. We also noted that there were some selling functions performed by Avesta that were not common to its EP and home market sales (e.g., inventory maintenance, processing services, R&D, warehousing, technical support and market research). We believe these differences are qualitatively and quantitatively significant. See Preliminary Analysis Memorandum, December 17, 1998. Because we compared these EP sales to home market sales at a different LOT, we examined whether a LOT adjustment may be appropriate. In this case, Avesta sold at one LOT in the home market; therefore, there is no basis upon which Avesta has demonstrated a pattern of consistent price differences between LOTs. Further, we do not have the information which would allow us to examine pricing patterns of Avesta's sales of other similar products, and there are no other respondents or other record evidence on which such an analysis could be based. Therefore, we cannot make a LOT adjustment, and a CEP offset, pursuant to section 773(a)(7)(B) of the Tariff Act, is not appropriate because these are EP sales.

Avesta requested a CEP offset in this investigation. Section 773(a)(7)(B) of the Tariff Act establishes that a CEP ''offset'' may be made when two conditions exist: (1) NV is established at a LOT which constitutes a more advanced stage of distribution than the LOT of the CEP; and (2) the data available do not provide an appropriate basis to determine a LOT adjustment. In this case, we note that for CEP sales, after excluding the expenses associated with the sales by ASI to the unaffiliated buyers in the United States, Avesta performed no services for the customer. Therefore, the differences in selling functions between home market sales and CEP sales are even greater than those described above. Because Avesta's home market sales are at a more advanced stage of distribution than its CEP sales, these sales are at a different LOT. See Preliminary Analysis Memorandum, December 17, 1998.

Because we compared these CEP sales to home market sales at a different LOT, we examined whether a LOT adjustment may be appropriate. See discussion above. Because the data available do not provide an appropriate basis for making a LOT adjustment, but the home market LOT is at a more advanced stage than the LOT of the CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Tariff Act, as claimed by Avesta. We based the CEP offset amount on the amount of home market indirect selling expenses, and limited the deduction for home market indirect selling expenses to the amount of indirect selling expenses deducted from CEP in accordance with section 772(d)(1)(D) of the Tariff Act. We applied the CEP offset to NV, whether based on home market prices or CV.

Export Price and Constructed Export Price

Avesta reported as EP transactions its sales of subject merchandise to unaffiliated U.S. customers, in which sales arrangements are negotiated with sales representatives at the U.K.-producing mill, although paperwork, invoicing, and shipment are handled by ASI. For EP sales, Avesta has claimed that the prices are negotiated by sales representatives in the United Kingdom before importation into the United States, and the products were shipped directly to the customer through ASI without being introduced into U.S. inventory. Avesta reported as CEP transactions its sales of subject merchandise sold to ASI for its own account. ASI then resold the subject merchandise to unaffiliated customers in the United States.

We calculated EP, in accordance with section 772(a) of the Tariff Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted, based on the facts of record. We based EP on the packed, delivered, duty paid price to unaffiliated purchasers in the United States. We made deductions for freight charged to the customer and other movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, freight charged to the customer (the amount included in reported gross unit price), foreign inland freight, foreign inland insurance, international freight, marine insurance, U.S. inland freight, U.S. inland insurance, unloading charges, U.S. duty, and foreign and U.S. brokerage and handling.

We calculated CEP, in accordance with subsection 772(b) of the Tariff Act, for those sales made by ASI to unaffiliated purchasers in the United States. We based CEP on the packed, delivered, duty paid prices to unaffiliated purchasers in the United States. We made adjustments for discounts and rebates, where applicable. We also made deductions for freight charged to the customer and other movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, foreign inland insurance, international freight, marine insurance, U.S. inland freight, U.S. warehousing, U.S. inland insurance, unloading charges, U.S. duty, and foreign and U.S. brokerage and handling. In accordance with section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs, warranty expenses), inventory carrying costs, and indirect selling expenses. In accordance with section 772(d)(2) of the Tariff Act, we deducted the cost of further manufacturing (slitting costs). For CEP sales, we also made an adjustment for

profit in accordance with section 772(d)(3) of the Tariff Act.

Normal Value

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

Affiliated-Party Transactions and Arm's-Length Test

Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102. To test whether these sales were made at arm's-length prices, we compared, on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062, 37077 (July 9, 1993); Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil, 63 FR 59509 (Nov. 8, 1998), citing to Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Cost of Production Analysis

Based on a cost allegation filed by petitioners, the Department found reasonable grounds to believe or suspect that Avesta's sales of the foreign like product were made at prices which represent less than the cost of production (COP). See section 773(b)(2)(A) of the Tariff Act. As a result, the Department has initiated an investigation to determine whether the respondent made home market sales during the POI at prices below their respective COPs, within the meaning of section 773(b) of the Tariff Act. (See Initiation, 63 FR 37521, July 13, 1998).

In accordance with section 773(b)(3) of the Tariff Act, we calculated COP based on the sum of Avesta's cost of materials and fabrication for the foreign like product, plus an amount for G&A, interest expenses, and packing costs. In addition, on a transaction specific basis, we added to COP, tolling costs for slitting work done by an unaffiliated party.

We used the information from Avesta's section D questionnaire responses to calculate COP. We compared the weighted-average COP for Avesta to home market sales prices of the foreign like product, as required under section 773(b) of the Tariff Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made (i) in substantial quantities over an extended period of time, and (ii) at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared COP to home market prices, less any applicable movement charges, billing adjustments, and discounts and rebates.

Pursuant to section 773(b)(2)(C)(i) of the Tariff Act, where less than twenty 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 twenty percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities, in accordance with section 773(b)(2)(C)(i) of the Tariff Act. In addition, we determined that such below-cost sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Tariff Act. In such cases, pursuant to section 773(b)(2)(D) of the Tariff Act, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time. 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 and relied on similar merchandise to match, if available (*see CEMEX v. United States,* 1998 WL 3626 (Fed. Cir.)).

Our cost test for Avesta revealed that less than twenty percent of Avesta's home market sales of certain products were at prices below Avesta's COP. We retained all such sales in our analysis. For other products, more than twenty percent of Avesta's sales were at below-cost prices. In such cases we disregarded the below-cost sales, while retaining the above-cost sales for our analysis. See Preliminary Determination Analysis Memorandum, December 17, 1998.

Constructed Value

In accordance with section 773(e)(1) of the Tariff Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, interest expenses, and profit. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A and profit on the amounts incurred and realized by Avesta in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. We used the CV data Avesta supplied in its section D questionnaire responses.

Price-to-Price Comparisons

We calculated NV based on FOB or delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length prices. We made adjustments for billing adjustments and discounts and rebates. We made deductions, where appropriate, for foreign inland freight, warehousing, and inland insurance, pursuant to section 773(a)(6)(B) of the Tariff Act. In addition, we made adjustments for differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses and warranties. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with

section 773(a)(6)(A) and (B) of the Tariff Act.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. In accordance with section 773(a)(2)(A) of the Tariff Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the United Kingdom. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. When we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

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, in accordance with section 773A(a) of the Tariff Act.

Verification

As provided in section 782(i) of the Tariff Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Tariff Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percentage)
Avesta Sheffied	13.45
All Others	13.45

Commission Notification

In accordance with section 733(f) of the Tariff Act, we have notified the Commission of our determination. If our final determination is affirmative, the Commission will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of stainless steel sheet and strip in coils are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Tariff Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. See 19 CFR 351.310(c). If this investigation proceeds normally, we will make our final determination by no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Tariff Act.

Dated: December 17, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–34460 Filed 12–31–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Stainless Steel Sheet and Strip in Coils From Germany

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

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Ranado, Robert James, or Stephanie Arthur at (202) 482–3518, (202) 482–5222 or (202) 482–6312, respectively, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Applicable Statute and Regulations:

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (May 19, 1998).

Preliminary Determination

We preliminarily determine that stainless steel sheet and strip in coil (SSSS) from Germany is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On June 30, 1998, the Department initiated antidumping duty investigations of imports of SSSS from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom. *See Initiation of Antidumping Duty Investigations: Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom*, 63 FR 37521 (July 13, 1998) (*Initiation*). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. Between July and October 1998, Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation (formerly Lukens, Inc.), the United Steelworkers of America, AFL–CIO/CLC, the Butler Armco Independent Union and the Zanesville Armco Independent Organization, Inc. (collectively, petitioners) filed comments proposing clarifications to the scope of these investigations. Also, from July through October 1998, the Department received numerous responses from respondents aimed at clarifying the scope of the investigations.

During July 1998, the Department requested information from the U.S. Embassy in Germany to identify producers/exporters of the subject merchandise. On July 21, 1998, the Department also requested comments from petitioners, two potential respondents, Krupp Thyssen Nirosta GmbH (KTN), and Stahlwerk Ergste Westig GmbH (Ergste), and the Embassy of Germany in Washington regarding the criteria to be used for model matching purposes. On July 27, 1998, KTN and petitioners submitted comments on our proposed model-matching criteria.

Also on July 24, 1998, the United States International Trade Commission (the Commission) notified the Department of its affirmative preliminary injury determination in this case.

The Department subsequently issued antidumping questionnaires to KTN and Ergste on August 3, 1998. The questionnaire is divided into five parts; we requested that KTN and Ergste respond to Section A (general information, corporate structure, sales practices, and merchandise produced), Section B (home market or third-country sales), Section C (U.S. sales), and Section D (cost of production/constructed value).

On August 21, 1998, Ergste wrote the Department requesting that it be exempt from the investigation due to the fact that it was a small German producer ''accounting for a minimal share of imports of subject merchandise from Germany, a sub-minimal portion of all imports, and a microscopic part of U.S. apparent consumption.'' Ergste's August 21, 1998 submission at 1 and 2. On September 3, 1998, petitioners submitted a letter to the Department stating that it did not object to Ergste's withdrawal request. Therefore, due to its negligible imports during the period of investigation (POI) and because petitioners agreed to the request, on September 9, 1998, we consented to Ergste's request to be excused as a mandatory respondent in the investigation (*see* Germany Respondent Selection Memo For Richard Weible, September 9, 1998).

KTN submitted its response to section A of the questionnaire on September 8, 1998; KTN's responses to sections B through D followed on September 29, 1998. Petitioners filed comments on KTN's questionnaire responses in September and October 1998. We issued the following supplemental questionnaires: (i) Section A to KTN on October 9, 1998; (ii) Sections B and C on October 27, 1998; and, (iii) Section D on November 2, 1998. KTN responded to our Section A supplemental on October 23, 1998, and to Sections B through D on November 16, 1998.

On October 6, 1998, petitioners made a timely request for a thirty-day postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Tariff Act. The Department determined that these concurrent investigations warranted the thirty-day postponement requested by petitioners. On October 23, 1998, we postponed the preliminary determination until no later than December 17, 1998. *See Stainless Steel Sheet and Strip in Coils From Italy, France, Germany, Mexico, Japan, South Korea, the United Kingdom, and Taiwan; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations*, 63 FR 56909 (October 23, 1998).

Scope of the Investigation

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades.

See Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[5]

Period of Investigation

The period of investigation (POI) is April 1, 1997 through March 31, 1998.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to Section 735(a)(2) of the Tariff Act, on December 16, 1998, KTN requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) KTN

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Affiliation

We have preliminarily determined that KTN is affiliated with Thyssen Stahl and Thyssen AG (Thyssen). Section 771(33)(E) provides that the Department shall consider companies to be affiliated where one company owns, controls, or holds, with the power to vote, five percent or more of the outstanding shares of voting stock or shares of any other company. Where the Department has determined that a company directly or indirectly holds a five percent or more equity interest in another company, the Department has deemed these companies to be affiliated.

We have preliminarily determined that KTN is affiliated with Thyssen and Thyssen Stahl because Thyssen Stahl indirectly owns and controls through KTS forty percent of KTN's outstanding stock and Thyssen, which wholly owns Thyssen Stahl, likewise indirectly owns and controls forty percent of KTN. We examined the record evidence to evaluate the nature of KTN's relationship with Thyssen Stahl and Thyssen. KTN's Section A Questionnaire Response dated September 8, 1998, states that KTN is a wholly-owned subsidiary of KTS. KTS formed a subsidiary entity KTN in 1997 with the intention that KTN would handle the stainless steel production business managed and operated by its parent company KTS. The supporting exhibits to this submission confirm Thyssen Stahl's interest in KTS and KTS's 100-percent shareholder interest in KTN. In its September 8 submission, respondent states that KTS is a joint venture owned sixty percent by Fried. Krupp AG Krupp-Hoesch (Krupp) and forty percent by Thyssen Stahl. In a submission dated October 20, 1998, the petitioners placed on the record publicly available data that confirmed not only the foregoing shareholding interests, but also confirmed that Thyssen Stahl is a wholly-owned subsidiary of Thyssen. Consequently, Thyssen, through Thyssen Stahl and KTS, indirectly owns a 40 percent interest in KTN. Therefore, KTN, as the wholly-owned subsidiary of the joint venture entity KTS, is affiliated with the joint venturer Thyssen Stahl and its parent company Thyssen pursuant to section 771(33)(E). *See Steel Wire Rod From Sweden*, 63 FR 40499, 40453 (July 29, 1998) (*Sweden*).

In addition, we have preliminarily determined that KTN is affiliated with Thyssen and its U.S. and home market affiliates. Section 771(33)(F) provides that the Department shall consider companies to be affiliated where two or more companies are under the common control of a third company. The statute defines control as being in a position to legally or operationally exercise restraint or direction over the other entity. Actual exercise of control is not required by the statute. In this investigation, the nature and quality of corporate contact necessitate a finding of affiliation vis-a-vis the common control mechanism.

Section 771(33)(F) and the Department's determinations in *Certain Cut-to-Length Carbon Steel Plate From Brazil*, 62 FR 18486, 18490 (April 15, 1997) and *Sweden* at 40452, support a finding that KTN and Thyssen's other affiliates are under the common control of Thyssen and, therefore, KTN is affiliated with Thyssen's other affiliates in both the home and U.S. markets. The record facts show that Thyssen, as the majority equity holder and ultimate parent company to its various affiliates, is in a position to exercise direction and restraint over the Thyssen affiliates' production and pricing. The record evidence also shows that Thyssen indirectly holds a substantial equity interest in KTN, plays a significant role in KTN's operations and management, and therefore is in a position to legally and operationally exercise direction and restraint over KTN (*see* Memorandum to Joseph Spetrini, KTN Affiliation, December 16, 1998) (Affiliation Memo). The evidence, taken as a whole, indicates that Thyssen has several potential avenues for exercising direction and restraint over KTN's production, pricing and other business activities. In sum, Thyssen's substantial equity ownership in KTN and Thyssen's other affiliates, in conjunction with the ''totality of other evidence of control'' requires a finding that these companies are under the common control of Thyssen.

Finally, notwithstanding KTN's November 23 and 25 submissions, we note that KTN to date has failed to place rebuttal evidence on the record which addresses whether Thyssen's other affiliates are affiliated with KTN. The Department on three separate occasions issued questionnaires requesting more information from KTN. Despite three Department requests for information on affiliation, and KTN's repeated assurances that it would provide the Department with its factual and legal analysis of this issue, it has yet to comply with these statements and to provide the Department with this information. Therefore, the Department preliminarily determines that pursuant to section 776(a) of the Tariff Act that the use of partial facts otherwise available is necessary to determine whether KTN is affiliated with Thyssen's other affiliates that act as steel service centers in the home and U.S. markets (*see* Affiliation Memo). Accordingly, the Department has preliminarily determined that the record evidence establishes that KTN is affiliated under section 771(33)(F) with these service centers because they are under the common control of Thyssen.

Facts Available

In accordance with section 776 of the Tariff Act, in these preliminary results we have used partial facts available in one instance where KTN failed to provide us with certain sales information concerning KTN's reseller sales in the U.S. and home market.

On August 3, 1998, the Department issued to KTN its standard antidumping questionnaire. That questionnaire explicitly instructed KTN to report affiliates' resales to unaffiliated customers rather than its sales to affiliates. We also directed KTN to contact the agency official in charge if the sales to affiliated parties represented a ''relatively small part'' of its total sales, or if KTN was unable to collect the necessary information. Our October 9, 1998 section A supplemental questionnaire reiterated this instruction (*see*, question 1.c) and further instructed KTN to report the sales of subject merchandise in the home and U.S. market *by* the various subsidiaries of Thyssen identified in KTN's section A questionnaire response (*see* question 2.d). Finally, on October 27, 1998, Department personnel contacted KTN's counsel and once again requested a detailed explanation of KTN's reporting methodology concerning its sales to affiliated and unaffiliated customers. During that conversation we instructed KTN to report the downstream sales of certain affiliates and, if unable to do so, required KTN to provide the Department with a detailed explanation as to why it was unable to report such sales (*see* Memorandum to the File, Affiliated Party Sales, October 28, 1998).

On October 28, 1998, KTN submitted comments regarding its downstream sales. KTN submitted additional information regarding such sales on November 4, 1998. KTN indicated in both of its submissions that, per the Department's instructions, it intended to

report downstream sales information by certain home market affiliates and U.S. affiliated resellers, but for numerous other reasons, it did not intend to report its remaining affiliates' reseller sales.

After a thorough review of the record the Department notified KTN that it was still required to report downstream and reseller sales by additional home market and U.S. affiliates (*see* Memorandum to the File, Downstream Sales, November 6, 1998). Further, on November 6, 1998, KTN wrote the Department requesting an extension of time in which to submit a response to sections B and C of the Department's questionnaire, which the Department granted in full.

A review of KTN's November 16, 1998, section B and C supplemental responses indicated that KTN failed to report certain affiliated reseller sales information requested by the Department. On November 17, 1998, we issued a letter to KTN stating that if the information requested was not submitted by November 23, 1998, the Department would apply adverse facts available to KTN's unreported downstream and reseller sales. On November 23, 1998, KTN submitted additional affiliated reseller sales information, but failed to provide the Department with a majority of the requested downstream and reseller sales information. KTN did not submit downstream sales information for its home market affiliates in question, and submitted inaccurate reseller information for its affiliated U.S. resellers. Specifically, for the expenses incurred *by* certain of its U.S. subsidiaries, KTN reported the amount it incurred when selling *to* certain of its resellers instead of the amount of expenses incurred *by* certain of its resellers when selling to unaffiliated U.S. customers.

Therefore, we preliminarily determine that, pursuant to section 776(b) of the Tariff Act, it is appropriate to make an inference adverse to the interests of KTN because it failed to cooperate by not fully responding to the Department's request for specific information. The Department is authorized, under section 776(b) of the Tariff Act, to use an inference that is adverse to the interest of a party if the Department finds that the party has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. We examined whether KTN had acted to the best of its ability in responding to our requests for information. Based on the details listed above, we have preliminarily determined that KTN had sufficient time to prepare the requested information. As mentioned above, both our antidumping questionnaire and subsequent supplemental questionnaires explicitly directed KTN to report its downstream sales in the home market and affiliated reseller's sales in the United States. While we did eventually conclude that KTN was not required to report certain resales by certain affiliates, from the time of our initial questionnaire, it was required to gather all affiliated reseller information. As a result, we have calculated the highest normal value (NV) reported by control number (CONNUM) in KTN's home market database and applied it to KTN's sales *to* its affiliates for which KTN did not report home market downstream sales. For sales by KTN's affiliated U.S. resellers for which expenses were incorrectly reported, we identified the highest value for each U.S. expense from KTN's U.S. database and applied this highest value to all of KTN's reseller expenses that were incorrectly reported. *See* KTN Preliminary Analysis Memorandum, December 17, 1998, a copy of which is on file in room B–099 of the main Commerce building.

Fair Value Comparisons

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

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 Tariff 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 Tariff 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 Tariff Act, we considered all products sold in the home market as described in the ''Scope of Investigation'' 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, 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.

Transactions Investigated

For its home market and U.S. sales, KTN reported the date of invoice as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale. KTN stated that the invoice date best reflects the date on which the material terms of sale are established and that price and/or quantity can and do change between order date and invoice date. However, petitioners have alleged that the sales documentation indicates that the order date appears to be the date when the material terms of sale are set for the majority of KTN's sales of SSSS. Given the relevance of petitioners comments and the nature of marketing these types of made-to-order products, petitioners claims have some merit. Consequently, on October 9, 1998, the Department requested that KTN provide additional information concerning the nature and frequency of price and quantity changes occurring between the date of order and date of invoice. We also asked KTN to report order date for all home market and U.S. sales and to ensure that all sales with order or invoice dates within the POI are reported. On November 16, 1998, KTN reported the order date for its home market sales including sales with order dates within the POI but invoices after the POI. With respect to KTN's U.S. sales, on December 4, 1998, KTN reported order date for sales through its wholly-owned U.S. subsidiary, Krupp Hoesch Steel Products (KHSP), but failed to report order date for sales through its other affiliated resellers. However, in both submissions KTN reiterated that invoice

date is the appropriate date of sale. The Department is preliminarily using the invoice date as the date of sale for both home market and U.S. sales. We intend to fully examine this issue at verification, and we will incorporate our findings, as appropriate, in our analysis for the final determination. If we determine that order confirmation is the appropriate date of sale, we may resort to facts available for the final determination to the extent that this information has not been reported.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the US LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

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

In implementing these principles in this review, we asked KTN to identify the specific differences and similarities in selling functions and/or support services between all phases of marketing in the home market and the United States. KTN identified five channels of distribution in the home market: (1) direct factory (2) inventory sales (3) second quality sales (4) further processed sales, and (5) precision strip sales. For all channels, KTN performs similar selling functions such as negotiating prices with customers, setting similar credit terms, arranging freight to the customer, and conducting market research and sales calls. The remaining selling activities did not differ significantly by channel of distribution. Because channels of distribution do not qualify as separate levels of trade when the selling functions performed for each customer class or channel are sufficiently similar, we determined that one level of trade exists for KTN's home market sales.

For the U.S. market, KTN reported four channels of distribution: 1) back-to-back CEP sales made through KHSP; 2) consignment CEP sales made through KHSP; 3) ''second'' quality CEP sales made through KHSP; and 4) factory direct EP sales. However, for CEP transactions, the Department examines the selling functions at the level of the constructed sale from the exporter to the importer (*i.e.*, the sale from Krupp Nirosta Export (KTN's home market affiliate) in Germany to KHSP). These selling functions included negotiating prices with customers, offering technical advice, arranging delivery services, providing after-sale warranties, and conducting market research and/or sales calls. We found that KTN provided a greater degree of these services on its factory-direct sales (channel 4) than it did on its CEP sales to KHSP (channels 1 through 3), and that the selling functions were sufficiently different between sales to these customers to support a finding of two separate LOTs. Furthermore, we determined that KTN's sales through channel 4 were at a different stage of distribution than were its sales through KHSP. Therefore, we have determined that two LOTs exist in the United States, notwithstanding KTN's claim that it sold through four channels. *See* KTN Preliminary Analysis Memorandum.

When we compared EP sales (*i.e.*, factory-direct sales) to home market sales, we determined that both sales were made at the same LOT. For both EP and home market transactions, KTN sold directly to the customer, and provided similar levels of price negotiations, freight arrangements, sales calls, market research, advertising, after-sales service warranties, and technical services. For CEP sales, KTN performed fewer price negotiations, freight arrangements, sales calls, market research, and after-sales service warranties. In addition, the differences in selling functions performed for home market and CEP transactions indicates that home market sales involved a more advanced stage of distribution than CEP sales. *See Id.*

Because we compared CEP sales to HM sales at a different level of trade, we examined whether a LOT adjustment may be appropriate. In this case KTN sold at one LOT in the home market; therefore, there is no basis upon which to determine whether there is a pattern of consistent price differences between levels of trade. Further, we do not have the information which would allow us to examine pricing patterns of KTN's sales of other similar products and there is no other record evidence upon which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a LOT adjustment but the LOT in Germany for KTN is at a more advanced stage than the LOT of the CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Tariff Act, as claimed by KTN. We based the CEP offset amount on the amount of home market indirect selling expenses, and limited the deduction for HM indirect selling expenses to the amount of indirect selling expenses deducted from CEP in accordance with section 772(d)(1)(D) of the Tariff Act. We applied the CEP offset to NV, whether based on home market prices or CV. *See* KTN Preliminary Analysis Memorandum.

Export Price and Constructed Export Price

KTN reported as EP transactions certain sales of subject merchandise sold to unaffiliated U.S. customers prior to importation without the involvement of its affiliated company, KHSP. KTN reported as CEP transactions its sales of subject merchandise sold to KHSP for its own account. KHSP then resold the subject merchandise after importation to unaffiliated customers in the United States.

Also, because KTN was unable to demonstrate that it was not in the position to collect downstream sales information from its U.S. affiliates, based on record evidence, we requested that KTN report its downstream sales made in the United States (*see* Memorandum To Richard Weible, Limited Reporting of Home Market and United States Sales, November 13, 1998) (Limited Reporting).

We calculated EP, in accordance with section 772(a) of the Tariff Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted, based on the facts of record. We based EP on the packed, delivered tax and duty unpaid price to

unaffiliated purchasers in the United States. We made deductions for billing adjustments and movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight and foreign inland insurance.

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

With respect to subject merchandise to which value was added in the United States by KTN prior to sale to unaffiliated customers, we deducted the cost of further manufacturing in accordance with section 772(d)(2) of the Tariff Act. Also, KTN's further manufacturer calculated a ratio specific to stainless steel processing, rather than a company-wide G&A rate. We recalculated a company-wide G&A rate by dividing total G&A expense by total processing costs. See Calculation Memo of the Office of Accounting to the File, dated December 1, 1998 (Calculation Memo).

Affiliated-Party Transactions and Arm's-Length Test

Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). In instances where no price ratio could be calculated for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1993) and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Emulsion Styrene-Butadiene Rubber from Brazil,* 63 FR 59509, 59512 (November 4, 1998). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Normal Value

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

Cost of Production (COP) Analysis

Based on a cost allegation filed by the petitioners, the Department found reasonable grounds to believe or suspect that KTN's sales of the foreign like product were made at prices which represent less than the cost of production. *See* section 773(b)(2)(A) of the Tariff Act. As a result, the Department has initiated an investigation to determine whether the respondent made home market sales during the POI at prices below their respective COPs, within the meaning of section 773(b) of the Tariff Act (*see Initiation*).

We calculated the COP based on the sum of the respondents 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 Tariff Act. We relied on the home market sales and COP information provided except in the following circumstances.

1. Affiliated Purchases

In accordance with section 773(f)(2) of the Tariff Act, a transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.

Because a COP investigation is being conducted in this case, the Department requested in its Section D questionnaire of September 29, 1998 and in its supplemental questionnaire of November 2, 1998 that KTN provide both COP and market prices for each of the inputs obtained from affiliates.

For our preliminary determination in this investigation, we used the market prices provided by KTN. However, to the extent that the amounts paid to affiliated suppliers did not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration, we adjusted the affiliated-party per-unit price to the higher of (i) the actual transfer price or (ii) the average price paid to unaffiliated suppliers of the same inputs. *See* Calculation Memo at 1 and Attachment 2.

2. General and Administrative Expenses

In calculating general and administrative (G&A) expenses in its response, KTN subtracted several revenue items from its G&A expense. Also, KTN subtracted from the denominator used to calculate its G&A expense ratio (*i.e.,* total cost of manufacturing) amounts for international projects, year-end adjustments and personnel costs.

Because KTN did not provide explanations as to the sources of these deductions or supporting documentation, the Department is unable to determine whether such items should be included in the G&A rate. Therefore, for purposes of this preliminary determination we disallowed its claimed offsets. *See* Calculation Memo.

3. Financial Expense

In calculating the net financial expenses in its response, KTN included total financial income as a reduction to its financial expense. Because KTN did not provide any documentation supporting the nature of the income or its long term or short term portions, we disallowed its claimed offset. *See* Calculation Memo.

Where possible, we used KTN's reported COP amounts, adjusted as discussed above, to compute weighted-average COPs during the POI. We compared the product-specific weighted-average COP figures to home market sales of the foreign like product, as required under section 773(b) of the Tariff Act, in order to determine whether these sales had been made at prices below COP. We compared the COP to the home market prices, less any applicable movement charges and discounts.

In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made (i) in substantial quantities over an extended period of time, and (ii) at prices which permitted the recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C)(i) of the Tariff Act, where less than twenty percent of KTN'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 twenty percent or more of its sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time, in accordance with sections 773(b)(2)(B) and 773(b)(2)(C)(i) of the Tariff Act. Because we used POI average costs, pursuant to section 773(b)(2)(D) of the Tariff Act, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time. 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. In the event that there were no home market sales of identical or similar merchandise in the home market available to match to U.S. sales, we compared the CEP to CV in accordance with section 773(a)(4) of the Tariff Act.

Our cost test for KTN revealed that less than twenty percent of KTN's home market sales of certain products were at prices below KTN's COP. Therefore, we retained all such sales in our analysis. For other products, more than twenty percent of KTN's sales were at below-cost prices. In such cases we disregarded the below-cost sales, while retaining the above-cost sales for our analysis. *See* KTN Preliminary Analysis Memorandum.

Constructed Value

In accordance with section 773(e)(1) of the Tariff Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, interest expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A and profit on the amounts incurred and realized by KTN in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. We used the CV data KTN supplied in its section D supplemental questionnaire response, except for the adjustments that we made for COP above.

Price-to-Price Comparisons

We calculated NV based on FOB or delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length prices. We made adjustments for price billing errors, where appropriate. We made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Tariff Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Tariff Act.

To the extent practicable, we based NV on sales at the same level of trade as the EP or CEP transactions. Finally, because KTN's sales to its home market affiliates represented more than five percent of its total home market sales, for certain of its home market affiliates we requested that KTN report its affiliates downstream sales (*e.g.*, sales made by the affiliate). See Limited Reporting.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

Preliminary Determination of Critical Circumstances

On October 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of SSSS. In accordance with 19 CFR 351.206(c), since these allegations were filed earlier than the deadline for the Department's preliminary determination, we must issue our preliminary critical circumstances determination not later than the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

1. History of Dumping or Importer Knowledge of Dumping

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with Section 733(e)(1)(A)(i), the Department considers evidence of an existing antidumping order on the subject merchandise from the country in question in the United States or elsewhere to be sufficient. We are not aware of any antidumping orders on SSSS from Germany.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling SSSS at less than fair value, the Department normally considers margins of 15 percent or more on CEP sales or 25 percent or more on EP sales to provide a basis for imputing knowledge. *See, e.g., Preliminary Critical Circumstances Determination: Honey From the People's Republic of China (PRC),* 60 FR 29824 (June 6, 1995) (*Honey from the PRC*) and *Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Rotors From the People's Republic of China,* 62 FR 9160, 9164 (February 28, 1997) .

Since KTN's margin in our preliminary determination for SSSS is equal to or greater than 15 percent, we have imputed knowledge of dumping to importers of subject merchandise from this exporter.

2. Importer Knowledge of Material Injury

Pursuant to the URAA, and in conformance with the WTO Antidumping Agreement, the statute now includes a provision requiring the Department, when relying upon section 735(a)(3)(A)(ii), to determine whether the importer knew or should have known that there would be material injury by reason of the less than fair value sales. In this respect, the preliminary finding of the International Trade Commission (ITC) is instructive, especially because the general public, including importers, is deemed to have notice of that finding as published in the **Federal Register**. If, as in this case, the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there would be material injury by reason of dumped imports during the critical circumstances period—the 90-day period beginning with the initiation of the investigation. *See* 19 CFR 351.206(i).

Accordingly, we find that the importers either knew, or should have known, that the imports of SSSS were being sold at less than fair value and that there was likely to be material injury by reason of such sales.

3. Massive Imports

When examining the trade data on volume and value, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Pursuant to 19 CFR 351.206(h)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports to have been ''massive.'' In addition, the regulations allow for the adjustment of the base and comparison periods where the availability of the data and the commercial realities of the marketplace so dictate.

We have examined the increase in import volumes from April-June 1998 as compared to July-September 1998 and have found that imports of SSSS in coils from Germany increased by 67.74 percent (*see* KTN Preliminary Analysis Memo). Therefore, we determine that there have been massive imports of stainless steel sheet and strip in coils from Germany over a relatively short period of time.

4. KTN's Results

Based on the ITC's preliminary determination of material injury, the massive increases in imports noted above, and KTN's margins, which were greater than 15 percent for CEP sales, the Department preliminarily determines that critical circumstances exist for KTN.

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, in accordance with section 773A(a) of the Tariff Act.

Verification

As provided in section 782(i) of the Tariff Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Tariff Act, we are directing Customs to suspend liquidation of all imports of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin
Krupp Thyssen Nirosta GmbH	21.34%
All others	21.34%

Commission Notification

In accordance with section 733(f) of the Tariff Act, we have notified the Commission of our determination. If our final determination is affirmative, the Commission will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of stainless steel sheet and strip in coils are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Tariff Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c). We intend to issue our final determination in this investigation no later than 135 days

after the publication of this notice in the **Federal Register**.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Tariff Act.

Dated: December 17, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–34461 Filed 12–31–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Sheet and Strip in Coils From Taiwan

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

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy (Chang Mien), Doreen Chen (Tung Mung), Gideon Katz (YUSCO) or Michael Panfeld, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0165, (202) 482–0408, (202) 482–5255, and (202) 482–0172, respectively.

THE APPLICABLE STATUTE: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

PRELIMINARY DETERMINATION: We preliminarily determine that stainless steel sheet and strip in coils (''SSSS'') from Taiwan is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On July 13, 1998, the Department initiated antidumping duty investigations of imports of SSSS from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom. *See Initiation of Antidumping Duty Investigations: Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom*, 63 FR 37521, (July 13, 1998) (''*Initiation*''). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. On July 27, 1998, petitioners, Allegheny Ludlum Corporation, Armco Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation (formerly Lukens, Inc.), the United Steelworkers of America, AFL–CIO/CLC, the Butler Armco Independent Union, and the Zanesville Armco Independent Organization, Inc., filed comments proposing clarifications to the scope of these investigations. From July October, 1998, the Department received numerous responses from respondents aimed at clarifying the scope of the investigations. *See* Memorandum for Joseph A. Spetrini, Scope Issues, dated December 14, 1998.

On July 31, 1998, the Department requested information from the American Institute in Taiwan (''AIT'') to identify producers/exporters of the subject merchandise. On August 2, 1998, AIT responded to the Department's request for information. On July 27 and July 28, 1998, petitioners and Yieh United Steel Corporation (YUSCO), respectively, submitted comments on our proposed model matching criteria.

On July 24, 1998, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination in this case. On August 3, 1998, the Department issued antidumping questionnaires to YUSCO, Chia Far Industrial Factory Co., Ltd. (''Chia Far''), Tang Eng Iron Works Co., Ltd. (''Tang Eng''), Tung Mung Development Co., Ltd. (''Tung Mung''), Ta Chen International (''Ta Chen''), and Chang Mien Industries, Co., Ltd. (''Chang Mien''). On September 21, 1998, the Department selected YUSCO and Tung Mung (collectively ''respondents'') as respondents in this investigation. On November 3, 1998, the Department amended its decision to include Chang Mien as a mandatory respondent. *See* ''Selection of Respondents,'' below.

On September 8, 1998, we received the section A questionnaire response from Chang Mien. On September 21, 1998, we received sections B, C, and D of the questionnaire from Chang Mien. Petitioners filed comments on Chang Mien's questionnaire responses on September 24, and November 12, 1998. We issued supplemental questionnaires for sections A, B, C and D to Chang Mien on November 13, 1998, and December 3, 1998, and received responses to these questionnaires on November 27, 1998 and December 10, 1998. Additionally, on December 4, 1998, petitioners submitted comments concerning adjustments that the Department should make in its preliminary determination.

On September 8, 1998, we received the section A questionnaire response from Tung Mung. On September 24, 1998, we received sections B, C, and D of the questionnaire from Tung Mung. Petitioners filed comments on Tung Mung's questionnaire responses on September 24, and October 16, 1998. We issued a supplemental questionnaire for sections A, B, C and D to Tung Mung on October 26, 1998, and received responses to this questionnaire on November 12, 1998. On November 18, 1998, we requested that Tung Mung report the date or order, which Tung Mung describes as ''initial estimates,'' and also requested that Tung Mung ensure that all those home market sales for which ''initial estimates'' were finalized during the period of the investigation are included in the revised home market sales listing. On December 2, Tung Mung provided the requested information.

On September 8, 1998, we received the section A questionnaire response from YUSCO. On September 25, 1998, we received sections B and C of the questionnaire, and on September 28, 1998, we received section D of the questionnaire from YUSCO. Petitioners filed comments on YUSCO's questionnaire responses on September 25, 1998 and October 19, 1998. We issued a supplemental questionnaire for sections A, B, and C to YUSCO on October 26, 1998, and received a response to this questionnaire on November 18, 1998. We issued a supplemental questionnaire for section D on November 2, 1998 and received a response on November 16, 1998. We issued a second supplemental questionnaire for sections A, B, and C on November 25, 1998 and received a response on December 3, 1998.

On October 6, 1998, petitioners made a timely request for a thirty-day postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Act. The Department determined that these concurrent investigations are extraordinarily complicated and warranted the thirty-day postponement requested by petitioners. On October 23, 1998, we

postponed the preliminary determination until no later than December 17, 1998. *See Stainless Steel Sheet and Strip in Coils From Italy, France, Germany, Mexico, Japan, the Republic of South Korea, the United Kingdom and Taiwan; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations*, 63 FR 56909 (October 23, 1998). On October 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of SSSS from Taiwan. The critical circumstances analysis for the preliminary determination is discussed in the ''Critical Circumstances'' section of the notice below.

Finally, on December 3, 1998, petitioners submitted comments regarding the product concordance. For specific adjustments to the product concordance information submitted by Chang Mien, *see Memorandum to the File: Analysis of Chang Mien in the Preliminary Determination of Stainless Steel Sheet and Strip in Coils from Taiwan*, December 17, 1998.

On October 14 and 15, 1998, petitioners alleged that Ta Chen is reselling subject merchandise by certain respondents in the United States at prices less than Ta Chen's cost of acquisition and related selling and movement expenses. On December 3, 1998, we initiated a middleman dumping investigation against Ta Chen. The results of that investigation will be incorporated in the final determination of this investigation.

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on December 9, 1998, YUSCO requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**. YUSCO also requested to extend the provisional measures to not more than six months. Additionally, on December 11 and 15, 1998, Tung Mung and Chang Mien, respectively requested a postponement of the deadline for the Final Determination and an extension of provisional measures, if found that their margins are higher than *de minimis*. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) YUSCO and Tung Mung account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for a denial exists, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of the Investigation

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below:

Flapper valve steel is excluded. It is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters also is excluded from the scope of this investigation. This stainless steel strip

in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip also is excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel also is excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel also is excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments also are excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''. [5]

Period of Investigation

The period of investigation (''POI'') is April 1, 1997 through March 31, 1998.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

After consideration of the complexities expected to arise in this proceeding and the resources available to the Department, we determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. Instead, we found that, given our resources, we would be able to investigate the Taiwanese producers/exporters with the greatest export volume, as identified above. In total, these companies (YUSCO, Tung Mung and Chang Mien) accounted for more than 85 percent of all known exports of the subject merchandise from Taiwan during the POI. For a more detailed discussion of respondent selection in this investigation, *see Respondent Selection Memorandum,* September 24, 1998.

Fair Value Comparisons

To determine whether sales of SSSS from Taiwan 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'' section of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

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.'' The

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo'', ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

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.

Transactions Investigated

YUSCO

For its home market sales, YUSCO reported the Government Uniform Invoice (''GUI'') date as the date of sale, while for its U.S. market sales, YUSCO reported the commercial invoice date as the date of sale. YUSCO stated that the sale dates submitted for each market represented the date when the essential terms of sales, *i.e.*, price and quantity, are definitively set, and that until the invoice date, these terms were subject to change. Petitioners alleged that the questionnaire response by YUSCO does not support YUSCO's claim that price and quantity may change at any time between the order acceptance date (confirmation date) and the final invoice date. Given the relevance of petitioners' comments and the nature of marketing these types of made-to-order products, petitioners' claims have some merit. Consequently, on October 26, 1998, the Department requested that YUSCO provide additional information concerning the nature and frequency of price and quantity changes occurring between order and invoice. In addition, we requested that YUSCO report sales during the POI for which YUSCO had issued an order acceptance, in addition to those sales invoiced during the POI. Based on our analysis of the information submitted by YUSCO, we have preliminarily determined that for home market and U.S. sales, the GUI and commercial invoice dates, respectively, are the appropriate indicators of the actual date of sale because a large percentage of orders in each market were modified or canceled during the time between order and invoice dates.

YUSCO reported that it made sales of subject merchandise to several end-users during the POI, including Yieh Mau, to which YUSCO claims an affiliation. With respect to Yieh Mau, there is no equity ownership of five percent or more between the two companies and YUSCO did not provide record evidence sufficient to demonstrate either financial or operational control of Yieh Mau. Therefore, the Department preliminarily determines that Yieh Mau is not affiliated with YUSCO. *See Proprietary Analysis Memorandum: YUSCO.* With respect to the other allegedly affiliated parties, the Department has likewise conducted an analysis of these parties' affiliation with YUSCO. Because the identities of these parties, as well as all pertinent information regarding the affiliations, is proprietary information, please refer to the Proprietary Analysis Memorandum: YUSCO. We note that the Department intends to examine closely all affiliation issues at verification.

Sales to affiliated customers in the home market not made at arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our less than fair value (''LTFV'') analysis. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1993); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil,* 63 Fed. Reg. 59509 (Nov. 8, 1998). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Tung Mung

For its home market, Tung Mung reported the date of invoice as the date of sale, while for its U.S. market sales, Tung Mung reported the contract date as the date of sale. Tung Mung stated that the sale dates submitted for each market represented the date when the essential terms of sales, *i.e.*, price and quantity, are definitively set, and that up to the invoice date, these terms were subject to change. Petitioners alleged that the questionnaire response by Tung Mung did not support Tung Mung's claim that for home market sales, price and quantity may change at any time between the order acceptance date (confirmation date) and the final invoice date. Given the relevance of petitioners' comments and the nature of marketing these types of made-to-order products, petitioners' claims have some merit. Consequently, on October 26 and November 18, 1998, the Department requested that Tung Mung provide additional information concerning the nature and frequency of price and quantity changes occurring between the confirmation date and date of invoice. In addition, we requested that Tung Mung report sales during the POI for which Tung Mung had issued an order acceptance, in addition to those sales invoiced during the POI. Based on our analysis of the information submitted by Tung Mung, we have preliminarily determined that the sales contract date is the appropriate date of sale because the sale contract date is the date on which the terms are finalized. With respect to home market sales, we have preliminarily determined that the date of invoice is the appropriate date of sale since it is the date on which the terms are set and not changed thereafter. For a further discussion of this issue, *see* Analysis Memorandum: Tung Mung.

Chang Mien

In its original questionnaire response, Chang Mien reported that for home market transactions it was using the date of invoice as the date of sale because Chang Mien's accounting books treated date of sale in this manner. In petitioners' November 12, 1998 submission, they stated that it appeared that Chang Mien was using the wrong date of sale. Given the relevance of petitioners' comments and the nature of marketing these types of made-to-order products, petitioners' claims have some merit. Consequently, on November 13, 1998, the Department requested that Chang Mien provide additional information concerning the nature and frequency of price and quantity changes occurring between the confirmation date and date of invoice. In its November 27, 1998 supplemental response Chang Mien stated that because home market customers purchase from inventory, ''there usually is no price change or

change in quantity between order confirmation date (day 0) and shipping (invoice date) (day 1–3).'' *See* Chang Mien's November 27, 1998 supplemental response at 8. Therefore, we preliminarily determine that the date of the order confirmation is the more appropriate sale date. Accordingly, on December 3, 1998, the Department requested that Chang Mien submit a revised home market sales listing using date of order confirmation as the sale date.

Also, in its November 27, 1998 supplemental response, Chang Mien reported that for its U.S. transactions it was using the date of sale employed in its accounting system, *i.e.*, the export declaration date for sales through August 31, 1997, and after August 31, 1997, the date of shipment. In the preamble to the regulations, the Department addressed the issue of why it was appropriate normally to use date of invoice, not date of shipment as the uniform date of sale. Specifically, the Department noted in the preamble that: (1) date of shipment is not among the possible dates of sale specified in note 8 of the AD Agreement; (2) date of shipment rarely represents the date on which the material terms of sale are established; (3) firms rarely use shipment documents as the basis for preparation of financial reports, thus making reliance on date of shipment at verification more difficult; and (4) concerns regarding possible manipulation by using date of invoice do not warrant substituting date of shipment for date of invoice.'' *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27297, 27349 (May 19, 1997). In this case, Chang Mien has reported that the terms of sale changed between the order date and the invoice date. Specifically, an analysis of all U.S. sales of subject merchandise in the POI reveals that for approximately 94 percent of the sales there was a change between the quantity ordered and the quantity shipped, and that for approximately 30 percent of the sales, the change between the quantity ordered and the quantity shipped was greater than the accepted industry tolerances. Therefore, we preliminarily determine that the invoice date is the appropriate date of sale for U.S. transactions. Accordingly, on December 3, 1998, the Department requested that Chang Mien submit a revised U.S. sales listing using date of invoice as the sale date. For a further discussion of this issue, *see Memorandum to the File: Analysis of Chang Mien in the Preliminary Determination of Stainless Steel Sheet and Strip in Coils from Taiwan*, December 17, 1998.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all products produced by respondents, covered by the description in the ''Scope of Investigation'' section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's August 3, 1998 questionnaire.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or constructed export price (''CEP'') transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (''SG&A'') and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales 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 (November 19, 1997).

In this investigation, none of the respondents requested a LOT adjustment. To ensure that no such adjustment was necessary, in accordance with principles discussed above, we examined information regarding the distribution systems in both the United States and Taiwan markets, including the selling functions, classes of customer and selling expenses for each respondent.

YUSCO

YUSCO reported one LOT in the home market and one LOT in the U.S. market. YUSCO reported that it made sales in the home market through one channel of distribution, directly from the plant to distributors, end users, and further manufacturers. In the U.S. market, YUSCO reported that it made sales through one channel of distribution, directly from the plant to trading companies and distributors.

The Department examined the selling activities performed within each LOT reported. YUSCO's selling activities in the home market were comprised of technical advice, warranty services and freight and delivery arrangements. YUSCO claimed that there were no other sales support activities. None of YUSCO's home market selling activities differed by customer category. YUSCO's selling activities in the U.S. market were comprised of warranty services and freight and delivery arrangements. Sales to trading companies were made on an FOB, FOR, or C&F basis and sales to distributors were made on an FOB or CIF basis. YUSCO claims that its selling activities did not differ by customer category in any other way in the U.S. market. Because there are only insignificant differences between the selling functions on sales made to home market and U.S. customers, we preliminarily conclude that there is one LOT in both the U.S. and home market and that sales to these customers constitute the same LOT in each market. Therefore a LOT adjustment for YUSCO is not appropriate. For a further discussion of the Department's LOT analysis with respect to YUSCO, *see Memorandum to the File: Analysis of YUSCO in the Preliminary Determination of Stainless Steel Sheet and Strip in Coils from Taiwan*, December 17, 1998.

Tung Mung

Tung Mung claimed that there was only one LOT in the home market. Tung Mung reported that in the home market it made sales to distributors, service centers, and end-users through one channel of distribution. Tung Mung offered freight and delivery arrangements and warranty services to all customers in the home market. Based

on our analysis, we preliminarily determine that Tung Mung had one LOT in its home market.

In the U.S. market, Tung Mung reported that it sold at one LOT through two channels of distribution, (1) a foreign distributor and (2) domestic trading companies. In the U.S. market, Tung Mung reported only one LOT to customers. Tung Mung reported that it performed identical selling functions in the United States and in the home market. These selling functions include freight and delivery arrangements and warranty services. Therefore, we preliminary conclude that there is one LOT in the U.S. and that sales to these customers constitute the same LOT in the comparison market and the United States. Therefore a LOT adjustment for Tung Mung is not appropriate. For a further discussion of the Department's LOT analysis with respect to Tung Mung, *see Memorandum to the File: Analysis of Tung Mung in the Preliminary Determination of Stainless Steel Sheet and Strip in Coils from Taiwan,* December 17, 1998.

Chang Mien

Chang Mien reported two LOTs in the home market and two channels of distribution. Within both channels of distribution, the merchandise is either shipped immediately to the customer or stored in Chang Mien's warehouse. In the home market, Chang Mien stated that it performed identical selling activities for both channels of distribution such as providing inventory maintenance, technical advice, warranty services, delivery arrangements, and advertising. Although the selling activities offered are identical for each of its customers, an additional selling activity is performed for those sales which are stored in inventory. However, we preliminarily determine that sales on which inventory maintenance is performed do not involve significantly greater resources than sales on which inventory maintenance is not performed and, therefore, do not constitute a separate LOT. Therefore, because Chang Mien performs identical selling activities for each claimed LOT, we preliminarily find that the two claimed LOTs constitute one LOT.

In the U.S. market, Chang Mien reported that it sold at one LOT, through one channel of distribution, and to one type of customer (trading company). For sales in the U.S. market, Chang Mien performed the following activities: packing, delivery arrangements (*i.e.*, transportation, brokerage and handling, and marine insurance), advertising, and warranty services. Based on a comparison of the selling activities performed in the U.S. market to the selling activities in the home market, we preliminarily conclude that there is not a significant difference in the selling functions performed in both markets. We preliminarily conclude that U.S. sales are made at the same LOT as the home market. Therefore, a LOT adjustment is not appropriate. For a further discussion of the Department's LOT analysis with respect to Chang Mien, *see Memorandum to the File: Analysis of Chang Mien in the Preliminary Determination of Stainless Steel Sheet and Strip in Coils from Taiwan,* December 17, 1998.

Export Price

For all respondents, we based our calculation on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise indicated. Furthermore, we calculated EP based on packed prices charged to the first unaffiliated customer in the United States.

We made company-specific adjustments as follows:

YUSCO

We made deductions from the starting price, where appropriate, for the following movement expenses, in accordance with section 772(c)(2)(A) of the Act: foreign inland freight; international freight; marine insurance; brokerage and handling expenses; container handling fees; and certification fees. No other adjustments were claimed or allowed.

Tung Mung

We made deductions from the starting price, where appropriate, for the following movement expenses, in accordance with section 772(c)(2)(A) of the Act: foreign inland freight; containerization expenses; brokerage and handling expenses; harbor duty fees, and bank charges. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act.

Chang Mien

We made deductions for foreign inland freight, brokerage and handling, ocean freight, and marine insurance, in accordance with section 772(c)(2)(A) of the Act. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. For further information, *see Memorandum to the File: Analysis of Chang Mien in the Preliminary Determination of Stainless Steel Sheet and Strip in Coils from Taiwan,* December 17, 1998.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparison'' sections of this notice.

Home Market Viability

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 equal to or greater than five percent of the aggregate volume of U.S. sales), we compared each of the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Since each of the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for all respondents. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Cost of Production (COP) Analysis

Based on the cost allegation submitted by petitioners in the petition, the Department found reasonable grounds to believe or suspect that respondents had made sales in the home market at prices below the cost of producing the merchandise, in accordance with section 773(b)(2)(A) of the Act. As a result, the Department initiated an investigation to determine whether respondents made home market sales during the POI at prices below their respective COPs within the meaning of section 773(b) of the Act. *See Initiation.*

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A, interest expenses, and packing costs. We relied on the COP data submitted by each respondent in its cost questionnaire response.

B. Test of Home Market Prices

We compared the weighted-average COP for each respondent, adjusted where appropriate (*see* above), to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities,'' pursuant to section 773(b)(2)(c)(i), and within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to weighted-average COPs for the POI , 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.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, interest expenses, 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 respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Taiwan.

Price-to-Price Comparisons

We performed price-to-price comparisons where there were sales of comparable merchandise in the home market that did not fail the cost test. There were no sales to affiliated customers in the home market for any respondent. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(c)(ii) of the Act.

YUSCO

For YUSCO's home market sales of products that were above COP, we based NV on prices to home market customers. YUSCO classified certain home market customers as affiliated, and one of these customers, Yieh Mau, reported its downstream sales in the home and U.S. markets. We have preliminarily determined that these customers were not affiliated because five percent or more ownership does not exist between YUSCO and any of these companies. Additionally, the record does not show that these customers meet any other of the ''affiliated persons'' criteria set forth in Section 771(33) of the Act. Therefore, we did not conduct an arm's-length test on any of YUSCO's sales.

We calculated NV based on prices to unaffiliated home market customers. We made deductions for inland freight and two post-sale price adjustments (these adjustments were originally reported as a quantity discount and sales promotion discount). In addition, we made circumstance-of-sale (COS) adjustments for differences in direct selling expenses (*i.e.*, credit, warranty, and a document handling fee) incurred on U.S. and home market sales, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Tung Mung

For Tung Mung's home market sales of products that were above COP, we based NV on prices to home market customers. We made a deduction for inland freight and two post-sale price adjustments (these adjustments were originally reported as a quantity discount and other discounts) pursuant to Section 351.401(c) of the Department's Regulations. We calculated NV based on prices to unaffiliated home market customers. In addition, we made COS adjustments for differences in direct selling expenses (*i.e.*, credit and warranty expenses), where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Chang Mien

For Chang Mien's home market sales of products that were above the COP, we based NV on prices to home market customers.

We calculated NV based on prices to unaffiliated home market customers. We made a deduction for inland freight. In its December 4, 1998 submission, petitioners argued that the Department should deny Chang Mien's reported home market credit expense and reclassify Chang Mien's claimed advertising expenses as indirect selling expenses. For the preliminary determination, the Department has accepted Chang Mien's home market credit expenses and continued to classify Chang Mien's advertising expenses in both the U.S. and home market as direct selling expenses. We made COS adjustments for direct selling expenses (*i.e.*, credit, warranty, advertising, and bank charges), where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a home market match of such or similar merchandise. We made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. For these EP comparisons, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

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, in accordance with section 773A(a) of the Tariff Act.

Critical Circumstances

On October 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of SSSS from Taiwan. In accordance with 19 CFR 351.206(c)(2)(i), since this allegation was filed at least 20 days prior to the Department's preliminary determination, we must issue our preliminary critical circumstances determination not later than the preliminary determination.

Section 733(e)(1) of the Act provides that if a petitioner alleges critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine that there is a history of dumping of the subject merchandise, the Department normally considers evidence of an existing antidumping duty order on SSSS in the United States or elsewhere to be sufficient. Petitioners did not provide any information indicating a history of dumping of SSSS from Taiwan. Furthermore, we investigated the existence of antidumping duty orders on SSSS from Taiwan in the United States or elsewhere, and did not find any. We were also unable to find other information that would have indicated a history of dumping of SSSS from Taiwan.

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at less than fair value and thereby causing material injury, the Department normally considers estimated dumping margins of 25 percent or greater for EP sales to impute knowledge of dumping and of resultant material injury. In this investigation, we have not established calculated estimated dumping margins of 25 percent or greater. Based on these facts, we determine that the first criterion for ascertaining whether critical circumstances exist is not satisfied. Therefore, we preliminarily determine that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to exports of SSSS from Taiwan by respondents *(see, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Collated Roofing Nails From Korea,* 62 FR 25895, 25898 (May 12, 1997)). We have not analyzed the shipment data for respondents to examine whether imports of SSSS have been massive over a relatively short period. Because we do not find that critical circumstances exist for all other respondents, we determine that critical circumstances do not exist for companies covered by the ''All Others'' rate. We will make a final determination concerning critical circumstances when we make our final determination in this investigation, if that final determination is affirmative.

Verification

As provided in section 782(i) of the Tariff Act, we will verify all information relied upon in making our final determination.

All Others Rate

In accordance with Section 735(c)(5) of the Act, the estimated all-others rate shall be an amount equal to the calculated estimated weight-average dumping margins established for producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely under section 776. As a result, the all-others rate is 2.94 percent.

Suspension of Liquidation

In accordance with section 733(d) of the Tariff Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Chang Mien	.57
Tung Mung	.07
YUSCO	2.94
All Others	2.94

ITC Notification

In accordance with section 733(f) of the Tariff Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of SSSS are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Tariff Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c). We intend to issue our final determination in this investigation no later than 135 days after publication of this notice.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Tariff Act.

Dated: December 17, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–34462 Filed 12–31–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Sheet and Strip in Coils From Japan

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

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Letitia Kress, Cindy Sonmez or Karla Whalen, Import Administration,

International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–6412, (202) 482–3362 or (202) 482–1391, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351, 62 FR 27296 (May 19, 1997).

Preliminary Determination

We preliminarily determine that Stainless Steel Sheet and Strip in Coils (''SSS&S'') from Japan is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice. For Nippon Steel Corporation (''NSC''), the Department used the sales data submitted on December 2, 1998 and the cost of production and constructed value data submitted on November 19, 1998. For Kawasaki Steel Corporation (''Kawasaki'') the Department used the response submitted on November 30, 1998.

Case History

On July 13, 1998, the Department initiated antidumping duty investigations of imports of stainless steel sheet and strip in coils from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan and the United Kingdom (*see Initiation of Antidumping Investigations: Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan and the United Kingdom*, 63 FR 37521 (July 13, 1998)). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage in a letter to interested parties on July 21, 1998. On July 27, 1998, Allegheny Ludlum Corporation, Armco, Inc.,[1] J&L Specialty Steel, Inc.,[2] Washington Steel Division of Bethlehem Steel Corporation (formerly Lukens, Inc.), the United Steelworkers of America, AFL–CIO/CLC, the Butler Armco Independent Union[3] and the Zanesville Armco Independent Organization, Inc.[4] (''petitioners'') submitted comments to the Department stating that they generally agree with the Department's product characteristics and model match criteria. However, petitioners noted that the reporting of products' actual alloy content, within certain ranges, must be incorporated from the outset into the product characteristics that comprise the product matching hierarchy that create the control numbers (''CONNUMs'').

On July 17, 1998, NSC submitted comments claiming that petitioners do not manufacture suspension foil and thus do not have standing to file a petition against this product. Also on July 17, 1998, NSC submitted a statement regarding petitioners agreement to exclude suspension foil from the scope of the investigation. Also on July 20, 1998, Hutchinson Technology submitted comments regarding the definition of suspension foil. On July 20, 1998, Hitachi Metals America, Ltd. submitted comments concerning razor blade steel, flapper valve steel, and surgical/medical categories of stainless steel sheet and strip and that all of its products are outside of the scope of the investigation.

On July 27, 1998, respondent NSC submitted comments stating that the criteria should be reordered and clarified and that the ''additional information'' concerning chemical content is burdensome and unnecessary. On July 29, 1998, Hitachi Metals America, Ltd. submitted comments regarding an exclusion for flapper valve steel. On July 27, 1998, respondent Kawasaki Steel Corporation stated that it agrees with NSC's July 27, 1998 comments. On July 29, 1998 petitioners submitted a letter regarding the scope.

On July 24, 1998, the International Trade Commission (''ITC'') notified the Department of its affirmative preliminary determination in this case.

On August 3, 1998, the Department issued antidumping duty questionnaires to Kawasaki, NSC, and Hitachi Metals America, Ltd.[5] On August 4, 1998, the Department issued antidumping duty questionnaires to Nisshin Steel Co., Ltd. (''Nisshin''), Nippon Yakin Kogyo (''Nippon Yakin''), Nippon Metal Industries (''Nippon Metal''), and Sumitomo Metal Industries (''Sumitomo''). On September 21, 1998, the Department selected NSC, Kawasaki, Nippon Metal, Nippon Yakin, and Nisshin (collectively ''respondents'') as mandatory respondents. *See Decision Memorandum from Division Directors,* Office VII, to Joseph Spetrini, regarding Selection of Respondents, September 21, 1998.

On August 28, October 19 and 27, and November 2, 1998, in letters to the Department, NSC requested that it not be required to report downstream sales in Japan because relevant resales: (1) Involve sales to affiliated resellers which are at arm's length; (2) are all at a different level of trade from United States sales; (3) for the most part are not likely to match U.S. sales; and (4) would entail undue burden. On September 8 and November 25, 1998, petitioners rebutted NSC's requested exemption from reporting certain home market sales.

On September 9, 1998, the Department received responses to Section A of the questionnaire from Kawasaki, NSC, and Sumitomo. On October 5 and 7, 1998, petitioners filed comments to the Section A responses for Kawasaki and NSC, respectively. On September 29, 1998, the Department received Kawasaki and NSC's responses to Sections B and C of the questionnaire. On October 15, 1998, petitioners filed comments on Kawasaki and NSC's Section B and C questionnaire responses. On October 20 and 21, 1998, the Department issued supplemental questionnaires on Sections A, B, and C to NSC and Kawasaki, respectively.

On October 6, 1998, pursuant to section 733(c)(1)(A) of the Act, the petitioners made a timely request to postpone the preliminary determination for thirty days. The Department determined that this investigation is extraordinarily complicated and that the additional time is necessary for the Department to make its preliminary determination. On October 16, 1998, we postponed the preliminary determination until no later than December 17, 1998. *See Stainless Steel Sheet and Strip from Italy, France, Germany, Mexico, Japan, the Republic of Korea, the United Kingdom and Taiwan; Notice of Postponement of Preliminary Determinations for Antidumping Duty Investigations,* 63 FR 56909, (October 23, 1998).

On October 8 and 13, 1998, petitioners timely requested that the Department initiate a cost investigation against Kawasaki and NSC, respectively. Based on an adequate sales below cost of production allegation, the Department initiated a cost of

[1] Armco, Inc. is not petitioner in the Mexico case.

[2] J&L Specialty Steel, Inc, is not a petitioner in the France case.

[3] Butler Armco Independent Union is not a petitioner in the Mexico case.

[4] Zanesville Armco Independent Organization, Inc. is not a petitioner in the Mexico case.

[5] Counsel for Hitachi Metals America, Ltd. forwarded the questionnaire to Hitachi Metals, Ltd. in Japan.

production investigation against Kawasaki and NSC on October 28, 1998. *See Memorandum from William Jones and Taija Slaugher to Roland MacDonald regarding Allegations of Sales Below the Cost of Production for Kawasaki Steel Corporation and Nippon Steel Corporation dated October 28, 1998. On November 19, 1998, Kawasaki and NSC submitted their Section D responses.*

On October 28, 1998, NSC submitted a request that it not be required to report sales based on order confirmation date as was requested in the supplemental questionnaire that the Department issued on October 20, 1998. On November 18, 1998, Kawasaki requested a waiver from the Department's request to submit a new database using order confirmation date.

On October 30, 1998, petitioners timely alleged that critical circumstances exist with respect to imports of stainless steel sheet and strip in coils from Japan. On November 19, 1998, Kawasaki submitted shipment information in regards to this allegation. On December 4, 1998, NSC submitted shipment information in regards to this allegation.

On December 2, 1998, NSC submitted the order confirmation date for the sales it previously reported in its Section B and C responses as well as downstream sales. On December 3, 1998, petitioners submitted comments on appropriate product comparisons. On December 7, 1998, Kawasaki submitted its sales made to unaffiliated parties based on order confirmation date. On December 4 and 8, 1998, petitioners submitted comments regarding preliminary determination guidance for Kawasaki and NSC, respectively. On December 11, 1998, NSC submitted a rebuttal to petitioners' December 8, 1988 preliminary determination comments. On December 11, 1998, NSC submitted additional order confirmation reporting. On December 9, 1998, Kawasaki submitted a rebuttal to petitioners' December 4th preliminary determination comments.

Scope of the Investigation

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel

strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names ''Arnokrome.'' [6]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[7]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[8]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[9] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[10]

Period of Investigation

The Period of Investigation (''POI'') is April 1, 1997 through March 31, 1998.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on November 19 and 25, 1998, Kawasaki and NSC respectively, requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**. On December 15, 1998, NSC and Kawasaki amended their requests to include a request to extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) NSC and Kawasaki account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' requests and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Preliminary Determination of Critical Circumstances

On October 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise. Petitioners based their allegation on a comparison of import data from April-June and July-September, 1998, arguing comparison of these periods due to a one-month shipping time lag. In accordance with 19 CFR 351.206(c)(2), since this allegation was filed earlier than the deadline for the Department's preliminary determination, we must issue our preliminary critical circumstances determinations not later than the preliminary determination. *See* Policy Bulletin 98/4 regarding Timing of Issuance of Critical Circumstances Determinations, 63 FR 55364, (October 15, 1998).

Section 733(e)(1) of the Act provides that if a petitioner alleges critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

The statute and the Statement of Administrative Action (''SAA'') which accompanies the Uruguay Round Agreements Act are silent as to how we are to make a finding that there was knowledge that there was likely to be material injury. Therefore, Congress has left the method of implementing this provision to the Department's discretion.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the product at less than fair value, the Department normally considers margins

[6] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[7] ''Gilphy 36'' is a trademark of Imphy, S.A.

[8] ''Durphynox 17'' is a trademark of Imphy, S.A.

[9] This list of uses is illustrative and provided for descriptive purposes only.

[10] ''GIN4 Mo'', ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

of 15 percent or more sufficient to impute knowledge of dumping for constructed export price (''CEP'') sales, and margins of 25 percent or more for export price (''EP'') sales. See, *e.g., Preliminary Critical Circumstances Determination: Honey from the People's Republic of China*, 60 FR 29824 (June 6, 1995). Since the company specific margin for EP sales in our preliminary determination for stainless steel sheet and strip in coils are greater than 25 percent for Kawasaki, we have imputed importer knowledge of dumping for Kawasaki. Since the company specific margins for EP sales in our preliminary determination for stainless steel sheet and strip in coils are less than 25 percent for NSC, we have not imputed knowledge of dumping based on this margin. There is no evidence on the record regarding history of dumping by NSC. Therefore, NSC does not meet the first prong of the analysis.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the ITC. If, as in this case, the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports during the critical circumstance period—the 90-day period beginning with the initiation of the investigation. *See* 19 CFR 351.206. Therefore, the Department finds it is reasonable to impute importer knowledge of injury by reason of dumped imports in this case.

Since Kawasaki has met the first prong of the critical circumstances allegation, we must examine whether or not it had massive imports. To determine whether imports were massive over a relatively short time period, the Department typically compares the import volume of the subject merchandise for the three months immediately preceding and following the filing of the petition. *See* 19 CFR 351.206(i). Pursuant to 19 CFR 351.206(h)(2), the Department will consider an increase of 15 percent or more in the imports of the subject merchandise over the relevant period to be massive. On November 19, 1998, Kawasaki submitted shipment information which shows that its imports decreased during the comparison period (July-September, 1998) from the level of the preceding three months. Therefore, we do not find that critical circumstances exist for Kawasaki, since it did not have massive imports, or for NSC, since it does not have a history of dumping or a margin high enough to impute knowledge.

In addition, for companies which did not respond to the Department's questionnaire, we are imputing knowledge based on the facts available rate assigned, which is the highest petition rate. Therefore, we determine, based on facts available, that there were massive imports of stainless steel sheet and strip in coils by companies that did not respond to the Department's questionnaire. Therefore, we preliminarily determine that critical circumstances exist with regard to these companies. Regarding all other exporters, because we find that critical circumstances exist for three out of five investigated companies, we also determine that critical circumstances exist for all other exporters.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section above, and sold in Japan during the POI, are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on nine characteristics to match U.S. sales of subject merchandise to comparison market sales of the foreign like product (listed in order of significance): grade; hot/cold rolled; gauge; finish; metallic coating; non-metallic coating; width; temper/tensile strength; and, edge trim. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping duty questionnaire and reporting instructions.

Date of Sale

For its home market and U.S. sales, NSC and Kawasaki reported the date of invoice (shipment date) as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale. Both respondents stated that the invoice date best reflects the date on which the material terms of sale are established and that price and/or quantity can and do change between order date and invoice date. However, petitioners have alleged that the sales documentation indicates that the order date appears to be the date when the material terms of sale are set for the majority of these respondents' sales of SSSS. Given the relevance of petitioners' comments and the nature of marketing these types of made-to-order products, we determined that petitioners' claims have some merit. Consequently, on October 20 and 21, 1998, the Department requested that NSC and Kawasaki, respectively, provide additional information concerning the nature and frequency of price and quantity changes occurring between the date of order and date of invoice. We also asked NSC and Kawasaki to report the order date for all home market and U.S. sales, and to ensure that all sales with order or invoice dates within the POI are reported. On October 28 and November 18, 1998, NSC and Kawasaki reiterated that invoice date is the appropriate date of sale and requested that they not have to report sales based on order confirmation date. On December 21, 1998, NSC reported the order date for sales reported in its section B and C responses. NSC supplemented this filing on December 11, 1998 reporting sales with final order date within the POI, and invoice dates within the POI. On December 7, 1998, Kawasaki submitted its response to the Department's request for order confirmation date reporting.

The Department is preliminarily using the invoice date as the date of sale for both home market and U.S. sales. We intend to fully examine this issue at verification, and we will incorporate our findings, as appropriate, in our analysis for the final determination. If we determine that the order confirmation date is the appropriate date of sale, we may resort to facts available for the final determination to the extent that this information has not been reported.

Fair Value Comparisons

To determine whether sales of SSS&S from Japan to the United States were made at LTFV, we compared EP to the normal value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 772(a) and (c), we calculated EP for all of Kawasaki and NSC's sales, since the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts on the record.

Export Price

We calculated EP based on the packed delivered price to unaffiliated purchasers in the United States. For Kawasaki, we made deductions from the starting price (gross unit price), where

appropriate, for foreign inland freight, insurance, rebates and brokerage and handling, and we added duty drawback. For NSC, we made deductions from the starting price (gross unit price), where appropriate, for foreign inland freight, inland insurance, discounts and rebates, credit, and warranty expenses.

Normal Value

After testing home market viability, as discussed below, we calculated NV as noted in the ''Price-to-CV Comparisons'' and ''Price-to-Price Comparisons'' sections of this notice.

1. Home Market Viability

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 equal to or greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Since each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, we have based NV on home market sales.

2. Cost of Production Analysis

Based on a cost allegation filed by the petitioners, the Department found reasonable grounds to believe or suspect that sales by Kawasaki and NSC in the home market were made at prices below the costs of production (''COP''), pursuant to section 773(b)(1) of the Act. As a result, the Department initiated an investigation to determine whether Kawasaki or NSC made home market sales during the POI at prices below their respective COPs, within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Kawasaki's and NSC's respective costs for materials and fabrication for the foreign like product, plus amounts for selling, general and administrative expenses, interest expenses, research and development, and packing costs. We relied on the COP data submitted by Kawasaki and NSC, except as discussed below, where Kawasaki submitted costs were not sufficiently reported, quantified or valued.

1. Kawasaki did not report costs for some CONNUMs that were sold in the home market. In these instances, we assigned the highest reported costs to those CONNUMs.

2. Kawasaki reported no costs for secondary merchandise. Therefore, we have assigned the highest reported costs to those products.

3. In any instances where Kawasaki reported more than one cost for the same CONNUM, we calculated a single weighted-average cost for each CONNUM using the reported production quantities.

4. We revised Kawasaki's general and administrative (''G&A'') expenses to include losses related to the disposal of tangible fixed assets and expenses related to retirement payments and pension costs *see Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination from William Jones and Taija Slaughter to Neal Halper*, dated December 17, 1998.

B. Test of Home Market Prices

We compared the weighted-average COP for each respondent, adjusted where appropriate (see above), to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, discounts and rebates, other selling expenses, and home market packing.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined that such sales have been made in substantial quantities within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. Because we compared prices to POI average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, G&A expenses, U.S. packing costs, direct and indirect selling expenses, interest expenses, research and development expenses, and profit. We made adjustments to Kawasaki's reported costs as indicated above in the COP section. In accordance with section 773(e)(2)(A) of the Act, we based selling, general, and administrative expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on prices to home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C) of the Act. In accordance with Section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Kawasaki

We based home market prices on the packed, delivered prices to affiliated and unaffiliated purchasers in the home market. We made adjustments, where applicable, in accordance with section 773(a)(6) of the Act. Where applicable, we made adjustments for rebates and movement expenses. To adjust for differences in circumstances of sale between the home market and the United States, we reduced home market prices by the amounts of direct selling expenses (*i.e.*, warranty and credit expenses) and added U.S. credit expenses. In order to adjust for differences in packing between the two markets, we deducted HM packing costs and added U.S. packing costs.

NSC

We calculated NV based on prices to unaffiliated home market customers. We

made deductions for direct selling expenses, discounts and rebates, inland freight charges, insurance, warehousing, and packing expenses, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs. Lastly, in our NV calculations, we did not use NSC's reported downstream sales because the sales by NSC to its first affiliated reseller passed the arm's-length test (*see* section on Arm's Length Test).

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on each respondent's cost of materials, fabrication, G&A expenses, U.S. packing, direct and indirect expenses, interest expense, research and development expenses employed in producing the subject merchandise as well as profit. In accordance with section 773(a)(2)(A) of the Tariff Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Japan. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

Arm's Length Test

Sales to affiliated customers in the home market not made at arm's length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. To test whether these sales were made at arm's length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403 (c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's length prices and, therefore, excluded them from our LTFV analysis. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar product.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (''CV''), that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from 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 LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. 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 (November 19, 1997).

Kawasaki

In its questionnaire responses, Kawasaki stated that it sold subject merchandise through a total of five channels of trade during the period of investigation, four in the home market and one in the United States. Kawasaki's U.S. sales were all made to unaffiliated trading companies. Its four home market channels were sales from Kawasaki to end users, sales from Kawasaki to unaffiliated trading companies, sales from Kawasaki to affiliated trading companies and then to affiliated customers (which used the subject merchandise to manufacture products outside the scope of the proceeding), and finally, sales from Kawasaki to affiliated trading companies and then to unaffiliated customers. Thus, Kawasaki sold subject merchandise to two types of customers: trading companies, whether affiliated or not, and unaffiliated end users. These sales represent two different points in the chain of distribution between the producer and the final end user, as in one instance (sales to trading companies), the subject merchandise passes through the intermediary parties, while in the other case, sales are made without any intervening parties at all. As a result, these sales to different points in the distribution chain could represent different levels of trade in the home market.

The Department then examined whether any differences existed with respect to the selling functions Kawasaki performed in making sales to these two types of customers. Regardless of the type of customer, all of Kawasaki's home market sales were manufactured to order and the merchandise was shipped directly from the factory to the end user. The packing processes were also identical for all sales, and the reported selling expenses were comparable for all sales. There is no evidence on the record to suggest that Kawasaki had formal policies for providing special payment terms, such as discounts, to different types of customers. Regarding the selling functions with respect to the sales to end users, Kawasaki conducted price negotiations, communications with the customers, payment collection activity, and warranty activity, in addition to maintaining a long-term cooperative relationship designed to assist the customers' utilization of Kawasaki's products. None of these qualitatively different functions were performed regarding the sales to trading companies. Based on the different points in the chain of distribution and the differences in selling functions, the Department has preliminarily determined that two levels of trade exist for Kawasaki's sales in the home market.

Regarding U.S. sales, the Department found that no evidence existed to differentiate the selling functions between sales made to trading companies for sale to the United States and sales made to trading companies for sale in the home market. Therefore, the Department preliminarily considers sales made through trading companies,

whether to the United States or the home market, to be at the same level of trade.

The Department then checked to determine whether a pattern of consistent price differences existed between these two levels of trade. The Department found that no consistent significant pattern existed and therefore did not adjust NV if U.S. sales were compared to home market sales made at a different LOT.

NSC

In the home market NSC sold to unaffiliated and affiliated trading companies and to end users. In the U.S. market, NSC sold only to unaffiliated trading companies. NSC claims that there is no difference in the selling expenses between channels. Although the sales in the home market represent different points in the chain of distribution between the producer and the final end-user which could represent different levels of trade, NSC provided essentially the same level of marketing assistance and selling functions to all three types of customers. For its U.S. sales, NSC reported sales to unaffiliated resellers as its only method of distribution.

When comparing NSC's sales at its EP LOT to its home market LOT, we found that NSC provided essentially the same level of strategic or economic planning, market research, engineering services, or post-sale warehousing at both the EP or home market LOT. All packing expenses and freight arrangements were similar (in the activities performed) in both markets. NSC provided similar degrees of after-sales and technical support at both the EP and home market LOT. Based upon our examination of the information on the record, we agree with NSC that it had one LOT.

We have not, therefore, made a LOT adjustment because all price comparisons are at the same LOT and an adjustment pursuant to section 773(a)(7)(A) of the Tariff Act is not appropriate.

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, as provided in section 782(i), the Department shall, subject to subsections 782(d), use facts otherwise available in reaching the applicable determination. Because Nisshin, Nippon Yakin, and Nippon Metal failed to respond to the Department's questionnaire, and because that failure is not overcome by the application of section 782, we must use facts otherwise available to calculate the dumping margins for each company.

Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See* also Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (1994). The non-responsive companies' decisions not to reply to the Department's antidumping questionnaire demonstrates that they have failed to act to the best of their ability to comply with a request for information under section 776 of the Act. Thus, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted.

Consistent with Department practice, as adverse facts available, the Department is assigning to Nisshin, Nippon Yakin, and Nippon Metal the higher of: (1) the highest margin stated in the petition; or (2) the highest margin calculated for any respondent in this investigation.

Section 776(b) states that an adverse inference may include reliance on information derived from the petition or any other information placed on the record. See also SAA at 829–831. Section 776(c) provides that, when the Department relies on secondary information (*e.g.*, the petition) as the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics, call reports, and data from business contacts). In this case, the highest margin alleged in the petition for any Japanese producer is 57.87 percent (*see Import Administration AD Investigation Initiation Checklist,* dated June 30, 1998 for a discussion of the margin calculations in the petition).

The Department was provided with no other useful information by the respondents or other interested parties, and is aware of no other independent sources of information, that would enable it to further corroborate the remaining components of the margin calculation in the petition.

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, in accordance with section 773(A) of the Act.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. For all companies except Kawasaki and NSC, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the **Federal Register**. *See* section 733(e)(2). We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Kawasaki Steel Corporation ...	48.41
Nippon Steel Corporation	24.94
Nisshin Steel Co., Ltd.	57.87
Nippon Yakin Kogyo	57.87
Nippon Metal Industries	57.87
All Others	35.61

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded any zero and de minimis margins and any margins determined entirely under section 776 of the Act, from the calculation of the ''All Others Rate.''

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination, or 45 days after our final determination, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after publication of this notice. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held fifty-seven days after publication of this notice, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 135 days after publication of this notice.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: December 17, 1998.

Richard Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–34463 Filed 12–31–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy

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

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Lesley Stagliano or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0190 or (202) 482–3818, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Preliminary Determination

We preliminarily determine that stainless steel sheet and strip in coils (''SSSS'') from Italy is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On June 30, 1998, the Department initiated antidumping duty investigations of imports of SSSS from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom. *See Initiation of Antidumping Duty Investigations: Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom* (''*Initiation*'') 63 FR 37521, (July 13, 1998) . Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. On July 29, 1998, petitioners, Allegheny Ludlum Corporation, Armco Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation (formerly Lukens, Inc.), the United Steelworkers of America, AFL–CIO/CLC, the Butler Armco Independent Union, and the Zanesville Armco Independent Organization, Inc., filed comments proposing clarifications to the scope of these investigations. Also, from July through October, 1998, the Department received numerous responses from respondents aimed at clarifying the scope of the investigations. *See Memorandum to Joseph A. Spetrini, Re: Scope Issues,* dated December 14, 1998.

On July 7, 1998, the Department requested information from the U.S. Embassy in Italy to identify producers/exporters of the subject merchandise. On July 21, 1998, the Department requested comments from petitioners and other interested parties regarding the criteria to be used for model matching purposes. On July 27, 1998, petitioners submitted comments on our proposed model matching criteria.

Also on July 24, 1998, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination in this case. On August 3, 1998, the Department issued an antidumping questionnaire to Acciai Speciali Terni SpA (''AST'') and Arinox SrL (''Arinox''). On September 21, 1998, the Department selected AST as a respondent in this investigation. *See* ''Selection of Respondents,'' below.

AST submitted its response to section A of the questionnaire on September 8, 1998, and AST's responses to sections B through D followed on September 28, 1998. Petitioners filed comments on AST's Section A through D responses on October 9, October 13, and October 16, 1998. We issued supplemental questionnaires for Sections A, B, and C to AST on October 23, 1998, and for Section D on November 13, 1998. AST responded to our supplemental questionnaires for Sections A, B, and C on November 6, and November 12, 1998, and to our supplemental questionnaires for Section D on December 2, 1998.

On October 6, 1998, petitioners made a timely request for a thirty-day postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Act. The Department determined that these concurrent investigations are extraordinarily complicated and warranted the thirty-day postponement requested by petitioners. On October 23, 1998, we postponed the preliminary determination until no later than December 17, 1998. *See Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations*, 63 FR 56909 (October 23, 1998). On October 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of SSSS from Italy. The critical circumstances analysis for the preliminary determination is discussed in the ''Critical Circumstances'' section of the notice below.

On December 2, 1998, petitioners submitted comments for use in this preliminary determination. Petitioners also submitted comments on December 3, 1998, regarding the product concordance for use in this preliminary determination.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on December 15, 1998, AST requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**. AST also included a request to extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) AST accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of The Investigation

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''. [5]

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo'', ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Period of Investigation

The period of investigation (POI) is April 1, 1997 through March 31, 1998.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

After consideration of the complexities expected to arise in this proceeding and the resources available to the Department, we determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. Instead, we found that, given our resources, we would be able to investigate the Italian producers/exporters with the greatest export volume, as identified above. Since AST accounted for more than 70 percent of all known exports of the subject merchandise from Italy during the POI, we selected it as the sole respondent. *See Memorandum from Program Managers to Joseph A. Spetrini Re: Selection of Respondents*, September 21, 1998.

Affiliation

AST has claimed that it is not affiliated with Thyssen AG or any of Thyssen AG's affiliates. However, a review of the evidence demonstrates that AST is affiliated with Thyssen AG. Pursuant to section 771(33)(E) of the Act, the Department will determine that companies are affiliated where a company directly or indirectly owns, controls, or holds power to vote, five percent or more of the outstanding voting stock or shares of any organization. Here, evidence establishes that AST is 75 percent owned by a joint venture company, KTS. KTS, in turn, is 40 percent owned by Thyssen Stahl AG, itself a wholly-owned subsidiary of Thyssen AG. Consequently, Thyssen AG has a 33.75 percent equity holding in AST and, therefore, because this is greater than five percent, Thyssen AG is affiliated with AST within the meaning of section 771(33)(E). *See Memorandum: Affiliation of AST and Thyssen AG, and AST and A Thyssen Affiliate (company A)*, dated December 17, 1998.

AST also claimed that because it was not affiliated with Thyssen AG or any of Thyssen AG's affiliates, AST was not affiliated with a particular U.S. customer, company A. AST stated that company A was wholly-owned by Thyssen Inc., N.A. and other evidence establishes that Thyssen Inc., is in turn a wholly-owned subsidiary of Thyssen AG. Because the Department is precluded under the statute from using sales to affiliates in determining CEP or EP, we examined whether AST was affiliated to company A. *See* Section 772 (a) and (b) of the Act. Section 771(33)(F) provides the Department with the authority to find parties affiliated where two or more persons are directly or indirectly controlled by or under common control with any other person. Therefore, if evidence demonstrates that Thyssen AG controls both company A and AST, then AST and company A are affiliated within the meaning of section 771(33)(F). Based on the evidence, we have preliminarily found that Thyssen AG has the ability to control AST and company A, and therefore, we find that AST and company A are affiliated.

In codifying a new definition of affiliated persons, the legislative history make clear that one of the Department's goals was to broaden its ability to analyze commercial relationships for the purposes of a dumping analysis and

consistent with economic reality. New section 771(33)(F) defines affiliation to include additional control relationships. The legislative history also makes clear that the statute does not require majority ownership for a finding of control, but rather encompasses both legal and operational control. *See* SAA at 838. A minority ownership interest, examined within the context of the totality of the circumstances, is a factor that we will consider in determining if one party is operationally in control of another. *See Certain Cut-To-Length Carbon Steel Plate From Brazil*, 62 FR 18486, 18490 (April 15, 1998). Additionally, evidence of actual control is not required. *See* 19 C.F.R. 351.102(b).

Because, in essence, company A is wholly-owned by Thyssen AG, Thyssen AG has both legal and operational control over company A. With regard to AST, Thyssen AG has a substantial minority equity interest in AST of 33.75 percent. Under the prior statutory provision, parties were deemed ''related'' if any person or persons owned or controlled 20 percent or more of the voting power or control in both entities. *See Queen's Flowers de Colombia* v. *United States*, 981 Fed. Supp. 617 (CIT 1997); section 771(13) of the Act. As Congress intended the Department to analyze a broader range of relationships under section 771(33) of the Act, a minority equity interest of over 20 percent presumably would represent control pursuant to section 771(33)(F) of the Act.

However, for our preliminary determination we also examined the shareholder agreement forming KTS and other evidence which leads us to conclude that, coupled with its 33.75 percent interest in AST, Thyssen AG has the ability to control AST. Because most of this evidence is proprietary in nature, we are not able to discuss this evidence publicly. *See Memorandum: Affiliation of AST and Thyssen AG, and AST and A Thyssen Affiliate (Company A).* In summary, we can say that this evidence indicates that Thyssen AG retained the ability to control the production and pricing decisions of AST through the joint venture company KTS. Because both company A and AST are controlled by Thyssen AG within the meaning of section 771(33)(F), we have preliminarily found that AST and company A are affiliated. We therefore have requested company A to provide all of its downstream sales of subject merchandise made during the POI. On December 11, 1998, the Department received this downstream U.S. sales information. However, due to the timing of the receipt of this information, we were not able to review these transactions for the preliminary determination.

Additionally, on December 11, 1998, AST reported that it could not compel two additional resellers in the U.S. market, to which it claims to have only an indirect minority interest, to report their downstream sales information. Based on the fact that such sales constitute an insignificant portion of total U.S. sales (exclusion of which from the margin calculation, therefore, is non-distortive), for the purposes of the preliminary determination, we have calculated a margin which does not account for these sales.

Fair Value Comparisons

To determine whether sales of SSSS from Italy to the United States were made at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the ''export price and constructed export price'' and ''normal value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

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.'' 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.

Transactions Investigated

For its home market sales, and U.S. sales which AST claimed were CEP, AST reported the date of invoice as the date of sale, stating that the invoice date represented the date when the essential terms of sale, *i.e.*, price and quantity, are definitively set, and that up to the invoice date, these terms were subject to change. For sales AST claimed were EP (''back-to-back'') sales, AST reported the date of shipment from Italy as the date of sale because this is when final price and quantity terms are determined. However, petitioners alleged that the sales documentation provided by AST does not appear to support AST's claims that price and quantity may change at any time between the order acceptance date (confirmation date) and the shipment date. Given the relevance of petitioners comments and the nature of marketing these types of made-to-order products, petitioners claims have some merit. Consequently, on October 23, 1998, the Department requested that AST provide additional information concerning the nature and frequency of price and quantity changes occurring between the date of order and date of invoice for sales in both markets. In addition, we requested that AST report all sales during the POI for which AST had issued an order acceptance, in addition to those sales invoiced during the POI. AST reported this information in its November 12, 1998 submission.

Normally, the Department has a preference of using invoice date as the date of sale. However, the Department may use a date other than invoice date if a different date better reflects the date on which the material terms of the sale were set. *Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan*, 61 FR 14067 (March 29, 1996); 19 C.F.R. 351.401(i). For AST's home market sales, AST submitted information that indicates that date of invoice is the appropriate date of sale. *See Analysis Memo for AST* at page 2. Therefore, we have preliminarily determined that the date of invoice is the appropriate indicator of the actual date of sale for all home market sales, because price and quantity are subject to negotiation until that time. For the U.S. sales that are EP (direct) sales, we have preliminarily determined that the shipment date is the appropriate indicator of the actual date of sale because price and quantity are subject to negotiation until the date of shipment, a date preceding the invoice date. For the U.S. sales that are CEP sales, we used the invoice date as the date of sale, because either the material terms of sale had not been fixed prior to invoice or the sale did not occur prior to importation.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent covered by

the description in the ''Scope of the Investigation'' section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

In its supplemental response dated November 12, 1998, AST defined ''side cuts'' as the 1¼ inch trimmings that result from slitting mill-edge coils with a width of 50½ inches. AST stated that side cuts are second quality merchandise because ''the mill edges often containing surface defects (like edge laminations) and variable width.'' For ''pup coils'', AST stated that during inspection, it sometimes is determined that the ends of the coil require cropping due to defects (such as cross breaks) that cannot be corrected. AST stated that the resulting coils generated from cropping the ends are pup coils. Although AST has claimed that pup coils and side cuts are non-prime merchandise, because AST provided no evidence to support its claim that side cuts and pup coils were damaged or defective, thus making them non-prime, the Department has treated both side-cuts and pup-coils as prime merchandise for the purposes of this preliminary determination. Data regarding the quality of side-cuts and pup-coils will be reviewed at verification.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting price comparison sales in the home market or, when NV is based on constructed value (CV), that of the sales from which we derive SG&A expenses and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

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

In this investigation, AST did not request a level-of-trade (LOT) adjustment. To ensure that no such adjustment was necessary, in accordance with principles discussed above, we examined information regarding the distribution systems in both the United States and Italian markets, including the selling functions, classes of customers and selling expenses for AST.

For its home market sales, Acciai Speciali Terni SpA (''AST'') reported: (1) three customer categories—industrial end-users, white goods manufacturers, and service centers/distributors; and (2) two channels of distribution—direct factory sales (sales of prime merchandise) and warehouse sales (the majority of which are sales of non-prime merchandise). AST claimed two levels of trade in the home market based solely on the quality of subject merchandise, *i.e.,* prime vs. non-prime.

In reviewing AST's LOT in the home market, we asked AST to identify the specific differences and similarities in selling functions and/or support services between all phases of marketing to customers in the home market and the United States. As mentioned above, AST identified two channels of distribution in the home market based entirely on whether the sale to the customer was of prime or non-prime merchandise. For sales of prime merchandise, AST sold to all three of the customers mentioned above, and provided the same selling functions to each of the customers. Specifically, AST provided freight and delivery, credit, technical services, and warranties. For sales of mostly non-prime merchandise sold from AST's warehouse, AST performed the same selling functions (except for providing warranties) as for sales of its prime merchandise, but AST also engaged in the additional selling activities of advertising of its mostly non-prime merchandise and maintaining inventory of this merchandise at AST's warehouse. Because the selling activities engaged in by AST were identical for each customer when selling prime merchandise and were identical for each customer when selling mostly non-prime from inventory, and because the selling activities for both groups of sales were very similar, we preliminarily determine that there exists one level of trade for AST's home market sales.

For its U.S. sales, AST reported that its affiliated importer, AST USA, made sales to two customer categories—industrial end-users and service centers and through three channels of distribution—direct factory sales, warehouse sales, and consignment sales. AST claimed two levels of trade in the U.S. market based solely on the quality of subject merchandise: (1) non-prime; and (2) prime. We examined the claimed selling functions performed by AST and its U.S. affiliate, AST USA, for all U.S. sales. For sales made directly to the unaffiliated U.S. customer (EP sales), AST performed the same selling functions; it provided technical and warranty services, arranged for freight and delivery, and extended credit. For sales made to AST USA (CEP sales) as adjusted, AST engaged in identical selling activities, providing technical and warranty services, freight and delivery and credit. In making sales from warehousing and consignment sales, AST USA engaged in the additional activities of advertising and maintaining inventory.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between AST and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade.

Based on our analysis of the chains of distribution and selling functions performed for sales in the home market and CEP and EP sales in the U.S. market, we preliminarily find that both are made at the same stage in the marketing process and involve identical selling functions. Therefore, we preliminarily determine that AST made sales in the home market at the same level of trade as existed in the U.S. market for both CEP sales and EP sales.

Thus, an LOT adjustment in this case is not appropriate.

For matching purposes, we have matched AST's sale of prime merchandise in the home market to sales of prime merchandise in the U.S. market. We have also matched sales of non-prime merchandise in the home market to sales of non-prime merchandise in the U.S. market.

Export Price And Constructed Export Price

Based on the Department's practice, we examine several criteria in determining whether sales made prior to importation through a sales agent to an unaffiliated U.S. customer are EP sales, including: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent was limited to that of a ''processor of sales-related documentation'' and a ''communications link'' with the unaffiliated U.S. buyer. Where all three criteria are met, indicating that the activities of the U.S. selling agent are ancillary to the sale, the Department has regarded the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States where the sales agent performs them, and has determined the sales to be EP sales. Where one of more of these conditions are not met, indicating that the U.S. sales agent is substantially involved in the U.S. sales process, the Department has classified the sales in question as CEP sales. *See Viscose Rayon Staple Fibre From Finland: Final Results of Antidumping Duty Administrative Review*, 63 FR 32820, 32821 (June 16, 1998); *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review*, 63 FR 13170, 13174 (March 18, 1998).

AST has classified certain sales transactions which are further-processed in the United States as EP sales. However, we preliminarily determine that such sales are CEP sales. Evidence establishes that AST USA contracts with unaffiliated processors to provide substantial value-added services for these sales. This necessarily entails significant expenses which are added to the price originally negotiated between the unaffiliated customer and AST. Under such circumstances, the characterization of a further-manufactured sale as an export price sale would ignore these substantial expenses related to the sale of subject merchandise. Clearly, AST USA's role with regard to these sales is more than an ancillary one. Moreover, the Department has always analyzed further manufacturing in the context of CEP, pursuant to section 772(d) of the Act. *See Notice of Final Determination of Sales At Less Than Fair Value: Large Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany*, 61 FR 38166, 38174 (July 23, 1996).

For the remaining sales which AST has classified as EP sales, our examination leads us to preliminarily conclude that these are EP sales. AST ships the subject merchandise directly to the unaffiliated U.S. customer and we have no evidence to indicate this is other than a customary commercial channel of trade between the parties. Additionally, the facts demonstrate that it is AST which sets the terms of the sale in Italy prior to importation. AST USA merely provides a communication link and processes sales-related documentation by transmitting the U.S. customer's request to AST and receiving AST's response either confirming or not confirming the order.

Finally, AST classified sales of subject merchandise sold by AST USA after importation and for the account of AST USA as CEP sales. These were referred to by AST as warehouse or consignment sales.

We calculated EP, in accordance with section 772(a) of the Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted, based on the facts of record. We based EP on the packed, delivered tax and duty unpaid price to unaffiliated purchasers in the United States. We made adjustments to starting price for billing adjustments, alloy surcharges, and skid charges, and for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, freight equalization charges, foreign inland freight, foreign brokerage and handling, international freight and foreign inland insurance.

We calculated CEP, in accordance with subsections 772(b) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States, or otherwise warranted the application of CEP, as discussed above. We based CEP on the packed, delivered, duty paid or delivered prices to unaffiliated purchasers in the United States. We made adjustments to the starting price for price-billing errors, where applicable. In addition, we made adjustments to the starting price by adding alloy surcharges, and skid charges where appropriate. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, freight equalization charges, foreign inland freight, marine insurance, U.S. customs duties, U.S. inland freight, foreign brokerage and handling, international freight, foreign inland insurance, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs, warranty expenses and technical selling expenses), inventory carrying costs, and indirect selling expenses. With regard to indirect selling expenses, we have included the expense associated with AST's two U.S. shipments that were damaged in transit, before reaching the United States. We calculated the expense as the difference between the original value of the merchandise (as represented by the amount of the insurance claim) less the insurance revenue received for these two shipments, and the less value of the subsequent sale of this material as secondary merchandise. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Affiliated-Party Transactions and Arm's-Length Test

Sales to affiliated customers in the home market not made at arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled*

Carbon Steel Flat Products from Argentina (''Certain Cold-Rolled Carbon Steel Flat Products from Argentina'') (58 FR 37062, 37077 (July 9, 1993); *See, Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil*, 63 Fed. Reg. 59509 (Nov. 8, 1998), citing to *Certain Cold-Rolled Carbon Steel Flat Products from Argentina.* Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparison'' sections of this notice.

Home Market Viability

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

Cost of Production Analysis

Based on the information contained in the timely cost allegation filed by the petitioners on June 10, 1998, the Department found reasonable grounds to believe or suspect that AST's sales of the foreign like product were made at prices which represent less than the cost of production, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated an investigation to determine whether AST made home market sales during the POI at prices below their respective cost of production (COP)s, within the meaning of section 773(b) of the Act. *See Initiation.* Before making any fair value comparisons, we conducted the COP analysis described below.

Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of AST's cost of materials and fabrication for the foreign like product, plus an amount for home market general and administrative expenses (SG&A), interest expenses, and packing costs. We relied on the COP data submitted by AST in its Section D cost questionnaire response, except in the following instances where we determined the reported costs were improperly valued: (1) We recalculated AST's G&A rate using fiscal year data as reported on its 1997 audited financial statement; (2) we recalculated AST's financial expense rate by excluding its financial income offset because it failed to support that it was generated from short-term sources. In addition, we recalculated the cost of sales denominator to include certain non-operating income and expense items.

B. Test of Home Market Prices

We compared the weighted-average COP figures for AST to home market sales prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether sales had been made at prices below their COPs. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. On a product-specific basis, we compared COP to home market prices, less any applicable movement charges, billing adjustments, alloy surcharges, skid charges, rebates, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'', pursuant to section 773(b)(2)(c)(i), and within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to weighted-average COPs for the POI, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, pursuant to 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. For those U.S. sales of SSSS for which there were no comparable home market sales in the ordinary course of trade, we compared the CEP to CV in accordance with section 773(a)(4) of the Act.

D. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of AST's cost of materials, fabrication, selling, general, and administrative expenses (SG&A), interest expenses, profit, and packing. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by AST in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Italy. For CV, we made the same adjustments described in the COP section above.

Price-to-Price Comparisons

We performed price-to-price comparisons where there were sales of comparable merchandise in the home market that did not fail the cost test.

For AST's home market sales of products that were above COP, we calculated NV based on FOB or delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length prices. We made adjustments for price billing errors, discounts and rebates where appropriate. We made deductions, where appropriate, for foreign inland freight, warehousing, and foreign inland insurance expenses pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments, where appropriate, for imputed credit, warranty expenses, and technical expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market

match of such or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to EP, we made COS adjustments by deducting the weighted average home market selling expenses and adding U.S. direct selling expenses. Where we compared CV to CEP, we deducted from CV the average home market direct selling expenses.

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, in accordance with section 773A(a) of the Act.

Critical Circumstances

On October 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of SSSS from Italy. In accordance with 19 CFR 351.206(c)(2)(i), since this allegation was filed at least 20 days prior to the Department's preliminary determination, we must issue our preliminary critical circumstances determination not later than the preliminary determination.

Section 733(e)(1) of the Act provides that if a petitioner alleges critical circumstances, the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine that there is a history of dumping of the subject merchandise, the Department normally considers evidence of an existing antidumping duty order on SSSS in the United States or elsewhere to be sufficient. Petitioners did not provide any information indicating a history of dumping of SSSS from Italy. Furthermore, we investigated the existence of antidumping duty orders on SSSS from Italy in the United States or elsewhere and found none. We were also unable to find other information that would have indicated a history of dumping of SSSS from Italy.

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at less than fair value and thereby causing material injury, the Department normally considers margins of 25 percent or greater for EP sales to impute knowledge of dumping and of resultant material injury. In this investigation, we have not calculated estimated dumping margins of 25 percent or greater. With regard to CEP sales, the Department normally consider margins of 15 percent or greater sufficient to impute knowledge of dumping and material injury. In this investigation, we have not calculated estimated dumping margins of 15 percent or greater. Based on these facts, we determine that the first criterion for ascertaining whether critical circumstances exist is not satisfied. Therefore, we preliminarily determine that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to exports of SSSS from Italy by AST. We have not analyzed the shipment data for AST to examine whether imports of SSSS have been massive over a relatively short period. (*see* e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Collated Roofing Nails From Korea*, 62 FR 25895, 25898 (May 12, 1997)). Regarding all other exporters, because we do not find that critical circumstances exist for AST, we determine that critical circumstances do not exist for companies covered by the ''All Others'' rate. We will make a final determination concerning critical circumstances when we make our final determination in this investigation, if that final determination is affirmative.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

The All Others Rate

Because the Department investigated one company (AST), we used AST's margin in this investigation as the all-others rate. As a result, the all-others rate is 6.25 percent.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin
AST	6.25%
All Others	6.25%

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of stainless steel plate in coils are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation

only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c). We will issue our final determination in this investigation no later than 135 days after the date of publication in the **Federal Register** of the preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: December 17, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–34464 Filed 12–31–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Sheet and Strip in Coils from Mexico

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

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Martin Odenyo, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2924 or (202) 482–5254, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Preliminary Determination

We preliminarily determine that stainless steel sheet and strip in coils (SSSS) from Mexico is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On June 30, 1998, the Department initiated antidumping duty investigations of imports of SSSS from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom. *See Initiation of Antidumping Duty Investigations: Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom*, 63 FR 37521 (July 13, 1998) (Initiation Notice). Since the initiation of this investigation the following events have occurred.

In the Initiation Notice, the Department set aside a period for all interested parties to raise issues regarding product coverage. On July 29, 1998, petitioners (Allegheny Ludlum Corp.; J&L Specialty Steel, Inc.; Washington Steel Division of Bethlehem Steel Corporation; United Steelworkers of America, and AFL–CIO/CLC) filed comments proposing clarifications to the scope of these investigations. Also, from July through October 1998, the Department received numerous submissions from petitioners and respondents concerning product coverage.

Petitioners identified Mexinox S.A. de C.V (Mexinox) as the sole producer of the subject merchandise in Mexico. Thus Mexinox is the sole respondent in this investigation. *See* Memorandum to Joseph Spetrini, dated September 21, 1998, Attachment 7 (Selection of Respondents Memo). On July 21, 1998, the Department also requested comments from petitioners, Mexinox, and the Embassy of Mexico regarding the criteria to be used for model matching purposes. On July 27 and December 3, 1998, Mexinox and petitioners submitted comments on our proposed model matching criteria.

Also, on July 24, 1998, the United States International Trade Commission (the ITC) notified the Department of its affirmative preliminary injury determination in this case.

The questionnaire is divided into five parts; Section A (general information, corporate structure, sales practices, and merchandise produced), Section B (home market or third-country sales), Section C (U.S. sales), Section D (cost of production/constructed value), and Section E (further manufacturing in the United States). The Department issued its antidumping questionnaire to Mexinox on August 3, 1998, requesting that Mexinox respond to Sections A–D. On October 14, 1998, we instructed Mexinox to respond to Section E of the questionnaire.

Mexinox submitted its response to Section A of the questionnaire on September 8, 1998; Mexinox's responses to Sections B through D followed on September 29, and to Section E on November 10, 1998. Petitioners filed comments on Mexinox's Sections A through D responses on October 13, and October 21, 1998. We issued supplemental questionnaires for Section A to Mexinox on October 14, October 29, and November 5, 1998, and for Sections B and C on October 29, 1998. Mexinox responded to our supplemental questionnaires for Section A on October 29, and November 17, 1998, and to our supplemental questionnaires for Sections B and C on November 17, 1998.

On October 6, 1998, petitioners made a timely request for a thirty-day postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Act. On October 23, 1998, we postponed the preliminary determination until no later than December 17, 1998. *See Stainless Steel Sheet and Strip in Coils From Italy, France, Germany, Mexico, Japan, Republic of Korea, United Kingdom, and Taiwan; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations*, 63 FR 56909 (October 23, 1998).

Scope of the Investigations

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42,

7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[5]

Period of Investigation

The period of investigation (POI) is April 1, 1997 through March 31, 1998.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to Section 735(a)(2) of the Tariff Act, on December 14, 1998, Mexinox requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because: (1) our preliminary determination is affirmative; (2) Mexinox accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Affiliation

We have preliminarily determined that Mexinox is affiliated with Thyssen Stahl AG (Thyssen Stahl) and Thyssen AG (Thyssen). Section 771(33)(E) of the Act provides that the Department shall consider companies to be affiliated where one owns, controls or holds, with the power to vote, five percent or more of the outstanding voting stock or shares of any other company. Where the Department has determined that a company directly or indirectly holds a five percent or greater equity interest in another company, the Department has deemed these companies to be affiliated.

We have preliminarily determined that Mexinox is affiliated with Thyssen and Thyssen Stahl because these two companies indirectly own and control 36 percent of Mexinox's outstanding stock. We examined the record evidence to evaluate the nature of Mexinox's relationship with Thyssen Stahl and Thyssen. Mexinox's Section A Questionnaire Response, dated September 8, 1998, states that Krupp Thyssen Stainless (KTS) is a joint venture entity owned 60 percent by Krupp and 40 percent by Thyssen Stahl, and that KTS owns 90 percent of Mexinox. The supporting exhibits to this submission confirm Thyssen Stahl's interest in KTS and KTS's 90 percent shareholder interests in Mexinox. In its submission dated December 9, 1998, the petitioners submitted to the Department publicly available data that confirmed not only the foregoing shareholding interests, but also confirmed that Thyssen Stahl is a wholly-owned subsidiary of Thyssen. Consequently, Thyssen, through Thyssen Stahl and KTS, indirectly owns 36 percent interest in Mexinox. Therefore, Mexinox, as the majority owned subsidiary of the joint venture entity KTS, is affiliated with the joint venturer Thyssen Stahl and its parent company, Thyssen, pursuant to section 771(33)(E) of the Act. *See Steel Wire Rod From Sweden*, 63 FR 40499, 40453 (July 29, 1998) (*Wire Rod From Sweden*).

In addition, we have preliminarily determined that Mexinox is affiliated with Thyssen AG and its U.S. affiliates. Pursuant to section 771(33)(F) of the Act, affiliation exists between a parent company and its various subsidiaries where the subsidiaries are under the common control of the ultimate parent company. The statute defines control as being in a position to legally or operationally exercise restraint or direction over the other entity. Actual exercise of control is not required by the statute. In this investigation, the nature and quality of corporate contact necessitate a finding of affiliation vis-a-vis the common control mechanism.

Section 771(33)(F) of the Act and the Department's determinations in *Certain Cut-to-Length Carbon Steel Plate From Brazil*, 62 FR 18486, 18490 (April 15, 1997), and *Wire Rod From Sweden* at 40452, support a finding that Mexinox, Thyssen Stahl and Thyssen's affiliates in the U.S. market are under the common control of Thyssen and, therefore, affiliated with Thyssen, and each other. The record evidence shows that Thyssen, as the majority equity holder and ultimate parent company of its various affiliates, is in a position to exercise direction and restraint over the Thyssen affiliates' production and pricing. The record evidence also shows that Thyssen indirectly holds a substantial equity interest in Mexinox and is in a position to legally and operationally exercise direction and restraint over Mexinox (*see* Memorandum to Joseph Spetrini, Mexinox Affiliation, December 17, 1998) (Affiliation Memo). The evidence, taken as a whole, strongly suggests that Thyssen has several potential avenues for exercising direction and restraint over Mexinox's production, pricing and other business activities. In sum, Thyssen's substantial equity ownership in both Mexinox and its Thyssen affiliates, in conjunction with the ''totality of other evidence of control,'' requires a finding that these companies are under the common control of Thyssen, and are therefore affiliated parties within the meaning of section 771(33)(F) of the Act.

Fair Value Comparisons

To determine whether sales of SSSS from Mexico to the United States were made at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the ''export price and constructed export price'' and ''normal value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

On January 8, 1998, the U.S. Court of Appeals for the Federal Circuit (CAFC) issued a decision in *CEMEX* v. *United States*, 133 F.3d 897 (Fed. Cir. 1998). In that case, based on the pre-URAA version of the Act, the CAFC 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.'' 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

[5] ''GIN4 Mo'', ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

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.

Transactions Investigated

For its home market and U.S. sales, Mexinox reported the date of invoice as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale (section 19 CFR 351.401 (i)). Mexinox further stated that the invoice date represented the date when the essential terms of sales, *i.e.*, price and quantity, are definitively set, and that up to the invoice date, these terms were subject to change. However, petitioners have alleged that the sales documentation provided by Mexinox does not appear to support Mexinox's claims that price and quantity may change at any time between the order acceptance date (confirmation date) and the final invoice date. On October 29, 1998, the Department requested that Mexinox provide additional information concerning the nature and frequency of price and quantity changes occurring between the date of order and date of invoice. In addition, we requested that Mexinox report sales during the POI for which Mexinox had issued an order acceptance, in addition to those sales invoiced during the POI. Mexinox responded to our request on November 17, 1998. We have preliminarily determined that the date of invoice is the appropriate indicator of the actual date of sale because record evidence indicates that in a substantial number of instances the price and quantity changed between the date of the order acceptance and the date of invoice, thus substantiating Mexinox's claim that price and quantity terms are subject to negotiation until the date of invoice. *See* Mexinox's November 17, 1998 Submission, pages 5–6. We will examine this issue closely at verification. If we determine that order confirmation date is the more appropriate date of sale, to the extent that this information has not been provided we may resort to facts available for the final determination.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent covered by the description in the ''Scope of the Investigation'' section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price of the comparison sales in the home market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision).

In implementing these principles in this investigation, we asked Mexinox to identify the specific differences and similarities in selling functions and/or support services between all phases of marketing in the home market and the United States. Mexinox identified two channels of distribution in the home market: (1) distributors/retailers and (2) end-users. For both channels, Mexinox performs similar selling functions such as pre-sale technical assistance and after-sales warranty services. Because channels of distribution do not qualify as separate LOTs when the selling functions performed for each customer class are sufficiently similar, we determined that there exists one LOT for Mexinox's home market sales. *See Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review*, 63 FR 30185, 30190 (June 3, 1998).

For the U.S. market, Mexinox reported in its original questionnaire response two LOTs: 1) EP sales consisting, in some cases, of sales made directly to unaffiliated U.S. customers, and in other cases of sales made from the merchandise finished goods stock held at the Mexican factory in San Luis Potosi (SLP Stock sales); and 2) CEP sales made through Mexinox USA's Brownsville warehouse to service centers and end users. The Department examined the selling functions performed by Mexinox for both EP and CEP sales (after deductions under 772(d)). These selling functions included customer sales contacts (*i.e.*, visiting current or potential customers receiving orders and promotion of new products), technical services, inventory maintenance, and business system development. We found that Mexinox provided a qualitatively different degree of these services on EP sales than it did on CEP sales, and that the selling functions were sufficiently different to warrant a determination that two separate LOTs exist in the United States.

When we compared EP sales to home market sales, we determined that both sales were made at the same LOT. For both EP and home market transactions, Mexinox sold directly to the customer, and provided similar levels of customer sales contacts, technical services, and inventory maintenance. For CEP sales as adjusted, Mexinox performed fewer customer sales contacts, technical services, inventory maintenance, and warranty services. In addition, the differences in selling functions performed for home market and CEP transactions indicate that home market sales involved a more advanced stage of distribution than CEP sales. In the home market, Mexinox provides marketing further down the chain of distribution by providing the range of customized downstream selling functions that are normally performed by service centers in the U.S. market (*e.g.*, further processing of coils, inventory maintenance, just-in-time deliveries, technical advice, credit and collection, etc.)

Based on the above analysis, we determined that CEP and the starting price of home market sales represent different stages in the marketing process, and are therefore at different LOTs. Therefore, when we compared CEP sales to home market sales, we examined whether a level-of-trade adjustment may be appropriate. In this case, Mexinox sold at one LOT in the home market; therefore, there is no basis upon which to determine whether there

is a pattern of consistent price differences between levels of trade. Further, we do not have the information which would allow us to examine pricing patterns of Mexinox's sales of other similar products, and there are no other respondent's or other record evidence on which such an analysis could be based.

Because the data available does not provide an appropriate basis for making a LOT adjustment and the level of trade in Mexico for Mexinox is at a more advanced stage than the level of trade of the CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act, as claimed by Mexinox. We based the CEP offset amount on the amount of home market indirect selling expenses, and limited the deduction for home market (HM) indirect selling expenses to the amount of indirect selling expenses deducted from CEP in accordance with section 772(d)(1)(D) of the Act. We applied the CEP offset to NV, whether based on home market prices or CV.

In addition to the three channels of distribution contained in the two U.S. levels of trade Mexinox reported in its original questionnaire response, Mexinox reported (in response to the Department's request in a supplemental questionnaire) U.S. sales through two other channels of distribution: CEP sales through a U.S. affiliate of Krupp; and CEP sales through a U.S. affiliate of Thyssen AG. We do not at this time have the information on the record to enable us to make a LOT determination for these two channels of distribution. We are currently soliciting such information from Mexinox and will invite comment on the information we receive from interested parties. For the purposes of this preliminary determination, we treated both of these channels of distribution as equivalent to the CEP level of trade as described above.

Export Price and Constructed Export Price

Mexinox reported its sales of subject merchandise sold to unaffiliated U.S. customers through its affiliated company, Mexinox USA, as EP transactions. For EP sales, the price terms were set by management in Mexico before importation into the United States, and the products were shipped directly to the customer through Mexinox USA without being introduced into U.S. inventory. Furthermore, we reviewed the information Mexinox submitted about the sales process for these sales and determined that the role Mexico USA played was ancillary at most. Mexinox reported as CEP transactions its sales of subject merchandise sold to Mexinox USA for its own account. Mexinox USA then resold the subject merchandise after importation to unaffiliated customers in the United States.

We calculated EP, in accordance with section 772(a) of the Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted, based on the facts of record. We based EP on packed prices to unaffiliated purchasers in the United States. We made deductions for discounts, rebates, and debit/credit rates. We also made adjustments for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, foreign inland insurance, U.S. inland freight, U.S. brokerage and handling, U.S. customs duty, and U.S. warehousing. We also added duty drawback to the starting price, in accordance with section 772(c)(1)(B) of the Act.

We calculated CEP, in accordance with section 772(b) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on packed prices to unaffiliated purchasers in the United States. We made adjustments for discounts, rebates, and debit/credit notes where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, U.S. customs duties, U.S. inland freight, foreign brokerage and handling, and foreign inland insurance. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs and warranty expenses), inventory carrying costs, and other indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act, and added duty drawback to the starting price in accordance with section 772(c)(1)(B) of the Act. In addition, the U.S. entity affiliated with Mexinox through Thyssen AG (discussed above) performed some further manufacturing of some of Mexinox's U.S. sales. For these sales, we deducted the cost of further manufacturing in accordance with 772(d)(2) of the Act. In calculating the cost of further manufacturing from the Thyssen affiliate, we relied upon the further manufacturing information Mexinox provided except for general and administrative (G&A) expenses. Mexinox's reported G&A expenses included interest expense and G&A expense. Mexinox also included a separate amount for interest expense. Therefore, we deducted the interest expense from the total G&A expenses and we accounted for interest expenses as a separate item in our total cost calculation. Also, Mexinox calculated G&A using a ratio specific to stainless steel processing. We recalculated the ratio by dividing company-wide G&A expenses by total processing costs. *See* memorandum from Laurens Van Houten to Neal Halper regarding cost of production and constructed value calculation dated December 17, 1998.

As indicated above under ''Level of Trade,'' Mexinox made some U.S. sales through an affiliate of Thyssen AG. In its November 17, 1998 submission Mexinox reported (at page 20) that this affiliate subsequently resold a small amount of this merchandise to other Thyssen affiliates. On December 14, 1988 we requested that Mexinox report these downstream U.S. sales. We will receive Mexinox's response on January 4, 1999, and will consider using the information for the final determination. However, section 776(a) of the Act requires the Department to resort to facts available if a party ''fails to provide [requested] information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782.'' Furthermore, section 776(b) of the Act authorizes the Department, if it finds that a party has failed to act to the best of its ability in complying with a request for information, to use an inference adverse to the interests of the party in selecting from among the facts otherwise available. We determine that by reporting in its November 17, 1998 submission its U.S. sales to affiliated customers, rather than to the first unaffiliated U.S. customer, Mexinox has failed to act to the best of its ability. Therefore, for purposes of this preliminary determination we assigned a margin to these sales based on the facts available, pursuant to section 776(a) of the Act. As facts available, we assigned to these sales the highest margin we found for any of the sales made by the Thyssen AG affiliate to its unaffiliated U.S. customers

Normal Value

A. Selection of Comparison Market

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* 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 respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable.

B. Affiliated-Party Transactions and Arm's-Length Test

Sales to affiliated customers in the home market not made at arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102(b). To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers minus all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). In instances where no price ratio could be calculated for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil,* 63 FR 59509 (Nov. 8, 1998), citing to *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

C. Cost of Production Analysis

Based on the cost allegation contained in the petition, the Department found reasonable grounds to believe or suspect that sales in the home market were made at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated an investigation to determine whether the respondent made home market sales during the POI at prices below its cost of production (COP) within the meaning of section 773(b) of the Act (See Initiation Notice).

We calculated the COP based on the sum of the 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 respondent's reported COP amounts, adjusted as discussed below, to compute weighted-average COPs during the POI. 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 COP. On a product-specific basis, we compared the COP to the 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 in accordance with sections 773(b)(1) (A)&(B) of the Act: (1) Whether, within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade.

Where twenty percent or more of the 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 sections 773(b)(2) (B) and (C) of the Act. Based on our comparison of prices to the weighted-average per-unit cost of production for the POI, we determined whether the below-cost prices were such as to provide for recovery of costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded below-cost sales in determining NV.

Our cost test for Mexinox revealed that less than twenty percent of Mexinox's home market sales of certain products were at prices below Mexinox's COP. We therefore concluded that for such products, Mexinox had not made below-cost sales in substantial quantities. *See* section 773 (b)(2)(C)(i) of the Act. We therefore retained all such sales in our analysis. For other products, more than twenty percent of Mexinox's sales were at below-cost prices. In such cases we disregarded the below-cost sales, while retaining the above-cost sales for our analysis. *See* Preliminary Determination Analysis Memorandum, December 17, 1998, a public version of which is on file in room B–009 of the main Commerce building. We relied on the respondent's reported COP and CV amounts except as noted below.

1. We revised the reported material cost obtained from affiliates to include the highest of cost of production, transfer price, or market price. We made this adjustment in accordance with section 773(f)(3) of the Act.

2. We revised the reported G&A rate to include G&A expenses as reported in the financial statement without adjustment for expenses incurred on behalf of subsidiaries. Additionally, we applied the revised G&A rate to the cost elements on which the rate was based in order to ensure that we did not understate the total G&A expenses.

3. We revised the reported net financing expense ratio to include an offset only for those items which we determined to be short-term interest income. This is consistent with our methodology for calculating financing expenses. *See, e.g. Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Reviews, Partial Termination of Administrative Reviews, and Revocation Part of Antidumping Duty Orders,* 60 FR 10900, 10925 (February 28, 1998).

D. Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, SG&A expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. We deducted from CV the weighted-average home market direct selling expenses incurred on sales made in the ordinary course of trade.

E. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. We made adjustments for debit/credit notes, interest revenue, discounts, rebates, insurance revenue, and freight revenue, where appropriate. We made deductions, where appropriate, for foreign inland freight, insurance, handling, and warehousing, pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR

351.411, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses and warranty expenses. We also made an adjustment, where appropriate, for the CEP offset in accordance with section(a)(7)(B) of the Act. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6) (A) and (B) of the Act.

F. Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of such or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses. We also made an adjustment, where appropriate, for the CEP offset in accordance with section 773(a)(7)(B) of the Act.

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, in accordance with section 773A(a) of the Act.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (Percentage)
Mexinox	23.27
All Others	23.27

Commission Notification

In accordance with section 733(f) of the Tariff Act, we have notified the Commission of our determination. If our final determination is affirmative, the Commission will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of stainless steel sheet and strip are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. *See* 19 CFR 351.309. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. *See* 19 CFR 351.310. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c). We intend to issue our final determination in this investigation no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act and 19 CFR 351.205 (c).

Date: December 17, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–34465 Filed 12–31–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Sheet and Strip in Coils From France

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

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Doug Campau or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3964 or (202) 482–3434, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351, (May 19, 1997).

Preliminary Determination

We preliminarily determine that Stainless Steel Sheet and Strip in Coils (''SSSS'') from France is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice. The Department used the data submitted December 1, 1998 in its analysis.

Case History

On July 13, 1998, the Department initiated antidumping duty

investigations of imports of stainless steel sheet and strip in coils from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan and the United Kingdom (*Notice of Initiation of Antidumping Investigations: Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan and the United Kingdom* (63 FR 37521 (July 13, 1998)). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. On July 27, 1998, Allegheny Ludlum Corporation, Armco, Inc.,[1] J&L Specialty Steel, Inc.,[2] Washington Steel Division of Bethlehem Steel Corporation (formerly Lukens, Inc.), the United Steelworkers of America, AFL–CIO/CLC , the Butler Armco Independent Union [3] and the Zanesville Armco Independent Organization, Inc.[4] (''petitioners'') submitted comments to the Department stating that they generally agree with the Department's product characteristics and model match criteria. However, petitioners noted that the products' actual alloy content, within certain ranges, must be incorporated from the outset into the product characteristics that comprise the product matching hierarchy that create the control numbers (CONNUMs). Additionally, on July 27, 1998, respondent Usinor submitted comments stating that the order and categories of some of the elements should be modified to ensure that the Department's model matching criteria appropriately identify identical and like products, consistent with the statute. Further, on July 28, 1998, respondent submitted additional comments on its product specification information regarding certain products (i.e., Durphynox 17 and Gilphy 36). On December 3, 1998, petitioners submitted additional comments, pertaining to all of the pending SSSS investigations, detailing for the Department the appropriate basis for product comparison when matching sales of non-identical merchandise. On December 4, 1998, petitioners submitted additional comments, specific to the French SSSS case, on the additional finish information provided by Usinor. On December 7, 1998, Usinor submitted comments arguing that the Department should disregard concerns articulated by petitioners in their letters of December 4th and 7th, 1998. However, Usinor misinterprets the purpose of the early deadline for commenting on model matching. The purpose of that deadline is not to cut off comment on all model match related issues, but rather to let parties know the date by which they must respond in order to ensure that their comments are considered in formulating initial questionnaires. In this way the Department tries to avoid situations in which parties point out relevant matching criteria too late for the Department to gather necessary data. Petitioners' December comments do not propose gathering new types of information, but rather suggest other ways to arrange the criteria already reported. Depending on the content, such general comments are subject to the deadlines of new factual information, or for legal arguments. 19 CFR 351.301 and 351.309, respectively.

On July 24, 1998, the United States International Trade Commission (''ITC'') notified the Department of its affirmative preliminary injury determination in this case. Additionally, on August 5, 1998, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured or is threatened with material injury by reason of imports of the subject merchandise from France (63 FR 29250).

On August 3, 1998, the Department issued an antidumping duty questionnaire to Usinor and Imphy, S.A. On September 9, 1998, the Department received Usinor's response to Section A of the questionnaire. In this response, Usinor stated that it made sales in the home market through its Ugine division, and through Bernier SNC (Bernier) and Ugine-Service SAS (Ugine-Service), and in the U.S. market through its affiliate Uginox. Additionally, on September 29, 1998, the Department received Usinor's responses to Sections B, C, D, and E of the questionnaire. On September 29 and October 14, 1998, petitioners filed comments on Usinor's questionnaire responses. On October 20, 1998, we issued a supplemental questionnaire to Usinor for Sections A, B, C, D, and E. On November 12 and December 1, 1998, we received Usinor's responses to the Department's supplemental questionnaire. On December 2, 1998, petitioners filed comments to the upcoming preliminary determination with respect to Usinor's sales and confirmation dates.

On August 31, 1998, in a letter to the Department, respondent Usinor requested that it not be required to report downstream sales in France by Bernier or Ugine-Service, or sales in the United States by Edgcomb Metals, Inc. (Edgcomb). Usinor requested that it not be required to report downstream sales in France because Bernier's and Ugine-Service's relevant resales: (1) represent approximately five percent of sales in France during the POI; (2) are all at a different level of trade from United States sales; (3) for the most part are not likely to match U.S. sales; and (4) would entail a disproportionately large effort to report. Additionally, Usinor also requested that it not be required to report sales in the United States by Edgcomb, an affiliated processor/reseller. Usinor stated that the majority of Ugine's sales of SSSS in the United States are made by Uginox, a wholly-owned subsidiary of Usinor, and that during the POI, Uginox sold a small quantity of SSSS to Edgcomb. Also, Usinor argues that while Edgcomb is affiliated with Usinor, since January 1, 1998, Usinor only indirectly owns 28.5% of its shares through its control of Sollac, which is wholly owned by Usinor.[5] Usinor asserts that Edgcomb should not be regarded as affiliated with Uginox because Uginox and Edgcomb are not under common control, and neither Uginox nor Edgcomb controls the other. On September 11, 1998, in a letter to the Department, petitioners contested Usinor's request for exemption from reporting certain home market and U.S. sales. In the home market, petitioners argue that Usinor misapplied the Department's five percent test [6] by calculating the percentage of sales made by affiliated buyers to their unaffiliated customers rather than calculating the percentage of sales made by Usinor to all of its affiliated customers. On October 19, 1998, we determined that Bernier and Ugine-Service were required to report their home market downstream sales, and that Edgcomb was required to report its U.S. downstream sales. *See Decision Memorandum from Roland MacDonald, Office Director, Office VII to Joseph A. Spetrini, Deputy Assistant Secretary*, Group III, dated October 19, 1998. *See also, Affiliation Memorandum from Case Analysts to Roland MacDonald*, dated December 14, 1998.

On October 6, 1998, pursuant to section 733(c)(1)(A) of the Act, the petitioners made a timely request to

[1] Armco, Inc. is not a petitioner in the Mexico case.

[2] J&L Specialty Steel, Inc, is not a petitioner in the France case.

[3] Butler Armco Independent Union is not a petitioner in the Mexico case.

[4] Zanesville Armco Independent Organization, Inc. is not a petitioner in the Mexico case.

[5] Prior to January 1, 1998, Unisor indirectly owned 49% of Edgcomb through its wholly-owned subsidiary Sollac.

[6] The Department's practice of not requiring the reporting of downstream sales for purposes of determining normal value if the firm in question does not have sales of the foreign like product over five percent to its affiliated customers.

postpone the preliminary determination for thirty days. The Department determined that this investigation is extraordinarily complicated and that the additional time is necessary for the Department to make its preliminary determination. On October 15, 1998, we postponed the preliminary determination until no later than December 17, 1998. *See Notice of Postponement of Preliminary Antidumping Duty Investigations of Stainless Steel Sheet and Strip in Coils: from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan and the United Kingdom*, 63 FR 56909 (October 23, 1998).

Finally, Imphy S.A. reported that it did not produce or sell subject merchandise. *See* Memorandum from *Robert James, to Joseph A. Spetrini, Deputy Assistant Secretary through Roland MacDonald, Office Director, Office VII, Richard Weible, Office Director, Office VIII, Edward Yang, Office Director, Office IX*, Group III, dated December 14, 1998.

Scope of Investigation

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [7]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting

[7] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[8]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[9]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[10] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[11]

Period of Investigation

The Period of Investigation (POI) is April 1, 1997, through March 31, 1998.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to Section 735(a)(2) of the Act, on November 25, 1998, Usinor requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) Usinor accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Usinor covered by the description in the *Scope of Investigation* section, above, and sold in France during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on nine characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of preference): grade, hot/cold rolled, gauge, finish, metallic coating, non-metallic coating, width, tempered/tensile strength, and edge trim. The Department's questionnaire authorized respondents to make distinctions (sub-codes) within some of these characteristics, but not within others. For certain product characteristics (*i.e.*, finish and coating) Usinor reported additional sub-codes which were specifically permitted by the Department's questionnaire. However, Usinor also reported additional sub-codes in its hot/cold rolled, and tempered product characteristic categories. These are characteristics for which the Department's questionnaire did not explicitly permit sub-codes. Nevertheless, for this preliminary determination, the Department has included the additional codes that Usinor reported in the aforementioned categories in the Department's product matching methodology. *See* Analysis Memo from Doug Campau to The File, dated December 17, 1998. We will further review Usinor's distinctions within characteristics to determine their appropriateness for the final determination. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping duty questionnaire and the August 3, 1998, reporting instructions.

Date of Sale

In the home market and U.S. market, Usinor has reported date of sale as the invoice date. Based on information reported in Usinor's questionnaire response, it appeared that the date of the order confirmation may be the appropriate date of sale. On October 14, 1998, petitioners requested that the Department inquire further into how Usinor reported its date of sale. Given the relevance of petitioners' comments and the nature of marketing these types of made-to-order products, petitioners' claims have some merit. Consequently, on October 20, 1998, the Department requested sales data bases reported on that basis. On November 2, 1998, Usinor submitted a letter requesting that the Department not require the submission of order confirmation date data because the companies' record keeping systems were not equipped to report order acknowledgments, in some cases because order acknowledgments were not generated, and in some cases because they were routinely purged from the involved databases. Furthermore, Usinor reported that the essential terms of the companies' orders change between the date of order acknowledgment and the invoice date for most, but not all, of its U.S. and home market sales. On December 1, 1998, Usinor provided the Department

[8] ''Gilphy 36'' is a trademark of Imphy, S.A.

[9] ''Durphynox 17'' is a trademark of Imphy, S.A.

[10] This list of uses is illustrative and provided for descriptive purposes only.

[11] ''GIN4 Mo'', ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

with a database containing sales by order confirmation date. On December 2, 1998, petitioners submitted a letter stating that Usinor misrepresented its date of sale data by reporting invoice date instead of order date. Petitioners contend that Usinor's material terms of sale do not change but for changes to sales tolerance levels.

Section 351.401(i) of the Department's regulations states that the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. The preamble to the Final Rules (the ''Preamble'') provides an explanation of this policy and examples of when the Department may choose to base the date of sale on a date other than the date of invoice. See 62 FR at 27348–49 (May 19, 1997). For the reasons given in the November 2, 1998 letter discussed above, Usinor has argued that invoice date should be considered the proper date of sale. In accordance with 19 CFR 351.401(i), where appropriate, we based date of sale on invoice dates recorded in the ordinary course of business by the involved sellers and resellers of the subject merchandise. However, we intend to fully verify information concerning respondent's claims that invoice date is the appropriate date of sale. Based on the outcome of our verification, we will determine whether it is appropriate to continue to use the date of invoice as the date of sale. We will consider, among other things, whether, in fact, there were any changes to the material contract terms between the original order confirmation and the date of invoice. *See e.g., Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit from Thailand*, 63 FR 7392 at 7394–95 (February 13, 1988).

Fair Value Comparisons

To determine whether sales of SSSS from France to the United States were made at LTFV, we compared constructed export price (''CEP'') to the Normal Value (''NV''), as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEP sales for comparison to weighted-average NV sales or CV sales.

Constructed Export Price

We calculated CEP in accordance with section 772(b) of the Act because the first sales to an unaffiliated purchaser took place after the subject merchandise was imported into the United States.

We based CEP on the packed ex-warehouse or delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions from the starting price for discounts, credit, warranty expenses, and commissions. We also made deductions for the following movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act: inland freight from plant to distribution warehouse, inland freight from plant/warehouse to port of exportation, international freight, marine insurance, U.S. inland freight from port to warehouse, U.S. inland freight from warehouse to the unaffiliated customer, U.S. inland insurance, U.S. warehouse expenses, and U.S. Customs duties. In accordance with section 772(d)(1) of the Act, we deducted selling expenses associated with economic activities occurring in the United States, including direct selling expenses, inventory carrying costs, and other indirect selling expenses. We recalculated credit expenses for those sales with missing payment dates because payment has not yet been made. For sales with missing payment dates, the Department set the date of payment as the projected preliminary results date. For a further explanation, see Analysis Memo from Doug Campau to The File, dated December 17, 1998. We also adjusted the starting price for billing adjustments to the invoice price. For products that were further manufactured after importation, we adjusted for all costs of further manufacturing in the United States in accordance with section 772(d)(2) of the Act. We deducted the profit allocated to expenses deducted under section 772(d)(1) and (d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity (including further manufacturing costs), based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market. In our U.S. CEP calculation, we included all downstream sales from Edgcomb and Hague Steel Corp. (Hague) reported in respondent's December 1, 1998 submission.

Normal Value

After testing home market viability, as discussed below, we calculated NV as noted in the ''Price-to-CV Comparisons'' and ''Price-to-Price Comparisons'' sections of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was 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 or equal to five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Because Usinor's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. We therefore based NV on home market sales.

2. Cost of Production Analysis

Based on a cost allegation filed by the petitioners, the Department found reasonable grounds to believe or suspect that sales by Usinor in its home market were made at prices below the costs of production (COP), pursuant to section 773(b)(1). As a result, the Department has initiated an investigation to determine whether the respondent made home market sales during the POI at prices below their respective COPs, within the meaning of section 773(b) of the Act.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of Usinor's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses, interest expenses, and packing costs. We relied on the COP data submitted by Usinor in its original and supplemental cost questionnaire responses. For this preliminary determination, we did not make any adjustments to Usinor's submitted costs.

B. Test of Home Market Prices

We compared the weighted-average COP for Usinor to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of

trade, in accordance with section 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable billing adjustments, movement charges, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Usinor'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 Usinor's sales of a given product during the POI were at prices less than the COP, we determined that such sales have been made in ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we use POI average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the 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.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Usinor's cost of materials, fabrication, G&A, U.S. packing costs, direct and indirect selling expenses, interest expenses and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Usinor in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on prices to home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

We calculated NV based on prices to unaffiliated home market customers. Where appropriate, we deducted discounts, rebates, credit expenses, warranty expenses, inland freight, inland insurance, and warehousing expense. We also adjusted the starting price for billing adjustments and freight revenue. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in CEP comparisons.

We recalculated credit expenses for those sales with missing payment dates. For sales with missing payment dates, the Department set the date of payment to the projected preliminary results date. We also recalculated indirect selling expenses incurred by Ugine, subtracting indirect selling expenses not clearly attributable to the scope merchandise. *See* Analysis Memo from Doug Campau to The File, dated December 17, 1998. In our home market NV calculation, we included all downstream sales from Bernier and Ugine-Service reported in respondent's December 1, 1998 submission.

For reasons discussed below in the ''Level of Trade'' section, we allowed a CEP offset for comparisons made at different levels of trade. To calculate the CEP offset, we deducted the home market indirect selling expenses from normal value for home market sales that were compared to U.S. CEP sales. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. In accordance with section 773(a)(2)(A) of the Tariff Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in France. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. We deducted from CV the weighted-average home market direct selling expenses and allowed a CEP offset adjustment (see ''Level of Trade'' section).

Arm's-Length Sales

Usinor reported that it made sales in the home market to affiliated end users. Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. Where prices to the affiliated party were on average 99.5 percent or more of the price to the unrelated party, we determined that sales made to the related party were at arm's length. Where no affiliated customer ratio could be calculated because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's length and, therefore, excluded them from our analysis. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made comparisons to the next most similar model.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market, or when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from 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 LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and

there is no basis for determining whether the difference in 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, 61732 (November 19, 1997).

In reviewing the selling functions reported by the respondents, we examined all types of selling functions and activities reported in respondent's questionnaire response on LOT. In analyzing whether separate LOTs existed in this review, we found that no single selling function was sufficient to warrant a separate LOT in the home market. See Antidumping Duties; Countervailing Duties, Final Rule, 63 FR 65347 (November 25, 1998).)

We determined that Usinor sold merchandise at two LOTs in the home market during the POI. One level of trade involved sales made through two channels: 1. Sales by Usinor's Ugine division, directly to unaffiliated service centers or end users (Channel 1), and 2. Sales made by Usinor's Ugine division, with the assistance of Ugine-Service in its capacity as sales agent, to unaffiliated service centers or end users (Channel 2). The second level of trade involved sales from Ugine to Usinor's affiliates, Ugine-Service and Bernier, together with subsequent resales by those affiliates to unaffiliated end users (Channel 3). From our analysis of the marketing process for these sales, we determined that sales through Channel 3 were made at a more remote marketing stage than that for sales through Channels 1 or 2. *See Memorandum from Doug Campau to Roland MacDonald,* dated December 12, 1998, on file in Import Administration's Central Records Unit, Room B–099, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC. We also found significant distinctions in selling activities and associated expenses between the sales through channel 3 and those through channel 1 or 2. Based on these differences, we concluded that two LOTs existed in the home market.

In order to determine whether separate LOTs actually existed between the U.S. and home market, we reviewed the selling activities associated with each channel of distribution. Usinor only reported CEP sales in the U.S. market. Because all of Usinor's CEP sales in the U.S. market were made through Uginox, there was only one level of trade. For these CEP sales, we determined that fewer and different selling functions were performed for CEP sales to Uginox than for sales at either of the home market LOTs. In addition, we found that the home market sales were at a more advanced stage of distribution (to end-users) compared to the CEP sales (to the affiliated distributor).

We examined whether a LOT adjustment was appropriate. The Department makes this adjustment when it is demonstrated that a difference in LOTs affects price comparability. However, where the available data do not provide an appropriate basis upon which to determine a LOT adjustment, and where the NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). We were unable to quantify the LOT adjustment in accordance with section 773(a)(7)(A) of the Act, as we found that neither of the LOTs in the home market matched the LOT of the CEP transactions. Because of this, we did not calculate a LOT adjustment. Instead, a CEP offset was applied to the NV–CEP comparisons. *See Memorandum from Doug Campau to Roland MacDonald*, dated December 12, 1998, on file in Import Administration's Central Records Unit, Room B–099, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

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, in accordance with section 773A of the Act.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percentage)
Usinor	11.73
All Others	11.73

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination, or 45 days after our final determination, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after publication of this notice. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held fifty-seven days after publication of this notice, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 135 days after publication of this notice in the **Federal Register**.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: December 17, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–34466 Filed 12–31–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–834]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From South Korea

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

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak (Pohang Iron and Steel Company, Ltd. (''POSCO'')), Brandon Farlander (Inchon Iron & Steel Co., Ltd. (''Inchon'')), or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1398 (Dybczak), (202) 482–0182 (Farlander), or (202) 482–3818 (Johnson).

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Preliminary Determination

We preliminarily determine that stainless steel sheet and strip in coils (''SSSS'') from South Korea is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On June 30, 1998, the Department initiated antidumping duty investigations of imports of SSSS from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom. *See Initiation of Antidumping Duty Investigations: Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom*, 63 FR 37521 (July 13, 1998) (''Initiation''). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. On July 29, 1998, petitioners, Allegheny Ludlum Corporation, Armco Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation (formerly Lukens, Inc.), the United Steelworkers of America, AFL–CIO/CLC, the Butler Armco Independent Union, and the Zanesville Armco Independent Organization, Inc., filed comments proposing clarifications to the scope of these investigations. Also, from July through October, 1998, the Department received numerous responses from respondents aimed at clarifying the scope of the investigations. *See Memorandum For Joseph A. Spetrini, Re: Scope Issues*, dated December 14, 1998.

In July 1998, the Department requested information from the U.S. Embassy in South Korea to identify producers/exporters of the subject merchandise. On July 21, 1998 the U.S. Embassy in South Korea responded to the Department's request for this information. Also, on July 21, 1998, the Department requested comments from petitioners and other interested parties regarding the criteria to be used for model matching purposes. On July 27, 1998, petitioners submitted comments on our proposed model matching criteria.

On July 24, 1998, the United States International Trade Commission (''ITC'') notified the Department of its affirmative preliminary injury determination in this case. On August 3, 1998, the Department subsequently issued its antidumping questionnaire to the following respondents: Pohang Iron and Steel Co., Ltd. (''POSCO''); Inchon Iron and Steel Co., Ltd. (''Inchon''); Taihan Electric Wire Co., Ltd. (''Taihan''); Sammi Steel Co., Ltd. (''Sammi''); and Dai Yang Metal Co., Ltd. (''Dai Yang''). On August 7, 1998, Sammi submitted a letter to the Department stating that it did not export the subject merchandise to the United States during the period of investigation (''POI''), with a request that it be excluded from further participation in the investigation.

POSCO, Inchon, Sammi, and Dai Yang submitted responses to section A of the questionnaire on September 8, 1998. Taihan did not respond to section A of the Department's questionnaire. On September 21, the Department issued a decision with regard to selection of respondents in the above-mentioned investigations (*see Memorandum to Joseph A. Spetrini*, dated September 21, 1998). On the basis of the analysis detailed in the memorandum, the Department chose three mandatory Korean respondents for the investigation: POSCO, Inchon, and Taihan. POSCO submitted responses to sections B through D on September 23, 1998. Taihan did not respond to sections B through D of the Department's questionnaire. Inchon submitted responses to sections B and C on September 23, 1998, and to section D on September 25, 1998. Petitioners filed comments on POSCO's section A through D responses on October 13, 1998, and October 21, 1998. Petitioners filed comments on Inchon's section A on September 21, 1998; to sections B and C on October 14, 1998; and to section D on October 16, 1998. We issued supplemental questionnaires for sections A, B and C to POSCO on October 23, 1998, and October 27, 1998. In addition, we issued a supplemental questionnaire to POSCO for section D on October 20, 1998. We issued supplemental questionnaires for sections A, B, C, and D to Inchon on October 26, 1998. POSCO responded to our supplemental questionnaires for sections A, B and C on November 23, 1998, and to our supplemental questionnaires for section D on November 17, 1998. Inchon responded to our supplemental questionnaires for sections A, B, C, and D on November 19, 1998.

On October 6, 1998, petitioners made a timely request for a thirty-day postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Act. The Department determined that these concurrent investigations are extraordinarily complicated and warranted the thirty-day postponement requested by petitioners. On October 23, 1998, we postponed the preliminary determination until no later than December 17, 1998. *See Stainless Steel Sheet and Strip in Coils From Italy, France, Germany, Mexico, Japan, the Republic of Korea, Taiwan, the United Kingdom, and Taiwan; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations*, 63 FR 56909 (October 23, 1998). On October 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of SSSS from South Korea. The critical circumstances analysis for the preliminary determination is discussed

in the ''Critical Circumstances'' section of the notice below.

On December 3, 1998, petitioners submitted comments regarding product concordance. *See Memorandum to File: Analysis for the Preliminary Determination in the Investigation of Stainless Steel Sheet and Strip in Coils from Korea—Pohang Iron and Steel Co., Ltd. (''POSCO'')* (''Analysis Memo: POSCO'') (December 17, 1998) and *Memorandum to File: Analysis for the Preliminary Determination in the Investigation of Stainless Steel Sheet and Strip in Coils from Korea—Inchon Iron and Steel Co., Ltd. (''Inchon'')* (''Analysis Memo: Inchon'') (December 17, 1998) for the Department's discussion and treatment regarding product concordance.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on December 15, 1998, POSCO informed the Department that, in the event of an affirmative preliminary determination in this investigation, it would request a full extension of the final determination, until not later than 135 days after the date of publication of the preliminary determination. On December 16, 1998, POSCO amended its request to include a request to extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) POSCO accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the date of publication in the **Federal Register** of the preliminary determination. Suspension of liquidation will be extended accordingly.

Scope of the Investigation

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent

cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[5]

Period of Investigation

The period of investigation is April 1, 1997 through March 31, 1998.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

After consideration of the complexities expected to arise in this proceeding and the resources available to the Department, we determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. Instead, we found that, given our resources, we would be able to investigate the Korean producers/exporters with the greatest export volume, as identified above. In total, these companies (POSCO, Inchon and Taihan) accounted for more than 85 percent of all known exports of the subject merchandise during the POI. For a more detailed discussion of respondent selection in this investigation, see *Memorandum to Joseph A. Spetrini: Selection of Respondents*, September 21, 1998.

Inflation

Generally, when the annual inflation rate in the country under investigation exceeds 25 percent, the Department considers that inflation to be significant and uses a modified methodology. *See, e.g., Import Administration Antidumping Manual, Chapter 8, Section 15*, (January 1998).

Petitioners allege that the Korean economy should be classified as hyperinflationary, basing their argument on an ''annualized'' monthly rate for three months of producer prices (*see* Petitioners' submissions of September 4, 1998 and December 2, 1998). However, in accordance with the Department's practice, we considered the Korean inflation rate for the POI, which was 17.06 percent. Although the inflation rate in Korea for December 1997 was 8.19 percent, the annual inflation rate during the POI was well below 25 percent. *See International Monetary Fund's International Financial Statistics: Producer Prices* (July 1998; March 1998; December 1997; July 1997). Therefore, we preliminarily determine that it is not appropriate to use the Department's high inflation methodology in this case. For a further discussion of this issue, *see Analysis Memo: POSCO.*

Fair Value Comparisons

To determine whether sales of SSSS from Korea to the United States were made at less than fair value, we compared the export price (''EP'') or constructed export price (''CEP'') to the normal value (''NV''), as described in the ''export price and constructed export price'' and ''normal value'' sections of this notice, below. In accordance with section

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo'', ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

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.'' 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.

Transactions Investigated

POSCO

POSCO reported that it made sales of subject merchandise to affiliated resellers during the POI, but claimed that less than five percent of these resales were sales of subject merchandise. In its response to the Department's October 23, 1998 supplemental questionnaire, POSCO provided detailed information regarding the sales of subject merchandise made to its affiliates. The Department preliminarily finds that the sales of subject merchandise made to affiliated resellers constitutes less than five percent of POSCO's total sales in the home market (subject to verification), and thus, the Department considered POSCO's sales to the affiliated service centers.

Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). In instances where no price ratio could be calculated for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil*, 63 Fed. Reg. 59509 (Nov. 8, 1998), citing to *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 Fed, Reg, 37062 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

For its home market and U.S. sales, POSCO reported the date of invoice as the date of sale, because POSCO stated that the invoice date represented the date when the essential terms of sales, *i.e.*, price and quantity, are definitively set, and that up to the invoice date, these terms were subject to change. Petitioners have alleged that the sales documentation provided by POSCO does not appear to support POSCO's claim that price and quantity may change at any time between the order acceptance date (confirmation date) and the final invoice date. Given the relevance of petitioners' comments and the nature of marketing these types of made-to-order products, petitioners claims have merit. Consequently, the Department requested further information concerning date of sale. On November 23, 1998, in its supplemental questionnaire response, POSCO provided additional information concerning the nature and frequency of price and quantity changes occurring between the date of order and date of invoice. This information appears to support POSCO's contention that terms of the contract are not finalized until the invoice date. We will conduct an in-depth examination of information concerning the designation of date of sale (*i.e.*, order date versus invoice date) at verification. However, based on POSCO's record submissions to date, we preliminarily determine that the date of invoice is the appropriate indicator of the actual date of sale because price and quantity are subject to negotiation until the date of invoice. For a further discussion of this issue, *see Analysis Memo: POSCO.*

In calculating EP, the Department determined that those U.S. sales for which POSCO was not paid should be excluded from the U.S. database. We preliminarily determine that the U.S. sales for which POSCO did not receive payment because the customer went bankrupt are atypical and not part of POSCO's normal business practice. Therefore, for this preliminary determination, the Department has excluded these sales from our margin analysis. Nevertheless, record evidence indicates that POSCO's U.S. sales affiliate, Pohang Steel America Corp. (''POSAM''), recognized the cost of these sales. Petitioners suggest that the Department treat the cost of these sales as a direct expense. However, direct expenses are typically expenses that are incurred as a direct and unavoidable consequence of the sale (*i.e.*, in the absence of the sale these expenses would not be incurred), whereas indirect expenses are fixed expenses that are incurred whether or not a sale is made. In this case, the cost of these sales would have occurred whether or not other sales had been made, and therefore, the Department preliminarily determines that the costs associated with these sales are more appropriately treated as indirect selling expenses incurred on U.S. sales.

Inchon

For both home market and U.S. transactions, Inchon reported the invoice date as the date of sale, *i.e.*, the date when price and quantity are finalized, because Inchon states that the price and quantity may change until the time of shipment and invoicing. However, petitioners have requested that the Department examine whether the material terms of sale (*i.e.*, price and quantity) change and, if the material terms do change, how frequently are the material terms of sale changed. Also, petitioners have requested that the Department determine whether Inchon charges a fee for changes to the terms of sale and how much time, on average, exists between the purchase order date and the shipment/invoice date. Given the relevance of petitioners' comments and the nature of marketing these types of made-to-order products, petitioners claims have merit. Consequently, on October 26, 1998, the Department issued a supplemental questionnaire, requesting that Inchon answer several questions regarding changes, if any, in Inchon's material terms of sale between

the order confirmation date and the invoice date. In Inchon's November 19, 1998 supplemental questionnaire, Inchon stated that for approximately 17 percent of U.S. sales, based on sales volume, there was a change in the material terms of sale (*i.e.*, price or quantity) between the order date and the invoice date. Based on this information, the Department has determined that the invoice date is the most appropriate date to use for the date of sale for U.S. sales, because the frequency of changes in price and quantity between order confirmation and invoice date indicate that the essential terms of sale are not fixed until the invoice date.

Inchon claimed that it could not report the frequency of changes made in the material terms of sale for home market sales. In Inchon's November 19, 1998 supplemental questionnaire response, Inchon stated that most of its home market sales are from inventory. Inchon stated that when a sale is made from inventory, the terms of sale rarely change because the order is filled within one or two days. However, if Inchon receives an order that it does not have in inventory, Inchon will usually produce the requested product. Inchon claims that if a product is produced to fill the order, there can be significant changes in the terms of sale between the order date and the invoice date. Because, as Inchon states, the majority of its sales in the home market are made from inventory, and thus the terms are set, and because Inchon has not been able to substantiate its claim of frequent changes in the terms of its non-inventory sales, the Department preliminarily determines that the order date is the most appropriate date to use for the date of sale for home market sales. For a further discussion of this issue, *see Analysis Memo: Inchon.*

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the ''Scope of the Investigation'' section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's August 3, 1998 questionnaire.

Export Price and Constructed Export Price

The Department considers several factors in making its determination concerning whether sales made prior to importation through a U.S. affiliate to an unaffiliated customer in the United States are EP sales. These factors are: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer without being introduced into the physical inventory of the affiliated selling agent; (2) whether the sales follow customary commercial channels between the parties involved; and (3) whether the functions of the U.S. sales affiliates are limited to those 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. sales affiliate are ancillary to the sale, we treat the transactions as EP sales. Where the U.S. sales affiliate has a significant role in the sales process, we treat the transactions as CEP sales. *See Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Administrative Review,* 62 FR 18389, 18391 (April 15, 1997); *Mitsubishi Heavy Industries* v. *United States,* Slip Op. 98–82 at 6 (CIT, June 23, 1998).

POSCO

POSCO reported three channels of distribution for U.S. sales. In channel 1, POSCO Steel Sales and Service Co., Ltd. (''POSTEEL''), which is POSCO's affiliated trading company, sold directly to a U.S. customer. In channel 3, POSTEEL sold directly to unaffiliated Korean trading companies for resale of subject merchandise to the United States. We classified sales made through these two channels as EP sales, since the U.S. affiliate, POSAM, had no involvement in the selling process. In channel 2, however, POSAM was involved in all the sales made to unaffiliated U.S. customers, and reported that although the majority of sales were EP sales, there were some sales classified as CEP.

For U.S. sales channels one and three, we based our calculation on EP, in accordance with section 772 (a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise indicated. For U.S. sales channel two, for those sales for which POSCO categorized as EP sales, we based our calculations on EP, in accordance with section 772(a) of the Act. For sales for which POSCO categorized as CEP, we based our calculations on CEP, in accordance with 772(b) of the Act.

The record indicates that those of POSCO's channel 2 sales reported as EP sales were shipped directly from the manufacturer to the unaffiliated U.S. customer and that the reported U.S. sales, with the exception of ''bankrupt'' sales not included in our analysis (*see* ''Transactions Investigated'', above), were made in the customary commercial channel, thereby satisfying the first two criteria mentioned above. In determining whether the U.S. affiliate acted solely as a ''processor of sales-related documentation'' and a ''communication link'' with the unaffiliated U.S. customer, we reviewed the selling functions performed by POSAM and the sales process for these sales.

POSAM performed a variety of selling functions on behalf of POSCO in connection with POSCO's SSSS sales in the United States. These functions include forwarding inquiries and confirmations to and from the customer and POSTEEL, invoicing customers, arranging for freight to the customer from the U.S. port, extending credit and collecting payment, and serving as importer of record. POSCO has stated that POSTEEL determined price and terms of sale and performed ''all other'' sales related activities, including meeting with U.S. customers on standard marketing trips, warranty-related functions, market research and technical assistance.

In addition, according to POSCO's response, POSTEEL ''communicates a variety of general price information to and from POSAM,'' including ''quarterly FOB price guidelines'' (*see* November 23, 1998 response at 11). Record evidence indicates that although POSTEEL presents POSAM with quarterly guidelines, each sale must be approved by POSTEEL. In some instances, POSTEEL has rejected terms of particular inquiries submitted by POSAM.

We will conduct an in-depth examination of the information concerning classification of POSCO's U.S. sales through POSAM (*i.e.*, CEP versus EP) at verification. However, based on POSCO's record statements, we preliminarily determine that POSCO's U.S. sales of SSSS through POSAM reported as EP sales qualify as EP sales. For further discussion of this issue, *see Analysis Memo: POSCO.*

As discussed in ''Transactions Investigated'', above, one of POSCO's customers declared bankruptcy during the POI. During this time, shipments to

this customer were canceled en route to the United States, and POSCO had to place the merchandise into an unaffiliated warehouse. POSCO then resold the merchandise with POSTEEL as the facilitator. As these sales to the first unaffiliated purchaser took place after importation into the United States, they have been correctly classified by POSCO as CEP sales.

We based EP on the packed prices to unaffiliated purchasers in the United States. We made deductions for foreign inland freight, brokerage and handling, ocean freight, marine insurance, U.S. inland freight (where applicable), U.S. brokerage and wharfage charges (where applicable) and U.S. Customs duties in accordance with section 772(c)(2)(A) of the Act. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. For a further discussion of this issue, *see Analysis Memo: POSCO.*

We calculated CEP, in accordance with subsections 772(b), (c), and (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on the packed, delivered, duty paid or delivered prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign wharfage and loading, international freight, marine insurance, domestic inland freight, U.S. brokerage and wharfage, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs and bank charges) and indirect selling expenses (*e.g.*, inventory carrying costs). For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. For a further discussion of this issue, *see Analysis Memo: POSCO.*

Inchon

For U.S. sales channels two and three, which are defined in the Level of Trade section below, we based our calculation on EP, in accordance with section 772 (a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise indicated. For U.S. sales channel one, which is defined in the Level of Trade section below, we based our calculation on CEP, in accordance with section 772 (b) of the Act, because the merchandise was sold by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, and based on our analysis of the facts as discussed in this section.

We have preliminarily determined that the affiliated purchaser in the United States, Hyundai U.S.A., did more than merely act as a ''processor of sales-related documentation and a communication link with the unrelated U.S. buyer.'' Inchon claimed that all of its U.S. sales of subject merchandise are EP sales, including those sales made prior to importation through Hyundai U.S.A., Hyundai Corporation's wholly-owned U.S. subsidiary (*i.e.*, channel 1 sales). Inchon claims that Hyundai U.S.A., did not act in a significant role in the sales negotiation process. We preliminarily disagree with this characterization.

To ensure proper application of statutory definitions, where a U.S. affiliate is involved in making a sale, we normally consider the sale to be CEP unless the record demonstrates that the U.S. affiliate's involvement in making the sale is incidental or ancillary. The record demonstrates that Hyundai U.S.A.'s role exceeds that of an incidental or ancillary role.

Hyundai U.S.A. participates in several significant pre- and post-sale selling activities. At the initial stages, Inchon and Hyundai U.S.A. jointly call on U.S. customers to discuss sales and prices. Hyundai U.S.A. quotes prices to prospective customers and if the price is acceptable, the customer submits a purchase order to Hyundai U.S.A. When the merchandise arrives in the United States, Hyundai U.S.A. acts as the importer of record and arranges for U.S. inland freight. For a significant number of channel 1 transactions, Hyundai U.S.A. also arranged and paid for post-sale warehousing and freight to the warehouse. Hyundai U.S.A. invoices and collects payment from the U.S. customer, including any late payments and/or outstanding accounts receivable. Additionally, there is one other selling function which supports our determination that these sales are CEP. However, because this information is business proprietary, please see our discussion in the analysis memorandum. *See Analysis Memo: Inchon,* page 4. Based on the record as stated above, we have determined that these sales are CEP transactions. For a further discussion of this issue, *see Analysis Memo: Inchon.*

We based EP on the packed, delivered, tax and duty unpaid price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign wharfage and loading, international freight, marine insurance, domestic inland freight, and U.S. brokerage and wharfage. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. For a further discussion of this issue, *see Analysis Memo: Inchon.*

We calculated CEP, in accordance with subsections 772(b), (c), and (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on the packed, delivered, duty paid or delivered prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign wharfage and loading, international freight, marine insurance, domestic inland freight, U.S. brokerage and wharfage, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs and bank charges), and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. For a further discussion of this issue, *see Analysis Memo: Inchon.*

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

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

In the present review, none of the respondents requested a LOT adjustment. To ensure that no such adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Korean markets, including the selling functions, classes of customer, and selling expenses for each respondent.

POSCO

POSCO did not claim a LOT adjustment. POSCO identified two channels of distribution in the home market: (1) sales made by POSCO directly to its customers; and (2) sales made by POSCO through its selling arm, POSTEEL, to customers. Both POSCO and POSTEEL made sales to domestic trading companies, service centers, and unaffiliated and affiliated end-users. For both channels, POSCO and POSTEEL report that they perform similar selling functions. Either POSCO or POSTEEL contacted customers, managed inventory, arranged for shipment and freight, and invoiced the customer. In addition, POSCO claims that either POSCO or POSTEEL offered, as needed, technical services and warranty processing. Because channels of distribution do not qualify as separate LOTs when the selling functions performed for each customer class are sufficiently similar, we preliminarily determine that there exists one LOT for POSCO's home market sales.

POSCO reports three channels of distribution in the U.S. market: (1) sales made by POSTEEL directly to a U.S. end-user; (2) sales to U.S. end-users made by POSTEEL through its wholly-owned U.S. subsidiary, POSAM; and (3) sales made by POSTEEL to unaffiliated Korean trading companies for shipment to the United States. POSCO claimed two LOTs in the U.S. market, but requested no LOT adjustment for the U.S. LOT purported to be different from the home market LOT. The Department examined the claimed selling functions performed by POSCO and its subsidiaries, POSTEEL and POSAM (although we did not consider POSAM's selling functions in determining CEP LOT), for all U.S. sales. These selling functions included freight and delivery arrangements, invoicing customers, and extending credit.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between POSCO and its home market and U.S. customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transactions, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market level of trade constituted a more advanced stage of distribution than the CEP level of trade.

Based on our analysis of the chains of distribution and selling functions performed for sales in the home market and CEP and EP sales in the U.S. market, we preliminarily find that CEP and EP sales to all three channels of distribution are made at the same stage in the marketing process and involve identical selling functions. Therefore, we preliminarily determine that POSCO and its subsidiaries POSTEEL and POSAM (for EP sales) provided a sufficiently similar degree of services on sales to all three channels of distribution, and that the sales made to the United States constitute one LOT.

Based on a comparison of the selling activities performed in the U.S. market to the selling activities in the home market, we preliminarily determine that there is not a significant difference in the selling functions performed in both markets, and thus, a LOT adjustment is not appropriate. For a further discussion, *see Analysis Memo: POSCO.*

Inchon

In the home market, Inchon reported two sales channels: (1) to unaffiliated distributors; and (2) to affiliated and unaffiliated end-users. We examined the selling functions performed for both channels. These selling functions included inventory maintenance, freight and delivery arrangements, and credit services. Because there are no differences between the selling functions on sales made to either unaffiliated distributors or affiliated and unaffiliated end-users in the home market, sales to both of these customer categories represent a similar stage of marketing. Therefore, we preliminarily conclude that sales to unaffiliated distributors and affiliated and unaffiliated end-users constitute one LOT in the home market.

For its EP and CEP sales in the U.S. market, Inchon reported three sales channels: (1) Inchon sales through Hyundai Corporation, Inchon's affiliated trading company, to Hyundai U.S.A., a wholly owned subsidiary of Hyundai Corporation located in the United States and an affiliate of Inchon, and finally, to an unaffiliated customer; (2) Inchon sales through Hyundai Corporation, to an unaffiliated customer; and (3) Inchon sales to an unaffiliated trading customer. Inchon's U.S. customers for all three sales channels are to trading companies and distributors. We examined the selling functions performed for each of the three U.S. sales channels. These selling functions included freight and delivery arrangements, credit services, and post-sale warehousing. With the exception of post-sale warehousing for one sale in channel one, selling functions performed in the three sales channels were identical. Thus, sales to these customer categories represent a similar stage of marketing. Therefore, we preliminarily determine that Inchon provided a sufficiently similar degree of services on sales to all three channels of distribution, and that the sales made to the United States constitute one LOT.

Further, because we preliminarily conclude that the U.S. LOT and the home market LOT included similar selling functions, we conclude that these sales are made at the same LOT. Therefore, a LOT adjustment for Inchon is not appropriate. For a further discussion, *see Analysis Memo: Inchon.*

Normal Value

After testing home market viability and whether home market sales were made at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparison'' sections of this notice.

Home Market Viability

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 equal to or

greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Since both POSCO's and Inchon's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home markets for both companies were viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Cost of Production (''COP'') Analysis

Based on the cost allegations submitted by the petitioners in their June 10, 1998 petition, the Department found reasonable grounds to believe or suspect that POSCO and Inchon had made sales in the home market at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. As a result the Department initiated an investigation to determine whether POSCO and Inchon made home market sales during the POI at prices below their respective COPs within the meaning of section 773(b) of the Act. *See Initiation.*

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, for each respondent we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses (''SG&A''), interest expenses, and packing costs, respectively. We used the information from POSCO's and Inchon's section D supplemental questionnaire responses to calculate each company's COP.

In a letter dated August 12, 1998, POSCO asked that the Department examine fiscal year 1997 (January–December 1997) cost data rather than cost data for the full POI, April 1, 1997 to March 31, 1998. On September 4, 1998, petitioners responded to respondent's request, noting that the cost data submitted would not coincide with the sales data, particularly in light of the won's devaluation during the POI. On September 28, 1998, the Department requested that POSCO report its costs using costs incurred during the POI.

B. Test of Home Market Prices

We compared the weighted-average COP for POSCO and Inchon to each company's respective home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared POSCO's and Inchon's COP to their respective home market prices, less any applicable movement charges and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with sections 773(b)(2)(B) and 773(b)(2)(C)(i) of the Act. In such cases, because we compared prices to weighted-average COPs for the POI, 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 in determining NV.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated each respondent's CV based on the sum of the respondent's cost of materials, fabrication, SG&A, interest expenses and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in South Korea.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on prices to home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

POSCO

We calculated NV for EP sales based on prices to unaffiliated home market customers. We made a deduction for inland freight. We made circumstance-of-sale (''COS'') adjustments based on differences in direct selling expenses (*i.e.*, credit, warranty expense and interest revenue) incurred on U.S. and home market sales, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

We calculated NV for CEP sales based on prices to unaffiliated home market customers, as sales to affiliated customers failed the arm's length test. We made a deduction for inland freight. We made COS adjustments based on differences in direct selling expenses (*i.e.*, credit, warranty expense and interest revenue) incurred on U.S. and home market sales, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Inchon

We calculated NV for EP sales based on prices to unaffiliated home market customers. We made a deduction for inland freight. We made billing adjustments, where appropriate. We made COS adjustments based on differences in direct selling expenses (*i.e.*, credit) incurred on U.S. and home market sales, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

We calculated NV for CEP sales based on prices to unaffiliated home market customers. We made a deduction for inland freight. We made billing adjustments, where appropriate. We made COS adjustments based on differences in direct selling expenses (*i.e.*, credit) incurred on U.S. and home market sales, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of the foreign like product. We made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S.

direct selling expenses. Where we compared CV to CEP, we deducted the weighted-average home market direct selling expenses from CV.

Currency Conversion

Our preliminary analysis of Federal Reserve dollar-won exchange rate data shows that the won declined rapidly at the end of 1997, losing over 40 percent of its value between the beginning of November and the end of December. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-won exchange rate during the previous eight years. Had the won rebounded quickly enough to recover all or almost all of the initial loss, the Department might have been inclined to view the won's decline at the end of 1997 as nothing more than a sudden, but only momentary drop, despite the magnitude of that drop. As it was, however, there was no significant rebound.

We have preliminarily determined that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, *i.e.*, as having experienced only a momentary drop in value. Therefore, in making this preliminary determination, the Department used daily rates exclusively for currency conversion purposes for home market sales matched to U.S. sales occurring between November 1, 1997 and December 31, 1997.

For sales occurring after December 31, but before March 1, 1998, the Department relied on the standard exchange rate model, but used a modified benchmark. In calculating a benchmark rate, the Department's standard practice is to incorporate rates extending back 40 days from the date of sale. However, using such a benchmark rate would incorporate rates during November and December of 1997, when the dollar-won exchange rate dropped, and hence would result in apparent significant fluctuations in the dollar-won exchange rates used in the Department's margin calculation.

In order to ensure that rates used are more indicative of the exchange rate climate during January and February 1998, the benchmark was modified to include rates extending back only to January 1, 1998. Therefore, we have applied an up-to-date (post-precipitous drop) benchmark, while at the same time we have avoided making sales comparisons using exchange rates with excessive day-to-day fluctuations. By March 1, 1998, the dollar-won exchange rate had stabilized sufficiently so that the Department's standard model could be employed. For sales occurring after March 1, the standard model and benchmark rate were used.

Petitioners have suggested that the Department segregate the current POI into multiple periods to account for the effect of the devaluation of the Korean won during the last portion of the POI. *See* petitioners' submission of December 2, 1998. Petitioners state that the Department has examined this question in a recent preliminary determination involving the same POI and Korea, namely, *Emulsion Styrene-Butadiene Rubber from the Republic of Korea. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from the Republic of Korea,* 63 FR 59514 (November 4, 1998). However, the Department used the same currency conversion methodology described above in that case, and for the preliminary determination, did not average margins based on multiple periods within the POI. In the one case cited by petitioners in support of averaging multiple periods, *PVA from Taiwan,* the Department used multiple periods when there was a significant change in pricing. However, in that case, the decline in pricing was due to a company-specific change in selling practices made at a particular point in the POI (*i.e.*, the use of long term contracts versus purchase orders), rather than a devaluation of the local currency. *See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan,* 61 FR 14064 (March 29, 1996). The Department preliminarily determines that the modification of currency conversion reasonably accounts for the devaluation of the won, and that the use of multiple periods for averaging purposes is unwarranted.

The Department makes this determination without the benefit of extensive case precedent dealing with this area of our currency conversion policy. The Department therefore welcomes comments from interested parties on all aspects of our analysis and the time period-specific exchange rates used. For the purposes of the final determination, the Department will continue to analyze the implications, if any, of the decline in the won during 1997 for price averaging and whether multiple averages are warranted. The Department is examining this issue in *Mushrooms from Indonesia* and *Emulsion Styrene-Butadiene Rubber from the Republic of Korea. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Preserved Mushrooms from Indonesia,* 63 FR 41783 (August 5, 1998); also, *see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from the Republic of Korea,* 63 FR 59514 (November 4, 1998).

Critical Circumstances

On October 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of SSSS from Korea. In accordance with 19 CFR 351.206(c)(2)(i), since this allegation was filed at least 20 days prior to the Department's preliminary determination, we must issue our preliminary critical circumstances determination no later than the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with Section 733(e)(1)(A)(i), the Department considers evidence of an existing antidumping order on SSSS from the country in question in the United States or elsewhere to be sufficient. We are not aware of any antidumping order in any country on SSSS from any of the countries subject to this investigation.

In determining whether an importer knew or should have known that the exporter was selling SSSS at less than fair value and thereby causing material injury, the Department normally considers margins of 15 percent for CEP sales and 25 percent for EP sales or more sufficient to impute knowledge of dumping and of resultant material injury. *See Notice of Final Determination of Sales Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* 63 FR 61964, 61967 (November 20, 1997); *see also Notice of Final*

Determination of Sales Less Than Fair Value: Manganese Sulphate from People's of Republic of China 60 FR 52155, 52161 (October 5, 1995).

In this investigation, respondents POSCO and Inchon, which the Department has preliminarily determined have both EP and CEP sales, do not have margins over 15 percent. Based on these facts, we determine that the first criterion for ascertaining whether critical circumstances exist is not satisfied. Therefore, we preliminarily determine that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of SSSS from respondents POSCO or Inchon. We have not analyzed the respondent's shipment data to examine whether imports of SSSS have been massive over a relatively short period. *See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Collated Roofing Nails from Korea,* 63 FR 25895, 25898 (May 12, 1997).

However, because respondent Taihan has not responded to the Department's questionnaires, and has been assigned a margin based on facts otherwise available (*see* ''Facts Available'' section, below), its margin exceeds 25 percent, thus meeting the first criterion. Also, as facts available, we consider Taihan to have had massive imports over a relatively short period. Therefore, having met both criteria, critical circumstances exist for imports of subject merchandise from Taihan.

Regarding all other exporters, an ''All Others'' rate has been determined (*see* ''The All Others Rate'', below); because this rate does not exceed 15 percent, we determine that critical circumstances do not exist for companies covered by the ''All Others'' rate. We will make a final determination concerning critical circumstances when we make our final determination in this investigation, if that final determination is affirmative.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administrating authority; (B) fails to provide such information by the deadlines for the submission of information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information, but the information cannot be verified as provided in section 782(i) of the Act, the administrating authority shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. As discussed above, Taihan failed to respond to the Department's questionnaire. Accordingly, we have preliminarily determined, under section 776(a)(2)(A), that we must base our determination for that company on facts available.

Section 776(b) of the Act further provides that adverse inferences may be used for a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information (*see* also the Statement of Administrative Action (''SAA''), accompanying the URAA, H.R. Rp. No. 316, 103rd Cong., 2d Sess. 870). Given the company's refusal to comply with the Department's request for information, Taihan has failed to cooperate to the best of its ability in this investigation. Therefore, the Department has determined that an adverse inference is warranted with respect to Taihan.

In this proceeding, we used the information from the petition, as adjusted by the Department for the purposes of initiation, to form the basis for a dumping margin for this respondent. Thus, consistent with the Department's practice (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Germany*, 63 FR 10847 (March 5, 1998) (''Stainless Steel Wire Rod from Germany'')), the Department is assigning to Taihan the highest margin alleged in the petition, as adjusted, for Korean producers, which is 58.79 percent (*see* June 30, 1998, ''Import Administration Antidumping Investigation Initiation Checklist (''Initiation Checklist'') and the Notice of Initiation for a discussion of the margin calculations in the petition).

Section 776(c) of the Act provides that when the Department relies on ''secondary information'' (*e.g.*, the petition) as the facts available, the Department shall, to the extent practicable, corroborate that information with independent sources reasonably at the Department's disposal. The SAA accompanying the URAA clarifies that the petition is ''secondary information.'' *See* SAA at 870. The SAA also clarifies that ''corroborate'' means to determine whether the information used has probative value. *Id*.

We reviewed the accuracy and adequacy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics, foreign market research reports, and data from U.S. producers). *See Initiation Checklist.* Specifically, in the petition, the petitioners based both EP and NV on foreign market research, affidavits concerning prices and freight costs, official U.S. import statistics, U.S. government sources and International Financial Statistics.

As certain information included in the petition's margin calculation is from public sources (*e.g.*, international freight and insurance, U.S. harbor maintenance and U.S. merchandise processing fees, SG&A, and profit), we find for the purpose of the preliminary determination, that the information has probative value and is therefore corroborated. In addition, with respect to certain data included in the margin calculations included in the petition (*e.g.*, gross U.S. and home market unit prices), the Department was provided information by other respondents that corroborates the remaining portions of the margin calculation in the petition. We have examined the reliability of this information. *See Memorandum to the File,* dated June 20, 1998. Finally, we note that the Department has, in other cases, for facts available purposes, used margins developed in a petition that are based in part on foreign market research. However, with respect to certain data included in the margin calculations in the petition (*e.g.*, gross U.S. and home market unit prices), the Department was provided no information by the respondents or other interested parties, and is aware of no other independent sources of information, that would enable it to further corroborate the remaining components of the margin calculation in the petition. The implementing regulation to section 776 of the Act, at 19 CFR 351.308(c), states ''[t]he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question.'' Additionally, we note that the SAA at 870 specifically states that, where ''corroboration may not be practicable in a given circumstance'', the Department may nevertheless apply an adverse inference. We note further that the Department has used as the facts available margins developed in the petition that are based in part on foreign market research in other cases. *See e.g., Stainless Steel Wire Rod from Germany,* and *Notice of Preliminary Determination of Sales at Less Than*

Fair Value and Postponement of Final Determination: Melamine Institutional Dinnerware Products from Indonesia, 61 FR 43333 (August 22, 1996).

The All Others Rate

Section 735(c)(5) of the Act provides that, where the dumping margins established for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. For this preliminary determination, since Inchon has a zero margin, the all other's rate is simply the calculated rate for POSCO.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percentage)
POSCO	12.35
Inchon	0.0
Taihan	58.79
All Others	12.35

In addition, in accordance with section 733(e)(2) of the Act, on the date of publication of affirmative preliminary determinations in these investigations, the Department will direct the U.S. Customs Service to suspend liquidation of all entries of SSSS from Korea for exporter Taihan, for which we found critical circumstances, that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins reflected in the preliminary determinations published in the **Federal Register**. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we are notifying the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than 50 days after the publication of the preliminary determination, and rebuttal briefs, limited to issues raised in case briefs, no later than 55 days after the publication of the preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held 57 days after the publication of the preliminary determination, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. We will make our final determination no later than 135 days after the date of publication in the **Federal Register** of our preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: December 17, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–34467 Filed 12–31–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

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

ACTION: Publication of Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period October 1, 1997 through September 30, 1998. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Russell Morris, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(g)(b)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's annual list of subsidies on articles of cheese that were imported during the period October 1, 1997 through September 30, 1998.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(g)(b)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice

lists the country, the subsidy program or programs, and the gross and net amount of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: December 22, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross [1] subsidy	Net [2] subsidy
Austria	European Union Restitution Payments	$0.21	$0.21
Belgium	EU Restitution Payments	0.07	0.07
Canada	Export Assistance on Certain Types of Cheese	0.24	0.24
Denmark	EU Restitution Payments	0.12	0.12
Finland	EU Restitution Payments	0.27	0.27
France	EU Restitution Payments	0.18	0.18
Germany	EU Restitution Payments	0.25	0.25
Greece	EU Restitution Payments	0.00	0.00
Ireland	EU Restitution Payments	0.19	0.19
Italy	EU Restitution Payments	0.18	0.18
Luxembourg	EU Restitution Payments	0.07	0.07
Netherlands	EU Restitution Payments	0.10	0.10
Norway	Indirect (Milk) Subsidy	0.35	0.35
	Consumer Subsidy	0.16	0.16
Total		0.51	0.51
Portugal	EU Restitution Payments	0.07	0.07
Spain	EU Restitution Payments	0.11	0.11
Switzerland	Deficiency Payments	0.24	0.24
U.K.	EU Restitution Payments	0.13	0.13

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 98–34801 Filed 12–31–98; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122398B]

Endangered Species; Permits

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

ACTION: Receipt of applications for scientific research permits (1189, 1190).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received permit applications from: Dr. James Kirk, U.S. Army Corps of Engineers Waterways Experiment Station (WES) (1189), and Charles Karnella, NMFS Southwest Region (NMFS-SER) (1190).

DATES: Written comments or requests for a public hearing on any of the applications must be received on or before February 3, 1999.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permit 1189: Protected Resources Division, F/SER3, 9721 Executive Center Dr., St. Petersburg, FL 33702–2432 (813–570–5312)

For permit 1190: Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310–980–4016).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permit 1189: Terri Jordan, Silver Spring, MD (301–713–1401)

For permit 1190: Michelle Rogers, Silver Spring, MD (301–713–1401)

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the ESA, is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Permits and modifications are issued in accordance with and are subject to parts 217–222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Species Covered in this Notice

The following species are covered in this notice: Green sea turtle (*Chelonia mydas*), Hawksbill sea turtle (*Eretmochelys imbricata*), Leatherback sea turtle (*Dermochelys coriacea*), Loggerhead sea turtle (*Caretta caretta*), Olive ridley sea turtle (*Lepidochelys olivacea*), and Shortnose sturgeon (*Acipenser brevirostrum*).

New Applications Received

WES (1189) requests a 3-year permit to take and conduct research on endangered shortnose sturgeon to characterize the Ogeechee River system shortnose sturgeon population size, age, structure and growth; document seasonal movement and habitat preferences; identify, if possible, spawning and rearing sites and develop

population models to evaluate anthropogenic effects, population trends, and define a recovering or steady-state population.

NMFS-SWR (1190) requests a 5-year scientific research permit to take up to 150 loggerhead, 10 green, 10 hawksbill, 25 leatherback, and 10 olive ridley sea turtles annually in the Pacific Basin for the purpose of determining take rates of sea turtles taken incidental to the Hawaiian longline fishery, and to determine the fate of sea turtles released alive after incidental capture. Trained observers may weigh, measure, flipper tag, satellite tag, tissue sample, blood sample, stomach lavage, and release sea turtles taken incidental to the Hawaiian longline fishery. This is a continuation of work permitted under scientific research permit 924, which expires on February 28, 1999.

Dated: December 28, 1998.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–34797 Filed 12–31–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Temporary Amendment to the Requirements for Participating in the Special Access Program for Caribbean Basin Countries; Correction

December 24, 1998.

In the document published in the **Federal Register** on December 18, 1998 (63 FR 70112), make the following corrections:

1. In the notice, 2nd column, first full paragraph, 9th line, correct ''Categories 433, 443, 633 and 643'' to read ''Categories 433, 435, 443, 444, 633, 635, 643 and 644.''

2. In the letter to the Commissioner of Customs, 3rd column, 2nd paragraph, 10th line, correct ''Categories 433, 443, 633 and 643'' to read ''Categories 433, 435, 443, 444, 633, 635, 643 and 644.''

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–34781 Filed 12–31–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the New York Futures Exchange for Designation as a Contract Market in Russell 1,000 Large Index Futures and Russell 1,000 Index Futures Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The New York Futures Exchange (NYFE or Exchange) has applied for designation as a contract market in Russell 1,000 Large Index futures and Russell 1,000 Index options. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before January 19, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed NYFE Russell 1,000 Index contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Thomas Leahy of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, telephone (202) 418–5278. Facsimile number: (202) 418–5527. Electronic mail: tleahy@cftc.gov.

SUPPLEMENTARY INFORMATION: There are no substantive issues raised by the applications, since contracts having similar terms have been approved based on the Russell indexes. In this regard, the proposed Russell 1,000 Index option contract is an option on the previously approved NYFE Russell 1,000 Index futures contract, and the proposed Large Russell 1,000 index futures contract is identical (except for the contract size) to that previously approved contract. In approving the existing NYFE Russell 1,000 futures index contract, the Commission determined that it satisfied the requirements of the Accord. Accordingly, the Division believes that an abbreviated 15-day comment period is appropriate for the subject applications.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the NYFE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the NYFE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on December 28, 1998.

John Mielke,

Acting Director.

[FR Doc. 98–34731 Filed 12–31–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Power Subscription Strategy

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Record of Decision (ROD).

SUMMARY: The Bonneville Power Administration (BPA) has decided to adopt a Power Subscription Strategy for entering into new power sales contracts with its Pacific Northwest customers. The Strategy equitably distributes the

electric power generated by the Federal Columbia River Power System (FCRPS), within the framework of existing law. The Power Subscription Strategy addresses the availability of power; describes power products; lays out strategies for pricing, including risk management; and discusses contract elements. In proceeding with this Subscription Strategy, BPA is guided by and committed to the ''Fish and Wildlife Funding Principles for Bonneville Power Administration Rates and Contracts'' (Fish and Wildlife Funding Principles) that were announced by the Vice President of the United States in September 1998. This decision is a direct application of BPA's earlier decision to use a Market-Driven approach for participation in the increasingly competitive electric power market and is consistent with BPA's Business Plan, the Business Plan Environmental Impact Statement (BP EIS) (DOE/EIS–0183, June 1995) and the Business Plan Record of Decision (BP ROD) (August 15, 1995). The complete text of the Power Subscription Strategy ROD is below in the Supplementary Information section of this Notice.

ADDRESSES: Additional copies of this ROD, and of the BP EIS and the BP ROD, may be obtained by calling BPA's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION CONTACT: Katherine Pierce—ECP–4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number (503) 230–3962, fax number (503) 230–5699.

SUPPLEMENTARY INFORMATION: In response to a need for sound policy to guide its business direction under changing market conditions, BPA explored six alternative plans of action in its BP EIS. The six alternatives were: Status Quo (No Action), BPA Influence, Market-Driven, Maximize Financial Returns, Minimal BPA, and Short-Term Marketing. In the subsequent BP ROD, the BPA Administrator selected the Market-Driven alternative. Although the Status Quo and the BPA Influence alternatives were the environmentally preferred alternatives, the differences in total environmental impacts among alternatives were relatively small. Other business aspects, including loads and rates, showed greater variation among the alternatives. The Market-Driven alternative strikes a balance between marketing and environmental concerns. It also helps BPA to ensure the financial strength necessary to maintain a high level of support for public service benefits such as energy conservation and fish and wildlife mitigation activities.

The BP EIS was intended to support a number of decisions (BP EIS, section 1.4.2), including the:

- Products and services BPA will market,
- Rates for BPA products and services to be implemented in future rate cases,
- Strategy BPA will use to administer its fish and wildlife responsibilities,
- Policy direction for BPA's sale of power products to customers, and,
- Contract terms BPA will offer for power sales.

The BP EIS and ROD also documented a decision strategy for subsequent actions. BPA's Power Subscription Strategy is one of these subsequent actions and the subject of this tiered ROD (BP EIS, section 1.4.1 and BP ROD, page 1). Tiering subsequent RODs to the BP ROD helps delineate BPA decisions and provides a logical framework for connecting broad programmatic or policy level decisions to more specific actions (see Figure 1—not included in this Notice). BPA reviewed the BP EIS to ensure that power Subscription was adequately covered within its scope and that it was appropriate to issue a tiered ROD (BP EIS, section 1.4.2). This tiered ROD, which summarizes and incorporates information from the BP ROD, clearly demonstrates this decision is within the scope of the BP EIS and ROD. This ROD describes specific information applicable to the decision on BPA's Power Subscription Strategy, and provides a summary of the environmental impacts associated with this decision with reference to the appropriate sections of the BP EIS and BP ROD. BPA will also issue an Administrative ROD describing the legal and policy rationale supporting the administrative decisions made in the Final Power Subscription Strategy.

Competitiveness in the Electric Utility Industry

BPA supplies about 40 percent of the Pacific Northwest's electricity and about 75 percent of the region's high-voltage transmission. Although it is a Federal agency, BPA does not receive tax money. It must cover all its costs with revenues earned in the market. From these revenues, BPA funds public benefits, such as fish and wildlife, conservation, and renewable energy programs. It also uses its revenues to meet its repayment obligations to the United States Treasury (Treasury) on the Federal investment in the region's hydroelectric dams and the transmission lines.

The electric utility industry is increasingly competitive and dynamic. Four factors have substantially affected BPA's ability to compete in a fully deregulated wholesale electricity market: market change, increased nonpower obligations, the potential deterioration of BPA's cost/price advantage, and lost hydro output. However, BPA must be able to balance its costs and revenues. The emergence of a competitive market for power creates supply choices for BPA customers and prevents BPA from meeting costs simply by raising rates. Expected firm prices set a power rate level, above which a rate increase would no longer increase BPA's revenue and cover BPA's costs. This level is defined as BPA's maximum sustainable revenue (MSR) (BP EIS, sections 1.1, 2.6.1, and 4.4.1).

Allowing BPA's rates to exceed this level would not be consistent with sound business principles. It would result in a reduction in BPA's total revenue and BPA's ability to fund public benefits. Power Subscription will facilitate BPA's ability to retain customers and successfully compete in the market for the long term.

Customers

BPA sells at the wholesale level to public agencies, other utilities, and to a few direct service industries (DSIs). Subscription contracts will be available to BPA's public agency preference customers, Federal agencies, investor-owned utilities (IOUs) and DSIs.

- *Preference customers*—Public utility districts, municipalities, and cooperatives to which, by law, BPA must give preference for Federal power. These customers include utilities without power generation that rely on BPA for all or nearly all of their wholesale power needs, and those with generation that meet some of their load with non-Federal resources.
- *Federal agency customers*—Those Federal agencies in the Pacific Northwest that buy most of their electricity directly from BPA. Customers include Fairchild Air Force Base and the U.S. Department of Energy (DOE), Richland Operations Office.
- *IOUs*—Private, investor-owned utilities. Under the Residential Exchange Program, as defined by the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), regional IOUs have historically ''sold'' BPA an amount of power equal to their residential and small farm load at a price equal to their average system cost. In exchange, BPA has sold them an equal amount of power at the Priority Firm (PF) Exchange rate.

The benefits of this financial transaction have been passed on to their residential and small farm customers in the form of lower retail rates. BPA's Subscription Strategy proposes to offer IOUs a settlement of the Residential Exchange Program comprised of a sale of power and the payment of monetary benefits.

- *DSIs*—Large industries, primarily aluminum smelters, that buy electric power directly from BPA at relatively high voltages.

Under the Power Subscription Strategy, all customers serving regional firm load are eligible to purchase firm power within the constraints of existing statutes.

Public Process

As shown in Figure 1 (not included in this Notice), public process is integral to BPA's decisionmaking. With the changing marketplace for electric power, there is considerable regional interest in defining how and to whom the region's Federal power should be sold. The public has been involved at several levels during the development of BPA's Power Subscription Strategy. In addition to the public meetings held specifically on Subscription, BPA sought input from a wide range of interested and affected groups and individuals. BPA collaborated with Northwest Tribes, interest groups, Congressional members, DOE, the Administration, and customers to resolve issues, understand commercial interests, and develop strong business relationships.

The concept of power Subscription came from the Comprehensive Review of the Northwest Energy System, which was convened by the governors of Idaho, Montana, Oregon, and Washington to assist the Northwest through the transition to competitive electricity markets. The goal of the review was to develop recommendations for changes in the region's electric utility industry through an open public process involving a broad cross-section of regional interests. In December 1996, after over a year of intense study, the Comprehensive Review Steering Committee released its Final Report.

The Final Report recommended that BPA capture and deliver the low-cost benefits of the Federal hydropower system to Northwest energy customers through a subscription-based system. Consistent with the new competitiveness in the electricity market, the goals for Federal power marketing were to: align the benefits and risks of access to Federal power, ensure BPA's repayment of the debt to the Treasury, deliver the low-cost benefits of the Federal hydropower system to Northwest energy customers, and retain the long-term benefits of the system for the region. In early 1997, the Governors' representatives formed a Transition Board to monitor, guide, and evaluate progress on these recommendations.

Also in early 1997, BPA and the Pacific Northwest Utilities Conference Committee (PNUCC) invited 2800 interested parties throughout the Pacific Northwest to help further define Subscription. The collaborative effort to design a Subscription process began with a public kickoff meeting on March 11, 1997. At this meeting, a BPA/customer design team presented a proposed work plan, including a description of the environmental coverage for Subscription. An important element of the work plan was the formation of a Subscription Work Group. The Work Group, which normally met twice a month (on the first and third Wednesdays) from March 1997 through September 1998, was open to the public. On average, 40–45 participants—representing customers, customer associations, Tribes, state governments, public interest groups, and BPA—attended. Three subgroups formed to more intensely pursue the resolution of issues involving business relationships, products and services, and implementation.

Over the past 18 months, BPA and its customers have discussed and clarified many Subscription issues. During this time, BPA and the public confirmed goals, defined issues, developed an implementation process for offering Subscription, and developed proposed product and pricing principles.

In addition to the March 1997 kick-off meeting, two other regional meetings were held specifically to ensure the public understood and had an opportunity to participate in the Subscription process. One meeting was held in December 1997 and the other in June 1998. In addition, BPA conducted a series of meetings around the region. These meetings, which were part of the public involvement process known as ''Issues '98,'' covered many regional subjects. Issues related to Subscription were key topics in the discussions at those meetings. The public comment period for Issues '98 closed June 26, 1998.

Late in the summer of 1998, after considering the efforts of the Subscription Work Group, public comments on Subscription, and the broad information from Issues '98, BPA developed a Power Subscription Strategy Proposal. BPA released its Power Subscription Strategy Proposal on September 18, 1998. The Proposal, which incorporated the information received from customers, Tribes, fish and wildlife interest groups, industries and other constituents, laid out BPA's strategy for retaining the benefits of the FCRPS for the Pacific Northwest after 2001. The public was invited to participate in two comment meetings: one in Spokane, Washington, on October 8; the other in Portland, Oregon, on October 14. The comment period closed October 23, 1998, although all comments received after that date were considered. To learn more about the issues addressed in BPA's Subscription Strategy Proposal, interested parties were also invited to BPA's Columbia River Power and Benefits Conference on September 29, 1998, in Portland, Oregon. Over 250 people attended.

Summary of Key Issues and Concerns

BPA received over 200 separate written comments from Tribes, States, utilities, industries, interest groups, and citizens. Most of the comments presented at the two public meetings were followed with formal written comments. Comments on BPA's Power Subscription Strategy Proposal totaled almost 600 pages. In general, comments were readily grouped by customer class or interest group. Many customers expressed concern over BPA's proposed risk management strategy, especially the potential level of financial reserves and the use of such reserves. Similarly, most customer groups also voiced concern about the details of a Cost Recovery Adjustment Clause (CRAC), including the levels and disposition of cash reserves. Also, most customers encouraged BPA to extend the Subscription ''window'' for three to six months beyond the final rate decisions.

A summary of key issues and concerns by customer class or interest group follows. The Administrative ROD provides a more detailed evaluation of comments by issue.

- *Preference customers*—In general, comments received from preference customers and their associations were supportive of the Proposal. However, these customers shared common concerns about preference and sales to other customer classes. Preference customers were adamant that BPA should avoid taking any actions that would impinge on their statutory right to preference and priority to Federal power. In urging BPA to extend the Subscription ''window,'' most of these customers cited the need to understand the rates before they could negotiate contracts and take the proposed contracts to their elected boards for

discussion and final action. Most preference customers were opposed to tiered rates, noting they are entitled to BPA's lowest cost power.

Most preference customers did not object to BPA selling firm power to the IOUs in settlement of the Residential Exchange Program as long as all preference customer requests were met first. In contrast, the preference customers were not generally supportive of BPA reserving power for the DSIs. Much expressed concern that BPA might offer to sell surplus firm power to the DSIs ahead of offering such power to them.

In addition, there were a large number of comments on issues specific to individual or subgroups of public utilities. For example, comments from utilities with rural systems focused on BPA's low density discount (LDD) proposal while those dependent on general transfer agreements (GTAs) for their BPA service focused their comments on GTA-related proposals.

Also, some public utilities expressed concern that the range of costs for fish and wildlife was too high.

- IOUs—In general, the IOUs supported BPA's proposal to sell firm power, in combination with some monetary benefit, to settle the Residential Exchange Program. They also all urged BPA to make more power available to them and to offer as broad an array of products as possible to serve their residential and small farm loads. Some IOUs noted that residential exchange ''deemer'' balances should not affect proposed sales to them for residential and small farm customers.

The IOUs asked for greater assurance of rate comparability with the PF rate. Several asked for lower rates than Priority Firm, citing the advantage to the Federal system of the proposed flat block loads. The IOUs were unanimous that BPA is obligated to make final decisions regarding sales of power to individual IOUs rather than allowing the state utility commissions to make the final decisions. They also all pushed for a longer time period for Subscription, citing their contracting and regulatory processes.

Most of the IOUs supported BPA's proposal to tier rates. This support was based on the concept that marginal cost rates would prevent undue growth of the Federal power system. In fact, the IOUs were unanimous in recommending that BPA not ''grow the system'' by purchasing power to firm its nonfirm power, or otherwise increasing the size of the Federal Base System (FBS).

The IOUs commented that either no transmission surcharge should be considered or a surcharge should only apply to Federal power being wheeled. Some IOUs recommended that BPA allow delivery of non-Federal power under applicable GTAs.

- *DSIs*—The most significant issue for the DSIs was whether or not BPA would have any firm power available to them after serving preference customers and IOUs. Several of the DSIs were concerned that BPA might make final power ''allocation'' decisions, which would eliminate the possibility of power sales to them. They urged BPA to delay any final Subscription decisions until BPA was actually engaged in Subscription sales. They suggested BPA could then better judge what its actual sales to publics and IOUs would be and could better decide what level of system augmentation purchases were necessary and affordable. The DSIs also disagreed with BPA over BPA's legal authority under the Northwest Power Act section 5(b) to sell power to the IOUs for their residential and small farm customers. They recommended that BPA rely on the Northwest Power Act's section 5(c) statutory Residential Exchange program as the primary mechanism to extend benefits to the residential and small farm customers of IOUs.

The DSIs urged BPA not to declare that the inventory available for Subscription would be absolutely limited to 6300 average megawatts (aMW). Rather, they urged BPA to augment, or at least keep open the possibility of augmentation, the Federal power system and meld the costs into the existing FBS costs. As regional customers, they also asserted ''first call'' rights on any surplus Federal power before it could be sold outside of the region. Some DSIs expressed the view that BPA should give special policy consideration to the DSIs that had remained faithful customers during the first years of wholesale power deregulation.

In addition, some of the DSIs claimed that BPA's proposal to tier rates was not contemplated by the Northwest Power Act. Moreover, they noted that if such incremental pricing were to be adopted, it should be adopted across all classes of customers. Also, the DSIs commented that the range of fish and wildlife cost alternatives being considered was too high.

- *States*—The four Pacific Northwest state public utility commissions (PUCs) submitted joint comments. The PUCs encouraged greater sales to the IOUs and they recommended the Slice product be offered to IOUs for residential and small farm customers. The PUCs encouraged BPA to continue a full separation of power and transmission. They also suggested using a transmission surcharge only in an extreme emergency. The states believe BPA's power should reach market rates before any transmission surcharge is enacted.

The governors' offices strongly supported the positions taken by the PUCs. In addition, the Office of the Governor of Montana reminded BPA of Montana's deregulation legislation in encouraging BPA to ensure the residential and small farm customers of IOUs share in the power benefits of the Federal system.

- *Tribes*—Several Tribes conveyed their support for the Tribal Utility proposal, but expressed concern about the relatively short timeframe for planning and developing a Tribal Utility and about their lack of resources. Some Tribes also noted their concerns about the allocation of the benefits of the FCRPS.
- *Interest groups*—Public interest groups were generally supportive of BPA's proposal. They were largely unsympathetic to the DSIs plight and urged more power be sold to the IOUs' residential and small farm customers. Alone among commenters, they asked how BPA would cope with a major loss of resources. Some encouraged BPA to plan for the highest cost scenario for fish and wildlife funding; some asked BPA to drop the lowest cost scenario from consideration. The public interest groups were universally complimentary of a proposed conservation and renewable resource rate discount.

BPA also received letters from about 50 citizens—all of whom are served by Puget Sound Energy in Washington State—urging BPA to make Federal power available to them even though they are served by an IOU. Several members of the Washington State Legislature also commented similarly.

Relationship to Other Processes

Public input on BPA's Power Subscription Strategy Proposal revealed regional interest in several other key issues, notably future fish and wildlife funding and the 1999 Power Rate Case, facing BPA and the region. The tiered ROD strategy (Figure 1—not included in this Notice) supports the Power Subscription process being conducted simultaneously with other processes on these key issues. As anticipated in the BP EIS analysis, BPA has confirmed that prospective customers are not waiting until 2001 to arrange their 21st century power supply (BP EIS, section 1.1 and BP ROD, page 2). Instead, many are looking for sellers who can offer them low, stable, long-term rates now. By offering competitively priced power in a timely fashion, BPA will be able to retain customers and corresponding

revenue. Without sufficient revenue, BPA would be unable to guarantee full funding for its many responsibilities, including conservation, fish and wildlife projects, and renewable energy programs (BP EIS, section 2.6.1).

BPA's multi-faceted business is complex. To help ensure its success, BPA decided to embark simultaneously upon independent processes addressing these key issues. While contract negotiators would benefit from absolute knowledge of all future program costs and program negotiators would benefit from absolute knowledge of BPA's future revenue, the realities of a competitive marketplace often preclude waiting for such comprehensive information. To carry out its public responsibilities within a competitive marketplace, BPA must have the freedom to define the scope of individual business decisions without having to resolve all of the region's problems at once.

BPA understands the extensive regional interest and concerns regarding future fish and wildlife funding. The Fish and Wildlife Funding Principles were announced by Vice President Gore on September 21, 1998. The announcement of the Principles followed a process that began in November 1997 and continued until early September 1998. This public process included over 60 meetings with concerned citizens, Tribes, State and Federal agencies, BPA customers, and public interest groups. The preamble to the Fish and Wildlife Funding Principles states that the purpose ''of these principles is to conclude the fish and wildlife funding process in which BPA has been engaged with various interests in the region, and provide a set of guidelines for structuring BPA's Subscription and power rate processes. The principles are intended to 'keep the options open' for future fish and wildlife decisions that are anticipated to be made in late 1999 on reconfiguration of the hydrosystem and in early 2000 on the Northwest Power Planning Council's Fish and Wildlife Program.''

BPA has examined issues, including fish and wildlife funding, related to fish and wildlife administration under different business conditions (BP EIS, section 2.4.5). The analysis included a determination of potential impacts. Therefore, BPA is well prepared to make separate individual business decisions such as a Power Subscription Strategy and the 1999 Power Rate Case that complement one another and are guided by the Fish and Wildlife Funding Principles.

Proceeding with the Power Subscription Strategy is vital to providing BPA with the financial predictability and stability it needs to compete in a deregulated wholesale electric marketplace. As explained in detail in the BP EIS and the System Operation Review (SOR) EIS (DOE/EIS–0170, February 1995), BPA will serve its contractual obligations and market power and services with available resources consistent with the operating constraints that apply to the hydrosystem. (BP EIS, section 1.5.6 and BP ROD, page 4). Additionally, the BP EIS details various response strategies designed to address any financial imbalance due to revenue shortfall as a result of unanticipated expenditures (BP EIS, section 2.5 and BP ROD, pages 13–14). In circumstances with unforeseen costs or revenue shortfalls, BPA could implement one or more of these response strategies to allow the agency to continue to compete in the electric utility market and fulfill its statutory responsibilities. The Risk Management Strategy described in the Power Subscription Strategy is consistent with the response strategies discussed in the BP EIS.

During the past year, BPA has worked with interest groups, other agencies, and customers to understand how BPA will address the uncertainty of future fish and wildlife costs in future rates and contracts. BPA is committed to meeting the Fish and Wildlife Funding Principles presented in September 1998. The Subscription process and the power rate proposal are the major means for meeting BPA's commitment. BPA believes, based on analyses to date, that the Power Subscription Strategy carries out the Fish and Wildlife Funding Principles. This issue is subject to further test in the Power Rate Case, and adjustments may be made in BPA's implementation methods if necessary.

The Power Subscription Strategy Proposal discussed some issues that will not be finally decided in the Power Subscription Strategy. Most of these issues will be finally decided in the 1999 Power Rate Case (also known as a section 7(i) process), although some will be decided in other forums, such as the Transmission Rate Case, which will be concluded before October 2001. For example, while the Strategy documents BPA's intention to implement a discount for conservation and renewable resources, the final design of that discount will be decided in the 1999 Power Rate Case. Other issues that will be decided in the 1999 Power Rate Case include the design and application of the CRAC, which rates apply to which sales, and the design of the LDD.

While BPA's Subscription Strategy does not establish any rates or rate designs, rate design approaches identified in the Subscription Strategy will be part of BPA's initial power rate proposal, which is expected to be published in early 1999. The comments received during the Subscription public process regarding the various rate-related issues will be addressed in the power rate case, which includes extensive opportunities for public involvement.

The final Power Subscription Strategy will provide a framework for the 1999 Power Rate Case and Subscription contract negotiations. The Subscription window will remain open 120 days after the Power Rates ROD is signed by the BPA Administrator, providing relatively certain information to potential purchasers regarding rates.

Summary of BPA'S Power Subscription Strategy

The Power Subscription Strategy is BPA's decision on equitably distributing to its customers the electric power generated by the FCRPS, within the framework of existing law. The Strategy outlines the overall process for implementing Federal power Subscription and provides a policy framework for the 1999 Power Rate Case. The Power Subscription Strategy, which provides a comprehensive description of BPA's decision, is available as a separate document. The Strategy is briefly summarized as follows.

The Strategy has four principal goals:

- Spread the benefits of the FCRPS as broadly as possible, with special attention given to the residential and rural customers of the region;
- Avoid rate increases through a creative and businesslike response to markets and additional aggressive cost reduction;
- Allow BPA to fulfill its fish and wildlife obligations while assuring a high probability of Treasury payment; and
- Provide market incentives for the development of conservation and renewables as part of a broader BPA leadership role in the regional effort to capture the value of these and other emerging technologies.

Subscribing to Federal Power. The Subscription window will be open from February 1, 1999, until 120 days after the ROD for the 1999 Power Rate Case is signed. BPA and its customers can bilaterally negotiate and execute power sales contracts at any time during this period. In determining customers' net requirements eligibility, BPA will apply criteria that define which entities qualify for service. BPA also will apply section 9(c) of the Northwest Power Act

and review customer requests for service in light of the extent to which power, including power previously applied to loads in the region, has been sold for use outside the region. All contracts will be subject to the final rates established in the Power Rate Case.

All customers can negotiate during the Subscription window for power at applicable rates.

- *Publics*—All net requirements load, including load of new publics and load annexed by publics during the Subscription window, not currently served by all 5(b)(1)(A) resources and 5(b)(1)(B) generating resources.
- *Residential Loads of IOUs*—For 2002–2006 BPA intends to offer at least 1000 aMW of power and 800 aMW of power or financial benefits. For customers that purchase 10-year contracts, BPA will provide the 1800 aMW package for the first five-year period, and 2200 aMW for the second five years.
- *DSIs*—BPA expects to be able to serve all DSI load placed on the agency.
- *Managing Financial Risk.* BPA's pricing of its power products and services is based, in part, on the agency's risk management strategy. BPA faces a number of uncertainties, including future hydro conditions, market prices, operating costs, and fish and wildlife costs, which could affect how BPA operates and successfully meets all of its public responsibilities. To ensure BPA recovers all of its costs, the agency will use a variety of risk management tools. These tools are described in detail in BPA's Power Subscription Strategy.

Products and Services. BPA will market three categories of products:

- *Core Subscription products*—These products are available to customers who request requirements service to serve load and accept constraints on their ability to shape their purchases from BPA for any reason other than following variations in consumer load. These undelivered products will be offered at BPA's posted rates.
- *Customized Subscription products*—Customized products are available to customers who request requirements services to serve load (Core Products) and who want additional flexibility to reshape their purchases from BPA in order to optimize their resource operations. These products will have bilaterally negotiated pricing for all modifications to Core Products and any additional products and services customers wish to purchase. BPA anticipates that the price for customized products that differ substantially from the core products will be negotiated under the Firm Power Products and Services (FPS) rate schedule.
- *Non-Subscription products*—This category broadly includes power products and services that BPA might sell to any customer in the marketplace. These products will have prices negotiated under BPA's FPS rate schedule within the cost-based cap existing for that rate schedule. For detailed product descriptions, refer to the BPA Power Products Catalog available from BPA account executives or on the Power Business Line Web site.

BPA will also offer another product called Slice of the System. The Slice of the System is a requirements service and will be offered by a formula to be developed during the Power Rate Case. The final details of this product will be developed through an open process that will be concluded before the end of January 1999. Slice will allow eligible customers to pay a fixed percentage of BPA's costs in return for a fixed percentage of the capability of the FCRPS, mapped to net requirements.

Pricing. BPA intends to propose power rates for the 2002–2006 rate period that are significantly below market and approximately equal for all customer groups. Final pricing decisions will be made in the power rate 7(i) process in 1999.

- Subscription sales (i.e., contracts signed during the Subscription window) to public agency customers will be at the PF rate. Subscription sales to IOUs and DSIs would be at applicable rates, which are expected to be approximately equivalent to the PF rate, subject to a section 7(i) hearing and BPA meeting its statutory rate directives.
- Loads of preference customers that contract for services too late for inclusion in rate case analysis (i.e., the Power Rate Case setting rates for the FY 2007–2011 period) will be served at the PF rate through the end of that rate period, with a targeted adjustment charge. This targeted adjustment charge will reflect incremental costs, if such costs are incurred to serve the load. Also, any loads placed on BPA after the close of the Subscription window will receive this rate treatment at least through FY 2006.
- Option fees have been dropped. Eligible customers who make long-term commitments to buy power will get a contractual guarantee of BPA's applicable lowest cost-based rates beyond FY 2006.
- BPA will continue the LDD, with minor modifications, in a manner similar to current practice.
- BPA intends to continue existing General Transfer Agreement (GTA) service to customers for delivery of Federal power through the 2002–2006 rate period. This service will not be available to new preference customers or to existing preference customers for service territory expansions. BPA will attempt to negotiate extensions through 2006 for GTA agreements that expire during this time. If unsuccessful in this attempt, BPA will arrange for open access tariff transmission to replace GTAs for delivery of Federal power to GTA points of delivery. This delivery will be covered by power rates. The costs for delivery of non-Federal power to GTA points of delivery will not be covered by power rates.
- BPA has an important role in fostering and promoting the development of energy conservation and renewable resources in the Northwest. BPA plans to offer a 0.5 mill per kilowatthour Conservation and Renewables Rate Discount to utilities that voluntarily implement measures to develop energy conservation and renewable resources, up to a total of $30 million per year. The discount will be dollar for dollar. BPA is also considering whether, if its actual financial performance turns out to be much better than the rate case plan, to offer an additional discount for customers who support additional conservation and renewables activities. The details of how BPA plans to proceed with the discount in the initial rate proposal will be provided in the Administrative ROD.

Contract Elements. BPA intends to conduct bilateral negotiations with each of its customers to develop a contract that establishes the specific business relationship between that customer and BPA. All contracts will contain some provisions that are non-negotiable and consistent across all Subscription contracts.

- BPA will provide various incentives for customers to choose among three-year contracts, five-year contracts, and contracts longer than five years.
- BPA will be willing to negotiate non-requirements surplus firm power contracts with small rural full service customers that may be inordinately affected by rate design changes.
- Under Subscription contracts, customers bear the risk of losing load due to retail open access. BPA will offer several means to mitigate a customer's financial risk due to retail load loss.
- BPA will offer load growth coverage to public agency customers. Utilities whose loads grow due to retail access load gain or annexations and have contracts before the close of the Subscription window will be served with requirements power at the PF rate. However, new large single loads (NLSL)

will be served at the New Resources Firm Power rate. Public agency requests to BPA for additional service after the Subscription window closes will be subject to the special price and notice provisions described in the Pricing section.

- A new public utility, which is eligible for service under BPA's statutes and which forms and contracts for service within the Subscription window will be offered power at the PF rate for its entire load obligation, except for NLSLs. New tribal preference utilities, which are eligible for service under BPA's statutes, will be treated the same as other new public utilities.
- Under current statutory provisions, customers who purchase for their net firm power requirements load are not able to pool their power purchases with other customers' purchases. If new legislation affecting pooling is passed, BPA will consider modifying its contracts.

Environmental Analysis

BPA's BP EIS focused on the relationships of BPA to the market. (BP EIS, section 2.1). BPA's marketing actions do not have a direct effect on air, land, and water. Previous environmental studies (e.g., Initial Northwest Power Act Power Sales Contracts EIS, January 1992; and Final Environmental Assessment: 1993 Wholesale Power and Transmission Rate Adjustment, February 1993) showed that environmental impacts are determined by the responses to BPA's marketing actions, rather than by the actions themselves. These market responses, discussed in detail in section 4.2 of the BP EIS, are resource development (including conservation), resource operation, transmission development and operation, and consumer behavior. With this knowledge, BPA used market responses as the foundation for the environmental analysis in section 4.3 of the BP EIS.

These market responses that determine the environmental impacts also determine whether BPA's costs will exceed the level of maximum sustainable revenue. If BPA were unable to balance its revenue and costs, the agency would need to pursue a response strategy. These response strategies, which are discussed below, fall into three general categories: increase revenues, reduce spending, and transfer costs. The ability to utilize response strategies, such as the risk management tools described in the Power Subscription Strategy, to meet BPA's financial obligation allows the agency to continue to be competitive in the market and provide public benefits.

A review of the BP EIS clearly shows that the potential environmental impacts from BPA's Power Subscription Strategy are adequately covered. Figure 2 below (not included in this Notice) shows how the decision to adopt the Power Subscription Strategy affects the environment.

Potential Air, Land, and Water Effects.

- *Resource development and operation*—Customers' decisions on whether to buy power from BPA or from other suppliers to serve their firm loads have potential effects on resource development and operations. Moreover, resource operations and development are more likely to have a potential impact on the environment than other market responses. Even so, resource operations are not expected to change significantly due to BPA's decision to adopt the Power Subscription Strategy.

BPA's energy resources are overwhelmingly hydropower. The SOR EIS evaluated various hydro operation scenarios and the requirements necessary to serve the multiple purposes of the Federal facilities, including power generation, fisheries, recreation, irrigation, navigation, and flood control. The resulting decisions about operating requirements, as documented in the Columbia River System Operation Review On Selecting An Operating Strategy For The FCRPS ROD (February 21, 1997), defined the power operations and amount of resources available for all BPA power transactions. However, to assist in fully understanding the potential range of impacts as a consequence of fundamental Business Plan decisions, the BP EIS evaluated the possible effects under two SOR operating strategies covering a wide spectrum of possible hydro operations (BP EIS, sections 4.4.3 and 4.4.4). It is important to note that contractual decisions predicated upon the BP EIS do not influence the SOR analysis or hydro operations. In fact, the reverse is true: the results from the SOR ROD affect BPA's Power Subscription Strategy decisions by defining the amount of power available to BPA from its hydro resources.

Also, whether customers choose BPA or other regional providers to serve their loads has a minimal effect on environmental impacts from resource development. The BP EIS showed that the difference between BPA serving the loads and the rest of the region serving the loads is relatively minor. Although BPA's share of regional load varied across alternatives, the differences in total environmental impacts among alternatives were small (BP EIS, Figure 4.4.5, page 4–117).

The more important factor for determining potential environmental impacts from resource operations and development is whether the region will be in an energy resource surplus or deficit situation. Based on BPA's most recent Pacific Northwest Loads and Resources Study (the White Book), the region post-2001 is expected to be resource deficit under a critical water level (the lowest expected water condition based on historical data) for the hydroelectric system.

Under these conditions all resources in the region will run and there will be an increased likelihood of needing additional resources. It is anticipated that much of this need for additional resources will be met through better water conditions (closer to an average water year) than critical water. In addition, BPA will promote the development of conservation and renewable resources in the region. The region may also rely on existing power resources outside the region or on the construction of new resources within the region. In any case, there is likely to be an increase in air emissions. However, any new resources are expected to be CTs. If these cleaner, more fuel efficient CTs displace existing thermal generation, the overall air quality impacts may be lessened (BP EIS, section 4.4.1.4). Section 4.3.1 of the BP EIS describes the typical environmental impacts from various generating resources.

Currently BPA does not intend to rely on the long-term acquisition of the output of new generating resources to meet any increases in its loads. Instead, BPA plans to use cost-effective power purchases. If necessary, BPA would consider the long-term acquisition of the output of new combined cycle combustion turbines (CTs).

In the less likely event that the region is in a surplus situation, fewer air quality impacts would be expected. New generation would not be needed and surplus hydro could displace existing thermal generation, resulting in fewer air emissions. If most existing resources in the region run, no substantial changes in the current environmental effects would be expected. The closer the region is to load/resource balance, however, the greater the likelihood new resources will be constructed. As discussed above, these new resources would impact air quality.

- *Transmission development and operation*—Little change is expected in transmission development and operation due to the decision by BPA to adopt the Power Subscription Strategy. Reliability criteria and regional

planning would still set the direction for a regional transmission system (BP EIS, Table 4.2.1, page 4–40.) The potential environmental impacts of transmission development and operation were described in section 4.3.2 of the BP EIS. Analysis of transmission system development and operation across Business Plan alternatives (which represent a broad range of loads placed on BPA) shows overall transmission development in the region varying by less than six percent (BP EIS, section 4.4.3.6).

• *Consumer behavior*—Conservation reinvention, which is intrinsic to BPA's market-driven approach, included price incentives for conservation (BP EIS, section 2.2.3). A renewables incentives module was also analyzed as a variable (BP EIS, section 2.3). The success of any incentives, such as a rate discount, for conservation or renewable resources would reduce the region's reliance on or need for thermal resources. As a result, there would be fewer impacts to air, land and water. Conservation measures, in and of themselves, have few environmental impacts (BP EIS, section 4.3.1).

Potential Socioeconomic Effects. Consistent with its market-driven approach, BPA will remain active in the competitive market, working to assure its success. BPA must generate enough revenue to pay all of its costs. If the costs exceed BPA's ability to generate revenues, BPA may not be able to meet its financial obligations, including repaying the Treasury and providing public benefits. The BP EIS showed that two factors dominated BPA's ability to be successful in the market: rates and terms of service. Under the market-driven approach, BPA focused on keeping rates low and on meeting customers' needs (BP EIS, section 2.6). The success of BPA's Power Subscription Strategy will be determined by how well it responds to these same two factors. The Strategy equitably distributes the benefits of the FCRPS, provides customers with a variety of choices to meet their needs, and acknowledges BPA's financial and public benefit responsibilities. However, BPA faces a number of uncertainties that could affect its success. The Risk Management Strategy incorporates a set of risk management tools to manage this risk.

• *Rates*—For BPA to be successful, the Power Subscription Strategy must offer power products and services at prices that are acceptable to customers. To the extent BPA is more or less successful, the agency could be over-subscribed or under-subscribed.

If BPA's cost-based rates for Subscription power are below market, BPA could sell all the power it has available. BPA would meet this over-Subscription by making cost-effective power purchases from existing resources. In the unlikely event that the cost of these power purchases or customer demands were much higher than expected, BPA could use a variety of measures, including adjusting the shape of deliveries and interruption provisions, to ensure the DSIs share in the benefits of federal power.

Over-Subscription would likely decrease air quality. BPA's power purchases could cause regional thermal resources to run, resulting in increased air emissions. In addition, BPA currently sells power to California, offsetting the operation of some of California's thermal plants. These plants may be operated, leading to increases in air emissions in California. If, as expected, the region is deficit, BPA's purchases could encourage others to develop resources, including conservation.

If BPA's rates for Subscription power are higher than what customers perceive market prices to be, BPA could end up selling less firm power than it is offering. Consequently, BPA might not be able to recover its costs for the rate period and could be unable to make its Treasury payments or meet recovery costs for fish and wildlife. BPA would likely implement one or more of the financial contingency measures in the Risk Management Strategy to address such under-Subscription.

If BPA were under-Subscribed, other regional resources would meet customers' loads. These thermal resources would have negative air quality impacts. Under the likely regional deficit for resources, resource development would be encouraged. Unlike BPA's existing resources, these new resources (primarily CTs) would have air quality impacts. To the extent the new CTs displaced older, less efficient thermal resources, the potential impacts would be less.

• *Terms of service*—BPA also found that the issues raised during the Power Subscription Strategy public process were focused on business actions that affect the marketability or desirability of BPA's power. The Power Subscription Strategy must also offer terms of service that are attractive to BPA's customers. BPA worked with customers in developing the Strategy, and was responsive to their concerns. The Strategy preserves public preference and regional preference, while assuring that the residential and small farm customers of the region's IOUs share the benefits of the FCRPS. The Power Subscription Strategy also recognizes the unique needs of customers and responds to those needs. A variety of competitively-priced power products and services are available. In addition, BPA intends to conduct bilateral negotiations with each of its customers to develop individual contracts.

To the extent these terms of service are attractive, customers will choose to buy power from BPA. At the same time, the Strategy must recognize constituents' concerns. The Power Subscription Strategy balances the concerns and interests of customers and constituents. The more successful the Power Subscription Strategy, the more likely BPA will be able to fulfill all of its financial obligations.

• *Public benefits*—As discussed above, BPA is making a systematic effort through this Power Subscription Strategy to meet customer needs and improve business relationships. This will make the purchase of federal power more attractive to customers, resulting in reliable and predictable BPA revenues which will provide better financial stability over time. This success in the market will provide the financial strength necessary to ensure the public benefits BPA provides the region. The Power Subscription Strategy provides BPA the mechanisms to spread the benefits of the FCRPS throughout the region, fulfill BPA's fish and wildlife obligations, and encourage conservation and renewables.

• *Response strategies (Mitigation)*—BPA faces a number of uncertainties that could affect its success: hydro conditions, market prices, operating costs, and fish and wildlife costs. The Power Subscription Strategy includes a Risk Management Strategy BPA intends to use to make sure all of its costs and public responsibilities are met despite these uncertainties. The BP EIS, acknowledging these same uncertainties, detailed representative response strategies BPA could invoke to balance costs and revenues (BP EIS, section 2.5 and BP ROD, pages 13–14). These response strategies fell into three general categories: decrease spending, increase revenues, and transfer costs. The risk management tools in the Power Subscription Strategy are consistent with the response strategies in the BP EIS. BPA has already decided (in the BP ROD) to implement as many response strategies, or equivalents, as necessary to mitigate for cost and revenue imbalance. Such mitigation enhances BPA's ability to continue to adapt to changing market conditions and improves BPA's long-term attractiveness as a power supplier and business

partner and BPA's ability to ultimately continue to provide public benefits to the region.

Public Availability

This Power Subscription Strategy ROD, which satisfies BPA's requirements under the National Environmental Policy Act (NEPA), will be distributed to interested and affected persons and agencies. The ROD will also be posted on BPA's web-site, which is http://www.bpa.gov/power/subscription. Copies of BPA's Power Subscription Strategy, the Business Plan, Business Plan EIS, and the Business Plan ROD and additional copies of this NEPA ROD are all available from BPA's Communications Office, P.O. Box 12999, Portland, Oregon 97212. Copies of these documents may also be obtained by using BPA's nationwide toll-free document request line, 1–800–622–4520.

Conclusion

After participating in an extensive public process, I have decided to adopt and implement BPA's Power Subscription Strategy. Consistent with the decision strategy laid out in BPA's BP EIS, I have examined that EIS and found that this decision is clearly within its scope. In making this decision to adopt the Power Subscription Strategy, I have carefully considered the potential environmental impacts. Further, in proceeding with the Strategy, BPA is guided by and remains fully committed to the Fish and Wildlife Funding Principles.

This decision is a direct application of BPA's Market-Driven approach for participation in the increasingly competitive electric power market. BPA is offering a variety of power products and pricing to address customers' needs and make the purchase of federal power more attractive to customers. BPA will begin bilateral negotiations during which customers will make federal power purchase commitments and execute individual contracts.

Implementing the Power Subscription Strategy will result in reliable and predictable BPA revenues which will provide financial stability over time to help provide public benefits, avoid stranded costs and reduce the need to invoke risk management strategies. BPA is responding to customers' needs while ensuring the financial strength necessary to produce the public benefits that are of concern to the people of the Pacific Northwest. Making Power Subscription contracts available to customers is a prudent business and public agency decision that reflects the values of the region.

Issued in Portland, Oregon, on December 21, 1998.

J. A. Johansen,

Administrator and Chief Executive Officer.

[FR Doc. 98–34788 Filed 12–31–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–986–000]

Illinois Power Company; Notice of Filing

December 28, 1998.

Take notice that on December 18, 1998, Illinois Power Company (IP), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a summary of its activity for the third quarter of 1998, under its Market Based Power Sales Tariff, FERC Electric Tariff, Original Volume No. 7.

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 and protests should be filed on or before January 8, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34747 Filed 12–31–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER95–1625–017; ER95–1614–017; ER94–1394–018; ER99–905–000; ER99–934–000; ER99–935–000; and ER99–936–000]

PG&E Energy Trading-Power, L.P.; PG&E Energy Services, Energy Trading Corp.; PG&E Power Services Company; USGen New England, Inc.; Millennium Power Partners, L.P.; Logan Generating Company, L.P.; and Pittsfield Generating Company, L.P.; Notice of Filing

December 21, 1998.

Take notice that on December 14, 1998, PG&E Energy Trading-Power, L.P.; PG&E Energy Services, Energy Trading Corp.; PG&E Power Services Company; USGen New England, Inc.; Millennium Power Partners, L.P.; Logan Generating Company, L.P.; and Pittsfield Generating Company, L.P.; (PG&E Subsidiaries); collectively tendered for filing an updated market analysis as required by the Commission's orders approving market based rates for each of the PG&E Subsidiaries.

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 and protests should be filed on or before January 4, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34748 Filed 12–31–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 710–000]

Wisconsin Power & Light Company; Notice Establishing Comment Period for Complaint

December 28, 1998.

On December 1, 1998, the Menominee Indian Tribe of Wisconsin filed a document entitled ''Complaint against Wisconsin Power & Light for Non-Compliance and Motion Requesting FERC's Enforcement of License Articles 203 and 411.'' The Complainant requests, pursuant to 18 CFR 385.206 of the Commission's regulations, that the Commission find Wisconsin Power & Light Company to be in violation of its license for the Shawano Project No. 710, because of its alleged failure to negotiate annual charges as required by license Article 203, and its alleged failure to consult with the Menominee Indian Tribe or monitor archeological sites in accordance with its Programmatic Agreement as required by license Article 411. The Complainant requests that the Commission require immediate compliance with Articles 203 and 411 of the license.

Any person may file an answer, comments, protests, or a motion to intervene with respect to the complaint in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.213, and 385.214. In determining the appropriate action to take with respect to the complaint, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any answers, comments, protests, or motions to intervene must be received no later than 30 days after publication of this notice in the **Federal Register**.[1]

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34746 Filed 12–31–98; 8:45 am]

BILLING CODE 6717–01–M

[1] *See* 18 CFR 385.213(d). *See also* 18 CFR 385.202.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–3019–007, et al.]

CXY Energy Marketing (U.S.A.) Inc., et al.; Electric Rate and Corporate Regulation Filings

December 28, 1998.

Take notice that the following filings have been made with the Commission:

1. CXY Energy Marketing (U.S.A.) Inc.

[Docket No. ER96–3019–007]

Take notice that on December 21, 1998, CXY Energy Marketing (U.S.A.) Inc. (CXY), tendered for filing a Transaction Report for Quarter ended September 30, 1998.

Comment date: January 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Strategic Energy, Ltd.

[Docket No. ER96–3107–008]

Take notice that on December 21, 1998, Strategic Energy, Ltd., tendered for filing a Quarterly Transaction Report describing SEL's wholesale electricity sales for the third quarter of 1998.

Comment date: January 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Western Resources, Inc.

[Docket No. ER98–4401–000]

Take notice that on December 22, 1998, Western Resources, Inc. (Western Resources), tendered for filing amendments to Electric Power Supply Agreements (Agreements) between Western Resources, Inc. d/b/a KPL and Doniphan Electric Cooperative Association, Inc., Kaw Valley Electric Cooperative, Inc., and Nemaha-Marshall Electric Cooperative Association, Inc., (collectively termed the Cooperatives). Western Resources states that the amendments have been resubmitted with the exclusion of general stranded cost provisions that were in the original filing.

Western Resources requests the revised amendments be substituted for those originally tendered for filing and be allowed to become effective on August 1, 1998 as originally requested.

Copies of the filing were served upon the Cooperatives and the Kansas Corporation Commission.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER99–962–000]

Take notice that on December 22, 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), changes to its FERC Electric Tariff, First Revised Volume No. 4, by separating the Tariff into two (2) separate tariffs, one for Market-Based sales and one for Cost-Based sales.

Rates are to become effective concurrently with this filing.

Copies of the filing were served on wholesale customers under Cinergy's FERC Electric Tariff, First Revised Volume No. 4 and the public service commissions of Indiana, Ohio and Kentucky.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Nevada Sun-Peak Limited Partnership

[Docket No. ER99–963–000]

Take notice that on December 21, 1998, Nevada Sun-Peak Limited Partnership (Sun-Peak), owner of a 210 MW generating facility located near Las Vegas, Nevada, petitioned the Commission for acceptance of its Amended and Restated Power Purchase Contract with Nevada Power Company. Sun-Peak is an affiliate of Edison International and Oxbow Power Corporation.

Sun-Peak requested acceptance of the contract as a market-based rate schedule, waiver of the 60-day notice requirement, and certain other waivers and preapprovals under the Commission's Regulations.

Comment date: January 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Energy Canal, L.L.C.

[Docket No. ER99–694–000]

Take notice that on December 22, 1998, Southern Energy Canal, L.L.C. (Southern Canal), tendered for filing Notice of Withdrawal and amendment concerning its November 24, 1998, filing in this docket which requested Commission acceptance of agreements for cost-based wholesale power sales by Southern Canal to Cambridge Electric Light Company, Commonwealth Electric Company, New England Power Company, Montaup Electric Company, and Boston Edison Company.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Cielo Power Market LP

[Docket No. ER99–964–000]

Take notice that on December 21, 1998, Cielo Power Market LP (Cielo), petitioned the Commission for acceptance of Cielo Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Cielo intends to engage in wholesale electric power and energy purchases and sales as a marketer. Cielo is not in the business of generating or transmitting electric power.

Comment date: January 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Boston Edison Company

[Docket No. ER99–965–000]

Take notice that on December 21, 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 Select Energy, Inc., (collectively, Select).

Boston Edison requests that the Service Agreement become effective as of December 1, 1998.

Boston Edison states that it has served a copy of this filing on Select and the Massachusetts Department of Public Utilities.

Comment date: January 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER99–966–000]

Take notice that on December 21, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Select Energy, Inc. This Transmission Service Agreement specifies that Select Energy, Inc., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Select Energy, Inc., to enter into separately scheduled transactions under which NMPC will provide transmission service for Select Energy, Inc., as the parties may mutually agree.

NMPC requests an effective date of December 8, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Select Energy, Inc.

Comment date: January 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Wisvest-Connecticut, L.L.C.

[Docket No. ER99–967–000]

Take notice that on December 21, 1998, Wisvest-Connecticut, L.L.C. (Wisvest-Connecticut), a Connecticut limited liability company, tendered for filing proposed market-based rate schedules for the sale of capacity and energy and for the sale of ancillary services pursuant to negotiated agreements, together with a form of service agreement and a code of conduct to govern relationships with affiliated franchised utilities.

Wisvest-Connecticut requests that the Commission accept these schedules for filing and grant such waivers of its regulations and blanket authorizations as the Commission has granted to other power marketers.

Wisvest-Connecticut requests that the Commission permit these schedules to become effective no later than April 1, 1999.

Copies of the filing have been served upon the Connecticut Department of Public Utility Control.

Comment date: January 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Central Illinois Light Company

[Docket No. ER99–969–000]

Take notice that on December 21, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff for a name change for a customer, Williams Energy Services Co., changing its name to Williams Energy Marketing & Trading Co., and one service agreement for one new customer, New Energy Ventures, Inc.

CILCO requested an effective date of December 9, 1998.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: January 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. RockGen Energy LLC

[Docket No. ER99–970–000]

Take notice that on December 21, 1998, RockGen Energy LLC (RockGen Energy), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1. RockGen Energy intends to sell energy and capacity from the Facility at market-based rates, and on such terms and conditions to be mutually agreed to with the purchasing party.

RockGen Energy proposes that its Rate Schedule No. 1, become effective upon commencement of service of the RockGen Energy Center (the Facility), a generation project currently being developed by RockGen Energy in the State of Wisconsin. The Facility will not be commercially operable until June, 2000.

Comment date: January 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. NYSEG Solutions, Inc.

[Docket No. ER99–971–000]

Take notice that on December 21, 1998, NYSEG Solutions, Inc. (NYSEG Solutions or NSI), tendered for filing pursuant to Section 35.13 (18 CFR 35.13), with the Federal Energy Regulatory Commission NYSEG Solutions' revised Tariff for Market-Based Power Sales and Reassignment of Transmission Service Rights, FERC Electric Rate Schedule No. 1, which permits NYSEG Solutions to make wholesale power sales at market-based rates and revises NYSEG Solutions' Tariff for Market-Based Power Sales and Reassignment of Transmission Service Rights, FERC Electric Rate Schedule No. 1.

NSI respectfully requests that the Commission accept this Revised Market-Based Power Sales Tariff for filing and allow it to become effective as of December 22, 1998, and accordingly requests waiver of the 60-day notice requirement.

Comment date: January 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. SkyGen Energy Marketing LLC

[Docket No. ER99–972–000]

Take notice that on December 21, 1998, SkyGen Energy Marketing LLC (SkyGen), petitioned the Commission for acceptance of SkyGen Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations. SkyGen is a subsidiary of SkyGen Energy LLC, a limited liability company organized and existing under the laws of the State of Delaware and headquartered in Northbrook, Illinois.

Comment date: January 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Select Energy, Inc.

[Docket No. ER99–973–000]

Take notice that on December 21, 1998, Select Energy, Inc. (Select), tendered for filing a Service Agreement with the New Energy Ventures, Inc., under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

Select Energy, Inc., states that a copy of this filing has been mailed to the New Energy Ventures, Inc.

Select requests that the Service Agreement become effective December 1, 1998.

Comment date: January 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Boston Edison Company

[Docket No. ER99–978–000]

Take notice that on December 22, 1998, Boston Edison Company (Boston Edison), tendered for filing proposed tariff sheets to change the rates, terms and conditions of service under its Open Access Transmission Tariff. The principal change proposed by Boston Edison is the adoption of a formula rate methodology to mirror that proposed by the New England Power Pool in Docket Nos. OA97–237–000, *et al.* Based on 1997 data, the revenue requirement would be approximately $48 million. Boston Edison also proposes a formula rate for the derivation of its Schedule 1, costs for Scheduling, System Control and Dispatch Service, and Boston Edison proposes to change various non-rate provisions of the tariff as shown in detail in the filing.

Boston Edison proposes an effective date of February 21, 1999.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Peco Energy Company

[Docket No. ER99–979–000]

Take notice that on December 22, 1998, PECO Energy Company (PECO), tendered for filing a Service Agreement dated December 10, 1998 with Borough of Middletown, Pennsylvania (Middletown) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Middletown as a customer under the Tariff.

PECO requests an effective date of December 18, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to Middletown and to the Pennsylvania Public Utility Commission.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Peco Energy Company

[Docket No. ER99–980–000]

Take notice that on December 22, 1998, PECO Energy Company (PECO), tendered for filing a Service Agreement dated August 24, 1998 with Central Hudson Enterprises Corporation (CHEC) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds CHEC as a customer under the Tariff.

PECO requests an effective date of December 2, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to CHEC and to the Pennsylvania Public Utility Commission.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Peco Energy Company

[Docket No. ER99–981–000]

Take notice that on December 22, 1998, PECO Energy Company (PECO), tendered for filing a Service Agreement dated December 9, 1998 with Select Energy, Inc. (Select), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Select as a customer under the Tariff.

PECO requests an effective date of December 9, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to Select and to the Pennsylvania Public Utility Commission.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Peco Energy Company

[Docket No. ER99–982–000]

Take notice that on December 22, 1998, PECO Energy Company (PECO), tendered for filing a Service Agreement dated December 18, 1998, with Strategic Power Management, Inc. (SPM), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds SPM as a customer under the Tariff.

PECO requests an effective date of December 18, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to SPM and to the Pennsylvania Public Utility Commission.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. MidAmerican Energy Company

[Docket No. ER99–983–000]

Take notice that on December 22, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309 tendered for filing proposed changes to its Rate Schedule FERC Nos. 64 and 83. The changes consist of the annual adjustment of the transmission service fee for 1998 pursuant to the Transmission Service and Facilities Agreement dated October 2, 1979, as amended, between MidAmerican and Cedar Falls Municipal Electric Utility (Cedar Falls), and the Transmission Service Agreement dated August 26, 1985, as amended, between MidAmerican and Cedar Falls.

MidAmerican proposed an effective date of January 1, 1998, for the rate schedule change and states that good cause exists for this waiver pursuant to the Commission's decision in Central Hudson Gas & Electric Corporation, 60 FERC ¶61,106 (1992).

Copies of the filing were served on representatives of Cedar Falls, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Ameren Services Company

[Docket No. ER99–984–000]

Take notice that on December 22, 1998, Ameren Services Company (Ameren Services), tendered for filing a Network Operating Agreement and a Service Agreement for Network Integration Transmission Service between Ameren Services and the City of California, Missouri (the City). Ameren Services asserts that the purpose of the Agreement is to permit Ameren Services to provide transmission service to the City pursuant to Ameren's Open Access Tariff.

Ameren Services requests that the Network Service Agreement and Network Operating Agreement be allowed to become effective as of December 1, 1998.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Ameren Services Company

[Docket No. ER99–985–000]

Take notice that on December 22, 1998, Ameren Services Company (ASC) as Agent for Union Electric Company (UE), tendered for filing a Service Agreement for Market Based Rate Power Sales between UE and the City of

California (the City), Missouri. ASC asserts that the purpose of the Agreement is to permit ASC to make sales of capacity and energy at market based rates to the City pursuant to ASC's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

ACS requests that the Service Agreement be allowed to become effective December 1, 1998.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. NGE Generation, Inc.

[Docket No. ER99–987–000]

Take notice that on December 22, 1998, NGE Generation, Inc. (NGE Gen), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, (18 CFR 35), a service agreement (the Service Agreement) under which NGE Gen may provide capacity and/or energy to Select Energy, Inc. (Select) in accordance with NGE Gen's FERC Electric Tariff, Original Volume No. 1.

NGE Gen has requested waiver of the notice requirements so that the Service Agreement with Select becomes effective as of December 23, 1998.

NGE Gen has served copies of the filing upon the New York State Public Service Commission and Select.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. NGE Generation, Inc.

[Docket No. ER99–988–000]

Take notice that on December 22, 1998, NGE Generation, Inc. (NGE Gen), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Regulations, (18 CFR 35) service agreements under which NGE Gen may provide capacity and/or energy to Statoil Energy Services, Inc. (SESI), in accordance with NGE Gen's FERC Electric Tariff, Original Volume No. 1.

NGE Gen has requested waiver of the notice requirements so that the service agreement becomes effective as of May 22, 1998.

NYSEG served copies of the filing upon the New York State Public Service Commission and SESI.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Entergy Services, Inc.

[Docket No. ER99–989–000]

Take notice that on December 22, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Letter Amendment (dated December 19, 1990) to the Capacity and Energy Letter Agreement between Entergy Services, Inc., and Sam Rayburn G&T Electric Cooperative, Inc.,

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. The Detroit Edison Company

[Docket No. ER99–990–000]

Take notice that on December 22, 1998, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff No. 4 (the WPS–1 Tariff), and Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff) between Detroit Edison and Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (collectively, Allegheny Power).

Detroit Edison requests that both service agreements be allowed to become effective as of November 30, 1998.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. PJM Interconnection, L.L.C.

[Docket No. ER99–991–000]

Take notice that on December 22, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing executed service agreements for non-firm point-to-point service agreement and short-term firm point-to-point service with DukeSolutions, Inc., under the PJM Open Access Tariff.

The effective date of these agreements is December 17, 1998, the date they were executed. PJM requests a waiver of the Commission's 60 day notice requirements.

Copies of this filing were served upon the parties to the service agreements.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Portland General Electric Company

[Docket No. ER99–992–000]

Take notice that on December 22, 1998, Portland General Electric Company (PGE), filed to restructure its Long-Term Power Sale and Exchange Agreement (Burbank Agreement) between PGE and The City of Burbank, California (The City of Burbank). The Burbank Agreement is a non-economy coordination agreement, which is on file with the Commission as PGE FERC Rate Schedule No. 77, and was accepted for filing by the Commission on July 22, 1991, to be effective as of September 15, 1988, in Docket No. ER91–493-000. As part of the restructuring of the existing contract, the parties have entered into a Summer Power Sale Agreement and a Restructuring Agreement.

PGE requests that the revised Burbank Agreement be made effective March 1, 1999. PGE also requests that the Commission approve the Restructuring Agreement to be effective on December 31, 1998.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. UtiliCorp United Inc.

[Docket No. ES99–17–000]

Take notice that on December 18, 1998, UtiliCorp United Inc. (Applicant), tendered for filing an application seeking an order under Section 204(a) of the Federal Power Act authorizing the Applicant to issue corporate guaranties in support of Debt Securities and related obligations in an amount of up to and including $500,000,000 to be issued by a direct or indirect Australian subsidiary of Applicant, at some time before February 5, 1999, and for exemption from competitive bidding and negotiated placement requirements. Said guaranties would be in connection with Applicant's subsidiary's investment in gas distribution assets being privatized by the State of Victoria, Australia.

Comment date: January 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

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, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34779 Filed 12–31–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00575; FRL–6054–8]

Pesticides; Science Policy Issues Related to the Food Quality Protection Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: To assure that EPA's science policies related to implementing the Food Quality Protection Act (FQPA) are transparent and open to public participation, EPA is soliciting comments on four draft science policy papers—''A User's Guide to Available OPP Information on Assessing Dietary (Food) Exposure to Pesticides,'' ''Dietary (Drinking Water) Exposure Estimates,'' ''Standard Operating Procedures (SOPs) for Residential Exposure Assessment'' and ''Framework for Assessing Non-Occupational, Non-Dietary (Residential) Exposure to Pesticides.'' In addition, EPA is announcing the availability of the National Pesticide Residue Data Base which is being posted on the internet for access to the public, and the availability of Use and Usage Matrices for Organophosphates. This notice is the fourth in a series concerning science policy documents related to FQPA and developed through the Tolerance Reassessment Advisory Committee (TRAC).

DATES: Written comments for each science policy paper, identified by the separate docket control numbers provided in Unit I. of this document, should be submitted by March 5, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: For ''A User's Guide to Available OPP Information on Assessing Dietary (Food) Exposure to Pesticides'' and ''National Pesticide Residue Data Base'' contact by mail: Kathleen Martin, Environmental Protection Agency (7509C), 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–2857; fax: 703–305–5147; e-mail: martin.kathleen@epa.gov.

For ''Standard Operating Procedures (SOPs) for Residential Exposure Assessment'' and ''Framework for Assessing Non-Occupational, Non-Dietary (Residential) Exposure to Pesticides'' contact by mail: William Wooge, Environmental Protection Agency (7509C), 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8794; fax: 703–305–5147; e-mail: wooge.william@epa.gov.

For ''Dietary (Drinking Water) Exposure Estimates'' contact by mail: Denise Keehner, Environmental Protection Agency (7507C), 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–7695; fax: 703–305–6309; e-mail: keehner.denise@epa.gov.

For ''Use and Usage Matrices for Organophosphates'' contact by mail: Kathy Davis, Environmental Protection Agency (7503C), 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–7002; fax: 703–308–8091; e-mail: davis.kathy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Additional Information or Copies of This Document or Other Documents?

1. *Electronically.* You may obtain electronic copies of this document, the four science policy papers and ''National Pesticide Residue Data Base'' from the EPA Home Page under the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/. On the Office of Pesticide Program Home Page select ''TRAC'' and then look up the entry for this document. You can also go directly to the listings at the EPA Home page at the **Federal Register** — Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/) to obtain this notice and the five science policy papers. The Use and Usage Matrices for Organophosphates will be available at this site in January, 1999.

2. *Fax on Demand.* You may request to receive a faxed copy of this document, as well as supporting information, by using a faxphone to call (202) 401–0527 and selecting item 6027 for ''A User's Guide to Available OPP Information on Assessing Dietary (Food) Exposure to Pesticides,'' item 6028 for ''Dietary (Drinking Water) Exposure Estimates,'' item 6029 for ''Standard Operating Procedures (SOPs) for Residential Exposure Assessment,'' and item 6030 for ''Framework for Assessing Non-Occupational Non-Dietary (Residential) Exposure to Pesticides.'' You may also follow the automated menu.

3. *In person or by phone.* If you have any questions or need additional information about this action, you may contact the appropriate technical person identified in the ''FOR FURTHER INFORMATION CONTACT'' section of this document. In addition, the official records for the science policy papers listed in the SUMMARY section of this document, including the public versions, have been established under the docket control numbers listed in Unit I.B. of this document (including comments and data submitted electronically as described below). Public versions of these records, including printed, paper versions of any electronic comments, which do not include any information claimed as Confidential Business Information (CBI), are available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is 703–305–5805.

B. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number in your correspondence. The docket control number for ''A User's Guide to Available OPP Information on Assessing Dietary (Food) Exposure to Pesticides'' is OPP–00576, for ''Dietary (Drinking Water) Exposure Estimates,'' is OPP–00577, for ''Standard Operating Procedures (SOPs) for Residential Exposure Assessment'' is OPP–00578, and for ''Framework for Assessing Non-Occupational, Non-Dietary (Residential) Exposure to Pesticides'' is OPP–00579.

1. *By mail.* Submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Submit electronic comments as an ASCII file,

avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

C. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please call the Public Information and Records Integrity Branch telephone number is 703–305–5805.

D. What Should I Consider As I Prepare My Comments for EPA?

EPA invites you to provide your views on the various draft science policy papers, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide solid technical information and/or data to support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate.
5. Indicate what you support, as well as what you disagree with.
6. Provide specific examples to illustrate your concerns.
7. Make sure to submit your comments by the deadline in this notice.
8. At the beginning of your comments (e.g., as part of the ''Subject'' heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the notice, along with the name, date and **Federal Register** citation.

II. Background

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. Effective upon signature, the FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard (''a reasonable certainty of no harm'') for pesticide residues in foods to assure protection from unacceptable pesticide exposure; provided heightened health protections for infants and children from pesticide risks; required expedited review of new, safer pesticides; created incentives for the development and maintenance of effective crop protection tools for farmers; required reassessment of existing tolerances over a 10-year period; and required periodic re-evaluation of pesticide registrations and tolerances to ensure that scientific data supporting pesticide registrations will remain up-to-date in the future.

Subsequently, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs. The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that met FQPA's standard but that could be revisited if additional information became available or as the science evolved. As EPA's approach to implementing the scientific provisions of FQPA has evolved, the Agency has sought independent review and public participation, often through presentation of many of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

In addition, as directed by Vice President Albert Gore, EPA has been working with the U.S. Department of Agriculture (USDA) and another subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC), chaired by the EPA Deputy Administrator and the USDA Deputy Secretary, to address FQPA issues and implementation. TRAC comprises more than 50 representatives of affected user, producer, consumer, public health, environmental, states and other interested groups. The TRAC has met five times as a full committee from May 27 through September 16, 1998.

The Agency has been working with the TRAC to ensure that its science policies, risk assessments of individual pesticides, and process for decision making are transparent and open to public participation. An important product of these consultations with TRAC is the development of a framework for addressing key science policy issues. The Agency decided that the FQPA implementation process would benefit from initiating notice and comment on the major science policy issues.

The TRAC identified nine science policy issue areas they believe were key to implementation of FQPA and tolerance reassessment. The framework calls for EPA to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In addition to comments received in response to these **Federal Register** notices, EPA will consider comments received during the TRAC meetings. Each of these issues is evolving and in a different stage of refinement. Accordingly, as the issues are further refined by EPA in consultation with USDA and others, they may also be presented to the SAP.

In accordance with the framework described in a separate notice published in the **Federal Register** of October 29, 1998 (63 FR 58038) (FRL–6041–5), EPA is issuing a series of draft documents concerning nine science policy issues identified by the TRAC related to the implementation of FQPA. This notice announces the availability of four draft documents as identified in Unit I.B. of this document, as described in the framework notice published in the **Federal Register** of October 29, 1998 (63 FR 58038). EPA also stated in its October 29, 1998 **Federal Register** notice that it would issue a draft document titled ''Monte-Carlo Techniques and the 99.9th Percentile'' for comment in December 1998. Due to the complexity of this issue and the need to coordinate with the USDA, EPA will issue this document separately.

III. Summary of Draft Papers and Information

A. ''A User's Guide to Available OPP Information on Assessing Dietary (Food) Exposure to Pesticides''

Assessing the amount of pesticide residues in and on the foods Americans consume is a complex process. Over the years the Agency has written a number of guidelines and policy statements related to the conduct and review of

residue studies. ''A User's Guide to Available OPP Information on Assessing Dietary (Food) Exposure'' describes in ''plain English'' how EPA conducts acute and chronic pesticide dietary (food) exposure assessments and, more importantly, where in EPA guidance and policy documents one can find methods for doing such assessments.

B. ''Dietary (Drinking Water) Exposure Estimates''

The EPA Office of Pesticide Programs is proposing to build on its existing policy for estimating pesticide concentrations in drinking water as part of its assessment of dietary exposures to pesticides. The most significant changes being proposed are those that refine existing screening methods for identifying pesticides which may be present in drinking water at levels of concern. These refinements will enable OPP to more accurately estimate the potential risks of pesticides from drinking water exposure to the public and sensitive populations such as infants and children.

For some time the Agency has been using screening models to estimate pesticide concentrations in groundwater and surface water to rule out those food-use pesticides that are not expected to contribute enough exposure via drinking water to result in unacceptable levels of risk. The Agency uses monitoring data, where available and reliable, to refine its assessments in those cases where the use of the screening models does not result in ''clearing'' (i.e., indicate a low risk) the pesticide from a drinking water perspective. Specifically, OPP proposes to:

1. Replace the ''farm field pond'' scenario in its surface water screening models with a ''drinking water reservoir'' scenario.
2. Incorporate into the model a factor to account for the area surrounding the reservoir that is cropped.
3. Develop a second-level (tier 2) screening model for groundwater.
4. Evaluate how OPP uses water monitoring data in its drinking water assessment.
5. Continue efforts to obtain additional monitoring of pesticides in drinking water.

The proposed changes are intended to improve EPA's initial screening models by making them capable of producing more accurate estimates of pesticide concentrations in drinking water. In addition, EPA is seeking comment on current approaches to the use of monitoring data in its assessment of drinking water exposure. The Agency particularly seeks comments on the quantity and quality of data that would be appropriate for conducting drinking water assessments for purposes of tolerance decision-making. Finally, the Agency is soliciting comment on the current approach of back-calculating Drinking Water Levels of Comparison (DWLOC) only after all other exposures from food and residential use are considered.

C. ''Standard Operating Procedures (SOPs) for Residential Exposure Assessment''

As required by the FQPA, EPA must now include residential and other non-occupational exposures in the aggregate exposure assessments for pesticides. Generally speaking, residential exposure monitoring data have not been routinely required. Thus, EPA has been relying on existing monitoring, survey and modeling data, including information on activity patterns, particularly for children, to estimate residential exposure to pesticides. Because highly specific, residential exposure data are generally lacking and there is not wide understanding and acceptance of existing models and assumptions, several workgroups and task forces are working to generate data and improve methods for conducting residential exposure assessments. One of these such efforts is the work group for developing Residential Standard Operating Procedures (SOPs) for Residential Exposure Assessments.

The Residential Exposure Assessment Standard Operating Procedures are being developed by the Office of Pesticide Programs as standard methods for conducting residential exposure assessments for both handler and post-application exposures when pesticide-specific and/or site-specific field data are limited or not available. Handler and post-application SOPs were drafted for assessments of dermal, inhalation and/or potential ingestion exposures for the following major residential exposure scenarios: residential lawns, garden plants, trees (e.g., fruit, ornamental), swimming pools, painting and wood preservative treatments, fogging, crack and crevice, and broadcast treatments, pet treatments, detergent/hand soap, impregnated materials, termiticides, inhalation of residues from indoor treatments, and rodenticides.

Each SOP includes: A description of the exposure scenario, the recommended methods (i.e., algorithms and default parameters) for quantifying potential pesticide doses, example calculations, limitations and uncertainties associated with the use of the SOPs and applicable references. The estimated doses resulting from using these SOPs are appropriate for use in developing estimates of human risks associated with residential exposures to pesticides. Potential dermal and inhalation doses determined by these SOPs do not, in general, include an adjustment for the amount of chemical likely to pass through the skin or lungs and be absorbed into the human system. Assessors will need to apply chemical-specific dermal and inhalation absorption rates, if available, to determine absorbed doses.

The SOPs were jointly developed (and are now being revised) with the Pest Management Regulatory Agency (PMRA) of Health Canada and the California State EPA—Department of Pesticide Regulations. Other USEPA offices providing support include the National Exposure Research Laboratory (NERL)/ORD; the National Center for Environmental Assessment (NCEA)/ORD; and the Economics, Exposure, and Technology Division (EETD)/OPPT.

The first draft of the SOPs was presented to the FIFRA Scientific Advisory Panel (SAP) on September 9, 1997, for their consideration and comment. In the summer of 1998, as the Agency was preparing the Framework for Addressing Key Science Issues, EPA believed that for the SOPs it would be reasonable to incorporate all the SAP's comments by December 1998 and in fact, this is the timeframe that was provided in the Framework **Federal Register** notice (63 FR 58038). Early this Fall, the Residential SOP Workgroup met to discuss the best approach for implementing the SAP's comments and in a separate endeavor, the Agency decided that the SOPs should go back to the SAP in July 1999. So, EPA's original schedule for producing the final SOPs has been slightly altered. Instead of issuing final SOPs in May 1999, as originally planned, a significantly revised and updated version will be released in June 1999 in preparation for the July 1999 SAP meeting.

Today, the Agency is releasing a revised version (December 19, 1997) of the SOPs for comment along with a short paper describing how the Agency is incorporating the SAP's September 1997 comments (''The Agency's Response to Comment on the Draft Residential Standard Operating Procedures''). More importantly, EPA is taking this opportunity to seek additional data and information on residential exposure for the next revision. Because chemical-specific residential exposure data are generally lacking, there are several workgroups and task forces working to generate data and improved methods, which could significantly impact refinements to the

SOPs. It is the Agency's belief that new information will be forthcoming in the next few months from registrant groups and industry task forces, such as the Indoor Residential Exposure Joint Venture (IREJV) and the Outdoor Residential Exposure Task Force (ORETF), as well as from university and EPA researchers to more properly address the SAP comments and refine the SOPs for the June 1999 release.

D. ''Framework for Assessing Non-Occupational, Non-Dietary (Residential) Exposure to Pesticides''

Non-occupational, non-dietary exposure assessment is an important component in establishing an individual's overall risk from pesticides. This type of assessment focuses primarily on those exposures that occur in and around the home (otherwise known as residential exposure assessment). It is important to note that exposures that occur as a result of pesticide applications in schools, parks and day care centers are included under the term ''residential'' Residential exposures are ''non-dietary'' in nature (i.e., through the skin or inhaled).

The importance of non-dietary residential exposure assessment has only increased with the passage of the Food Quality Protection Act of 1996 and the statute's increased emphasis on the protection of children. EPA is currently refining its assessments in order to improve overall quality and achieve more realistic exposure estimates. This paper discusses:

1. Exposure basics.
2. How EPA currently conducts non-dietary residential exposure assessment.
3. The generally conservative nature of the Agency's non-dietary residential exposure assessment.
4. How EPA is refining non-dietary residential exposure assessments.

E. ''National Pesticide Residue Data Base''

EPA stated in its October 29, 1998 **Federal Register** notice that it would complete the National Pesticide Residue Database (NPRD), a comprehensive database that will contain information about actual pesticide residues in raw and processed foods. A complete version of the NPRD is expected to be available on EPA's web page in January 1999. Provided on EPA's web site is a description on the history, development and use of NPRD (http://www.epa.gov/pesticides/nprd/).

F. ''Use and Usage Matrices for Organophosphates''

To assist in the calculation of cumulative and aggregate risks from organophosphate (OP) pesticides and to evaluate the relative importance of the uses of each OP pesticide, EPA decision-makers need complete information about ''real-world'' pesticide usage. With the support of the USDA and the grower community, EPA is gathering available information about usage patterns and putting it into crop-by-crop matrices. These matrices present real-world information on pesticide usage and the pests which drive the usage, and are developed with support from the USDA and the States and the grower community is invited to comment.

Matrices are being developed for approximately 75 crops, including details such as percent of crop treated, typical application information, timing of pesticide use, target pests and registered alternatives. All of the matrices will be made available on the Internet. The first 10 draft matrices will be posted on the Internet in January 1999.

IV. Questions/Issues for Comment

While comments are invited on any aspect of the first four papers above, EPA is particularly interested in comments on the following questions and issues.

A. ''A User's Guide to Available OPP Information on Assessing Dietary (Food) Exposure to Pesticides''

1. Is EPA's paper clear and complete?

B. ''Dietary (Drinking Water) Exposure Estimates''

1. Surface Water Screening Model Refinements:

i. What factors should EPA consider in determining whether to replace the field pond scenario with an index reservoir in surface water screening models?

ii. What factors should EPA consider in determining whether to use an index reservoir similar to Shipman City Lake for its surface water screening models?

iii. How should the crop area factor be applied to surface water screening models when the pesticide may potentially be used on several crops present in the same watershed?

iv. How should OPP address changes to the crop area from year to year, crop rotations, fallow land, and the spatial distribution of the crop within the watershed?

v. How should OPP apply the crop area factor to minor-use crops for which data may not be available or may be limited?

vi. What watershed-scale models are available to provide effective screening tools for drinking water exposure assessments for pesticides?

2. Incorporating Water Monitoring Data in the Drinking Water Exposure Assessment:

i. Under what circumstances should valid monitoring data replace model predictions in a drinking water assessment when the data may not include potentially vulnerable areas?

ii. How should non-detects be handled in a drinking water assessment?

iii. What is a workable definition of ''reliable'' monitoring data for the purpose of conducting a national drinking water assessment? Describe the quantity and quality of data that would be acceptable for the purpose of conducting regional or national drinking water assessments.

iv. At what scale (i.e., national, regional or local) should OPP be conducting pesticide assessments in drinking water? What factors are important in determining the scale for assessements?

v. OPP currently calculates DWLOCs only after contributions from food and residential exposures have been considered. Should OPP continue with this approach or, if not, what approach should OPP consider?

vi. How should the impact of water treatment processes be incorporated into the drinking water assessment? What information is available on treatment effects on pesticides in water? Should a ''default'' treatment (i.e., some minimum standard which is employed by most drinking water facilities in the country) be used? If so, what?

C. ''Standard Operating Procedures (SOPs) for Residential Exposure Assessment''

1. Do EPA's responses to the SAP's comments appear reasonable?
2. Are the SOPs technically correct, complete and based on sound science?

D. ''Framework for Assessing Non-Occupational (Residential) Exposure to Pesticides.''

1. Is EPA's approach to non-dietary exposure assessment clear and complete?

V. Policies Not Rules

The draft science policy documents discussed in this notice are intended to provide guidance to EPA personnel and decision-makers, and to the public. As guidance documents and not rules, these policies are not binding on either EPA or any outside parties. Although these guidance documents provide a starting point for EPA risk assessments, EPA will depart from these policies where the facts or circumstances

warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a given policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a given policy should be abandoned.

EPA has stated in this notice that it will make available revised guidance after consideration of public comment. Public comment is not being solicited for the purpose of converting these policy documents into binding rules. EPA will not be codifying these policies in the Code of Federal Regulations. EPA is soliciting public comment so that it can make fully informed decisions regarding the content of these guidance.

The ''revised'' guidance will not be unalterable documents. Once a ''revised'' guidance document is issued, EPA will continue to treat it as guidance, not a rule. Accordingly, on a case-by-case basis EPA will decide whether it is appropriate to depart from the guidance or to modify the overall approach in the guidance. In the course of commenting on the individual guidance documents, EPA would welcome comments that specifically address how the guidance documents can be structured so that they provide meaningful guidance without imposing binding requirements.

VI. Contents of Docket

Documents that are referenced in this notice will be inserted in the docket under the docket control numbers ''OPP–00576,'' ''OPP–00577 ,'' ''OPP–00578 '' or ''OPP–00579.'' In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) have also been inserted in the docket under docket control number OPP–00557.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, pesticides and pests.

Dated: December 23, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 98–34736 Filed 12–31–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6214–6]

Science Advisory Board; Public Advisory Committee Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that two Committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. Documents that are the subject of SAB reviews are normally available from the originating U.S. Environmental Protection Agency (EPA) office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB office. Details on availability are noted below.

1. Ecological Risk Subcommittee (ERS) of the SAB's Integrated Risk Project (IRP)—Teleconference

The Ecological Risk Subcommittee (ERS) of the SAB's Integrated Risk Project (IRP) will hold a working meeting via teleconference on Tuesday January 26, 1999, from 1:00–3:00 pm. The meeting will be held in the SAB Conference Room (Room 3709), 401 M Street, SW, Washington, DC 20460. A limited number of teleconference lines will be available on a first come, first served basis for interested members of the public. The purpose of the working meeting will be to brief staff from the Agency's Office of the Chief Financial Officer (OCFO) on the draft methodology developed by the ERS for ranking ecological risks. The ERS was formed as part of the SAB's Integrated Risk Project, a multi-year SAB effort to update the 1990 report, Reducing Risk. The IRP full report, including the ERS chapter, is expected to be released for peer review this winter. A draft of the report was released April 1, 1998, and this draft will form the basis of the ERS discussion at this teleconference meeting.

For Further Information: Copies of the draft ERS chapter are available from Ms. Mary Winston, Science Advisory Board, telephone (202) 260–6557; FAX (202) 260–7118, or E-mail at winston.mary@epa.gov. Anyone interested in participating in the meeting should contact Ms. Stephanie Sanzone, Designated Federal Officer (DFO) for the ERS, no later than 4:00 pm on January 21, 1999 at: USEPA, Science Advisory Board (1400), Washington, DC 20460, (202) 260–6557, FAX (202) 260–7118, or via E-Mail at sanzone.stephanie@epa.gov.

2. Science Advisory Board's (SAB) Executive Committee (EC)

The Science Advisory Board's (SAB) Executive Committee (EC) will meet on Wednesday, January 27, and Thursday, January 28, 1999. The meeting will convene each day at 8:30 am, in the Administrator's Conference Room 1103 West Tower of the U.S. Environmental Protection Agency Headquarters Building at 401 M Street, SW, Washington, DC 20460, and adjourn no later than 5:30 pm on each day.

At this meeting, the Executive Committee will receive updates from its committees and subcommittees concerning their recent and planned activities. As part of these updates, some committees will present draft reports for Executive Committee review and approval. Copies of these drafts will be available on the SAB Website (see below for site address) two weeks prior to the meeting or may be obtained from Ms. Tillery-Gadson (see address below).

In addition, the Board anticipates interacting with various senior Agency officials on issues of general interest, as well as issues currently before or proposed for future Board consideration.

For Further Information: Any member of the public wishing further information concerning the meeting or who wishes to submit comments should contact Dr. Donald G. Barnes, Designated Federal Officer for the Executive Committee, Science Advisory Board (1400), U.S. EPA, Washington, DC 20460, phone (202)–260–4126; fax (202)–260–9232; or via Email at: barnes.don@epa.gov. Copies of the draft meeting agenda and the draft reports will be available on the SAB Website (www.epa.gov/sab) approximately two weeks prior to the meeting. Alternatively, these materials can be obtained from Ms. Priscilla Tillery-Gadson at the above phone and fax numbers or via Email: tillery.priscilla@epa.gov.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For conference call meetings,

opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to the meeting date, may be mailed to the Subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the Subcommittee at its meeting. Written comments may be provided to the Subcommittee up until the time of the meeting.

Information concerning the Science Advisory Board, its structure, function, and composition, may be found in The FY1998 Annual Report of the Staff Director which is available from the SAB Committee Evaluation and Support Staff (CESS) by contacting US EPA, Science Advisory Board (1400), Attention: CESS, 401 M Street, SW, Washington, DC 20460 or via fax (202) 260–1889. Additional information concerning the SAB can be found on the SAB Website at: http://www.epa.gov/sab

Individuals requiring special accommodation at this meeting, including wheelchair access, should contact the relevant DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: December 23, 1998.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 98–34821 Filed 12–31–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6214–4]

Science Advisory Board; Notification of Public Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Cancer Guidelines Subcommittee of the Science Advisory Board Executive Committee will meet on Wednesday, January 20 and Thursday, January 21, 1999, beginning no earlier than 8:30 am and ending no later than 5:30 pm on each day. All times noted are Eastern Time. The meeting is open to the public; however, seating will be on a first-come basis. The meeting will be held at the Crowne Plaza Hotel, 14th & K Streets, N.W., Washington, DC 20005–3411; phone: (202) 682–0111. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

Purpose—The purpose of the meeting is to conduct an advisory on the Agency's revisions to its Proposed Guidelines for Carcinogen Risk Assessment.

Background—In February, 1997, the Environmental Health Committee (EHC) of the Science Advisory Board met to review the Agency's Proposed Guidelines for Carcinogen Risk Assessment which were published in the **Federal Register** on April 23, 1996. During this meeting, the EHC responded to specific questions from the EPA's Risk Assessment Forum. At that time, the EHC addressed issues that Agency scientists and members of the public regarded as particularly important matters of science to be addressed to finalize the guidelines. The Environmental Health Committee provided its review report to the Agency, Guidelines for Cancer Risks Assessment (EPA–SAB–EHC–97–010), in September 1997. Since that time, the technical panel has been addressing the SAB recommendations in revising the Guidelines.

Since this meeting is an advisory, the Cancer Guidelines Subcommittee does not plan to conduct a full review of the revisions to the Proposed Guidelines for Carcinogen Risk Assessment. The Cancer Guidelines Subcommittee will provide technical advice on the Agency's plans to address the following four topics: (a) changes to the hazard descriptors for weight of evidence of human carcinogenic potential; (b) a framework for analysis of mode of action data; (c) illustrative examples of mode of action framework analysis; and (d) new dose response guidance methodologies with illustrative examples for margin of exposure analysis. The Cancer Guidelines Subcommittee has been asked to respond to the following issues:

1. Hazard Descriptors

(a) Please comment on the appropriateness and adequacy of the use of the narrative summary and the 5 hazard descriptors as a means of characterizing human carcinogenic potential.

(b) Please comment on the adequacy and clarity of the nature of the evidence applied to each of the proposed hazard descriptors.

2. Use of Mode of Action Information

(a) Sections 2.3.5–2.5 have been revised, please comment on the clarity and transparency of the guidance.

(b) Please comment on the proposed key elements and their use in supporting a mode of action conclusion via the framework (section 2.5).

(c) Please evaluate the usefulness of the case studies as illustrations of the guidance and framework.

3. Dose Response Analysis—Defining a Point of Departure

(a) Please comment on the soundness of the scientific rationale provided for the standard approach and options for selecting departure points.

(b) Please comment on the adequacy and clarity of the guidance on this subject.

4. Dose Response Analysis—Margin of Exposure Analysis

(a) Please comment on the adequacy and clarity of the guidance regarding how to perform a MOE analysis.

(b) Please comment on the appropriateness of the proposed approach and the factors for consideration in determining the appropriate magnitude of the MOE. Specifically address the use of factors to account for: (1) the nature of the response (i.e., tumors or key events selected as the point of departure for extrapolation); (2) steepness of the dose response curve; (3) human intraspecies variability, including susceptible populations; and (4) interspecies variability.

For Further Information on the Meeting: Copies of the background materials for the advisory are *not available* from the SAB. The EPA Risk Assessment Forum will post the background material by January 8, 1999, on its Internet website which is located at www.epa.gov/ncea/raf/rafpub.htm. Hardcopies of the background material may be requested by contacting Dr. William P. Wood, Executive Director, Risk Assessment Forum, U.S. EPA (8601–D), 401 M St., S.W., Washington, DC 20460; by telephone 202–564–3361; by fax 202–565–0062; or via E-mail at: wood.bill@epa.gov. General information about the cancer guidelines advisory or technical questions should also be directed to Dr. Wood.

Members of the public desiring additional information about the meeting, including an agenda, should contact Ms. Wanda R. Fields, Management Assistant, Science Advisory Board (1400), US EPA, 401 M Street, SW, Washington DC 20460, by telephone (202) 260–5510; by fax (202)

260–7118; or via E-mail at: fields.wanda@epa.gov.

Anyone wishing to make an oral presentation at the meeting must contact Ms. Roslyn Edson, Designated Federal Officer, *in writing,* no later than 5 p.m. noon Eastern Time on January 15, 1999, by fax (202) 260–7118, or via E-mail: edson.roslyn@epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Ms. Edson no later than the time of the presentation for distribution to the Committee and the interested public.

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Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access, should contact Ms. Roslyn Edson at 202–260–3823, via fax at 202–260–7118 or via E-mail at edson.roslyn@epa.gov at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: December 23, 1998.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 98–34822 Filed 12–31–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

December 23, 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, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 3, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0433.

Title: Basic Signal Leakage Performance Report.

Form Number: FCC 320.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 33,000.

Estimated Time per Response: 20 hours.

Frequency of Response: Annually.

Total Annual Burden: 660,000 hours.

Total Annual Costs: $3,750.

Needs and Uses: Cable television system operators who use frequencies in the bands 108–137 and 225–400 MHz (aeronautical frequencies) are required to file a cumulative signal leakage index (CLI) derived under Section 76.611(a)(1) or the results of airspace measurements derived under Section 76.611(a)(2). This filing must include a description of the method by which compliance with basic signal leakage criteria is achieved and the method of calibrating the measurement equipment. This yearly filing is done in accordance with Section 76.615 with the use of FCC Form 320. The data collected on the FCC Form 320 are used by Commission staff to ensure the safe operation of aeronautical and marine radio services, and to monitor for compliance of cable aeronautical usage in order to minimize future interference to these safety of life services.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–34761 Filed 21–31–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, January 6, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 30, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–34825 Filed 12–30–98; 10:32 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EST) January 11, 1999.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the December 14, 1998, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: December 30, 1998.

John J. O'Meara,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 98–34829 Filed 12–30–98; 1:27 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Saptarshi Paul, Ph.D., Fox Chase Cancer Center: Based on a report forwarded to the Office of Research Integrity (ORI) by Fox Chase Cancer Center (FCCC), Institute for Cancer Research, dated July 28, 1997, Dr. Paul's admissions, and information obtained by ORI during its oversight review, ORI found that Dr. Paul, former research associate, Molecular Oncology Division, FCCC, engaged in scientific misconduct in biomedical research funded by a National Cancer Institute (NCI), National Institutes of Health (NIH), grant. This project seeks improvements in cancer treatment through the development of agents that fight cellular resistance to drugs.

Specifically, Dr. Paul falsified an experiment on the uptake of all-trans retinoic acid (ATR) by HL60 cells conducted by several researchers during July 1997. Although this experiment was not published, the discovery of the falsified data led to admissions by Dr. Paul that he had altered an experiment and an acknowledgment that publications would need to be retracted. Several publications were retracted in whole or in part, and portions of two grant applications were retracted.

Dr. Paul has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which he has voluntarily agreed, for the three (3) year period beginning December 18, 1998:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 C.F.R. Part 76 (Debarment Regulations); and

(2) To exclude himself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 98–34760 Filed 12–31–98; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 19, 1999, 9:30 a.m. to 4 p.m., and January 20, 1999, 9 a.m. to 4:30 p.m.

Location: Holiday Inn, Walker/Whetstone Salons, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Veronica J. Calvin, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12515. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 20, 1999, the committee will: (1) Discuss, make recommendations, and vote on a petition for reclassification of automated differential cell counters in Class III and (2) establish a new classification for flow cytometers.

Procedure: On January 20, 1999, from 9 a.m. to 4:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 6, 1999. Oral presentations from the public will be scheduled between approximately 9:15 a.m. and 9:45 a.m. Near the end of the committee deliberations, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission or topic before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 6, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations. On January 19, 1999, from 9:30 a.m. to 4 p.m., the meeting will be closed to the public. The committee will hear and review trade secret and/or confidential commercial information on a product

development protocol. This portion of the meeting is closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 28, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–34826 Filed 12–30–98; 12:28 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0811]

Agency Information Collection Activities; Announcement of OMB Approval; Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 21, 1998 (63 FR 56195), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0389. The approval expires on May 31, 1999.

Dated: December 23, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–34735 Filed 12–31–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0494]

Agency Information Collection Activities; Announcement of OMB Approval; Medical Device Registration and Listing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Medical Device Registration and Listing'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 14, 1998 (63 FR 55132), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0387. The approval expires on December 31, 2001.

Dated: December 23, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–34736 Filed 12–31–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3889–N]

Medicare Program; Open Town Hall Meeting to Discuss the Positron Emission Tomography

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

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting to present and discuss the current medical and scientific evidence regarding the clinical use of positron emission tomography scans for cancers of the head and neck, colorectal malignancy, melanoma, lymphoma, and brain tumors. We will discuss the clinical comparability of dedicated positron emission tomography scanners compared to coincident imaging cameras. This meeting represents an aspect of the evolving process for making our coverage reviews more open and responsive to the public.

DATES: The meeting is scheduled for January 20, 1999 from 8:00 a.m. until 5:00 p.m., E.S.T. and January 21, 1999 from 8:30 a.m. until 4:00 p.m., E.S.T.

ADDRESSES: The meeting will be held in the HCFA headquarters auditorium, 7500 Security Boulevard, Baltimore, Maryland 21244.

FOR FURTHER INFORMATION CONTACT: Mitchell I. Burken, M.D., (410) 786–6861.

SUPPLEMENTARY INFORMATION:

Background

Currently, Medicare covers positron emission tomography (PET) scanning for the diagnostic evaluation of solitary pulmonary nodules and for staging of primary lung cancer. The purpose of the PET Scan Town Hall Meeting is to convene dialogue on PET scanning for the evaluation and management of head and neck, brain, and colorectal cancers; melanoma; and lymphoma. We anticipate participation by national professional medical organizations; medical equipment manufacturers; experts in technology assessment, health policy, and clinical research; other federal agencies; managed care organizations; national cancer organizations; and other members of the public with an interest in future oncology applications of PET.

The format of the meeting will include short (10–20 minutes) public presentations on PET scanning for the above oncology applications. It is our intent for invited panelists to stimulate further discussion based on the presentations. This discussion will be free-flowing and will *not* result in a set of advisory recommendations, or consensus statements.

The PET Scan Town Hall Meeting will assist us in reviewing the state of evidence for PET scanning in malignancies, as well as understanding the viewpoints of stakeholders with an interest in PET coverage policy.

The meeting will conclude with a question-and-answer session during which the public may raise any issues related to the topics discussed. While the meeting is open to the public, attendance is limited to space available.

Individuals must register in advance as described below.

Registration

AFYA, Incorporated in Takoma Park, Maryland will handle registration for the meeting. Individuals may register by contacting Cathy Freeland at AFYA, Incorporated by mail or fax. Please provide your name, title, firm name, address, telephone number, fax number, and Internet electronic mail address (if applicable).

- For mail registration, the address is: AFYA, Incorporated, 6930 Carroll Avenue, Suite 820, Takoma Park, Maryland 20912, Attention: *Cathy Freeland*.
- For fax registration, the number is (301) 270–3441.

AFYA, Inc. will provide all registrations with a confirmation packet and background papers before the meeting.

Participants who wish to display an exhibit or make a presentation at the meeting, must contact Maria Ellis at (410) 786–0309 or via E-Mail at MEllis@HCFA.GOV or Mitchell I. Burken, M.D. at (410) 786–6881 or via E-Mail at MBURKEN@HCFA.GOV no later than December 30, 1998.

We will accept written questions, comments, or other materials, either before the meeting, or up to 14 days after the meeting. Address comments to: Health Care Financing Administration, ATTN: Mitchell I. Burken, M.D., Office of Clinical Standards and Quality/CAG, Room S3–02–01,7500 Security Boulevard, Baltimore, Maryland 21244–1850, Telephone Number: (410) 786–6861, Fax Number: (410) 786–0169; E-Mail: MBurken@HCFA.GOV.

There is no special format for the materials; however, we request that commenters be clear about the issue or aspect of the proposed process on which they have a question, comment, or suggestion.

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 98.773, Medicate—Hospital Insurance; and Program No. 93.774, Medicate—Supplementary Medical Insurance Program)

Dated: December 18, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–34739 Filed 12–31–98; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SPECIAL NOTE: Our office moved to a different building on May 18, 1998. Please use the above address for all regular mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 (formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784 / 800–888–4063 (formerly: Drug Labs of Texas, Premier Analytical Laboratories)

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931 / 334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787 / 800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652 / 417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P. O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045 / 847–688–4171
Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200 / 800–735–5416
Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468
DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310
Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 800–661–9876 403–451–3702
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609
Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630
General Medical Laboratories 36 South Brooks St., Madison, WI 53715, 608–267–6267
Hartford Hospital Toxicology Laboratory 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023
Info-Meth 112 Crescent Ave., Peoria, IL 61636, 800–752–1835 / 309–671–5199 (Formerly: Methodist Medical Center Toxicology Laboratory)
LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–672–6900 / 800–833–3984 (Formerly: CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/ 800–223–6339 (Formerly: MedExpress/National Laboratory Center)
LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927 800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400 (formerly: Sierra Nevada Laboratories, Inc.)
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 / 908–526–2400 (formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Specialists, Inc. , 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734
MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (formerly: NOVAMANN (Ontario) Inc.)
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–383–5213
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244 / 612–636–7466
Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–4512, 800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc. , 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361 / 801–268–2431
Oregon Medical Laboratories, P.O. Box 972 , 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 (formerly: Centinela Hospital Airport Toxicology Laboratory
Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400 800–541–7891
PharmChem Laboratories, Inc. , 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200 / 800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7610 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory 7800 West 110th St., Overland Park, KS 66210, 913–339–0372 / 800–821–3627
Poisonlab, Inc. , 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600 / 800–882–7272
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120 / 800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947 / 972–916–3376 (formerly: Damon Clinical Laboratories, Damon/ MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474 / 412–920–7733 (formerly: Med-Chek Laboratories, Inc., Med-Chek/ Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 / 314–991–1311 (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728 / 619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 800–749–3788 / 254–771–8379
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300 / 800–999–5227
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590

(formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–877–7484, 610–631–4600 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800 / 818–996–7300 (formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851 / 888–953–8851
UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do. Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–34730 Filed 12–31–98; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following teleconference meeting of the SAMHSA Special Emphasis Panel II in December 1998.

A summary of the meeting and a roster of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–7390.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II (SEP II).

Meeting Dates: December 30, 1998.

Place: Parklawn Building, 5600 Fishers Lane, Room 17–90, Rockville, Maryland 20857.

Closed: December 30, 1998, 2:00 p.m.—adjournment.

Panel: Federal Emergency Management Assistance for Alabama.

Contact: Raquel Crider, Ph.D., Room 17–89, Parklawn Building, Telephone: 301–443–5063 and FAX: 301–443–3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: December 28, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–34762 Filed 12–31–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Glen Canyon Dam Adaptive Management Work Group; Notice of Renewal

This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (Public Law 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is renewing the Glen Canyon Dam adaptive Management Work Group. The purpose of the Adaptive Management Work Group is to advise and provide recommendations to the Secretary with respect to his responsibility to comply with the Grand Canyon Protection Act of October 30, 1992, embodied in Public Law 102–575.

Further information regarding the advisory council may be obtained from the Bureau of Reclamation, Department of the Interior, 1849 C Street, NW, Washington, DC 20240. You may also call Steven Lloyd, Staff for Secretary's Designee, at (801) 524–3690.

The certification of renewal is published below.

Certification

I hereby certify that renewal of the Glen Canyon Dam Adaptive Management Work Group is in the public interest in connection with the purpose of duties imposed on the Department of the Interior by 30 U.S.C. 1–8.

Dated: December 28, 1998.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 98–34798 Filed 12–31–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Resource Management Plan Amendment

AGENCY: Bureau of Land Management, Glenwood Springs Field Office, Department of the Interior.

ACTION: Notice of Intent.

SUMMARY: Pursuant to section 102 of the National Environmental Policy Act of 1969 and section 202 of the Federal Land Policy and Management Act of 1976 and Bureau of Land Management (BLM) regulations in CFR 1610.2 and 1610.5–5., BLM intends to write an Environmental Assessment which proposes to amend the Resource Management Plan (RMP) for the Glenwood Springs Field Office (GSFO) approved in January 0f 1984.

The amendment will consider management changes to the Red Hill area, approximately 3,093 acres, north of the town of Carbondale. It includes all BLM managed public lands bounded on the west by Highway 82, on the north by the Cattle Creek Road, on the east by County Road 112 and on the south by State Highway 82. The concerns of residents, the residential development on nearby private lands, new recreation information and the increase use has prompted BLM to consider amending the Resource Management Plan. A change in management strategy is needed to reduce conflicts between users, address adjoining private landowner concerns and enhance the experiences of visitors taking part in hiking, mountain biking and horseback-riding. The plan amendment will address the administrative recognition of the Red Hill area as a Special Recreation Management Area (SRMA), closure of the area to unauthorized motorized vehicles, and the designation of routes open for mountain bike riding. The amendment will also consider no surface occupancy (NSO) stipulations to maintain the current physical, social and managerial setting.

DATES: The BLM is accepting written comments concerning this Notice until February 3, 1999. Comments or requests to be placed on a mailing list should be mailed to the address below.

ADDRESSES: Comments should be sent to the Area Manager, Glenwood Springs Field Office, Bureau of Land Management, 50629 Highway 6 & 24, P.O. Box 1009, Glenwood Springs, CO 81601.

FOR FURTHER INFORMATION CONTACT: Brian Hopkins, (970) 947–2840.

SUPPLEMENTARY INFORMATION: The Red Hill area is important to visitors and the community of Carbondale. Use and user conflicts in the Red Hill area have increased significantly with the population growth in the Roaring Fork Valley.

A group of concerned users and neighbors formed the Red Hill Planning Committee to look at the area's future. The final report of the Red Hill Project produced a series of proposed recommendations for management of Red Hill. Public meetings were held to discuss the recommendations. It was concluded that the current open travel designation and dispersed recreation management emphasis was inadequate for preventing resource damage and reducing user conflicts.

Visitors to the Red Hill area can generally expect to enjoy a mostly natural setting and see fewer people, largely due to challenging or difficult access. It was also advocated that the Bureau not authorize new roads and development that would negatively change the undeveloped setting that favors non-motorized activities and the desired recreational experiences of the users.

Michael S. Mottice,

Glenwood Springs Field Office Manager.

[FR Doc. 98–34796 Filed 12–31–98; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–010–1430–00;GP9–0043]

Meeting Notice for the Southeast Oregon Resource Advisory Council

AGENCY: Lakeview District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Southeast Oregon Resource Advisory Council will meet at the Payette-Clearwater room of the training center at the National Interagency Fire Center, 3833 South Development Way, Boise, Idaho, from 8:00 a.m. to 4:30 pm (MST) on January 26, 1999, and from 8:00 am to 12:00 noon (MST) on January 27, 1999. Topics to be discussed by the Council include the Southeast Oregon Resource Management Plan, the Wild Horse and Burro Program, and such other matters as may reasonably come before the Council. The entire meeting is open to the public. Public comment is scheduled for 11:30 am to 12:00 noon (MST) on January 26, 1999.

FOR FURTHER INFORMATION CONTACT: Sonya Hickman, Bureau of Land Management, Lakeview District Office, P.O. Box 151, Lakeview, OR 97630, (Telephone: 541/947–2177).

Dated: December 16, 1998.

Scott Florence,

Acting Designated Federal Official.

[FR Doc. 98–34757 Filed 12–31–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Proposed Revisions to a Currently Approved Information Collection

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation (we, our, or us) intends to submit the following proposed revised information collection to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*): Certification Summary Form, Reporting Summary Form for Acreage Limitation, 43 CFR Part 426, OMB Control Number: 1006–0006. This information collection is required under the Reclamation Reform Act of 1982 (RRA), Acreage Limitation Rules and Regulations, 43 CFR Part 426, and a proposed rulemaking entitled: Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land, 43 CFR Part 428. We request your comments on the revised RRA forms and specific aspects of the information collection.

DATES: Your written comments must be received on or before March 5, 1999.

ADDRESSES: You may send written comments to the Bureau of Reclamation, Attention: D–5200, PO Box 25007, Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: You may request copies of the proposed revised forms by writing to the above address or by contacting Marilyn Rehfeld at: (303) 445–2899.

SUPPLEMENTARY INFORMATION:

Changes to the RRA Forms and the Instructions to Those Forms

We made a few changes to the current Form 7–21SUMM–C and Form 7–

21SUMM–R and rewrote the instructions to those forms in ''plain language'' to meet the requirements of the President's June 1, 1998, memorandum. Other changes to the forms and the instructions to the forms are editorial in nature and are designed to increase the respondents' understanding of the forms, instructions to the forms, and what information is required to be submitted with the forms to the districts. The proposed revisions to the RRA forms will be effective in the 2000 water year.

Draft of a New RRA Form

We published a proposed rulemaking, 43 CFR Part 428, in the **Federal Register** on November 18, 1998 (63 FR 64154, Nov. 18, 1998), and requested comments on the proposed rule and the information collection to be submitted to us by January 19, 1999. The proposed rulemaking requires farm operators who provide services to more than 960 nonexempt acres westwide, held by a single trust or legal entity or any combination of trusts and legal entities to submit RRA forms to the district(s) where such land is located. We requested comments from the public on whether to revise an existing RRA form or create a new form for farm operators to prepare.

We anticipate that if the rule is finalized, the districts will be required to provide specific information about declaring farm operators to us annually. We have developed a new Tabulation G to be used with Form 7–21SUMM–C and Form 7–21SUMM–R, and instructions on how to complete the tabulation sheets to accommodate this requirement. We do not believe the estimated burden hours will increase by requiring districts to complete these tabulation sheets since only a few districts should have farm operators in this category. Nevertheless, the tabulation sheets will not be used until after the proposed rule is published as a final rule in the **Federal Register.**

Title: Certification Summary Form, Reporting Summary Form for Acreage Limitation, 43 CFR Part 426.

Abstract: These forms are to be used by district offices to summarize individual landholder (direct or indirect landowner or lessee) certification and reporting forms as required by the RRA, 43 CFR Part 426, and proposed regulation 43 CFR Part 428. This information allows us to establish water user compliance with Federal reclamation law.

Frequency: Annually.

Respondents: Contracting entities that are subject to the acreage limitation provisions of Federal reclamation law.

Estimated Total Number of Respondents: 276.

Estimated Number of Responses per Respondent: 1.25.

Estimated Total Number of Annual Responses: 345.

Estimated Total Annual Burden on Respondents: 13,800 hours.

Estimate of Burden for Each Form:

Form No.	Burden estimate per form (in hours)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
7–21SUMM–C and associated tabulation sheets	40	222	278	11,120
7–21SUMM–R and associated tabulation sheets	40	54	67	2,680

Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

We will summarize all comments received to this notice and any comments regarding this information collection received during the comment period for the notice of proposed rulemaking. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

Dated: December 18, 1998.

Alonzo D. Knapp,

Acting Director, Program Analysis Office.

[FR Doc. 98–34379 Filed 12–31–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Proposed Revisions to a Currently Approved Information Collection

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation (we, our, or us) intends to submit the following proposed revised information collection to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.): Individual Landholder's Certification and Reporting Forms for Acreage Limitation, 43 CFR Part 426, OMB Control Number: 1006–0005. This information collection is required under the Reclamation Reform Act of 1982 (RRA), Acreage Limitation Rules and Regulations, 43 CFR Part 426, and a proposed rulemaking entitled: Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land, 43 CFR Part 428. We request your comments on the revised RRA forms and specific aspects of the information collection.

DATES: Your written comments must be received on or before March 5, 1999.

ADDRESSES: You may send written comments to the Bureau of Reclamation, Attention: D–5200, PO Box 25007, Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: You may request copies of the proposed revised forms by writing to the above address or by contacting Marilyn Rehfeld at: (303) 445–2899.

SUPPLEMENTARY INFORMATION:

Changes to the RRA forms and the instructions to those forms.

We made a few changes to the current RRA forms and rewrote the instructions to those forms in ''plain language'' to meet the requirements of the President's June 1, 1998, memorandum. Other changes to the forms and the instructions to the forms are editorial in nature and are designed to increase the respondents' understanding of the forms, instructions to the forms, and what information is required to be submitted with the forms to the districts. The proposed revisions to the RRA forms will be included starting in the 2000 water year.

Draft of a new RRA form.

We published a proposed rulemaking, 43 CFR Part 428, in the **Federal Register**

on November 18, 1998 (63 FR 64154, Nov. 18, 1998), and requested comments on the proposed rule and the information collection to be submitted to us by January 19, 1999. The proposed rulemaking requires farm operators who provide services to more than 960 nonexempt acres westwide, held by a single trust or legal entity or any combination of trusts and legal entities to submit RRA forms to the district(s) where such land is located. We requested comments from the public on whether to revise an existing RRA form or create a new form for farm operators to prepare.

Just in case, if the rule is finalized and it is determined that farm operators will be required to submit a separate form, we have prepared a draft of this form for review and comment (see **FOR FURTHER INFORMATION CONTACT**). We have included the estimated burden for the draft farm operator form (Form 7–21FARMOP) in this notice. Farm operators are not required to submit an RRA form to their district until the proposed rulemaking is published as a final rule in the **Federal Register**.

Title: Individual Landholder's Certification and Reporting Forms for Acreage Limitation, 43 CFR Part 426.

Abstract: This information collection requires certain landholders to complete forms demonstrating their compliance with the acreage limitation provisions of Federal reclamation law. These forms are submitted to districts who use the information to establish each landholder's status with respect to landownership limitations, full-cost pricing thresholds, lease requirements, and other provisions of Federal reclamation law. All landholders whose entire westwide landholdings total 40 acres or less are exempt from the requirement to submit RRA forms. Landholders who are ''qualified recipients'' have RRA forms submittal thresholds of 80 acres or 240 acres depending on the district's RRA forms submittal threshold caregory where the land is held.

Frequency: Annually.

Respondents: Landholders (direct or indirect landowners or lessees) and farm operators of certain lands in Bureau of Reclamation projects, whose landholdings exceed specified RRA forms submittal thresholds.

Estimated Total Number of Respondents: 19,202.

Estimated Number of Responses per Respondent: 1.02.

Estimated Total Number of Annual Responses: 19,586.

Estimated Total Annual Burden on Respondents: 14,829 hours.

Estimate of Burden for Each Form:

Form no.	Burden estimate per form (in minutes)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
Form 7–2180	60	5,358	5,465	5,465
Form 7–2180EZ	45	537	548	411
Form 7–2181	78	1,758	1,793	2,331
Form 7–2184	45	40	41	31
Form 7–2190	60	1,910	1,948	1,948
Form 7–2190EZ	45	113	115	86
Form 7–2191	78	891	909	1,182
Form 7–2194	45	4	4	3
Form 7–21PE	66	205	209	230
Form 7–21TRUST	60	1,331	1,358	1,358
Form 7–21VERIFY	12	6,452	6,581	1,316
Form 7–21FC	30	243	248	124
Form 7–21XS	30	164	167	84
Form 7–21FARMOP	78	196	200	260

Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

We will summarize all comments received to this notice and any comments regarding this information collection received during the comment period for the notice of proposed rulemaking. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

Dated: December 18, 1998.

Alonzo D. Knapp,

Acting Director, Program Analysis Office.

[FR Doc. 98–34380 Filed 12–31–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Intent To Prepare a Draft Supplemental Environmental Impact Statement to the 1996 Final Supplement to the Final Environmental Statement for the Animas-La Plata Project and Announcement of Public Scoping Meetings

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a Draft Supplemental Environmental Impact Statement to the 1996 Final Supplement to the Final Environmental Statement and Announcement of Public Scoping Meetings.

SUMMARY: The Department of the Interior, Bureau of Reclamation (Reclamation), announces its intent to prepare a Draft Supplemental Environmental Impact Statement (DSEIS) to the 1996 Final Supplement to the Final Environmental Statement for the Animas-La Plata Project (ALP) pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended.

This DSEIS will evaluate the environmental impacts of the Administration Proposal, which was announced on August 11, 1998, for Final Implementation of the Colorado Ute Settlement Act. At the heart of the proposal is a modified ALP which is limited to a smaller dam and reservoir

designed to supply municipal and industrial water to the Colorado Ute Tribes, Navajo Nation, and non-Indian entities in the local area. This modified project deviates from those previously evaluated for ALP, thus necessitating the need for supplemental environmental review. The proposal also contains a non-structural element as part of the settlement implementation which has not been the subject of any previous analysis under NEPA.

Reclamation invites other federal agencies, states, Indian tribes, local governments, and the general public to submit written comments or suggestions concerning the scope of the issues to be assessed in the DSEIS. The public is invited to participate in a series of scoping meetings that will be held in February in Colorado and New Mexico. A schedule of the meetings is provided. Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the DSEIS, should write to the address below. When the DSEIS is complete, its availability will be announced in the **Federal Register**, in the local news media, and through direct contact with interested parties. Comments will be solicited on the document.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for meeting locations.

FOR FURTHER INFORMATION CONTACT: Mr. Pat Schumacher, Manager, Southern Division of the Western Colorado Area Office, P.O. Box 640, Durango, Colorado 81302. Telephone: (970) 385–6500. FAX: (970) 385–6539. E-mail: pschumacher@uc.usbr.gov.

SUPPLEMENTARY INFORMATION:

Background

The Animas-La Plata Project (ALP) was authorized by the Colorado River Basin Project Act of September 30, 1968 (Pub. L. 84–485), and would be located in La Plata and Montezuma Counties in southwestern Colorado and in San Juan County in northwestern New Mexico. Since its authorization, several studies have been conducted regarding ALP. The results of these studies are summarized in the following documents and their supporting appendices: the 1979 Bureau of Reclamation Definite Plan Report, a 1980 Final Environmental Statement, the 1992 Draft Supplement to the Final Environmental Statement, and the 1996 Final Supplement to the Final Environmental Statement (FSFES). Much of the information compiled in these documents focuses on addressing NEPA, Endangered Species Act, and Clean Water Act compliance, identifying project impacts, and developing an extensive environmental commitment plan for the implementation of mitigation measures. Some of the issues that have received consideration over this period include impacts to aquatic resources (including wetlands identification/mitigation), water quality, recreation, wildlife habitat, endangered and threatened species, alternative analysis, Indian trust assets and cultural resources, and economic/social impacts.

In the early 1980s, discussions were initiated to achieve a negotiated settlement of water right claims of the Southern Ute Indian and Ute Mountain Ute Tribes in southwest Colorado. The Colorado Ute Tribes and other parties subsequently signed the Final Settlement Agreement on December 10, 1986. The Colorado Ute Indian Water Rights Settlement Act of 1988 (Pub. L. 100–585) (Settlement Act) provided language to implement the Final Settlement Agreement and supplemented the authorization of the ALP. A significant component of the Final Settlement Agreement was incorporation of the provisions of the ''Agreement in Principle Concerning the Colorado Ute Indian Water Rights Settlement and Binding Agreement for Animas-La Plata Project Cost Sharing'' (Cost Sharing Agreement). The Cost Sharing Agreement was executed by representatives of the states of New Mexico and Colorado, the two Colorado Ute Tribes, the Animas-La Plata Water Conservancy District, the San Juan Water Commission, Montezuma County in Colorado, and the Department of the Interior.

Recognizing the potential of ALP to affect endangered species (the Colorado squawfish), Reclamation consulted with the Fish and Wildlife Service (Service) pursuant to the requirements of the Endangered Species Act. A Biological Opinion was issued by the Service on October 25, 1991, containing a Reasonable and Prudent Alternative that would allow construction of several ALP features (including Durango Pumping Plant, Ridges Basin Inlet Conduit, Ridges Basin Dam and Reservoir, and other features) and an average annual initial water depletion for ALP of 57,100 acre-feet from the San Juan River.

After Reclamation was authorized to initiate construction, several challenges were made regarding the completeness of the 1980 Final Environmental Statement and Reclamation subsequently rescinded the authorization for construction pending completion of a FSFES.

Reclamation filed a Draft Supplement with the Environmental Protection Agency (EPA) and released the Draft Supplement for public review and comment in October 1992. Based on comments received on the Draft Supplement, the FSFES was completed and filed with EPA in April 1996. No record of decision was issued.

In May 1995, reconsultation with the Service addressed new information and changes to the project. A Biological Opinion was issued by the Service in February 1996. This Biological Opinion contained a Reasonable and Prudent Alternative that would limit construction to only those project features which would initially result in an average annual water depletion of 57,100 acre feet.

Following the completion of the FSFES in 1996, Colorado Governor Roy Romer and Lt. Governor Gail Schoettler convened the Project supporters and opponents in a process intended to seek resolution of controversy involved in the original ALP, and to attempt to gain consensus on an alternative to the original project. The Romer-Schoettler process concluded with the suggestion of two alternatives, a structural and nonstructural proposal. The Animas-La Plata Reconciliation Plan (Structural Proposal) proposed to construct the initial stage of the project as described in the FSFES, with some modifications. The Animas River Citizens' Coalition Conceptual Alternative (Nonstructural Proposal) proposed to purchase irrigated lands and other associated water rights near the existing Ute reservations in southern Colorado and would use or purchase water from existing projects or from expanded projects/delivery systems for the purpose of providing Indian-only water.

On August 11, 1998, the Secretary of the Interior presented an Administration Proposal to build a down-sized version of ALP to implement the Colorado Ute water rights settlement which would also include a nonstructural element as part of the settlement implementation.

Purpose and Need for Action

The purpose and need of the proposed federal action is to implement the Settlement Act by providing the Ute Tribes an assured long-term water supply and water acquisition fund in order to satisfy the Tribes' senior water rights claims as quantified in the Settlement Act, and to provide for identified municipal and industrial water needs in the Project area.

Congress enacted the Settlement Act to settle outstanding water rights claims

of the two Colorado Ute Tribes. The Colorado Ute Indian reservations were created in 1868, and as such, the Tribes have a priority date for their water rights that precedes the priority dates for most, if not all, non-Indian water rights. Implementation of the Act will allow the development of Tribal senior water rights without adversely impacting non-Indian water rights and users, including cities and municipalities throughout southwestern Colorado and northwestern New Mexico.

The Proposed Federal Action

The Administration proposal for final implementation of the Colorado Ute Water Rights Settlement was developed after a review of the Settlement Act requirements, the issues surrounding the 1996 formulation of ALP, and a consideration of the alternatives generated during the Romer-Schoettler Process. As a result, the Administration Proposal includes both structural and nonstructural elements designed to achieve the fundamental purpose of securing the Ute Tribes an assured water supply in satisfaction of their water rights as determined by the 1986 Settlement Agreement and the 1988 Settlement Act and by providing for identified municipal and industrial water needs in the Project area. The Administration proposal also brings final resolution to the ALP issue by restricting the project to construction of a defined number of facilities centered around a down-sized storage facility limited to municipal and industrial (M&I) water uses. Other previously contemplated project features would be deauthorized.

The Administration proposal includes two components:

Structural Component

This includes an off-stream storage reservoir (approximately 90,000 acre-feet capacity) with only a limited amount of ''dead'' storage, a pumping plant (up to approximately 240 cubic feet per second of capacity), and a reservoir inlet conduit, all designed to deplete no more than an average of 57,100 af per year (afy) from the Animas River. This depletion limit of 57,100 afy is consistent with the Biological Opinion issued by the Service, which limits further water depletion in the entire San Juan River Basin in order to avoid jeopardy to the endangered fish. The proposed reservoir would be located at the Ridges Basin site.

Consumptive use of water from the project will be restricted to M&I uses only and will be allocated in the following manner: [1]

	Afy depletion
Southern Ute Tribe (M&I)	19,980
Ute Mountain Ute Tribe (M&I)	19,980
Navajo Nation (M&I)	2,340
ALP Water Conservancy District (M&I)	2,600
San Juan Water Commission (M&I)	10,400

Consistent with the purpose and need statement, a substantial portion of the costs of the reservoir and associated works are anticipated to be non-reimbursable to the federal treasury. Costs of any project benefits accruing to non-Indian parties are expected to be fully absorbed by those parties in accordance with Reclamation law and Administration policy.

Nonstructural Component

Under the allocation shown above, the Tribes are still approximately 13,000 af short of the total quantity of depletion recognized in the settlement agreement. The proposed action therefore includes a nonstructural element which would establish and utilize a water acquisition fund which the Tribes could use one time to acquire water rights on a willing buyer/willing seller basis. The fund would be sufficient to acquire rights to the use of sufficient quantities of water allowing the Tribes about 13,000 afy of depletion in addition to the depletions stated above. Preliminary cost estimates indicate that a fund of approximately $40,000,000 would be required to purchase the additional rights. However, to provide flexibility in the use of the fund, authorization would allow some or all of the funds to be redirected for on-farm development, water delivery infrastructure, and other economic development activities.[2]

Several features of the proposed action, particularly the reservoir location, pumping plant, and inlet works have been the subject of previous analysis by Reclamation as described in the Background section. Details concerning these items and changes from the previous ALP configuration can be obtained by contacting Reclamation's Western Colorado Area Office, Southern Division, in Durango, Colorado at the address and telephone number shown above.

Proposed Scope of Analysis

The Administration Proposal is related to but represents a refinement in the configuration of ALP. Accordingly, Reclamation intends to fulfill the requirements of NEPA through development of a DSEIS which is supplemental to the 1996 FSFES for ALP. This approach will allow for full assessment of the new or changed features which are part of the Administration proposal but make use, to the extent appropriate, of the prior environmental analysis for ALP. Given this approach, the following discussion represents Reclamation's current view of the range of alternatives and the type of analysis which is appropriate for the Administration Proposal.

1. *Range of Alternatives*—In addition to the above-described proposed action (i.e. the Administration Proposal), Reclamation intends to evaluate the following alternatives as part of its NEPA analysis.

a. *Administration Proposal with Recreation Element Added*—At the request of the state of Colorado, Reclamation will evaluate adding recreation as a feature of the reservoir. This feature would necessitate consideration of a conservation pool of approximately 30,000 af thereby increasing the overall reservoir size to approximately 120,000 af.

b. *Animas-La Plata Reconciliation Plan*—This alternative represents the structural alternative developed during the Romer-Schoettler process. It was also the basis for legislation which was introduced during the 105th Congress (S. 1771 and H.R. 3478). The proposal provides water for both M&I and irrigation uses. It also contains project features similar to the Administration Proposal although the reservoir would be sized to a 260,000 af capacity to allow for future M&I and irrigation storage needs. No deauthorization of project features is included in this proposal.

c. *Animas River Citizens' Coalition Conceptual Alternative*—This alternative represents the nonstructural proposal developed during the Romer-Schoettler process. It proposes the purchase of irrigated lands and other associated water rights near the Ute reservations, and would use or purchase water from existing projects or expanded projects/delivery systems for the purpose of providing water in satisfaction of the Ute Tribes' water rights claims.

d. *1996 Final Supplement to the Final Environmental Statement (FSFES)*

[1] The balance of the available depletions is lost to evaporation making total depletions of 57,100 afy.

[2] At the request of the Ute Tribes, this provision represents a change from the Administration proposal released on August 11, which limited redirection of funds to only 50% of the total amount provided.

Recommended Action—This alternative recommended constructing ALP in two phases, providing a total water depletion of 149,220 af and is described in the 1996 FSFES. Initial project water depletions were limited to 57,100 af (Phase I, Stage A) due to the Service's Biological Opinion on endangered fish species. The total water depletion of 149,220 af would have required additional consultation with the Service.

e. *Administration Proposal with an Alternative Water Supply for Non-Ute Entities*—This alternative will consider supplying non-Ute M&I water (i.e. Animas-La Plata Water Conservancy District, San Juan Water Commission, and Navajo Nation) from sources other than the proposed Ridges Basin Reservoir.

f. *Citizens Progressive Alliance Proposal*—This proposal would allow the Ute Tribes to lease water instream based on the water amounts in the Settlement Agreement. The economic value of such instream leasing would be calculated on the value of leaving Animas River water instream and based on hydropower production, lower levels of salinity, and other benefits included in the authorized plan.

g. *No Action Alternative*—Under this alternative, the project would not be constructed. As a result, the Settlement Act would not be fulfilled. The Southern Ute Indian Tribe and Ute Mountain Ute Tribe could initiate either litigation or negotiation with non-Indian water users and the United States to resolve their water rights claims on rivers flowing through their respective reservations, including the Animas and La Plata Rivers. Tribal development of natural resources or other economic development tied to water use would likely be delayed until the Tribes' water claims were settled. Conflicts could exist between the Indian and non-Indian communities in the area.

Existing water uses would likely continue during litigation or negotiation. However, development of new water storage or delivery facilities by private, state, or Tribal entities would likely be deferred until those water rights claims were resolved.

2. *Type of Analysis*—Pending public input, Reclamation intends that the Administration Proposal and each of the alternatives described above undergo an analysis beginning with a threshold assessment of the alternative's capability to accomplish the project's purpose. The following items will then be analyzed as appropriate. Any new or updated information from that contained in the 1980 FES and the 1996 FSFES will be evaluated and included in this supplement.

a. Direct and Indirect Impacts—Reclamation intends to evaluate the direct and indirect impacts the Administration Proposal and alternatives may have on the affected environment including wetlands, water quality, recreational activities, wildlife habitat and aquatic resources, geology, cultural resources, and endangered species. This assessment would also examine the indirect impacts of potential end uses of project water. An assessment of options to avoid or minimize environmental impacts will also be a focus of the analysis.

b. Connected Actions—These actions include those closely related to the Administration Proposal or other alternatives being reviewed. They are typically either automatically triggered by, dependent upon, or interdependent with the subject action. Examples of current connected actions which Reclamation intends to analyze include (i) reoperation of Navajo Dam and Reservoir and (ii) relocation of gas pipelines.

c. Cumulative Impacts—These impacts arise from the incremental impact a proposed action or alternative has on the environment when added to other past, present or reasonably foreseeable future actions. Cumulative impacts which Reclamation intends to consider depending upon the action or alternative being reviewed include (i) the cumulative effects of ALP and other actions on endangered species; and (ii) water development opportunities for other communities in the San Juan River basin (e.g. completion of the Navajo Indian Irrigation Project).

d. Compliance with Other Laws—Reclamation will comply with all environmental laws and regulations, including but not limited to the Clean Water Act and the Endangered Species Act, in the preparation of the DSEIS.

e. Cost Estimate—Although not intended to be a focus of in-depth analysis, the supplemental analysis will discuss the estimated overall costs attributable to each alternative.

Public Scoping

Scoping meetings will be held in Durango, Colorado; Farmington, New Mexico; and Denver, Colorado in early February of 1999 for the purpose of obtaining public input on the significant issues related to the proposed action. The schedule and locations for the meetings are shown below. The public is especially asked to provide input on the following:

1. Whether the overall range of alternatives is appropriate. The Administration Proposal was developed in response to the alternatives developed during the Romer-Schoettler process, both of which are included in the range of alternatives to be considered.

2. Identification of significant issues related to the proposed action.

Schedule of Scoping Meetings

A series of meetings will be conducted in Colorado and New Mexico. Each will begin with a one hour open house where the public can informally discuss issues and ask questions of staff and managers.

The open house will be followed by a more formal scoping hearing in which each participant will be given time to make official comments. Speakers will be given five minutes for their comments. These comments will be formally recorded. Speakers are encouraged to provide written versions of their oral comments, and any other additional written materials, for the record.

Comments may also be sent directly to the Bureau of Reclamation's Southern Division of the Western Colorado Area Office in Durango, Colorado. Written comments should be received by February 19, 1999, to be most effectively considered.

Dates of Scoping Meetings

- February 2, 1999, 6–9 p.m., DoubleTree Hotel, Main Ballroom, 501 Camino Del Rio, Durango, Colorado
- February 3, 1999, 6–9 p.m., San Juan College, Henderson Fine Arts Center, Room 10, 4601 College Boulevard, Farmington, New Mexico
- February 4, 1999, 6–9 p.m., Colorado Convention Center, Room A201, 700 14th Street, Denver, Colorado

Dated: December 29, 1998.

Eluid L. Martinez,

Commissioner.

[FR Doc. 98–34818 Filed 12–31–98; 8:45 am]

BILLING CODE 4310–94–p

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

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

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation

and Enforcement (OSM) is announcing its intention to request approval for the collections of information under 30 CFR Parts 750 and 877 which relate to surface coal mining and reclamation operations on Indian Lands; and use of police power, if necessary, to effect entry upon private lands to conduct reclamation activities or exploratory studies if the landowner refuses consent or is not available, respectively.

DATES: Comments on the proposed information collection must be received by March 5, 1999. to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to jtrelease@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implemented provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see CFR 1320.8 (d)]. This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in (1) 30 CFR Part 750, Requirements for surface coal mining and reclamation operations on Indian Lands; and (2) 30 CFR Part 877, Rights of entry. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency: (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Requirements for surface coal mining and reclamation operations on Indian Lands—30 CFR Part 750.

OMB Control Number: 1029–0091.

Summary: Operators who conduct or propose to conduct surface coal mining and reclamation operations on Indian lands must comply with the requirements of 30 CFR 750 pursuant to Section 710 of SMCRA.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: Applicants for coal mining permits.

Total Annual Responses: 75.

Total Annual Burden Hours: 1,400.

Title: Rights of Entry—30 CFR Part 877.

OMB Control Number: 1029–0055.

Summary: This regulation establishes procedures for non-consensual entry upon private lands for the purpose of abandoned mine land reclamation activities or exploratory studies when the landowner refuses consent or is not available.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: State abandoned mine land reclamation agencies.

Total Annual Responses: 30.

Total Annual Burden Hours: 30.

Dated: December 29, 1998.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc 98–34817 Filed 12–31–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Watershed Cooperative Agreement Program

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

ACTION: Notice of availability of funds for the Waters Cooperative Agreement Program.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior is announcing its intent to solicit applications from eligible, not-for-profit candidates for funding under the Watershed Cooperative Agreement Program to undertake local acid mine drainage reclamation projects.

DATES: Applications for the cooperative agreements should be submitted to the appropriate individual listed under **ADDRESSES** starting February 1, 1999. Applications will be accepted until June 1, 1999.

ADDRESSES AND FURTHER INFORMATION: Requests for an application package, which includes further information on the program, the application forms and evaluation criteria, should be directed to the appropriate Appalachian Clean Streams Coordinator: Alabama: Jeannie O'Dell, Birmingham Field Office, 135 Gemini Circle, Suite 215, Homewood, AL 35209, 205–290–8292. ext. 21; Illinois: David Best, Mid-Continent Regional Coordinating Center, Alton Federal Center, 501 Belle Street, Room 216, Alton, IL 62002, 618–463–6463 ext. 123; Indiana: Michael Kalagian, Indianapolis Field Office, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Room 392, Indianapolis, IN 46204, 317–226–6166 ext. 234; Iowa: Len Meier, Mid-Continent Regional Coordinating Center, Alton Federal Center, 501 Belle Street, Room 216, Alton, IL 62002, 618–463–6463, ext. 109; Kentucky: Dave Beam, Lexington Field Office, 2675 Regency Road, Lexington, KY 40503, 606–233–2896; Maryland: Peter Hartman, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220, 412–937–2905; Missouri: Jeff Gillespie, Mid-Continent Regional Coordinating Center, Alton Federal Center, 501 Belle Street, Room 216, Alton, IL 62002, 618–463–6463 ext. 128; Ohio: Max Luehrs, Columbus Area Office, 4480 Refugee Road, Suite 201, Columbus, OH 43232, 614–866–0578 ext. 110; Pennsylvania: David Hamilton, Harrisburg Field Office, 415 Market Steet, Suite 3, Harrisburg, PA 17101, 717–782–2285; Tennessee: Danny Ellis, Knoxville Field Office, 530 Gay Street, Suite 500, Knoxville, TN 37902, 423–545–4103 ext. 147; Virginia: Ronnie Vicars, Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, VA 24219, 540–523–5053; West Virginia: Rick Buckley, Charleston Field Office, 1027 Virginia Street East, Charleston, WV 25301, 304–347–7162 ext. 3024.

SUPPLEMENTARY INFORMATION: For Fiscal Year 1999, OSM expects to award a total of $750,000 to eligible not-for-profit groups to undertake actual construction projects to clean up streams impacted by acid mine drainage. The cooperative agreements will be in the $5000–$80,000 range in order to assist as many groups as possible. The cooperative agreements will have a performance period of two years.

Eligible applicants are not-for-profit, established organizations with IRS

501(c)(3) status. Applicants must have other partners, contributing either funding of in-kind services; the partners must provide a substantial portion of the total resources needed to complete the project.

Projects in the following States are eligible: Alabama, Illinois, Indiana, Iowa, Kentucky, Maryland, Missouri, Ohio, Pennsylvania, Tennessee, Virginia and West Virginia. Projects must meet eligibility criteria for coal projects outlined in Section 404 of the Surface Mining Control and Reclamation Act of 1977:

> Lands and water eligible for reclamation or drainage abatement expenditures under this title are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes * * * and abandoned or left in an inadequate reclamation status prior to the date of enactment of this Act [August 3, 1977], and for which there is no continuing reclamation responsibility under State or other Federal laws.

There must be demonstrated public support for the project. The project should propose to use proven or innovative technology that has a high probability of success. The project must produce tangible results, e.g., fishery restored, stream miles improved, educational and community benefits, pollutants removed from the streams. The funds must be used primarily for the construction phase of a project; reimbursement of administrative costs will be carefully scrutinized. There must be a plan to address any ongoing operation/maintenance considerations.

Two copies of a complete application should be submitted to the appropriate Appalachian Clean Streams Coordinator identified under **ADDRESSES**. Awards are subject to the availability of funds. Applications will receive technical and financial management reviews.

Dated: December 29, 1998.

Kathy Karpan,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 98–34816 Filed 12–31–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on November 5, 1998, Cauldron Inc., DBA Cauldron Process Chemistry, 383 Phoenixville Pike, Malvern, Pennsylvania 19355, made application to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone for the bulk manufacture of the amphetamine basic class.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: December 23, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–34811 Filed 12–31–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated September 2, 1998, and published in the **Federal Register** on September 10, 1998, (63 FR 48523), Guilford Pharmaceuticals, Inc., Attn: Ross S. Laderman, 6611 Tributary Street, Baltimore, Maryland 21224, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of cocaine a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methyl-3-beta-(4-trimethylstannylphenyl)-tropane-2-carboxylate as a final intermediate for the production of dopascan injection.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Guilford Pharmaceuticals to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: December 23, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–34814 Filed 12–31–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September

9, 1998, Knoll Pharmaceutical Company, 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The firm plans to produce bulk product and finished dosage units for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 5, 1999.

Dated: December 23, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–34812 Filed 12–31–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on November 13, 1998, Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 600, Fort Collins, Colorado 80524, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Etorphine Hydrochloride (9059) ..	II
Carfentanil (9743)	II

The firm plans to import the listed controlled substances to produce finished products for distribution to its customers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: December 23, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–34813 Filed 12–31–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Sunshine Act Meeting

[F.C.S.C. Meeting Notice No. 1–99]

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Monday, January 11, 1999, 10:00 a.m.

Subject Matter: Hearings on the Record on Objections to Proposed Decisions on claims against Albania, as follows:

Claim No.

ALB–072 Thomas Toma
ALB–092 Thanas A. Laske
ALB–173 Marigo Tellios, et al.
ALB–220 Gjergji Gjeli
ALB–315 Afroditi Botsis

Status: Open.

All meetings are held at the Foreign claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, December 30, 1998.

David E. Bradley,

Chief Counsel.

[FR Doc. 98–34828 Filed 12–30–98; 1:26 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal

statutes referred to in 29 CFR Part 1, Appendix, a well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wage payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C., this 28th day of December 1998.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–34749 Filed 12–31–98; 8:45 am]

BILLING CODE 4510–21–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Oregon State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required. The Oregon plan also provides for the adoption of Federal standards as State standards by reference.

On its own initiative, the State of Oregon has submitted by letter dated October 16, 1992, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, a repeal of three Oregon codes—Division 94, Shipbuilding, Shipbreaking, Ship Repair; Division 307, Marine Terminals; and Division 308, Longshoring—and the adoption by reference of the following federal standards into a new Division 5, Maritime Activities: 29 CFR 1915,

Occupational Safety and Health Standards for Shipyard Employment; 1917, Marine Terminals; and 1918, Safety and Health Regulations for Longshoring, with the exception of 1917.27(a)(2), concerning the percentage of oxygen in IDLH atmospheres (Oregon requires 19.5%), and 1918.93(d), on hiring (Oregon added provisions required by the Americans with Disabilities Act). Oregon also retained two additional State-initiated rules, concerning fall protection for line handling in Marine Terminals, and the weight of containerized cargo in Longshoring. In addition, Oregon adopted references to other Oregon standards that apply to maritime activities: OAR 437, Division 1, General Administrative Rules; 1910.95, Occupational Noise Exposure; 1910.147, Control of Hazardous Energy (Lockout/Tagout); OAR 437–02–161, Medical and First Aid; OAR Division 2/L, Fire Protection and OAR 437–02–182, Fire Fighters; OAR 437, Division 2/N, OAR 437–02–228 through 235 and 1910.179 through .184 pertaining to Cranes; OAR 437, Division 1, General Provisions; OAR 437, Division 2/M, Compressed Gas and Compressed Air Equipment and OAR 437–02–223, Commercial and Industrial Trucks. The State of Oregon also adopted the following additional and preexisting State standards for shipyard employment: OAR 437–05–025, Ladders to Docks; OAR 437–04–030, Air Contaminants, in lieu of 1915.1000; OAR 437–05–0035, Additional Asbestos Rules; OAR 437–05-040, Rules for MOCA (4,4'-Methylene Bis (2-chloroaniline)); OAR 437–04–045, Amendment to 1915.1029(j)(1)(ii) for Benzene to require that pipes be labeled and OAR 437–05–050, Rules for Pipe Labeling. The State rules were adopted on September 24, 1992, effective November 1, 1992, under Oregon Administrative Order 9–1992. The State standards originally received **Federal Register** approval (40 FR 58704) on December 18, 1975. Before approval of this State-initiated change was made, the State in response to Federal standard changes published in the **Federal Register** (58 FR 35512) on July 1, 1993, submitted by letter dated January 20, 1994, from John A. Pompei, administrator, to James W. Lake, Regional Administrator, State standards comparable to 1915.5, 1915.12(a)(3) & (b)(3), 1915.99 and 1915 Subpart Z (except in lieu of 1915.1000, the State has its equivalent standard, OAR 437–05–030). The State rules were adopted and effective December 29, 1993, under Administrative Order 19–1993.

2. *Decision.* OSHA has determined that the State standards for Division 5, Maritime Activities (Shipyard Employment, Marine Terminals, and Longshoring), as amended through December 29, 1993, are at least as effective as the comparable Federal standards, as required by Section 18(c)(2) of the Act. These standards have been in effect since December 29, 1993. During that time OSHA has received no indication of significant objection to the State's diffeerent standard either as to its effectiveness in comparison to the Federal standard or as to its conformance with the product clause requirements of section 18(c)(2) of the Act. (A different State standard applicable to a product which is distributed or used in interstate commerce must be required by compelling local conditions and not unduly burden interstate commerce.) OSHA therefore approves these standards; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary. The State standards were adopted pursuant to ORS5 654.025(2), ORS 656.726(3) and ORS 183.335.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212; Oregon Occupational Safety and Health Division, Department of Consumer and Business Services, Salem, Oregon 97310; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3476, 200 Constitution Avenue, NW, Washington, D.C. 20210. An electronic copy of this **Federal Register** notice may be obtained from the OSHA home page, http://www.osha.gov.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards amendments are at least as effective as the federal standards which were promulgated in accordance with the federal law including meeting requirements for public participation.

2. The standards amendments were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective January 4, 1999.

(Sec. 18, Pub. L. 91–596, 84 STAT. 6108 [29 U.S.C. 667])

Signed at Seattle, Washington, this 16th day of October 1998.

Richard S. Terrill,

Acting Regional Administrator.

[FR Doc. 98–34741 Filed 12–31–98; 8:45 am]

BILLING CODE 4510–26–p

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Washington State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to a Federal standard change, the State submitted by letter dated September 2, 1994, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, a state standard amendment comparable to 29 CFR 1910.1200, 1926.59, 1915.1200, 1917.28, 1918.90 and 1928.21(a)(5), Hazard Communication for General Industry, Construction, Maritime and Agriculture, as published in the **Federal Register** on

February 9, 1994 (59 FR 6126). The state standards were adopted by Administrative Order 94–08 on August 3, 1994, with an effective date of September 12, 1994. The major difference is that there is no exemption for nuisance particulates. Employers must also follow the state's permissible exposure limits (PELS) for evaluation of employee exposures and training, not the ones listed on a material safety data sheet. A review of the standard revealed discrepancies and the submission was returned to the State for correction. On November 17, 1995, the state submitted by letter from Mark O. Brown, Director, to Richard S. Terrill, Acting Regional Administrator, corrections to the discrepancies and state standard amendments in response to the federal Hazard Communication standard amendments published in the **Federal Register** on December 22, 1994 (59 FR 65947). The state standard amendments were adopted by Administrative Order 94–19 on October 20, 1995, effective January 16, 1996. A review of the amendments revealed discrepancies and the submission was returned to the State for correction. On July 10, 1997, the state submitted by letter from Gary Moore, Director, to Richard S. Terrill, Acting Regional Administrator, the requested corrections. The corrections were adopted by Administrative Order 96–15 on May 20, 1997, effective August 1, 1997. The state standards are contained in WAC 296–62–054.

In response to a Federal standard change, the state submitted by letter dated October 14, 1994, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, state standard amendments comparable to 29 CFR 1910.137, Electrical Protective Equipment, as published in the **Federal Register** on January 31, 1994 (59 FR 4435) and 29 CFR 1910.135, Head Protection, as published in the **Federal Register** on April 6, 1994 (59 FR 16362). The state standards were adopted by Administrative Order 94–16 on September 30, 1994, effective November 20, 1994. A review of the standard revealed discrepancies and the submission was returned to the State for correction. On May 8, 1996, the state submitted by letter from Mark O. Brown, Director, to Richard S. Terrill, Acting Regional Administrator, the requested corrections and the standards are contained in WAC 296–24–084 and WAC 296–24–092. The change was adopted by Administrative Order 96–01 on April 10, 1996, effective June 1, 1996. The original state standard for Head Protection, WAC 296-24–084, received approval on January 30, 1976 (41 FR 4689).

In response to Federal standard changes, the state submitted by letter dated July 10, 1997, from Gary Moore, Director to Richard S. Terrill, Acting Regional Administrator, a state standard amendment comparable to 29 CFR 1910.133(a)(1), (a)(2), (a)(3) & (a)(5), Eye and Face Protection, 1910.135(a)(1) & (a)(2), Head Protection and 1910.136(a), Foot Protection as published in the **Federal Register** on May 2, 1996 (61 FR 19548) and May 9, 1996 (61 FR 21228). The state standards are contained in WAC 296–24–078, WAC 296–24–084 and WAC 296–24–088, and were adopted by Administrative Order 96–15 on May 20, 1997, effective August 1, 1997. The original state standards for Eye and Face Protection, Head Protection and Foot Protection received approval on January 30, 1976 (41 FR 4689).

In response to a Federal standard change, the State submitted by letter dated October 17, 1997, from Gary Moore, Director, to Richard S. Terrill, Acting Regional Administrator, a state standard comparable to 29 CFR 1910.1051, 1910.1000, Table Z–1, 1915.1000, 1926.55 and 1910.19, 1,3-Butadiene, as published in the **Federal Register** on November 4, 1996 (61 FR 56745). The state standard amendment was adopted on September 5, 1997, effective November 5, 1997, under Washington Administrative Order 97–07. The state standards are contained in WAC 296–62–07460.

In response to a Federal standard change, the state submitted by letter dated October 20, 1997, from Gary Moore, Director, to Richard S. Terrill, Acting Regional Administrator, a state standard comparable to 29 CFR 1910.19(m), 1910.1000, 1910.1052, 1915.1052, 1926.55 and 1926.1152, Methylene Chloride, as published in the **Federal Register** on January 10, 1997 (62 FR 1494). The state standard amendment was adopted on September 2, 1997, effective December 1, 1997, under Washington Administrative Order 97–08. The state standards are contained in WAC 296–62–07470.

In a response to Federal standard changes, the State has submitted by letter dated November 26, 1997, from Michael A. Silverstein, M.D., Assistant Director, to Richard S. Terrill, Acting Regional Administrator, State standards comparable to 29 CFR 1910.272, Grain Handling Facilities as published in the **Federal Register** (61 FR 9577) on March 8, 1996. The state standard amendment was adopted on November 3, 1997, effective January 1, 1998, under Washington Administrative Order 96–17. The main difference is that the State standard is written in plain language format. The state standards are contained in WAC 296–99.

In response to Federal standard changes, the State has submitted by letter dated April 3, 1998, from Michael A. Silverstein, Assistant Director, to Richard S. Terrill, Acting Regional Administrator, a State standard comparable to the Federal standard, 1926.450, 1926.451, 1926.452, 1926.453, 1926.454 and Appendix A, C, D and E, Scaffolds, published in the **Federal Register** (61 FR 46026) on August 30, 1996. The State standard was adopted on February 13, 1998, effective April 15, 1998, under Administrative Order 97–10. The state standards are contained in WAC 296–155–481 through 498.

On its own initiative, the State of Washington has submitted by letter dated February 8, 1991, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, a State standard for Crane and Derrick Suspended Personnel (Work) Platforms. The State's submission was adopted on January 10, 1991, effective February 12, 1991, under Washington Administrative Order 90–18. A review of the standard revealed discrepancies and the submission was returned to the State for correction. On May 16, 1996, the State submitted a corrective amendment that made the changes requested. This submission was adopted on April 10, 1996, effective June 1, 1996, under Washington Administrative Order 96–01. The major difference is the broader scope: the standard applies not just to construction industry employers, but to all employers who use cranes and derricks. The State standard is contained in WAC 296–24–23533. The original state standard for Overhead and Gantry Cranes, WAC 296–24–235, received approval on January 26, 1973 (38 FR 2421).

On its own initiative, the State of Washington has submitted by letter dated September 7, 1995, from Mark O. Brown, Director, to Richard S. Terrill, Acting Regional Administrator, corrections to the Safety Standards for Cranes and Derricks used in Construction, WAC 296–155–525. The State's submission was adopted on August 8, 1995, effective September 25, 1995, under Washington Administrative Order 95–04. The state added definitions and an appendix from applicable ANSI/ASME standards. A review of the standard revealed discrepancies and the submission was returned to the State for correction. On June 27, 1997, the State submitted a corrective amendment that made the requested changes. This submission was adopted on May 20, 1997, effective

August 1, 1997, under Washington Administrative Order 96–15. The original state standard for Cranes and Derricks in Construction, WAC 296–155–525, received approval on February 9, 1982 (47 FR 5956).

On its own initiative, the State of Washington has submitted by letter dated January 26, 1998, from Michael A. Silverstein, Assistant Director, to Richard S. Terrill, Acting Regional Administrator, a state standard change to Chapters 296–62–11015 WAC and 296–24–675 WAC, Safe Practices of Abrasive Blasting Operations. The amendments to Chapter 296–24–675 incorporates similar language on abrasive blasting found in Chapter 296–62–11015, and simplifies or clarifies this language. The requirements in Chapter 296–62 were deleted and a reference is made to the new consolidated standard in Chapter 296–24. The State's submission was adopted on December 26, 1997, effective March 1, 1998, under Washington Administration Order 98–18. The original state standards received approval on August 17, 1976 (41 FR 34837).

On its own initiative, the State submitted by letter dated February 27, 1998, from Michael A. Silverstein, Assistant Director, to Richard S. Terrill, Acting Regional Administrator an amendment to their standard for Guarding of Abrasive Wheel Machinery, WAC 296–24–18005. The amendment was made to incorporate a previously approved Washington Regional Directive 6.69 which was adopted in response to OSHA Directive STD 1–12.26A. The State amendment was adopted on December 31, 1997, effective January 31, 1998, under Washington Administrative Order 97–22. The original state standard received approval on June 4, 1976 (41 FR 22655).

The administrative orders were adopted pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08.

2. *Decision.* OSHA has determined that the State standards amendments for Electrical Protective Equipment, Head Protection, Eye and Face Protection, Foot Protection, 1,3-Butadiene, Methylene Chloride, Abrasive Blasting, Guarding of Abrasive Wheel Machinery, Scaffolds, Grain Handling, Hazard Communication (1996–1997 changes), Cranes and Derricks (1997 change), and Crane and Derrick Suspended Personnel Platforms (1998 change) are at least as effective as the comparable Federal standards, as required by Section 18(c)(2) of the Act. OSHA has also determined that the differences between these State and Federal standards amendments are minimal and that the amendments are thus substantially identical. OSHA has determined that the earlier State standard amendments for Hazard Communication, Crane and Derrick Suspended Personnel Platforms and Cranes and Derricks are at least as effective as the comparable Federal standard, as required by Section 18(c)(2) of the Act. The Hazard Communication amendment has been in effect since September 12, 1994, the Crane and Derrick Suspended Platforms amendment has been in effect since February 12, 1991, and the Crane and Derrick standard amendments have been in effect since September 25, 1998. During this time OSHA has received no indication of significant objection to the State's different standards either as to their effectiveness in comparison to the Federal standard or as to their conformance with the product clause requirements of section 18(c)(2) of the Act. (A different State standard applicable to a product which is distributed or used in interstate commerce must be required by compelling local conditions and not unduly burden interstate commerce.) OSHA, therefore approves these standards amendments; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212; State of Washington Department of Labor and Industries, Division of Industrial Safety and Health, 7273 Linderson Way, S.W., Tumwater, Washington 98501; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3476, 200 Constitution Avenue, NW, Washington, D.C. 20210. For electronic copies of this **Federal Register** notice, contact OSHA's Web Page at http://www.osha.gov/.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard amendments are as effective as the Federal standards which was promulgated in accordance with the Federal law including meeting requirements for public participation.

2. The standard amendments were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective January 4, 1999.

(Sec. 18, Pub. L. 91–596, 84 STAT. 6108 [29 U.S.C. 667])

Signed at Seattle, Washington, this 16th day of October, 1998.

Richard S. Terrill,

Acting Regional Administrator.

[FR Doc. 98–34742 Filed 12–31–98; 8:45 am]

BILLING CODE 4510–26–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, January 14, 1999 and Friday 15, 1999 at the Crowne Plaza Hotel, 14th K Streets, NW, Washington, DC. The meeting is tentatively scheduled to begin at 9:00 a.m. on January 14, and at 10:00 a.m. on January 15.

The Commission will discuss draft chapters and recommendations for its March 1999 report on Medicare payment policy. Topics to be addressed include the Medicare+Choice program and payments for inpatient and outpatient hospital services, post-acute care facilities, physician services and dialysis. The Commission will also continue its discussion of graduate medical education and the Medicare program.

Agendas will be mailed on January 7, 1999. The final agenda will be available on the Commission's web sites (WWW.MedPAC.GOV).

ADDRESSES: MedPAC's address is: 1730 K Street, NW, Suite 800, Washington, DC 20006. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, 202/653–7220.

SUPPLEMENARY INFORMATION: If you are not on the Commission mailing list and

wish to receive an agenda, please call 202/653–7220.

Murray N. Ross,

Executive Director.

[FR Doc 98–34777 Filed 12–31–98; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL CREDIT UNION ADMINISTRATION

Federal Credit Union Bylaws

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The proposed changes consolidate the two manuals which currently contain the federal credit union (FCU) bylaws into one manual and eliminate or modernize several bylaws. This action is necessary because several of the bylaws had become outdated or obsolete. The proposal is intended to update and clarify the FCU bylaws.

DATES: Comments must be received by April 5, 1999.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board.

Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may Fax comments to (703) 518–6319 or E-mail comments to boardmail@ncua.gov. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6553.

SUPPLEMENTARY INFORMATION:

Background

Section 108 of the Federal Credit Union Act (the Act) requires the NCUA Board to prepare bylaws to be used by all federal credit unions (FCUs). 12 U.S.C. 1758. The FCU bylaws are contained in two manuals entitled Federal Credit Union Bylaws (FCU Bylaws) and Federal Credit Union Standard Bylaw Amendments and Guidelines (Standard Amendments). These manuals were last updated in December 1987 and October 1991, respectively. The bylaws contained in the two manuals may be adopted by an FCU without approval from NCUA. An FCU must obtain approval from its Regional Director to adopt a bylaw not contained in the manuals.

On March 7, 1997, the NCUA Board issued a request for comments on the FCU Bylaws and Standard Amendments. 62 FR 11778 (March 13, 1997). The purpose of the request was to solicit comments to help guide the preparation of revised bylaws that would clarify and reorganize existing FCU bylaws. The Board received 29 comments.

Summary of Comments

The Board requested comment on four specific issues, as well as any additional comments that would assist the Board in streamlining and modernizing the FCU Bylaws. The four specific issues and the comments are as follows:

1. Should the bylaws be published as a regulation? Twenty of the twenty-three commenters that responded to this question opposed publishing the bylaws as a regulation. These commenters noted that: it is rare for NCUA to get involved in a bylaw dispute; NCUA should not be enforcing the bylaws, because they are a contract between the FCU and its members; NCUA would have to go through the rulemaking process for an FCU to change its bylaws; and bylaws are primarily for internal self governance and don't raise safety and soundness issues.

Because the commenters were overwhelmingly opposed to publishing the bylaws as a regulation and made a persuasive argument in support of this position, the NCUA Board will publish the bylaws as a manual. Although the Act requires FCUs to use the bylaws published by NCUA, FCUs will continue to have the flexibility to request a nonstandard bylaw amendments if the need arises.

2. Should the bylaws be consolidated in one publication? We asked for comment on whether the FCU Bylaws and Standard Amendments should be published in one place with alternative provisions side by side when necessary. Sixteen of the seventeen commenters that responded to this question said yes. The recurring reason given in support of consolidation was that it would provide for easier reference and improve efficiency. The California Credit Union League advised that it works well for California state chartered credit unions and provided a copy of the California bylaws. This document was very helpful in drafting the proposed consolidated bylaws.

3. Should outdated bylaws be eliminated? Sixteen of the nineteen commenters that responded to this question answered yes. Some of the bylaws frequently suggested for deletion were those addressing share accounts, lost/stolen passbook procedures, stipulation on loans, late fees, pre-payments, cash funds and operations following an attack on the United States. It was suggested that a FCU that wishes to retain a bylaw that is outdated for most FCUs could adopt a policy. It was also suggested that a committee be formed to help decide which bylaws are outdated.

The proposal deletes several outdated provisions. As several of the commenters suggested, NCUA staff worked closely with the credit union trade groups to ensure that FCUs' voices were heard before deleting a provision.

4. Should FCUs be required to adopt the revised bylaws? Eighteen of the twenty-two commenters that responded to this question answered no. The reasons cited for this response were that credit unions should have maximum flexibility; uniformity is not necessary; forcing FCUs to change the way they do business will create an unnecessary regulatory burden; and current bylaws work well for a large number of FCUs. Because of the overwhelming opposition to this requirement, FCUs, although strongly encouraged to adopt the revised bylaws, are not required to do so and may continue to use their previously approved FCU Bylaws.

Proposed FCU Bylaws

The bylaws have been revised so that they are more user friendly for FCUs. All of the information is now in one place; plain English is used; provisions that are outdated are deleted; and provisions that are operational or covered in the Accounting Manual or regulations are deleted, unless it was determined that because of their importance they should also be included in the bylaws. An index will be provided with the final version of the bylaws. Currently, there is only an index for the FCU Bylaws and not the Standard Amendments.

Article by Article Analysis

The following articles and sections have no substantive changes. There may be some minor editing or technical corrections:

Article I, Sections 1 and 2;
Article II, Sections 1, 2, and 4 (renumbered 3);
Article III, Sections 1, 2 and 5 a, b, d (renumbered c) and e (renumbered d);
Article V (renumbered Article IV), Sections 1, 4 and 5;
Article VI (renumbered Article V), Sections 3, 4, 5 and 6;
Article VII (renumbered Article VI), Sections 1, 2 (renumbered Section 3), 6 (renumbered Section 7) and 8 (renumbered Section 9);
Article VIII (renumbered Article VII), Sections 1, 2, 4 (renumbered 5) a, c

(renumbered b), e and f (renumbered d and e), 7, 8, 9, and 10 (renumbered 8, 9, 10, and 11);
Article X (renumbered Article IX), Sections 2–6;
Article XI, (renumbered Article X), Sections 1–3;
Article XII (renumbered Article XI), Section 8 (renumbered Section 3);
Article XIV (renumbered Article XII), Section 1;
Article XVI (renumbered Article XIV), Section 1;
Article XVII (renumbered Article XV), Section 1;
Article XVIII (renumbered Article XVI), Section 1;
Article XIX (renumbered Article XVII), Sections 1, 2, 5 and 6; and
Article XXI (renumbered Article XVIII), Section 1.

The following articles and sections have substantive changes:

Article II, Qualifications for Membership

Section 3 has been deleted. It required a credit union to assign each member a number as a means of identifying the member's account. This is an operational matter that does not belong in the bylaws.

Section 5 has been deleted because the ''once a member always a member'' policy is now addressed in the Act.

Article III, Shares of Members

In Section 3, the requirement that the credit union allow at least six months for a member to pay one share has been deleted. Section 1 of this Article and the Act require credit unions to allow for the payment of shares in installments. 12 U.S.C. 1759.

The $1 fee limitation on share transfers has been deleted from Section 4.

Section 5(c) addressed withdrawal of shares pledged as security. This has been deleted because it should be addressed in the loan agreement. The first paragraph of Section 5(e) has been deleted because it referenced Article II, Section 5 which has been deleted. Section 5(f) addressed fees for excessive share withdrawals. This is covered by our Truth in Savings Act regulation and has been deleted. 12 CFR 707. Section 6(a) and (b) have been combined for easier reading and (c) has been deleted.

Article IV, Receipting for Money—Passbooks

This Article has been deleted. It covered operational procedures of the credit union and does not belong in the bylaws.

Article V—Renumbered Article IV, Meetings of Members

In Section 2, the time frame for notification of the annual meeting has been changed from ''at least 7days'' to ''at least 30 but no longer than 75 days.''

Section 3 has been revised to allow directors to call a special meeting. This is currently a standard amendment. In addition, the maximum number of members necessary to call a special meeting has been changed from 200 to 500.

Article VI—Renumbered Article V, Elections

An FCU elects the voting method it wishes to follow by checking the appropriate box. The choices provided are currently contained in the FCU Bylaws and Standard Amendments. An additional electronic voting option has been added. In addition, the absentee ballot provision from the Standard Amendments has been included as an option the FCU may elect by checking the box.

In Section 7, the age to vote has been changed from ''not greater than 16'' to ''not greater than 18'' because this is the age of legal majority in most states.

Article VII—Renumbered Article VI, Board of Directors

Section 2 has been added. This provision allows a credit union to elect an option currently available in the Standard Amendments limiting the number of directors and family members of directors who can be paid employees of the credit union and electing whether or not the management official and assistant management official may serve on the board.

Section 3 is renumbered Section 4 and the phrase ''within a reasonable time'' has been added to the provision requiring the board to fill vacancies on the board and committees until the next annual meeting.

Section 4 is renumbered Section 5. It adopts the Standard Amendment requirement of at a minimum one face-to-face board meeting each calendar quarter. The FCU Bylaws require monthly, in person board meetings.

Section 5 is renumbered Section 6. It combines the Standard Amendment option of no credit committee with the FCU Bylaw of a credit committee. The no credit committee option adds a new provision allowing the board to appoint a mid-level loan review committee but, in compliance with the Act, still requires the board to review all appeals of loan denials. The mid-level loan review committee is currently being used by some FCUs through a nonstandard bylaw amendment.

Section 7 is renumbered Section 8. It allows the board to declare a position vacant if a director or credit committee member misses 3 consecutive meetings or 4 meetings within a calendar year. This is a combination of the FCU Bylaws and the Standard Amendments.

Article VIII—Renumbered Article VII. Board Officers, Management Officials and Executive Committee

The requirement that the executive officer countersign all notes, etc. has been deleted from Section 3 and a new Section 4 has been added that requires the board to approve all individuals authorized to sign notes, etc.

Section 5 is renumbered Section 6. Subsection (b) is deleted because it is covered by the addition of Section 4. Subsection (d) is renumbered (c) and the time frame is changed from 7 to 20 days, an option available in the standard amendment.

Section 6 is renumbered Section 7. The prohibition against the manager and assistant manager serving on the board is deleted because it is now addressed in Article VI, Section 2.

The suggested titles have been deleted from the Addendum and the board has been directed to identify the positions. In an effort to be consistent throughout the bylaws, the following terms have been replaced: ''executive officers'' with ''board officers'', ''executive officer'' with ''chair'', ''assistant executive officer'' with ''vice chair'' and ''recording officer'' with ''secretary''.

Article IX—Renumbered Article VIII. Option 1 Credit Committee or Option 2 Loan Officers

An FCU selects Option 1 if it has a credit committee and Option 2 if it doesn't. The Options mirror the current FCU Bylaws and Standard Amendments.

Article X—Renumbered Article IX. Supervisory Committee

Section 1 is modified slightly to allow the terms of the supervisory committee to be staggered in the same way that the terms of the credit committee are.

Article XII—Renumbered Article XI. Loans and Lines of Credit to Members

Section 1 is taken from the standard amendment that allows FCUs to make loans to nonnatural persons under certain limited circumstances. The FCU Bylaws only allow loans to nonnatural persons if the loan is share secured. Some of the commenters asked the Board to expand this provision beyond the standard amendment. The Board has safety and soundness concerns with expanding this provision beyond what

is allowed in the standard amendment but is interested in receiving additional comment on this issue.

Sections 2–7 have been deleted and replaced with the requirement that the FCU follow applicable law and regulations. All of the requirements in deleted Sections 2–7 were either operational or set forth in NCUA's regulations.

Article XIII. Reserves

This provision has been deleted because it is covered in the Act and regulations.

Article XIV—Renumbered Article XII. Dividends

Sections 2 and 3 have been deleted because they are covered in the Act and regulations.

Article XV—Renumbered Article XIII. Deposit and Disbursement of Funds-Investments and Borrowings

Retitled Deposit of Funds. Section 1 is modernized by allowing FCUs to fill in the number of days and the amounts. Sections 2–5 are deleted because they are operational.

Article XVIII—Renumbered Article XVI. Definitions

Section 2(a) is deleted because ''members of their immediate families'' will be defined in NCUA's regulations.

Article XIX—Renumbered Article XVII. General

Section 3 follows the standard amendment which limits the membership's authority to remove to directors, committee members or officers and does not provide the authority to remove employees.

Section 4 is the conflict of interest provision for directors, committee members, officers and employees. It has been expanded to prohibit participation not only in matters affecting their pecuniary interest but also matters affecting their personal interest. Personal interest is intended to include matters affecting their family members.

Section 7 requires the member to keep the board informed of his current address but deletes the discussion on permissible fees.

Section 8 adds the provision from the standard amendments that allows the board to indemnify officials and employees in accordance with the laws of the state or the Model Business Corporation Act.

Article XX. Operations Following an Attack on the United States

This provision is deleted from the bylaws. FCUs may adopt a board policy setting forth the FCU's policy in the event of an attack.

Request for Comment

The Board is interested in receiving comments on the proposed format of the FCU Bylaws, as well as any substantive issues the commenters wish to see addressed in the final bylaws.

By the National Credit Union Administration Board on December 17, 1998.

Becky Baker,

Secretary of the Board.

BYLAWS

Federal Credit Union, Charter No. _____

(A corporation chartered under the laws of the United States)

Article I. Name—Purposes

Section 1. The name of this credit union is as stated in section 1 of the charter (approved organization certificate) of this credit union.

Section 2. The purpose of this credit union is to promote thrift among its members by affording them an opportunity to accumulate their savings and to create for them a source of credit for provident or productive purposes.

Article II. Qualifications for Membership

Section 1. The field of membership of this credit union is limited to that stated in section 5 of its charter.

Section 2. Applications for membership from persons eligible for membership under section 5 of the charter must be signed by the applicant on forms approved by the board. Upon approval of an application by a majority of the directors, or a majority of the members of a duly authorized executive committee or by a membership officer, and upon subscription to at least one share of this credit union and the payment of the initial installment, and the payment of a uniform entrance fee if required by the board, the applicant is admitted to membership. If a membership application is denied, the reasons must be furnished in writing to the person whose application is denied, upon written request.

Section 3. A member who withdraws all shareholdings or fails to comply with the time requirements in article III, section 3, ceases to be a member. By resolution, the board may require persons readmitted to membership to pay another entrance fee.

Article III. Shares of Members

Section 1. The par value of each share shall be $____. Subscription to shares are payable at the time of subscription, or in installments of at least $____ per month.

Section 2. The maximum amount of shares that may be held by any one member shall be established from time to time by resolution of the board.

Section 3. A member who fails to complete payment of one share within ____ of admission to membership, or within ____ from the increase in the par value of shares, or a member who reduces the share balance below the par value of one share and does not increase the balance to at least the par value of one share within ____ of the reduction may be terminated from membership.

Section 4. Shares may only be transferred from one member to another by a written instrument in a form as the board may prescribe. Such transfer will carry dividend credits with it.

Section 5. Money paid in on shares or installments of shares may be withdrawn as provided in these bylaws or regulation on any day when payment on shares may be made: *Provided, however,* That

(a) The board has the right, at any time, to require members to give, in writing, not more than 60 days notice of intention to withdraw the whole or any part of the amounts so paid in by them.

(b) The board may determine that, if shares are paid in under an accumulated payroll deduction plan as prescribed in the Accounting Manual for Federal Credit Unions, they may not be withdrawn until credited to members' accounts.

(c) No member may withdraw any shareholdings below the amount of his primary or contingent liability to the credit union if he is delinquent as a borrower, or if borrowers for whom he is comaker, endorser, or guarantor are delinquent, without the written approval of the credit committee or loan officer; except that shares issued in an irrevocable trust as provided in section 6 of this article are not subject to restrictions upon withdrawal except as stated in the trust agreement.

(d) The share account of a deceased member (other than one held in joint tenancy with another member) may be continued until the close of the dividend period in which the administration of the deceased's estate is completed, but not to exceed a period of 4 years.

Section 6. Shares may be issued in a revocable or irrevocable trust, subject to the following:

When shares are issued in a revocable trust, the settlor must be a member of this credit union in his own right. When shares are issued in an irrevocable trust, the settlor or the beneficiary must be a member of this credit union in his own

right. The name of the beneficiary must be stated in both a revocable and irrevocable trust. For purposes of this section, shares issued pursuant to a pension plan authorized by the rules and regulations shall be treated as an irrevocable trust unless otherwise indicated in the rules and regulations.

Article IV. Meetings of Members

Section 1. The annual meeting of the members must be held within the period authorized in the Act, in the county in which the office of the credit union is located or within a radius of 100 miles of such office, at the time and place as the board determines and announces in the notice of the annual meeting.

Section 2. At least 30 but no more than 75 days before the date of any annual meeting or at least 7 days before the date of any special meeting of the members, the secretary must give written notice to each member by in person delivery, or by mailing the written notice to each member at the address that appears on the records of this credit union. Notice of the annual meeting may be given by posting the notice in a conspicuous place in the office of this credit union where it may be read by the members, at least 30 days prior to such meeting, if the annual meeting is to be held during the same month as that of the previous annual meeting and if this credit union maintains an office that is readily accessible to members where regular business hours are maintained. Any meeting of the members, whether annual or special, may be held without prior notice, at any place or time, if all the members entitled to vote, who are not present at the meeting, waive notice in writing, before, during, or after the meeting.

Notice of any special meeting must state the purpose for which it is to be held, and no business other than that related to this purpose may be transacted at the meeting.

Section 3. Special meetings of the members may be called by the chair or the board of directors upon a majority vote, or by the supervisory committee as provided in these bylaws, and may be held at any location permitted for the annual meeting. A special meeting must be called by the chair within 30 days of the receipt of a written request of 25 members or 5% of the members as of the date of the request, whichever number is larger. However, a request of no more than 500 members may be required for such meeting. The notice of a special meeting must be given as provided in section 2 of this article.

Section 4. The order of business at annual meetings of members must be—

(a) Ascertainment that a quorum is present.

(b) Reading and approval or correction of the minutes of the last meeting.

(c) Report of directors.

(d) Report of the financial officer or the chief management official.

(e) Report of the credit committee, if there is one.

(f) Report of the supervisory committee.

(g) Unfinished business.

(h) New business other than elections.

(i) Elections.

(j) Adjournment.

The members assembled at any annual meeting may suspend the above order of business upon a two-thirds vote of the members present at the meeting.

Section 5. Except as otherwise provided, 15 members constitutes a quorum at annual or special meetings. If no quorum is present, an adjournment may be taken to a date not fewer than 7 nor more than 14 days thereafter. The members present at any such adjourned meeting will constitute a quorum, regardless of the number of members present. The same notice must be given for the adjourned meeting as is prescribed in section 2 of this article for the original meeting, except that such notice must be given not fewer than 5 days previous to the date of the meeting as fixed in the adjournment.

Article V. Elections

The Credit Union must select one of the four voting options. This may be done by printing the credit union's bylaws with the option selected or retaining this copy and checking the box of the option selected.

☐ *Option A1—In-person elections; nominating committee and nominations from floor*

Section 1. At least 30 days prior to each annual meeting, the chair will appoint a nominating committee of not fewer than three members. It is the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and to determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected.

Section 2. After the nominations of the nominating committee have been placed before the members, the chair calls for nominations from the floor. When nominations are closed, tellers are appointed by the chair, ballots are distributed, the vote is taken and tallied by the tellers, and the results announced. All elections are determined by plurality vote and will be by ballot except where there is only one nominee for the office.

☐ *Option A2—In-person elections; nominating committee and nominations by petition*

Section 1. At least 120 days prior to each annual meeting the chair will appoint a nominating committee of not fewer than three members. It is the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and to determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected. The nominating committee files its nominations with the secretary of the credit union at least 90 days prior to the annual meeting, and the secretary notifies in writing all members eligible to vote at least 75 days prior to the annual meeting that nominations for vacancies may also be made by petition signed by 1% of the members with a minimum of 20 and a maximum of 500.

The written notice must indicate that the election will not be conducted by ballot and there will be no nominations from the floor when there is only one nominee for each position to be filled. A brief statement of qualifications and biographical data in a form approved by the board of directors will be included for each nominee submitted by the nominating committee with the written notice to all eligible members. Each nominee by petition must submit a similar statement of qualifications and biographical data with the petition. The written notice must state the closing date for receiving nominations by petition. In all cases, the period for receiving nominations by petition must extend at least 30 days from the date that the petition requirement and the list of nominating committee's nominees are mailed to all members. To be effective, such nominations must be accompanied by a signed certificate from the nominee or nominees stating that they are agreeable to nomination and will serve if elected to office. Such nominations must be filed with the secretary of the credit union at least 40 days prior to the annual meeting and the secretary will ensure that nominations by petition along with those of the nominating committee are posted in a conspicuous place in each credit union office at least 35 days prior to the annual meeting.

Section 2. All persons nominated by either the nominating committee or by

petition must be placed before the members. When nominations are closed, tellers are appointed by the chair, ballots are distributed, the vote is taken and tallied by the tellers, and the results announced. All elections are determined by plurality vote and will be by ballot except where there is only one nominee for each position to be filled.

Nominations cannot be made from the floor unless insufficient nominations have been made by the nominating committee or by petition to provide for one nominee for each position to be filled or circumstances prevent the candidacy of the one nominee for a position to be filled. Only those positions without a nominee are subject to nominations from the floor. In the event nominations from the floor are permitted and result in more than one nominee for a position to be filled, when nominations have been closed, tellers are appointed by the chair, ballots are distributed, the vote is taken and tallied by the tellers, and the results announced. When only one member is nominated for each position to be filled, the chair may take a voice vote or declare each nominee elected by general consent or acclamation at the annual meeting.

☐ *Option A3—Election by ballot boxes or voting machine; nominating committee and nomination by petition*

Section 1. At least 120 days prior to each annual meeting the chair will appoint a nominating committee of not fewer than three members. It is the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and to determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected. The nominating committee files its nominations with the secretary of the credit union at least 90 days prior to the annual meeting, and the secretary shall notify in writing all members eligible to vote at least 75 days prior to the annual meeting that nominations for vacancies may also be made by petition signed by 1% of the members with a minimum of 20 and a maximum of 500.

The written notice must indicate that the election will not be conducted by ballot and there will be no nominations from the floor when there is only one nominee for each position to be filled. A brief statement of qualifications and biographical data in a form approved by the board of directors will be included for each nominee submitted by the nominating committee with the written notice to all eligible members. Each nominee by petition must submit a similar statement of qualifications and biographical data with the petition. The written notice must state the closing date for receiving nominations by petition. In all cases, the period for receiving nominations by petition must extend at least 30 days from the date of the petition requirement and the list of nominating committee's nominees are mailed to all members. To be effective, such nominations must be accompanied by a signed certificate from the nominee or nominees stating that they are agreeable to nomination and will serve if elected to office. Such nominations must be filed with the secretary of the credit union at least 40 days prior to the annual meeting and the secretary will ensure that nominations by petition along with those of the nominating committee are posted in a conspicuous place in each credit union office at least 35 days prior to the annual meeting.

Section 2. All elections shall be determined by plurality vote. The election will be conducted by ballot boxes or voting machines, subject to the following conditions:

(a) The election tellers will be appointed by the board of directors;

(b) If sufficient nominations are made by the nominating committee or by petition to provide more than one nominee for any position to be filled, the secretary, at least 10 days prior to the annual meeting, will cause ballot boxes and printed ballots, or voting machines, to be placed in conspicuous locations, as determined by the board of directors with the names of the candidates posted near the boxes or voting machines. The name of each candidate will be followed by a brief statement of qualifications and biographical data in a form approved by the board of directors;

(c) After the members have been given 24 hours to vote at conspicuous locations as determined by the board of directors, the ballot boxes or voting machines will be opened, the vote tallied by the tellers, the tallies placed in the ballot boxes, and the ballot boxes resealed. The tellers are responsible at all times for the ballot boxes or voting machines and the integrity of the vote. A record must be kept of all persons voting and the tellers must assure themselves that each person so voting is entitled to vote; and

(d) The ballot boxes will be taken to the annual meeting by the tellers. At the annual meeting, printed ballots will be distributed to those in attendance who have not voted and their votes will be deposited in the ballot boxes placed by the tellers, before the beginning of the meeting, in conspicuous locations with the names of the candidates posted near them. After such members have been given an opportunity to vote at the annual meeting, balloting will be closed, the ballot boxes opened, the vote tallied by the tellers and added to the previous count, and the chair will announce the result of the vote.

Option A4—Election by electronic device (including but not limited to telephone and electronic mail) or mail ballot; nominating committee and nominations by petition

Section 1. At least 120 days prior to each annual meeting the chair will appoint a nominating committee of not fewer than three members. It is the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and to determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected. The nominating committee files its nominations with the secretary of the credit union at least 90 days prior to the annual meeting, and the secretary notifies in writing all members eligible to vote at least 75 days prior to the annual meeting that nominations for vacancies may also be made by petition signed by 1% of the members with a minimum of 20 and a maximum of 500.

The written notice must indicate that the election will not be conducted by ballot and there will be no nominations from the floor when there is only one nominee for each position to be filled. A brief statement of qualifications and biographical data in a form approved by the board of directors will be included for each nominee submitted by the nominating committee with the written notice to all eligible members. Each nominee by petition must submit a similar statement of qualifications and biographical data with the petition. The written notice must state the closing date for receiving nominations by petition. In all cases, the period for receiving nominations by petition must extend at least 30 days from the date of the petition requirement and the list of nominating committee's nominees are mailed to all members. To be effective, such nominations must be accompanied by a signed certificate from the nominee or nominees stating that they are agreeable to nomination and will serve if elected to office. Such nominations must be filed with the secretary of the credit union at least 40 days prior to the annual meeting and the secretary will ensure that nominations by petition along with those of the nominating committee are posted in a conspicuous

place in each credit union office at least 35 days prior to the annual meeting.

Section 2. All elections will be by electronic device or mail ballot, subject to the following conditions:

(a) The election tellers will be appointed by the board of directors;

(b) If sufficient nominations are made by the nominating committee or by petition to provide more than one nominee for any position to be filled, the secretary, at least 30 days prior to the annual meeting, will cause either a printed ballot or notice of ballot to be mailed to all members eligible to vote;

(c) If the credit union is conducting its elections electronically, the secretary will cause the following materials to be mailed to each eligible voter:

(1) One notice of balloting stating the names of the candidates for the board of directors and the candidates for other separately identified offices or committees. The name of each candidate must be followed by a brief statement of qualifications and biographical data in a form approved by the board of directors.

(2) One instruction sheet stating specific instructions for the electronic election procedure, including how to access and use the system, and the period of time in which votes will be taken. The instruction will state that members without the requisite electronic device necessary to vote on the system may vote by mail ballot upon written or telephone request and specify the date the request must be received by the credit union.

(3) It is the duty of the tellers of election to verify, or cause to be verified the name of the voter and the credit union account number as they are registered in the electronic balloting system. It is the duty of the teller to test the integrity of the balloting system at regular intervals during the election period.

(4) Ballots must be received no later than midnight 5 calendar days prior to the annual meeting.

(5) Voting will be closed at the midnight deadline specified in subsection (4) hereof and the vote will be tallied by the tellers. The result must be verified at the annual meeting and the chair will make the result of the vote public at the annual meeting.

(6) In the event of malfunction of the electronic balloting system, the board of directors may in its discretion order elections be held by mail ballot only. Such mail ballots must conform to section 2(d) of this Article and must be mailed to all eligible members 30 days prior to the annual meeting. The board may make reasonable adjustments to the voting time frames above, or postpone the annual meeting when necessary, to complete the elections prior to the annual meeting.

(d) If the credit union is conducting its election by mail ballot, the secretary will cause the following materials to be mailed to each candidate:

(1) One ballot, clearly identified as such, on which the names of the candidates for the board of directors and the candidates for other separately identified offices or committees are printed in order as determined by the draw of lots. The name of each candidate will be followed by a brief statement of qualifications and biographical data in a form approved by the board of directors;

(2) One ballot envelope clearly marked with instructions that the completed ballot must be placed in that envelope and sealed;

(3) One identification form to be completed so as to include the name, address, signature and credit union account number of the voter;

(4) One mailing envelope in which the voter, pursuant to instructions provided with the mailing envelope, must insert the sealed ballot envelope and the identification form, and which must have postage prepaid and be preaddressed for return to the tellers;

(5) When properly designed, one form can be printed that represents a combined ballot/identification form, and postage prepaid and preaddressed return envelope;

(6) It is the duty of the tellers to verify, or cause to be verified, the name of the voter and his credit union account number as appearing on the identification form; to place the verified identification form and the sealed ballot envelope in separate places of safekeeping pending the count of the vote; in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved;

(7) Ballots mailed to the tellers must be received by the tellers no later than midnight 5 days prior to the date of the annual meeting;

(8) Voting will be closed at the midnight deadline specified in subsection (7) hereof and the vote will be tallied by the tellers. The result will be verified at the annual meeting and the chair will make the result of the vote public at the annual meeting.

Section 3. Nominations shall be in the following order:

(a) Nominations for directors.

(b) Nominations for credit committee members, if applicable. Elections may be by separate ballots following the same order as the above nominations or, if preferred, may be by one ballot for all offices.

Section 4. Members cannot vote by proxy, but a member other than a natural person may vote through an agent designated in writing for the purpose. A trustee, or other person acting in a representative capacity, is not, as such, entitled to vote.

Section 5. Irrespective of the number of shares, no member has more than one vote.

Section 6. The names and addresses of members of the board, board officers, executive committee, and members of the credit committee, if applicable and supervisory committees must be forwarded to the Administration in accordance with the Act and regulations in the manner as may be required by the Administration.

Section 7. The board may establish by resolution a minimum age, not greater than 18 years of age, as a qualification for eligibility to vote at meetings of the members, or to hold elective or appointive office, or both.

The Credit Union may select the absentee ballot provision in conjunction with the voting procedure it has selected. This may be done by printing the credit union's bylaws with this provision or by retaining this copy and checking the box.

☐ *Section 8. The board of directors may authorize the use of absentee ballots in conjunction with the other procedures authorized in this article, subject to the following conditions:*

(a) The election tellers will be appointed by the board of directors;

(b) If sufficient nominations are made by the nominating committee or by petition to provide more than one nominee for any position to be filled, the secretary, at least 30 days prior to the annual meeting, will cause printed ballots to be mailed to all members of the credit union who are eligible to vote and who have submitted a written request for an absentee ballot;

(c) The secretary will cause the following materials to be mailed to each such eligible voter who has submitted a written request for an absentee ballot:

(1) One ballot, clearly identified as such, on which the names of the candidates for the board of directors and the candidates for other separately identified offices or committees are printed in order as determined by the draw of the lots. The name of each candidate will be followed by a brief statement of qualifications and biographical data in a form approved by the board of directors;

(2) One ballot envelope clearly marked with instructions that the

completed ballot must be placed in that envelope and sealed;

(3) One identification form to be completed so as to include the name, address, signature and credit union account number of the voter;

(4) One mailing envelope in which the voter, pursuant to instructions provided with the envelope, must insert the sealed ballot envelope and the identification form, and which must have postage prepaid and be preaddressed for return to the tellers;

(5) When properly designed, one form can be printed that represents a combined ballot/identification form, and postage prepaid and preaddressed return envelope;

(d) It shall be the duty of the tellers of election to verify, or cause to be verified, the name of the voter and his credit union account number as appearing on the identification form; to retain in a safe place the verified identification form and to place the sealed ballot envelope in the ballot box in the credit union office; in the case of a questionable or challenged identification form, to retain the identification form and the sealed ballot envelope together until the verification or challenge has been resolved; and in the event that more than one voting procedure is used, to verify that no eligible voter has voted more than one time;

(e) Ballots mailed to the tellers pursuant to subsection (b) hereof, must be received by the tellers no later than midnight 5 days prior to the date of the annual meeting; and

(f) After the expiration of the period of time specified in subsection (e) hereof, the voting by absentee ballot will be closed and absentee ballots deposited in the ballot boxes to be taken to the annual meeting or included in a precount in accordance with procedures specified in Article V, Section 2.

Article VI. Board of Directors

Section 1. The board consists of ____ members, all of whom must be members of this credit union. The number of directors may be changed to an odd number not fewer than 5 nor more than 15 by resolution of the board. No reduction in the number of directors may be made unless corresponding vacancies exist as a result of deaths, resignations, expiration of terms of office, or other actions provided by these bylaws. A copy of the resolution of the board covering any increase or decrease in the number of directors must be filed with the official copy of the bylaws of this credit union.

Section 2. ____ (No, one or two) directors or committee members may be a paid employee of the credit union. ____ (No, one or two) immediate family members of a director or committee member may be a paid employee of the credit union. In no case may employees and family members constitute a majority of the board. The board may appoint a management official who ____ (may or may not) be a member of the board and one or more assistant management officials who ____ (may or may not) be a member of the board. If the management official or assistant management official is permitted to serve on the board, he or she may not serve as the chair.

Section 3. Regular terms of office for directors must be for periods of either 2 or 3 years as the board determines: Provided, however, that all regular terms must be for the same number of years and until the election and qualification of successors. The regular terms must be fixed at the beginning, or upon any increase or decrease in the number of directors, that approximately an equal number of regular terms must expire at each annual meeting.

Section 4. Any vacancy on the board, credit committee (if applicable), or supervisory committee will be filled within a reasonable time by vote of a majority of the directors then holding office. Directors and credit committee members (if applicable) so appointed will hold office only until the next annual meeting, at which any unexpired terms will be filled by vote of the members, and until the qualification of their successors. Members of the supervisory committee so appointed will hold office until the first regular meeting of the board following the next annual meeting of members at which the regular term expires and until the appointment and qualification of their successors.

Section 5. A regular meeting of the board must be held each month at the time and place fixed by resolution of the board. One regular meeting each calendar quarter must be conducted in person. The other regular meetings may be conducted using audio or video teleconference methods. The chair, or in his absence the ranking vice chair, may call a special meeting of the board at any time; and must do so upon written request of a majority of the directors then holding office. Unless the board prescribes otherwise, the chair, or in his absence the ranking vice chair, will fix the time and place of special meetings. Notice of all meetings will be given in such manner as the board may from time to time by resolution prescribe. Special meetings may be conducted using audio or video teleconference methods.

Section 6. The board has the general direction and control of the affairs of this credit union and is responsible for performing all the duties customarily performed by boards of directors. This includes but is not limited to the following:

(a) Directing the affairs of the credit union in accordance with the Act, these bylaws, the rules and regulations and sound business practices.

(b) Establishing programs to achieve the purposes of this credit union as stated in article 1, section 2, of these bylaws.

(c) Establishing a loan collection program and authorizing the chargeoff of uncollectible loans.

(d) Determining that all persons appointed or elected by this credit union to any position requiring the receipt, payment or custody of money or other property of this credit union, or in its custody or control as collateral or otherwise, are properly bonded in accordance with the Act and regulations.

(e) Performing additional acts and exercising additional powers as may be required or authorized by applicable law.

If the credit union has an elected credit committee, you do not need to check a box. If the credit union has no credit committee check Option 1 and if it has an appointed credit committee check Option 2.

☐ *Option 1 No Credit Committee.*

(f) Reviewing denied loan applications of members who file written requests for such review.

(g) Appointing one or more loan officers and delegating to those officers the power to approve or disapprove loans, lines of credit or advances from lines of credit.

(h) In its discretion, appointing a loan review committee to review loan denials and delegating to the committee the power to overturn denials of loan applications. The committee will function as a mid-level appeal committee for the board. Any denial of a loan by the committee must be reviewed by the board upon written request of the member. The committee must consist of three members and the regular term of office of the committee member will be for two years. Not more than one member of the committee may be appointed as a loan officer.

☐ *Option 2 Appointed Credit Committee.*

(f) Appointing an odd number of credit committee members as provided in Article VIII of these bylaws.

Section 7. A majority of the number of directors, including any vacant positions, constitutes a quorum for the transaction of business at any meeting thereof; but fewer than a quorum may adjourn from time to time until a quorum is in attendance.

Section 8. If a director or a credit committee member, if applicable, fails to attend regular meetings of the board or credit committee, respectively, for 3 consecutive months, or 4 meetings within a calendar year, or otherwise fails to perform any of the duties devolving upon him as a director or a credit committee member, the office may be declared vacant by the board and the vacancy filled as herein provided. The board may remove any board officer from office for failure to perform the duties thereof, after giving the officer reasonable notice and opportunity to be heard.

When any board officer, membership officer, executive committee member or investment committee member is absent, disqualified, or otherwise unable to perform the duties of the office, the board may by resolution designate another member of this credit union to act temporarily in his place. The board may also, by resolution, designate another member or members of this credit union to act on the credit committee when necessary in order to obtain a quorum.

Section 9. Any member of the supervisory committee may be suspended by a majority vote of the board of directors. The members of this credit union will decide, at a special meeting held not fewer than 7 nor more than 14 days after any such suspension, whether the suspended committee member will be removed from or restored to the supervisory committee.

Article VII. Board Officers, Management Officials and Executive Committee

Section 1. The board officers of this credit union are comprised of a chair, one or more vice chairs, a financial officer, and a secretary, all of whom are elected by the board and from their number. The board determines the title and rank of each board officer and records them in the addendum to this article. One board officer, the _____, may be compensated for services as determined by the board. If more than one vice chair is elected, the board determines their rank as first vice chair, second vice chair, and so on. The offices of the financial officer and secretary may be held by the same person. Unless removed as provided in these bylaws, the board officers elected at the first meeting of the board hold office until the first meeting of the board following the first annual meeting of the members and until the election and qualification of their respective successors.

Section 2. Board officers elected at the meeting of the board next following the annual meeting of the members, which must be held not later than 7 days after the annual meeting, hold office for a term of 1 year and until the election and qualification of their respective successors: Provided, however, That any person elected to fill a vacancy caused by the death, resignation, or removal of an officer is elected by the board to serve only for the unexpired term of such officer and until a successor is duly elected and qualified.

Section 3. The chair presides at all meetings of the members and at all meetings of the board, unless disqualified through suspension by the supervisory committee. The chair also performs such other duties as customarily appertain to the office of the chair or as may be directed to perform by resolution of the board not inconsistent with the Act and regulations and these bylaws.

Section 4. The board must approve all individuals who are authorized to sign all notes of this credit union and all checks, drafts and other orders for disbursement of credit union funds.

Section 5. The ranking vice chair has and may exercise all the powers, authority, and duties of the chair during the absence of the latter or his inability to act.

Section 6. The financial officer manages this credit union under the control and direction of the board unless the board has appointed a management official to act as general manager. Subject to such limitations, controls and delegations as may be imposed by the board, the financial officer will:

(a) Have custody of all funds, securities, valuable papers and other assets of this credit union.

(b) Provide and maintain full and complete records of all the assets and liabilities of this credit union in accordance with forms and procedures prescribed in the Accounting Manual for Federal Credit Unions or otherwise approved by the Administration.

(c) Within 20 days after the close of each month, ensure that a financial statement showing the condition of this credit union as of the end of the month, including a summary of delinquent loans is prepared and submitted to the board and post a copy of such statement in a conspicuous place in the office of the credit union where it will remain until replaced by the financial statement for the next succeeding month.

(e) Ensure that such financial and other reports as the Administration may require are prepared and sent.

(f) Within standards and limitations prescribed by the board, employ tellers, clerks, bookkeepers, and other office employees, and have the power to remove such employees.

(g) Perform such other duties as customarily appertain to the office of the financial officer or as may be directed to perform by resolution of the board not inconsistent with the Act, regulations and these bylaws.

The board may employ one or more assistant financial officers, none of whom may also hold office as chair or vice chair, and may authorize them, under the direction of the financial officer, to perform any of the duties devolving on the financial officer, including the signing of checks. When designated by the board, any assistant financial officer may also act as financial officer during the temporary absence of the financial officer or in the event of his/her temporary inability to act.

Section 7. The board may appoint a management official who is under the direction and control of the board or of the financial officer as determined by the board. The management official may be assigned any or all of the responsibilities of the financial officer described in section 6 of this article. The board will determine the title and rank of each management official and record them in the addendum to this article. The board may employ one or more assistant management officials. The board may authorize assistant management officials under the direction of the management official, to perform any of the duties devolving on the management official, including the signing of checks. When designated by the board, any assistant management official may also act as management official during the temporary absence of the management official or in the event of his temporary inability to act.

Section 8. The board employs, fixes the compensation, and prescribes the duties of such employees as may in the discretion of the board be necessary, and has the power to remove such employees, unless it has delegated these powers to the financial officer or management official. Neither the board, the financial officer, nor the management official has the power or duty to employ, prescribe the duties of, or remove necessary clerical and auditing assistance employed or utilized by the supervisory committee and, if there is a credit committee, the power or duty to employ, prescribe the duties

of, or remove any loan officer appointed by the credit committee.

Section 9. The secretary prepares and maintains full and correct records of all meetings of the members and of the board, which records will be prepared within 7 days after the respective meetings. The secretary must promptly inform the Administration in writing of any change in the address of the office of this credit union or the location of its principal records. The secretary will give or cause to be given, in the manner prescribed in these bylaws, proper notice of all meetings of the members, and perform such other duties as may be directed to perform by resolution of the board not inconsistent with the Act, regulations and these bylaws. The board may employ one or more assistant secretaries, none of whom may also hold office as chair, vice chair, or financial officer, and may authorize them under direction of the secretary to perform any of the duties devolving on the secretary.

Section 10. The board may appoint an executive committee of not fewer than three directors to serve at its pleasure, to act for it with respect to specifically delegated functions authorized by the Act and regulations. The board may also authorize such executive committee or a membership officer(s) appointed by the board from the membership other than a board member paid as an officer, the financial officer, any assistant to the paid officer of the board or to the financial officer or any loan officer, to serve at its pleasure to approve applications for membership under such conditions as the board and these bylaws may prescribe. No executive committee member or membership officer may be compensated as such.

Section 11. The board may appoint an investment committee composed of not less than two, to serve at its pleasure to have charge of making investments under rules and procedures established by the board. No member of the investment committee may be compensated as such.

Addendum: The board shall list the positions of the board officers and management officials of this credit union. They are as follows:

Select Option 1 if the credit union has a credit committee and Option 2 if it does not have a credit committee.

☐*Option 1 Article VIII. Credit Committee*

Section 1. The credit committee consists of ____ members. All the members of the credit committee must be members of this credit union. The number of members of the credit committee must be an odd number and may be changed to not fewer than 3 nor more than 7 by resolution of the board. No reduction in the number of members may be made unless corresponding vacancies exist as a result of deaths, resignations, expiration of terms of office, or other actions provided by these bylaws. A copy of the resolution of the board covering any increase or decrease in the number of committee members must be filed with the official copy of the bylaws of this credit union.

Section 2. Regular terms of office for elected credit committee members are for periods of either 2 or 3 years as the board shall determine: Provided, however, That all regular terms are for the same number of years and until the election and qualification of successors. The regular terms are fixed at the beginning, or upon any increase or decrease in the number of committee members, that approximately an equal number of regular terms expire at each annual meeting.

Regular terms of office for appointed credit committee members are for periods as determined by the board and as noted in the board's minutes.

Section 3. The credit committee chooses from their number a chair and a secretary. The secretary of the committee prepares and maintains full and correct records of all actions taken by it, and such records must be prepared within 3 days after the action. The offices of the chair and secretary may be held by the same person.

Section 4. The credit committee may, by majority vote of its members, appoint one or more loan officers to serve at its pleasure, and delegate to him/her or them the power to approve application for loans or lines of credit, share withdrawals, releases and substitutions of security, within limits specified by the committee and within limits of applicable law and regulations. Not more than one member of the committee may be appointed as a loan officer. Each loan officer must furnish to the committee a record of each transaction approved or not approved by him within 7 days of the date of the filing of the application or request, and such record becomes a part of the records of the committee. All applications or requests not approved by a loan officer must be acted upon by the committee. No individual may disburse funds of this credit union for any application or share withdrawal which he has approved as a loan officer.

Section 5. The credit committee holds such meetings as the business of this credit union may require, and not less frequently than once a month. Notice of such meetings will be given to members of the committee in such a manner as the committee may from time to time, by resolution, prescribe.

Section 6. The credit committee or loan officer must inquire into the character and financial condition of each applicant for a loan or line of credit and his sureties, if any, to ascertain their ability to repay fully and promptly the obligations incurred by them and to determine whether the loan or line of credit will be of probable benefit to the borrower. The credit committee and its appointed loan officers will endeavor diligently to assist applicants in solving their financial problems.

Section 7. No loan or line of credit may be made unless approved by the committee or a loan officer in accordance with applicable law and regulations.

Section 8. Subject to the limits imposed by applicable law and regulations, these bylaws, and the general policies of the board, the credit committee, or a loan officer, shall determine the security if any required for each application and the terms of repayment. The security furnished must be adequate in quality and character and consistent with sound lending practices. When funds are not available to make all the loans and lines of credit for which there are applications, preference will be given, in all cases, to the smaller applications if the need and credit factors are nearly equal.

Option 2 Article VIII. Loan Officers (No Credit Committee)

Section 1. Each loan officer must maintain a record of each transaction approved or not approved by him/her within 7 days of the filing of the application or request, and such records becomes a part of the records of the credit union. No individual may disburse funds of this credit union for any application or share withdrawal which he has approved as a loan officer.

Section 2. The loan officer must inquire into the character and financial condition of each applicant for a loan or line of credit and his sureties, if any, to ascertain their ability to repay fully and promptly the obligations incurred by them and to determine whether the loan or line of credit will be of probable benefit to the borrower. The loan officers will endeavor diligently to assist applicants in solving their financial problems.

Section 3. No loan or line of credit may be made unless approved by a loan officer in accordance with applicable law and regulations.

Section 4. Subject to the limits imposed by applicable law and

regulations, these bylaws, and the general policies of the board, a loan officer determines the security if any required for each application and the terms of repayment. The security furnished must be adequate in quality and character and consistent with sound lending practices. When funds are not available to make all the loans and lines of credit for which there are applications, preference will be given, in all cases, to the smaller applications if the need and credit factors are nearly equal.

Article IX. Supervisory Committee

Section 1. The supervisory committee is appointed by the board from among the members of this credit union, one of whom may be a director other than the financial officer. The board determines the number of members on the committee, which may not be fewer than 3 nor more than the maximum number permitted by the Act. No member of the credit committee, if applicable, or any employee of this credit union may be appointed to the committee. Regular terms of committee members are for periods of 1, 2, or 3 years as the board determines: *Provided, however,* That all regular terms are for the same number of years and until the appointment and qualification of successors. The regular terms are fixed at the beginning, or upon any increase or decrease in the number of committee members, so that approximately an equal number of regular terms expires at each annual meeting.

Section 2. The supervisory committee members choose from among their number a chair and a secretary. The secretary of the supervisory committee prepares, maintains, and has custody of full and correct records of all actions taken by it. The offices of chair and secretary may be held by the same person.

Section 3. The supervisory committee makes, or causes to be made, such audits, and prepares and submits such written reports, as are required by the Act and regulations. The committee may employ and use such clerical and auditing assistance as may be required to carry out its responsibilities prescribed by this article, and may request the board to provide compensation for such assistance. It will prepare and forward to the Administration such reports as may be required.

Section 4. The supervisory committee must verify the accounts of all members with the records of the financial officer from time to time and not less frequently than as required by the Act and regulations. The committee must maintain a record of such verification.

Section 5. By unanimous vote, the supervisory committee may suspend until the next meeting of the members any director, board officer, or member of the credit committee. In the event of any such suspension, the supervisory committee must call a special meeting of the members to act on the suspension, which meeting must be held not fewer than 7 nor more than 14 days after the suspension. The chair of the committee acts as chair of the meeting unless the members select another person to act as chair.

Section 6. By the affirmative vote of a majority of its members, the supervisory committee may call a special meeting of the members to consider any violation of the provisions of the Act, the regulations, or of the charter or the bylaws of this credit union, or to consider any practice of this credit union which the committee deems to be unsafe or unauthorized.

Article X. Organization Meeting

Section 1. At the time application is made for a federal credit union charter, the subscribers to the organization certificate must meet for the purpose of electing a board of directors and a credit committee, if applicable. Failure to commence operations within 60 days following receipt of the approved organization certificate is cause for revocation of the charter unless a request for an extension of time has been submitted to and approved by the Regional Director.

Section 2. The subcribers elect a chair and a secretary for the meeting. The subscribers then elect from their number, or from those eligible to become members of this credit union, a board of directors and a credit committee, if applicable, all to hold office until the first annual meeting of the members and until the election and qualification of their respective successors. If not already a member, every person elected under this section or appointed under section 3 of this article, must qualify within 30 days by becoming a member. If any person elected as a director or committee member or appointed as a supervisory committee member does not qualify as a member within 30 days of such an election or appointment, his office will automatically become vacant and be filled by the board.

Section 3. Promptly following the elections held under the provisions of section 2 of this article, the board must meet and elect the board officers who will hold office until the first meeting of the board of directors following the first annual meeting of the members and until the election and qualification of their respective successors. The board also appoints a supervisory committee at this meeting as provided in article IX, section 1, of these bylaws and a credit committee, if applicable. The members so appointed hold office until the first regular meeting of the board following the first annual meeting of the members and until the appointment and qualification of their respective successors.

Article XI. Loans and Lines of Credit to Members

Section 1. Loans to individuals may only be made to members and for provident or productive purposes in accordance with applicable law and regulations. Loans to a member other than a natural person may not exceed its shareholdings in this credit union, unless the loan is made jointly to one or more natural person members and a business organization in which they have a majority interest, or if the nonnatural person is an association, the loan is made jointly to a majority of the members of the association and to the association in its own right.

Section 2. All loans made by the credit union must follow applicable law and regulations.

Section 3. Any member whose loan is delinquent may be required to pay a late charge as determined by the board of directors.

Article XII. Dividends

Section 1. The board establishes dividend periods and declares dividends as permitted by the Act and applicable regulations.

Article XIII. Deposit of Funds

Section 1. All funds of this credit union, except for petty cash and cash change funds, must be deposited in such qualified depository or depositories from among those authorized by applicable law and regulations as the board may from time to time by resolution designate; and must be so deposited not later than the ____ (fill in number) banking day after their receipt: Provided, however, That receipts in the aggregate of $____ (fill in number) or less may be held as long as 1 week before they are deposited.

Article XIV. Expulsion and Withdrawal

Section 1. A member may be expelled only in the manner provided by the Act. Expulsion or withdrawal will not operate to relieve a member of any liability to this credit union. All amounts paid in on shares by expelled or withdrawing members, prior to their

expulsion or withdrawal, will be paid to them in the order of their withdrawal or expulsion, but only as funds become available and only after deducting any amounts due to this credit union.

Article XV. Minors

Section 1. Shares may be issued in the name of a minor.

Article XVI. Definitions

Section 1. When used in these bylaws the terms:

(a) ''Act'' means the Federal Credit Union Act, as amended.

(b) ''Administration'' means the National Credit Union Administration.

(c) ''Board'' means board of directors of the federal credit union.

(d) ''NCUA Board'' means the Board of the National Credit Union Administration.

(e) ''Regulation'' or ''regulations'' means rules and regulations issued by the NCUA Board.

(f) ''Applicable law and regulations'' means the Federal Credit Union Act and rules and regulations issued thereunder or other applicable federal statutes and rules and regulations issued thereunder as the context indicates (such as The Higher Education Act of 1965).

(g) ''Paid in and unimpaired capital,'' as of a given date, means the balance of the paid-in share accounts as of such date, less any losses that may have been incurred for which there is no reserve or which have not been charged against undivided earnings.

(h) ''Surplus,'' as of a given date, means the credit balance of the undivided earnings account on such date, after all losses have been provided for and net earnings or net losses have been added thereto or deducted therefrom, as the case may be. Reserves are not considered as a part of the surplus.

(i) ''Share'' or ''shares'' means all classes of shares and share certificates that may be held in accordance with applicable law and regulations.

Section 2. If included in the definition of the field of membership in the organization certificate charter of this credit union, the term or expression ''Organizations of such persons'' means an organization or organizations composed exclusively of persons who are within the field of membership of this credit union.

Article XVII. General

Section 1. All power, authority, duties, and functions of the members, directors, officers, and employees of this credit union, pursuant to the provisions of these bylaws, must be exercised in strict conformity with the provisions of applicable law and regulations, and of the charter and the bylaws of this credit union.

Section 2. The officers, directors, members of committees and employees of this credit union must hold in confidence all transactions of this credit union with its members and all information respecting their personal affairs, except to the extent deemed necessary by the board in connection with:

(a) The making of loans and extending lines of credit.

(b) The collection of loans.

(c) The guarantee of member share drafts by third parties.

In accordance with the above, the board of directors may authorize participation in:

(a) A credit reporting agency if it has determined that use of such an agency is essential in the making of loans and extending lines of credit and that information supplied by the credit union concerning its members will be made available only to legitimate members belonging to that agency and persons who have a legitimate business need for information in connection with a business transaction involving a consumer.

(b) A consumer reporting agency if it has determined that information supplied by the credit union is essential to the guarantee of member share drafts by that agency.

Section 3. Notwithstanding any other provisions in these bylaws, any director, committee member or officer of this credit union may be removed from office by the affirmative vote of a majority of the members present at a special meeting called for the purpose, but only after an opportunity has been given to be heard.

Section 4. No director, committee member, officer, agent, or employee of this credit union may participate in any manner, directly or indirectly, in the deliberation upon or the determination of any question affecting his pecuniary or personal interest or the pecuniary interest of any corporation, partnership, or association (other than this credit union) in which he or she is directly or indirectly interested. In the event of the disqualification of any director respecting any matter presented to the board for deliberation or determination, such director must withdraw from such deliberation or determination; and in such event the remaining qualified directors present at the meeting, if constituting a quorum with the disqualified director or directors, may exercise with respect to this matter, by majority vote, all the powers of the board. In the event of the disqualification of any member of the credit committee, if applicable or the supervisory committee, such committee member must withdraw from such deliberation or determination.

Section 5. Copies of the organization certificate of this credit union, its bylaws and any amendments thereof, and any special authorizations by the Administration must be preserved in a place of safekeeping. Returns of nominations and elections and proceedings of all regular and special meetings of the members and directors must be recorded in the minute books of this credit union. The minutes of the meetings of the members, the board, and the committees must be signed by their respective chairmen or presiding officers and by the persons who serve as secretaries of such meetings.

Section 6. All books of account and other records of this credit union must be available at all times to the directors and committee members of this credit union. The charter and bylaws of this credit union must be made available for inspection by any member and, if the member requests a copy, it will be provided for a reasonable fee.

Section 7. Each member must keep the credit union informed about his current address.

Section 8. (a) The credit union may elect to indemnify to the extent authorized by (check one)

[ ] law of the state of ____:

[ ] Model Business Corporation Act:

the following individuals from any liability asserted against them and expenses reasonably incurred by them in connection with judicial or administrative proceedings to which they are or may become parties by reason of the performance of their official duties (check as appropriate).

[ ] current officials

[ ] former officials

[ ] current employees

[ ] former employees

(b) The credit union may purchase and maintain insurance on behalf of the individuals indicated in (a) above against any liability asserted against them and expenses reasonably incurred by them in their official capacities and arising out of the performance of their official duties to the extent such insurance is permitted by the applicable state law or the Model Business Corporation Act.

(c) The term ''official'' in this bylaw means a person who is a member of the board of directors, credit committee, supervisory committee, other volunteer committee (including elected or appointed loan officers or membership

officers), established by the board of directors.

Article XVIII. Amendments of Bylaws and Charter

Section 1. Amendments of these bylaws may be adopted and amendments of the charter requested by the affirmative vote of two-thirds of the authorized number of members of the board at any duly held meeting thereof if the members of the board have been given prior written notice of said meeting and the notice has contained a copy of the proposed amendment or amendments. No amendment of these bylaws or of the charter shall become effective, however, until approved in writing by the NCUA Board.

[FR Doc. 98–33947 Filed 12–31–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL INSTITUTE FOR LITERACY

Notice of Meeting, Advisory Board

AGENCY: National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This Notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under Section 10 (a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATE AND TIME: January 13, 1999 from 9:00 AM to 5:00 PM.

ADDRESSES: National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Shelly Coles, Executive Assistant to the NIFL Director, National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006. Telephone (202) 632–1507.

SUPPLEMENTARY INFORMATION: The Board is established under Section 384 of the Adult Education Act, as amended by Title I of Pub. L. 102–73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. To Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and Director of the Institute. In addition, the Institute consults with the Board on the award of fellowships. The Board will meet in Washington, DC on January 13, 1999 from 9:00 AM to 5:00 PM. The meeting of the NIFL Board is open to the public. This meeting of the Board will focus on the following agenda items: The administrative structure of the NIFL and its staffing; an update of NIFL activities, and its role in carrying out the goals of the Reading Excellence Act. Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006 from 8:30 AM to 5:00 PM, Monday through Friday.

Dated: December 28, 1998.

Sharyn M. Abbott,

Executive Officer, National Institute for Literacy.

[FR Doc. 98–34823 Filed 12–31–98; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–155]

Big Rock Point Plant; Consumers Energy Company; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Consumers Energy Company (Consumers or the licensee) to withdraw parts of its September 19, 1997, application, as supplemented October 10 and November 12, 1997, and June 5, July 21 and 27, October 14, November 25 and December 21, 1998, for proposed amendment to Facility Operating License No. DPR–6 for the Big Rock Point (BRP) Plant located in Charlevoix County, Michigan.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 3, 1997 (62 FR 63974), pursuant to the licensee's September 19, 1997, request, as supplemented. This proposed amendment was to amend the DPR–6 license and change Appendix A, Technical Specifications (TS), to the license to reflect the permanently shutdown and defueled condition of the BRP facility.

By letters dated November 25 and December 21, 1998, the licensee proposed to withdraw parts of its September 19, 1997, request, as supplemented. As requested in the November 25, 1998, letter, these parts include withdrawal of proposed changes with regard to: (1) storage of spent fuel with a decay time of greater than one year in the outer three rows of the fuel rack adjacent to the south wall of the spent fuel pool; (2) deletion of portions of TS 6.12.1.b regarding the use of a radiation monitoring device which continuously integrates the radiation dose rate in the area and alarms when a preset integrated dose is received; (3) applicability of TS 6.12.2 wording to dose rates equal to 1000 millirem per hour at 30 centimeters but less than 500 rads per hour at 1 meter from the radiation source; (4) replacement of TS 6.12.2 regarding the dose rate levels in the immediate work areas and the maximum stay time for individuals in that area; (5) replacement of TS 13.1.3.1 regarding limitations on dose rate due to radioactive materials released in gaseous effluents; and, (6) deletion of TS 13.1.4.3 regarding dose to a member of the public from tritium and all radionuclides in particulate form with half lives greater than 8 days in gaseous effluents. In its December 21, 1998, letter, Consumers requested to withdraw its proposed revision of the first sentence in paragraph 2.A. of the DPR–6 license that added the phrase ''decommissioning of'' prior to ''Big Rock Point Plant.''

For further details with respect to this action, see application for amendment dated September 19, 1997, as supplemented October 10 and November 12, 1997, and June 5, July 21 and 27, October 14, 1998, and letters dated November 25 and December 21, 1998, the last two of which, in part, withdrew certain portions of the proposed amendment request. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the North Central Michigan College Library, 1515 Howard Street, Petoskey, MI 49770.

Dated at Rockville, Maryland, this 24th day of December 1998.

For the Nuclear Regulatory Commission.

Paul W. Harris,

Project Manager, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–34791 Filed 12–31–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–354]

Public Service Electric & Gas Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Public Service Electric and Gas Company (the licensee) to withdraw its application dated August 26, 1997, as supplemented April 24, 1998, and September 24, 1998, for proposed amendment to Facility Operating License No. NPF–57 for the Hope Creek Generating Station, located in Salem County, New Jersey.

The proposed amendment would have revised Technical Specification (TS) 4.6.5.3.1.b, for the Filtration, Recirculation and Ventilation System (FRVS) Ventilation Subsystem, and TS 4.6.5.3.2.b for the FRVS Recirculation Subsystem. The revisions would have allowed the FRVS heaters to be ''operating (automatic heater modulation to maintain relative humidity)'' instead of ''on'' when performing the 10-hour monthly surveillance test.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 8, 1997 (62 FR 52587). However, by letter dated December 21, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 26, 1997, as supplemented April 24, 1998, and September 24, 1998, and the licensee's letter dated December 21, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Pennsville Public Library, 190 S. Broadway, Pennsville, NJ, 08070.

Dated at Rockville, Maryland, this 24th day of December 1998.

For the Nuclear Regulatory Commission.

Richard B. Ennis,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–34792 Filed 12–31–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–34318, License No. 06–30361–01, EA 98–521]

Special Testing Laboratories, Inc., P.O. Box 200, Bethel, Connecticut 06801–0200; Order Suspending License (Effective Immediately)

I

Special Testing Laboratories, Inc. (Special Testing or Licensee) is the holder of Byproduct Nuclear Material License No. 06–30361–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes possession and use of Troxler Electronics Laboratories, Campbell Pacific Nuclear, Humbolt Scientific, Seamen Nuclear, or Soiltest nuclear gauges. Mr. Richard Speciale (Mr. Speciale) is the President and Radiation Safety Officer of Special Testing Laboratories. The license was issued on August 6, 1997, and is due to expire on August 31, 2007.

License No. 06–19720–01 authorizing possession and use of portable nuclear density gauges was previously issued to Testwell Craig Laboratories of Connecticut, Inc. (Testwell Craig), but was suspended on July 1, 1996, due to non-payment of fees. Mr. Speciale was also the President of Testwell Craig.

II

On October 14, 15, and 16, 1998, and November 9–10, 1998, an NRC Region I inspector, accompanied by an investigator from the NRC Office of Investigations, conducted an inspection at the Licensee's facility in Bethel, Connecticut. During the inspection, the NRC determined that: (1) portable gauges containing NRC-licensed material were routinely used by some Licensee employees who had not received the required training; (2) some Licensee employees were using the gauges without being provided the required personnel dosimeters; and (3) leak tests of the gauges were not being performed at the required frequency.

During the October inspection, Mr. Speciale was interviewed by the inspector and investigator. In that interview, Mr. Speciale, when questioned concerning the scope of the Licensee's program, informed the NRC that the Licensee possessed four Troxler portable gauges that were used by three or four authorized users, including himself. He also stated that he did not believe any of his field technicians were operating gauges without training.

The NRC inspector and investigator returned to the facility on November 9–10, 1998, to complete the investigation, at which time the NRC was provided records indicating that nine individuals had received manufacturer's training on October 29, 1998, which was subsequent to the NRC's October 1998 visit. Mr. Speciale was questioned as to why nine individuals had received such training when he had previously stated that gauges were used by three or four users. Although Mr. Speciale initially maintained that only three individuals were using four gauges, he subsequently stated, and available records showed, that Speciale Testing possessed 13 gauges, and these gauges were used by as many as 14 individuals. Also, during the November inspection, seven gauge users stated that they used portable gauges without formal training for periods ranging from several weeks to four years prior to October 29, 1998. In addition, the NRC learned, based on discussions with Mr. Speciale, that there were periods when gauge users were not provided personnel dosimeters. Further, five gauge users stated that they operated portable gauges without wearing ''film badges'' for periods ranging from one to several months prior to October 1998. When questioned as to why individuals were using gauges without training or personnel dosimeters, Mr. Speciale indicated that the required training and dosimeters were not previously provided due to financial considerations, even though he continued to direct the individuals to use the gauges.

Based on this November review by the NRC, Mr. Speciale, during the October 1998 communications with the NRC regarding the review of gauges being used, the number of users, and the training of those users, provided information to the NRC that he knew at the time was not complete and accurate in all material respects.

Furthermore, during a subsequent interview with the OI investigator on November 19, 1998, Mr. Speciale also admitted that he ''never stopped using nuclear gauges'' after the Testwell Craig license was suspended for non-payment of fees and before the Special Testing license was issued. He stated that he failed to do so because Testwell Craig had ''job commitments to finish.''

III

The NRC investigation is continuing. However, in light of the facts set forth in Section II, the NRC finds that the Licensee has deliberately violated NRC requirements by: (1) directing untrained individuals to use gauges, contrary to License Condition II.A; (2) not providing these individuals with the necessary dosimetry while they were using the gauges, contrary to License Condition 19; (3) making false statements to the NRC, contrary to 10 CFR 30.9. Furthermore, the facts show that Mr. Speciale used gauges between July 1, 1996 and August 6, 1997, even though Testwell Craig's license had been suspended for nonpayment of fees and Special Testing's license had not yet been issued, contrary to 10 CFR 30.3 and the Order Suspending License issued to Testwell Craig.

Deliberately violating NRC requirements is significant because the NRC must be able to rely on the integrity of Licensee employees to comply with NRC requirements. Moreover, providing false information to the NRC is of significant regulatory concern because the Commission must be able to rely on its licensees to provide complete and accurate information. Directing untrained individuals to conduct NRC-licensed activities and not providing dosimetry is also of significant regulatory concern because misuse of gauges (which contain NRC-licensed material) could result in unnecessary radiation exposures to workers or members of the public. Given the above, it appears that the Licensee is either unwilling or unable to comply with the Commission's requirements.

Consequently, I lack the requisite reasonable assurance that the Licensee's current operations can be conducted under License No. 06–30361–01 in compliance with the Commission's requirements, and that the health and safety of the public, including the Licensee's employees, will be protected. Therefore, the public health, safety and interest require that License No. 06–30361–01 be suspended, with the exception of certain requirements enumerated in Section IV below, pending completion of the NRC investigation and further Order by the NRC. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, *it is hereby ordered*, effective immediately, that:

A. Except as provided below, the authority to perform NRC-licensed activities under License No. 06–30361–01 is hereby suspended pending completion of the NRC investigation and further Order by the NRC.

B. All NRC licensed material in the Licensee's possession shall be placed in locked storage at 21 Henry Street, Bethel, Connecticut and shall not be used.

C. The Licensee shall not receive any NRC licensed material while this order is in effect.

D. All records related to licensed activities shall be maintained in their original form and shall not be removed or altered in any way.

E. Within 2 days of the date of the Order, all Licensee employees shall be informed of this Order.

F. Within 7 days of the date of the Order, the NRC shall be provided a list of all clients for whom the Licensee has performed activities that involve use of the gauges within the past 12 months.

G. Within 24 hours of receipt of this Order, a copy of this Order shall be posted at the facility, pursuant to 10 CFR 19.11(a)(4).

The Regional Administrator, Region I, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this order and set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated at Rockville, Maryland, this 23rd day of December 1998.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 98–34793 Filed 12–31–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF STATE

[Public Notice 2930]

Bureau of Political-Military Affairs; Office of Defense Trade Control; Munitions Export Involving CWP Industries, Inc. and/or Luciana Lawrence

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: It shall be the policy of the Department of State to deny all export license applications or approvals sought by CWP Industries, Inc. and any of their subsidiaries, associated companies or successor entities, of defense articles or defense services and Luciana Lawrence to export or otherwise transfer defense

articles and defense services pursuant to section 38 of the Arms Export Control Act.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Philip S. Rhoads, Chief, Compliance and Enforcement Branch, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703) 875–6644.

SUPPLEMENTARY INFORMATION: This action has been taken pursuant to sections 38 of the Arms Export Control Act (AECA) (22 U.S.C. 2778) and 126.7(1) and (2) of the International Traffic in Arms Regulations (ITAR) (22 CFR 126.7(1) and (2)) in furtherance of the national security and foreign policy of the United States. It will remain in force until rescinded.

This action also precludes the use by such entities and persons of any exemptions from license or other approval requirements included in the ITAR (22 CFR parts 120–130).

Dated: December 21, 1998.

Michael T. Dixon,

Assistant Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs.

[FR Doc. 98–34758 Filed 12–31–98; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice No. 2946]

Secretary of State's Advisory Committee on Private International Law; Notice of Renewal of Charter

The Charter of the Secretary of State's Advisory Committee on Private International Law was renewed on December 2, 1998 and expires on December 2, 2000.

The Advisory Committee assists the State Department to monitor domestic and international developments in private international law, and provides information to assist in the development of United States positions for international efforts to negotiate uniform rules of private law by treaty, model national laws, and other means.

The Advisory Committee has focussed on work undertaken or proposed for various international bodies, including the United Nations Commission on International Trade Law (UNCITRAL), the Hague Conference on Private International Law; the International Institute for the Unification of Private Law (UNIDROIT), the Organization of American States (OAS), and others. The Committee reviewed proposed positions for the negotiation at the Hague Conference of a multilateral convention on jurisdiction and enforcement of foreign judgments; the United Nations model international law on cross-border insolvency; the 1996 Hague Convention on the Protection of Minors; new UN Rules on electronic commerce; proposed positions on UNCITRAL work on international digital signature systems; and proposed federal legislation to implement the Hague Convention on Inter-Country Adoption.

In addition to persons designated as members who represent interested nationally-based groups, broad public participation is relied on for the Committee's work, and a wide range of experts and interest groups participate as a regular part of the Committee's work throughout the year. Public notice is provided for all meetings and public notice is provided as well for comment on various international documents and proposals.

Harold S. Burman,

Executive Director, Secretary of State's, Advisory Committee on Private International Law.

[FR Doc. 98–34759 Filed 12–31–98; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending December 25, 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–1998–4605.

Date Filed: December 22, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 19, 1999.

Description: Amendment No. 2 of the Application of Cargolux Airlines International, S.A., pursuant to 49 U.S.C. Section 41302, and Subpart Q, requests an amendment of its Foreign Air Carrier Permit to authorize it to provide Seventh Freedom all-cargo charter services as specifically added to the United States-Luxembourg Air Transport Agreement.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–34782 Filed 12–31–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Air Carrier Operations Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Quentin J. Smith, Federal Aviation Administration (AFS–200), 800 Independence Avenue, SW., Washington, DC 20591; phone (202) 267–5819; fax (202) 267–5229.

SUPPLEMENTARY INFOMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its regulations and practices with its trading partners in Europe and Canada.

One area ARAC deals with is air carrier operations issues. These issues involve the operational requirements for air carriers, including crewmember requirements, airplane operating performance and limitations, and equipment requirements.

The Tasks

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendations on the following harmonization tasks:

Tasks 1 through 3 have been previously published and are restated here for continuity; Task 4 is new and is hereby added by this notice. Task 4 also cites the required completion date for all tasks.

Airplane Performance Operating Limitations

1. Review FAA and JAA airplane

operational performance requirements (14 CFR parts 121 and 135/JAR–OPS) and develop a list of differences between the two sets of requirements. (Use should be made of preliminary work on the task carried out by industry). During this review, if differences are identified in the associated certification requirements, such differences should be reported to the Aviation Rulemaking Advisory Committee (ARAC) and the Harmonization Management Team by the FAA and JAA contracts.

2. When the first step is completed, explore the feasibility of harmonization of each identified difference in the following order of priority: Performance Class A, Class B, and Class C.

3. Develop recommendations for common (harmonized) operational performance requirements for those items identified under item 2 above as being feasible for harmonization. If the working group determines FAA rulemaking is required, that determination must be forwarded to the FAA for consideration of rulemaking priority, resource allocation, and additional tasking to ARAC, as appropriate.

4. *(The new task)* Within one year of publication of this revised ARAC task in the **Federal Register**, recommend: a) whether the standards adopted by the FAA on February 18, 1997, in the final rule, ''Improved Standards for Determining Rejected Takeoff and Landing Performance,'' should be applied retroactively to airplanes currently in use or airplanes of existing approved designs that will be manufactured in the future; and b) whether to adopt a requirement for operators to take into account any distance needed to align the airplane on the runway in the direction of takeoff. The standards referenced in (a) revise the method for taking into account the time needed for the pilot to accomplish the procedures for a rejected takeoff; require that takeoff performance be determined for wet runways; and require that rejected takeoff and landing stopping distances be based on worn brakes, but apply only to airplanes whose type certification basis includes Amendment 25–92 (effective March 20, 1998) or equivalent. JAR–OPS 1 requires operators of Performance Class A airplanes to take wet runways and runway alignment distance into account regardless of the type certification basis of the airplane.

Working Group Activity

The Airplane Performance Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the tasks, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider air carrier operations issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. Draft an appropriate report.

4. Provide a status report at each meeting of ARAC held to consider air carrier operations issues.

Participation in the Working Group

The Airplane Performance Harmonization Working Group is composed of experts having an interest in the assigned tasks. A working group member need not be a representative of a member of the full committee. The working group has formed. However, an individual who has specific expertise in the subject matter and wishes to become a member of the working group should contact the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the tasks, and stating the expertise he or she would bring to the working group. The request will be reviewed by the assistant chair, the assistant executive director, and the working group chair, and the individual will be advised whether or not the request can be accommodated. To the extent possible, the composition of the working group will be balanced among the aviation interests selected to participate.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public. Meetings of the Airplane Performance Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on December 23, 1998.

Quentin J. Smith,

Assistant Executive Director, Air Carrier Operations Issues Group, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–34765 Filed 12–31–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 193/Eurocae Working Group 44; Terrain and Airport Databases

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 193/EUROCAE Working Group 44 meeting to be held January 18–21, 1999, starting at 9:00 a.m. on January 18. The meeting will be held at the Sheraton Denver Technical Center, 7007 South Clinton Street, Englewood, Colorado.

The agenda will be as follows: Monday, January 18, Opening Plenary Session: (1) Chairmen's Introductory Remarks; (2) Review/Approval of Meeting Agenda; (3) Review of Summary of the Previous Meeting (4) Subgroup 2, Terrain and Obstacle Databases: (a) Review of Summary of the Previous Meeting; (b) Review of Actions Taken during the Previous Meeting; (c) Presentations; (d) Review of the Draft Document. Tuesday, January 19: (5) Subgroup 2, continuation of previous day's discussions. Wednesday, January 20: (6) Subgroup 3, Airport Databases. Thursday, January 21: (7) Subgroup 3, continuation of previous day's discussions. Closing Plenary Session: (8) Summary of Subgroups 2 and 3 Meetings; (9) Assign Tasks; (10) Other Business; (11) Dates and Locations of Next Meetings; (12) Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC, 20036; (202) 833–9339 (phone), (202) 833–9434 (fax), or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 28, 1998.

Richard A. Cox,

Designated Official.

[FR Doc. 98–34767 Filed 12–31–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application #99–05–U–00–STL to use the Revenue from a Passenger Facility Charge (PFC) at Lambert-St. Louis International Airport, St. Louis, Missouri

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

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Lambert-St. Louis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 3, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Col. Leonard L. Griggs, Jr., Director of Airports, Lambert-St. Louis International Airport, at the following address: City of St. Louis Airport Authority, P.O. Box 10212, St. Louis, Missouri 63145.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of St. Louis Airport Authority, Lambert-St. Louis International Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna K. Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at the Lambert-St. Louis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 18, 1998, the FAA determined that the application to use the revenue from a PFC submitted by the City of St. Louis Airport Authority, St. Louis, Missouri, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 1, 1999.

The following is a brief overview of the application.

Level of the PFC: $3.00.

Actual charge effective date: July, 1998.

Estimated charge expiration date: January, 2002.

Total approved net PFC revenue: $155,000,000.

Brief description of proposed projects: Property and Business Acquisition for Natural Bridge Road Relocation (Phase 1); Land Acquisition for Natural Bridge Road Relocation (Phase 2); Land Acquisition for New Runway 12R/30L Site Preparation Work; Early Road Work; and Program Management and Design Fees for Roads and Runway (including Program Management Consultant/Airport Development Program Consultation Fees).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lambert-St. Louis International Airport.

Issued in Kansas City, Missouri on December 18, 1998.

George A. Hendon,

Manager, Airports Division Central Region.

[FR Doc. 98–34773 Filed 12–31–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–98–4950]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before March 5, 1999.

FOR FURTHER INFORMATION CONTACT: Rebecca M. Boyd, Office of Financial Approvals, Maritime Administration, MAR–580, Room 8114, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone 202–366–5870 or FAX 202–366–7901. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Uniform Financial Reporting Requirements.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0005.

Form Numbers: MA–172.

Expiration Date of Approval: October 31, 1999.

Summary of Collection of Information: The Uniform Financial Reporting Requirements are used as a basis for preparing and filing semiannual and annual financial statements with the Maritime Administration. Regulations requiring financial reports to the Maritime Administration are authorized by Section 21, Shipping Act, 1916, as amended, and Section 801, Merchant Marine Act, 1936, as amended.

Need and Use of the Information: The collected information is necessary for MARAD to determine compliance with regulatory and contractual requirements.

Description of Respondents: Vessel owners acquiring ships from MARAD on credit, companies chartering ships from MARAD, and companies having Title XI guarantee obligations.

Annual Responses: 220.

Annual Burden: 2090 hours.

Comments: Signed written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., ET. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http:/dms.dot.gov.

By Order of the Maritime Administrator.

Dated: December 28, 1998.

Joel C. Richard,

Secretary.

[FR Doc. 98–34756 Filed 12–31–98; 8:45 am]

BILLING CODE 4910–81–P

Corrections

Federal Register

Vol. 64, No. 1

Monday, January 4, 1999

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 ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–174–001]

Williams Gas Pipelines Central, Inc.; Notice of Compliance Filing

Correction

In notice document 98–33788, beginning on page 70763, in the issue of Tuesday, December 22, 1998, the docket number should appear as set forth above.

[FR Doc. C8–33788 Filed 12-31-98; 8:45 am]

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 98–200; FCC 98–298]

Assessment and Collection of Regulatory Fees For Fiscal Year 1999

Correction

In proposed rule document 98–33564, beginning on page 70090, in the issue of Friday, December 18, 1998, make the following correction:

On page 70092, in the third column, in paragraph 19, in the fifth line, ''July'' should read ''January''.

[FR Doc. C8–33564 Filed 12-31-98; 8:45 am]

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

Correction

In notice document 98–33846 beginning on page 70773 in the issue of Tuesday, December 22, 1998 make the following correction:

On page 70773, in the third column, under **DATES**, in the second line ''[insert date 60 days from publication in the Federal Register]'' should read ''February 22, 1999''.

[FR Doc. C8–33846 Filed 12-31-98; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-019A]

RIN 1218-AA51

Permit-Required Confined Spaces

Correction

In rule document 98–31946, beginning on page 66018, in the issue of Tuesday, December 1, 1998, make the following correction:

PART 1910–CORRECTED

On page 66038, in the first column, the heading ''**§ 1950.141 [Amended]**'' should be removed, and the authority citation to part 1910 should read as set forth below:

Authority: Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), or 6-96 (62 FR 111), as applicable.

Sections 1910.141, 1910.142, 1910.145, 1910.146, and 1910.147 also issued under 29 CFR part 1911.

[FR Doc. C8–31946 Filed 12-31-98; 8:45 am]

BILLING CODE 1505-01-D

Federal Register

Monday
January 4, 1999

Part II

Department of Education

Bilingual Education: Systemwide Improvement Grants; Inviting Applications for New Awards for Fiscal Year 1999; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.291R]

Bilingual Education: Systemwide Improvement Grants; Notice Inviting Applications for New Awards for Fiscal Year 1999.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program.

The statutory authorization for this program, and the application requirements that apply to this competition, are set out in sections 7115 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7425 and 7426)).

Purpose of Program: This program provides grants to implement districtwide bilingual education programs or special alternative instructional programs to improve, reform, and upgrade relevant programs and operations, within an entire local educational agency (LEA), that serve a significant number of limited English proficient (LEP) children and youth in one or more LEAs with significant concentrations of these children and youth.

Eligible Applicants: (1) One or more LEAs; or (2) one or more LEAs in collaboration with an institution of higher education, community-based organizations, other LEAs, or a State educational agency.

Deadline for Transmittal of Applications: February 26, 1999.

Deadline for Intergovernmental Review: April 27, 1999.

Available Funds: $4 million.

Estimated Range of Awards: $350,000—$650,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) 34 CFR Part 74, 75 ,77, 79, 80, 81, 82, 85, and 86; and (b) 34 CFR Part 299.

Description of Program: Grants under this program may be used during the first 12 months exclusively for activities preparatory to the delivery of services. Grants may be used to improve the education of limited English proficient students and their families by reviewing, restructuring, and upgrading—

(A) Educational goals, curriculum guidelines and content, standards and assessments;

(B) Personnel policies and practices including recruitment, certification, staff development, and assignment;

(C) Student grade-promotion and graduation requirements;

(D) Student assignment policies and practices;

(E) Family education programs and parent outreach and training activities designed to assist parents to become active participants in the education of their children;

(F) The instructional program for limited English proficient students by identifying, acquiring and upgrading curriculum, instructional materials, educational software and assessment procedures and, if appropriate, applying educational technology;

(G) Tutorials and academic or career counseling for children and youth of limited-English proficiency; and

(H) Such other activities, related to the purposes of this part, as the Secretary may approve.

Priorities

Absolute Priority: The priority in the notice of final priority for this program, as published in the **Federal Register** on October 30, 1995 (60 FR 55246–55247) applies to this competition.

Under 34 CFR 75.105(c)(3) and section 7115(a) of the Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that serve only LEAs in which the number of LEP students, in each LEA served, is at least 1,000 or at least 25 percent of the total student enrollment.

Competitive Priority: Within the absolute priority specified in this notice, the Secretary under 34 CFR 75.105(c)(2)(i) and 34 CFR 299.3(b) gives preference to applications that meet the following competitive priority. The Secretary awards 5 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that will contribute to systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

Invitational Priority: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the invitational priority in the next paragraph. An application that meets this invitational priority does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Applicants that consider the Department of Education Professional Development Principles in planning and designing a Systemwide Improvement Grant project.

These principles call for educator professional development that focuses on teachers as central to student learning, yet includes all other members of the school community; focuses on individual, collegial, and organizational improvement; respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community; reflects best available research and practice in teaching, learning, and leadership; enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards; promotes continuous inquiry and improvement embedded in the daily life of schools; is planned collaboratively by those who will participate in and facilitate that development; requires substantial time and other resources; is driven by a coherent long-term plan; is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and uses this assessment to guide subsequent professional development efforts.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.210 and sections 7116 and 7123 of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Extent of need for the project.* (15 points) The Secretary

considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The number of children and youth of limited-English proficiency in the school district to be served.

(ii) The characteristics of such children and youth, such as—

(A) Language spoken;

(B) Dropout rates;

(C) Proficiency in English and the native language;

(D) Academic standing in relation to the English-proficient peers of those children and youth; and

(E) If applicable, the recency of immigration.

(Authority: 20 U.S.C. 7426(g)(1)(A))

(2) *Project Design*. (35 points) (i) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the project design:

(A) Relates to the linguistic and academic needs of the children and youth of limited-English proficiency to be served;

(B) Is coordinated with other programs under this Act, the Goals 2000: Educate America Act and other Acts, as appropriate in accordance with section 14306 of this Act;

(C) Involves the parents of the children and youth of limited-English proficiency to be served;

(D) Ensures accountability in achieving high academic standards; and

(E) Promotes coordination of services for the children and youth of limited-English proficiency to be served and their families.

(ii) If appropriate, the quality of the applicant's proposal to collaborate with institutions of higher education, community-based organizations, local or State educational agencies, private schools, nonprofit organizations, or businesses in carrying out the project.

(iii) The extent to which the project will be integrated with the overall educational program.

(iv) The extent to which the project will provide for training for personnel participating in or preparing to participate in the program which will assist such personnel in meeting State and local certification requirements and that, to the extent possible, will award college or university credit for such training.

(Authority: 20 U.S.C. 7426(g)(1)(B) and (c), (2)(B)(i), and (i)(5))

(3) *Proficiency in English and Another Language*. (5 points) The Secretary reviews each application to determine the extent to which the project will provide for the development of bilingual proficiency both in English and another language for all participating students.

(Authority: 20 U.S.C. 7426(i)(a)(1))

(4) *Quality of the management plan*. (10 points) The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(Authority: 34 CFR 75.210(g)(1) and (2)(i) and (iv))

(5) *Quality of key personnel*. (10 points) The Secretary reviews each application to determine how well the project meets the following requirements:

(i) Employment of teachers in the proposed program that, individually or in combination, are proficient in English, including written, as well as oral, communication skills.

(ii) Use of qualified personnel, including personnel who are proficient in the language or languages used in instruction.

(Authority: 20 U.S.C. 7426(g)(1)(E) and (h)(1))

(6) *Adequacy of Resources*. (5 points) The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project.

(ii) The extent to which costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(Authority: 34 CFR 75.210(f)(1) and (2)(iii)–(iv))

(7) *Evaluation plan*. (15 points) The Secretary reviews each application to determine how well the proposed project's evaluation will meet the following requirements:

(i) Student evaluation and assessment procedures must be valid, reliable, and fair for limited English proficient students.

(ii) The evaluation must include—

(A) How students are achieving the State student performance standards, if any, including data comparing children and youth of limited-English proficiency with nonlimited English proficient children and youth with regard to school retention, academic achievement, and gains in English (and, if applicable, native language) proficiency;

(B) Program implementation indicators that provide information for informing and improving program management and effectiveness, including data on appropriateness of curriculum in relationship to grade and course requirements, appropriateness of program management, appropriateness of the program's staff professional development, and appropriateness of the language of instruction;

(C) Program context indicators that describe the relationship of the activities funded under the grant to the overall school program and other Federal, State, or local programs serving children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7426(h)(3) and 7433 (c)(1)–(3))

(8) *Capacity Building, Dissemination, and Serving Students with Disabilities*. (5 points) The Secretary reviews each application to determine the extent to which:

(i) Limited English proficient students who are disabled will be identified and served in accordance with the requirements of the Individuals with Disabilities Education Act; [20 U.S.C. 1400 *et seq.*];

(ii) The assistance provided under the application will contribute toward building the capacity of the applicant to provide a program on a regular basis, similar to that proposed for assistance, which will be of sufficient size, scope, and quality to promise significant improvement in the education of students of limited-English proficiency;

(iii) The applicant will have the resources and commitment to continue the program when assistance is reduced or no longer available; and

(iv) The applicant will provide for utilization of the State and national dissemination sources for program design and in dissemination of results and products.

(Authority: 20 U.S.C. 7426(h)(3), (5), and (6))

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal

Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 3, 1998 (63 FR 59452 through 59455).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.291R, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW., Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Eastern time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.291R), Washington, D.C. 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Eastern time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.291R), Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant must indicate on the envelope and in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number and suffix letter of the competition under which the application is being submitted.

Application Instructions and Forms

This notice contains the following forms and instructions, including a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, a checklist for applicants, various assurances, certifications, and required documentation:

a. Instructions for Application Narrative.

b. Additional Guidance.

c. Estimated Public Reporting Burden.

d. Notice to All Applicants (OMB No. 1801–0004).

e. Checklist for Applicants.

f. Application for Federal Assistance (Standard Form 424 (Rev. 4–88) and Instructions.

g. Budget Information-Non-Construction Programs (ED Form No. 524) and Instructions.

h. Group Application Certification.

i. Student Data.

j. Project Documentation.

k. Program Assurances.

l. Assurances-Non-Construction Programs (Standard Form 424B) and instructions.

m. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

n. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

(**Note:** This form is intended for the use of grantees and should not be transmitted to the Department.)

o. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996. An applicant may submit information on photostatic copies of the application form, budget forms, assurances, and certifications. However, the application form, the assurances, and the certifications must each have an original signature.

All applicants must submit ONE original signed application with ink signatures on all forms and assurances, and Two (2) copies of the application. Please mark each application as *original* or *copy*. No grant may be awarded unless a complete application has been received.

FOR FURTHER INFORMATION CONTACT: Cecile Kreins, U.S. Department of Education, 600 Independence Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Telephone: Cecile Kreins (202) 205–5568. 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.

Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable

document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html.

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7424.

Dated: December 23, 1998.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB number. The valid OMB control number for this information collection is OMB No. 1885–0537 (exp. 12/31/2001). The time required to complete this information collection is estimated to average 120 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please* write *to:* U.S. Department of Education, Washington, D.C. 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Avenue, SW., room 5605, Switzer Building, Washington, D.C. 20202–6510.

Application Instructions

Mandatory Page Limit for the Application Narrative

The narrative is the section of the application where you address the selection criteria used by reviewers in evaluating the application. You must limit the narrative to the equivalent of no more than 75 pages, using the following standards:

(1) A page is 8.5″ x 11″, printed on one side only with 1″ margins at the top, bottom, and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

(3) If you use a proportional computer font, you may not use a font smaller than a 12-point font. If you use a non-proportional font or a typewriter, you may not use more than 12 characters per inch.

(4) The page limit does not apply to the Application for Federal Education Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; or the one-page abstract and the table of contents described below. The page limit applies only to item 14 in the Checklist for Applicants provided below.

IF, IN ORDER TO MEET THE PAGE LIMIT, YOU USE PRINT SIZE, SPACING, OR MARGINS SMALLER THAN THE STANDARDS SPECIFIED IN THIS NOTICE, YOUR APPLICATION WILL NOT BE CONSIDERED FOR FUNDING.

Abstract

The narrative should begin with an abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes or curriculum vitae for project personnel; provide position descriptions instead. Do not send letters of support unless they are critical to the objectives of the program.

Empowerment Zone/Enterprise Community Priority

Applicants that wish to be considered under the competitive priority for Empowerment Zones and Enterprise Communities, as specified in a previous section of this notice, should identify in Section D of the Project Documentation Form the applicable Zone or Community. The application narrative should describe the extent to which the proposed project will contribute to systemic educational reform in the particular Zone or Community and be an integral part of the Zone's or Community's comprehensive revitalization strategies. A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

Table of Contents

The application should include a table of contents listing the sections in the order required and identifying the page numbers.

Budget

Budget line items should be directly related to the activities proposed in the project design and other project components.

Submission of Application to State Education Agency

Section 7116(a)(2) of the authorizing statute (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7426(a)(2)); Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting the application to the U.S. Department of Education. This section of Edgar also requires applicants to attach to their application a copy of their letter requesting the SEA to comment on the application (34 CFR). A copy of this letter should be attached to the Project Documentation Form contained in this application package. *APPLICANTS THAT DO NOT SUBMIT A COPY OF THEIR APPLICATION TO THEIR STATE EDUCATIONAL AGENCY IN ACCORDANCE WITH THESE STATUTORY AND REGULATORY REQUIREMENTS WILL NOT BE CONSIDERED FOR FUNDING.*

Final Application Preparation

Applicants should use the Checklist provided below to verify that the application is complete. Three (3) copies of the application, including one copy with an original signature on each form that requires the signature of the authorized representative, should be submitted. Applicants should not use elaborate bindings, notebooks, or covers. The application must be mailed or hand-delivered to the Application

Control Center (ACC) in the U.S. Department of Education and, for mailings, postmarked by the deadline date.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed:

1. Application for Federal Assistance (SF 424).
2. Group Application Certification (if applicable).
3. Budget Information (ED Form No. 524).
4. Itemized budget for each year.
5. Student Data Form.
6. Project Documentation Form, including:
   Section A—Copy of transmittal letter to SEA;
   Section B—Documentation of consultation with nonprofit private school Officials, if applicable;
   Section C—Appropriate box checked;
   Section D—Empowerment Zone or Enterprise Community identified (if applicable).
7. Program Assurances Form.
8. Assurances—Non-Construction Programs Form (SF 424B).
9. Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace. Requirements Form (ED 80–0013).
10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions Form (ED 80–0014) (if applicable).
11. Disclosure of Lobbying Activities Form (SF-LLL).
12. Information that addresses section 427 of the General Education Provisions Act—NOTICE TO ALL APPLICANTS (OMB No. 1801–0004).
13. Table of Contents. Indicate page numbers.
14. Application narrative (not to exceed 75 pages). The narrative must be paginated.
15. One original and two copies of the application for transmittal to the Education Department's Application Control Center.

BILLING CODE 4000–01–P

Application for Federal Education Assistance

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name:_____

Address:_____

Organizational Unit

_____

City _____ State _____ County _____ ZIP Code + 4 _____ - _____

2. Applicant's D-U-N-S Number: | | | | | | | | | |

3. Catalog of Federal Domestic Assistance #: 8 4 2 9 1 R ➡ Title: BILINGUAL EDUCATION: SYSTEMWIDE IMPROVEMENT GRANTS

4. Project Director:_____

Address:_____

City _____ State _____ ZIP Code + 4 _____

Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

E-Mail Address:_____

5. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No

(If "Yes," attach an explanation.)

6. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*:_____

7. Novice Applicant ☐ Yes ☐ No

Application Information

8. Type of Submission:

—*PreApplication*	—*Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

9. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____

☐ No *(If "No," check appropriate box below.)*

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

10. Proposed Project Dates:

Start Date:	End Date:
___/___/_____	___/___/_____

11. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #: _____ *OR* b. Assurance of Compliance #: _____

c. IRB approval date: _____ ☐ Full IRB or ☐ Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

d. E-Mail Address:

e. Signature of Authorized Representative | Date: ___/___/_____

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** Check "Yes" or "No" If research activities involving human subjects are not planned at any time during the proposed project period, check **"No." The remaining parts of item 11 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If all the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. **Provide this narrative information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 11.**

    If some or all of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue with the remaining parts of item 11, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amounts requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH
(Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 11 on the application "Yes" and designated exemptions in 11a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 11 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education. Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	Name of Institution/ Organization

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1880--0538

Expiration Date: 10/31/99

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

STUDENT DATA	
Name of Local Educational Agency	

SECTION A

NOTE: This section must be completed by applicants under the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

1. Total number of limited English proficient (LEP) students in the school district	
2. Total number of students in the school district	
3. Percentage of LEP students (line 1 divided by line 2)	%

SECTION B

NOTE: This section must be completed by applicants under the following program:

- **Comprehensive School Grants**

Name of project school	(1) Total number of LEP students in the school	(2) Total number of students in the school	(3) % of LEP students (Column (1) divided by column (2))
			%
			%
			%
			%
			%
			%

Name of Local Educational Agency _____

STUDENT DATA
(continued)

SECTION C

NOTE: This section must be completed by applicants under the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

1. Circle the grade level(s) that will participate in the project: PreK K 1 2 3 4 5 6 7 8 9 10 11 12

2. Total number of language groups that will participate in the project. _____

3. List the five largest participating language groups and the approximate number of students in each group.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PROJECT DOCUMENTATION

NOTE: Submit the appropriate documents and information as specified below for the following programs:

- Comprehensive School Grants
- Systemwide Improvement Grants

SECTION A

A copy of applicant's transmittal letter requesting the appropriate State educational agency to comment on the application. This requirement does not apply to schools funded by the Bureau of Indian Affairs. (See 34 CFR 75.155 and 75.156 below.)

§75.155 Review procedure if State may comment on applications: Purpose of §§75.156-75.158. If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§75.156-75.158 for that purpose.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Cross-Reference: See 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372. (In addition to the requirement in §75.155 for review by the State educational agency, the application is subject to review by State Executive Order 12372 process. Applicants must complete item 16 of the application face sheet (Standard Form 424, Application for Federal Assistance) by either (a) specifying the date when the application was made available to the State Single Point of Contact for review or (b) indicating that the program has not been selected by the State for review.)

§75.156 When an applicant under §75.155 must submit its application to the State: proof of submission.
(a) Each applicant under a program covered by §75.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Department.
(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

PROJECT DOCUMENTATION

(continued)

SECTION B

Evidence of compliance with the Federal requirements for participation of students enrolled in nonprofit private schools. (See section 7116(h)(2) of Public Law 103-382 and 34 CFR 75.119, 76.652, and 76.656 below.)

Sec. 7116. Applications. "(2) in designing the program for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type to those which the program is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children."

(Authority: 20 U.S.C. 7426(h)(2))

§75.119 Information needed if private schools participate. If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656

(Approved by the Office of Management and Budget under control number 1880-0513)
(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.652 Consultation with representatives of private school students.
(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:
(1) Which children will receive benefits under the project;
(2) How the children's needs will be identified;
(3) What benefits will be provided;
(4) How the benefits will be provided; and
(5) How the project will be evaluated.
(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

PROJECT DOCUMENTATION

(continued)

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.656 Information in an application for a subgrant.
An applicant for a subgrant shall include the following information in its application:
(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.
(b) The number of students enrolled in private schools who have been identified as eligible to benefit under the program.
(c) The number of students enrolled in private schools who will receive benefits under the program.
(d) The basis the applicant used to select the students.
(e) The manner and extent to which the applicant complied with §76.652 (consultation).
(f) The places and times that the students will receive benefits under the program.
(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e-3(a)(1))

SECTION C

Check the appropriate box below:

- **There are no eligible nonprofit private schools in the proposed service delivery area that wish to participate in the project.** ☐
- **One or more eligible nonprofit private schools in the proposed service delivery area wish to participate in the project and are listed on the enclosed Student Data form.** ☐
- **There are no eligible nonprofit private schools in the proposed service delivery area.** ☐

SECTION D

If applicable, identify on the line at the right the Empowerment Zone, Supplemental Empowerment Zone, or Enterprise Community that the proposed project will serve. (See the competitive priority and the list of designated Empowerment Zones and Enterprise Communities in previous sections of this application package.) _____

PROGRAM ASSURANCES

NOTE: **The authorizing statute requires applicants under certain programs to provide assurances. This form must be completed for applications under the following programs:**

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

As the duly authorized representative of the applicant, I certify that the applicant:

- Will not reduce the level of State and local funds that the applicant expends for bilingual education or special alternative instructional programs if the applicant is awarded a grant under the program.
- Will employ in the proposed project teachers who are proficient in English, including written and oral communication skills.
- Will integrate the proposed project with the applicant's overall educational program.
- Has developed this application in consultation with an advisory council, the majority of whose members are parents and other representatives of the children and youth to be served in the proposed project.

(Authority: 20 U.S.C. 7426(g))

Authorized Representative		Applicant Organization
Signature	Title	
Typed Name	Date Signed	

OMB Approval No. 0348-0040

ASSURANCES- NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to

EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official	Title
Applicant Organization	Date Submitted

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c)Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

) Notifying the agency, in writing, within 10 calendar days after ceiving notice under subparagraph (d)(2) from an employee or herwise receiving actual notice of such conviction. Employers convicted employees must provide notice, including position e, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ____, *if known:* Congressional District, *if known:*	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:*	
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $	
10. a. Name and Address of Lobbying Entity Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*	
11. Amount of Payment *(check all that apply):* $ _____ ☐ actual ☐ planned	13. Type of Payment *(Check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: _____ (attach Continuation Sheet(s) SF-LLL-A, if necessary)		
15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date:	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single

narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

GENERAL EDUCATION PROVISIONS ACT (GEPA) Requirement

Applicants should use this section to address the GEPA provision.

EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

Empowerment Zones
California: Los Angeles
California: Oakland
Georgia: Atlanta
Illinois: Chicago
Kentucky: Kentucky Highlands*
Maryland: Baltimore
Massachusetts: Boston
Michigan: Detroit
Mississippi: Mid Delta*
Missouri/Kansas: Kansas City, Kansas City
New York: Harlem, Bronx
Ohio: Cleveland
Pennsylvania/New Jersey: Philadelphia, Camden
Texas: Houston
Texas: Rio Grande Valley*

Enterprise Communities
Alabama: Birmingham
Alabama: Chambers County*
Alabama: Greene, Sumter Counties*
Arizona: Phoenix
Arizona: Arizona Border*
Arkansas: East Central*
Arkansas: Mississippi County*
Arkansas: Pulaski County
California: Imperial County*
California: L.A., Huntington Park
California: San Diego
California: San Francisco, Bayview, Hunter's Point
California: Watsonville*
Colorado: Denver
Connecticut: Bridgeport
Connecticut: New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County*
Florida: Tampa
Florida: Miami, Dade County
Georgia: Albany
Georgia: Central Savannah*
Georgia: Crisp, Dooley Counties*
Illinois: East St. Louis
Illinois: Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville
Louisiana: Northeast Delta*
Louisiana: Macon Ridge*
Louisiana: New Orleans
Louisiana: Ouachita Parish
Massachusetts: Lowell
Massachusetts: Springfield
Michigan: Five Cap*
Michigan: Flint
Michigan: Muskegon
Minnesota: Minneapolis
Minnesota: St. Paul
Mississippi: Jackson
Mississippi: North Delta*
Missouri: East Prairie*
Missouri: St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque
New Mexico: Mora, Rio Arriba, Taos Counties*
New York: Albany, Schenectady, Troy
New York: Buffalo
New York: Newburgh, Kingston
New York: Rochester
North Carolina: Charlotte
North Carolina: Halifax, Edgecombe, Wilson Counties*
North Carolina: Robeson County*
Ohio: Akron
Ohio: Columbus
Ohio: Greater Portsmouth *
Oklahoma: Choctaw, McCurtain Counties*
Oklahoma: Oklahoma City
Oregon: Josephine*
Oregon: Portland
Pennsylvania: Harrisburg
Pennsylvania: Lock Haven*
Pennsylvania: Pittsburgh
Rhode Island: Providence
South Dakota: Deadle, Spink Counties*
South Carolina: Charleston
South Carolina: Williamsburg County*
Tennessee: Fayette, Haywood Counties*
Tennessee: Memphis
Tennessee: Nashville
Tennessee/Kentucky: Scott, McCreary Counties*

Texas: Dallas
Texas: El Paso
Texas: San Antonio
Texas: Waco
Utah: Ogden
Vermont: Burlington
Virginia: Accomack*
Virginia: Norfolk
Washington: Lower Yakima*
Washington: Seattle
Washington: Tacoma
West Virginia: West Central*
West Virginia: Huntington
West Virginia: McDowell*
Wisconsin: Milwaukee

*denotes rural designee

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Federal Register

Monday
January 4, 1999

Part III

Department of Education

Bilingual Education: Comprehensive School Grants; Notice Inviting Applications for New Awards for Fiscal Year 1999

DEPARTMENT OF EDUCATION

[CFDA No.: 84.290U]

Bilingual Education: Comprehensive School Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program. The statutory authorization for this program, and the application requirements that apply to this competition, are contained in sections 7114 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7424 and 7426)).

Purpose of Program: This program provides grants to implement schoolwide bilingual education programs or schoolwide special alternative instruction programs for reforming, restructuring, and upgrading all relevant programs and operations, within an individual school, that serve all or virtually all limited English proficient (LEP) children and youth in one or more schools with significant concentrations of these children and youth.

Eligible Applicants: One or more local educational agencies (LEAs), or one or more LEAs in collaboration with an institution of higher education, community-based organizations, other LEAs, or a State educational agency.

Deadline for Transmittal of Applications: February 26, 1999.

Deadline for Intergovernmental Review: April 27, 1999.

Available Funds: $6 million.

Estimated Range of Awards: $150,000–$275,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 30.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations in 34 CFR part 299.

Description of Program: Funds under this program are to be used to reform, restructure, and upgrade all relevant operations and programs, within a school, that serve LEP children and youth. Before carrying out a project assisted under this program, a grantee shall plan, train personnel, develop curriculum, and acquire or develop materials. In addition, grantees are authorized, under this program, to improve the education of LEP children and youth and their families by implementing family education programs, improving the instructional program for LEP children, compensating personnel who have been trained—or are being trained—to serve LEP children and youth, providing tutorials and academic or career counseling for LEP children and youth, and providing intensified instruction.

Priorities

Absolute Priority: The priority in the notice of final priority for this program, as published in the **Federal Register** on October 30, 1995 (60 FR 55245), applies to this competition.

Under 34 CFR 75.105(c)(3) and section 7114(a) of the Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that serve only schools in which the number of LEP students, in each school served, equals at least 25 percent of the total student enrollment.

Competitive Priority: Within the absolute priority specified in this notice, the Secretary under 34 CFR 75.105(c)(2)(i) and 34 CFR 299.3(b) gives preference to applications that meet the following competitive priority. The Secretary awards 5 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that will contribute to systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

Invitational Priorities: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Reading

Projects that focus on reforming, restructuring, and upgrading reading instruction to assist limited English proficient students to read independently and well by the end of third grade.

Invitational Priority 2—Mathematics

Projects that focus on reforming, restructuring, and upgrading mathematics instruction to assist limited English proficient students to master challenging mathematics, including the foundations of algebra and geometry, by the end of eighth grade.

Invitational Priority 3—Preparation for Postsecondary Education

Projects that focus on motivating and academically preparing limited English proficient students for successful participation in college and other postsecondary education.

Invitational Priority 4—Professional Development

Applicants that consider the Department of Education Professional Development Principles in planning and designing a Comprehensive School Grant project.

Those principles call for educator professional development that focuses on teachers as central to student learning, yet includes all other members of the school community; focuses on individual, collegial, and organizational improvement; respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community; reflects best available research and practice in teaching, learning, and leadership; enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards; promotes continuous inquiry and improvement embedded in the daily life of schools; is planned collaboratively by those who will participate in and facilitate that development; requires substantial time and other resources; is driven by a coherent long-term plan; is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and uses this assessment to guide subsequent professional development efforts.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.210 and sections 7114, 7116, and 7123 of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (15 points) The Secretary reviews each application to determine how well the proposed project will implement schoolwide bilingual education programs or schoolwide special alternative instruction programs for reforming, restructuring, and upgrading all relevant programs and operations, within an individual school, that serve all (or virtually all) children and youth of limited English proficiency in schools with significant concentrations of those children and youth.

(Authority: 20 U.S.C. 7424(a))

(2) *Need for the project.* (10 points) The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The number of children and youth of limited English proficiency in the school or school district to be served, and

(ii) The characteristics of those children and youth, such as—

(A) Language spoken;

(B) Dropout rates;

(C) Proficiency in English and the native language;

(D) Academic standing in relation to the English proficient peers of those children and youth; and

(E) If applicable, the recency of immigration.

(Authority: 20 U.S.C. 7426(g)(1)(A))

(3) *Quality of the project design.* (15 points) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(Authority: 34 CFR 75.210(c)(2) (i), (ii), and (xviii))

(4) *Project activities.* (15 points) The Secretary reviews each application to determine—

(i) How well the proposed project will improve the education of limited English proficient students and their families by carrying out some or all of the following authorized activities:

(A) Implementing family education programs and parent outreach and training activities designed to assist parents to become active participants in the education of their children.

(B) Improving the instructional program for limited English proficient students by identifying, acquiring, and upgrading curriculum, instructional materials, educational software, and assessment procedures, and, if appropriate, applying educational technology.

(C) Compensating personnel, including teacher aides who have been specifically trained, or are being trained, to provide services to children and youth of limited English proficiency.

(D) Providing training for personnel participating in or preparing to participate in the program that will assist that personnel in meeting State and local certification requirements and, to the extent possible, obtaining college or university credit.

(E) Providing tutorials and academic or career counseling for children and youth of limited English proficiency.

(F) Providing intensified instruction.

(ii) The degree to which the program for which assistance is sought involves the collaborative efforts of institutions of higher education, community-based organizations, and the appropriate local and State educational agency or businesses; and

(iii) How well the proposed project provides for utilization of the State and national dissemination sources for program design and in dissemination of results and products.

(Authority: 20 U.S.C. 7424(b)(3); 7426(h)(6) and (i)(4)–(5))

(5) *Proficiency in English and another language.* (5 points) The Secretary reviews each application to determine the extent to which the proposed project will provide for the development of bilingual proficiency both in English and another language for all participating students.

(Authority: 20 U.S.C. 7426(i)(1))

(6) *Quality of the management plan.* (10 points) The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(Authority: 34 CFR 75.210(g)(1) and (2)(i) and (iv))

(7) *Quality of project personnel.* (5 points) (i) The Secretary considers the quality of the personnel who will carry out the proposed project.

(ii) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The qualifications, including relevant training and experience, of the project director or principal investigator.

(B) The qualifications, including relevant training and experience, of key project personnel.

(Authority: 34 CFR 75.210(e)(1)–(3)(i) and (ii))

(8) *Language skills of personnel.* (3 points) The Secretary reviews each application to determine how well the proposed project meets the following requirements:

(i) The program will use qualified personnel, including personnel who are proficient in the language or languages used for instruction.

(ii) The applicant will employ teachers in the proposed program who, individually or in combination, are proficient in English, including written, as well as oral, communication skills.

(Authority: 20 U.S.C. 7426(g)(1)(E) and (h)(1))

(9) *Adequacy of resources.* (3 points) The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(Authority: 34 CFR 75.210(f)(1) and (2)(iii)–(iv))

(10) *Integration of project funds.* (5 points) The Secretary reviews each application to determine how well funds received under this program will be integrated with all other Federal, State, local, and private resources that may be used to serve children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7426(g)(2)(A)(iii))

(11) *Evaluation plan.* (10 points) The Secretary reviews each application to determine how well the proposed project's evaluation will meet the following requirements:

(i) Student evaluation and assessment procedures must be valid, reliable, and fair for limited English proficient students.

(ii) The evaluation must include—

(A) How students are achieving the State student performance standards, if any, including data comparing children and youth of limited English proficiency with nonlimited English proficient children and youth with regard to school retention, academic achievement, and gains in English (and, if applicable, native language) proficiency;

(B) Program implementation indicators that provide information for informing and improving program management and effectiveness, including data on appropriateness of curriculum in relationship to grade and course requirements, appropriateness of program management, appropriateness of the program's staff professional development, and appropriateness of the language of instruction; and

(C) Program context indicators that describe the relationship of the activities funded under the grant to the overall school program and other Federal, State, or local programs serving children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7426(h)(3) and 7433(c)(1)–(3))

(12) *Commitment and capacity building.* (4 points) The Secretary reviews each application to determine how well the proposed project meets the following requirements:

(i) The proposed project must contribute toward building the capacity of the applicant to provide a program on a regular basis, similar to that proposed for assistance, that will be of sufficient size, scope, and quality to promise significant improvement in the education of students of limited English proficiency.

(ii) The applicant will have the resources and commitment to continue the program when assistance under this program is reduced or no longer available.

(Authority: 20 U.S.C. 7426(h)(5))

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 3, 1997 (62 FR 59452 through 59455).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.290U, U.S. Department of Education, Room 6213, 400 Maryland Avenue, SW, Washington, DC 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.290U), Washington, DC 20202–4725; or

(2) Hand-deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.290U), Room 3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a checklist for applicants, various assurances, certifications, and required documentation:

a. Instructions for Application Narrative.

b. Additional Guidance.

c. Estimated Public Reporting Burden.

d. Notice to All Applicants (GEPA Requirement) (OMB No. 1801–0004).

e. Checklist for Applicants.
f. Application for Federal Education Assistance (ED 424) and instructions.
g. Budget Information—Non-Construction Programs (ED 524) and instructions.
h. Group Application Certification.
i. Student Data.
j. Project Documentation.
k. Program Assurances.
l. Assurances—Non-Construction Programs (SF 424B) and instructions.
m. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.
n. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

o. Disclosure of Lobbying Activities (SF LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as ''original'' or ''copy.'' No grant may be awarded unless a completed application has been received.

For Further Information Contact: Harry Logel, U.S. Department of Education, 400 Maryland Avenue, SW., room 5605, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–5530. 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.

Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to this Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7424.

Dated: December 23, 1998.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0535 (Exp. 12/31/2001). The time required to complete this information collection is estimated to average 120 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Avenue, SW, room 5605, Switzer Building, Washington, DC 20202–6510.

Application Instructions

Mandatory Page Limit for the Application Narrative

The narrative is the section of the application where you address the selection criteria used by reviewers in evaluating the application. You must limit the narrative to the equivalent of no more than 45 pages, using the following standards:

(1) A page is 8.5'' x 11'', on one side only with 1'' margins at the top, bottom, and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font. If you use a non-proportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to the Application for Federal Education Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; or the one-page abstract and table of contents described below. The page limit applies only to item 15 in the Checklist for Applicants provided below.

IF, IN ORDER TO MEET THE PAGE LIMIT, YOU USE PRINT SIZE, SPACING, OR MARGINS SMALLER THAN THE STANDARDS SPECIFIED IN THIS NOTICE, YOUR APPLICATION WILL NOT BE CONSIDERED FOR FUNDING.

Abstract

The narrative section should be preceded by a one-page abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes or curriculum vitae for project personnel; provide position descriptions instead. Do not include bibliographies, letters of support, or appendices in your application.

Empowerment Zone/Enterprise Community Priority

Applicants that wish to be considered under the competitive priority for Empowerment Zones and Enterprise Communities, as specified in a previous section of this notice, should identify in Section D of the Project Documentation Form the applicable Empowerment Zone or Enterprise Community. The application narrative should describe the extent to which the proposed project will contribute to systemic educational reform in the particular Empowerment Zone or Enterprise Community and be an integral part of the Zone's or Community's comprehensive revitalization strategies. A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

Additional Guidance

Table of Contents

The application should include a table of contents listing the various parts of the narrative in the order of the selection criteria. Be sure that the table includes the page numbers where the parts of the narrative are found.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Final Application Preparation

Use the Checklist for Applicants to verify that your application is complete. Submit three copies of the application, including an original copy containing an original signature for each form requiring the signature of the authorized representative. Do not use elaborate bindings or covers. The application package must be mailed or hand-delivered to the Application Control Center (ACC) and postmarked by the deadline date.

Submission of Application to State Educational Agency

Section 7116(a)(2) of the authorizing statute (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7426(a)(2)). Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting their application to the Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter that requests the SEA to comment on the application (34 CFR 75.156). A copy of this letter should be attached to the Project Documentation Form contained in this application package. APPLICANTS THAT DO NOT SUBMIT A COPY OF THEIR APPLICATION TO THEIR STATE EDUCATIONAL AGENCY IN ACCORDANCE WITH THESE STATUTORY AND REGULATORY REQUIREMENTS WILL NOT BE CONSIDERED FOR FUNDING.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Education Assistance Form (ED 424).
2. Group Application Certification Form (if applicable).
3. Budget Information Form (ED 524).
4. Itemization of costs for each budget year.
5. Student Data Form.
6. Project Documentation Form, including:
   - Section A—Copy of transmittal letter to SEA requesting SEA to comment on the application;
   - Section B—Documentation of consultation with nonprofit private school officials;
   - Section C—Appropriate box checked;
   - Section D—Empowerment Zone or Enterprise Community identified (if applicable).
7. Program Assurances Form.
8. Assurances—Non-Construction Programs Form (SF 424B).
9. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements Form (ED 80–0013).
10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions Form (ED 80–0014) (if applicable).
11. Disclosure of Lobbying Activities Form (SF LLL).
12. Information that addresses section 427 of the General Education Provisions Act. See the document below entitled NOTICE TO ALL APPLICANTS (OMB No. 1801–0004).
13. One-page abstract.
14. Table of Contents.
15. Application narrative, not to exceed 45 pages.
16. One original and two copies of the application for transmittal to the Education Department's Application Control Center.

Empowerment Zones and Enterprise Communities

Empowerment Zones

(Listed Alphabetically by State)

California: Los Angeles, Oakland
Georgia: Atlanta
Illinois: Chicago
Kansas: Kansas City
Kentucky: Kentucky Highlands Area (Clinton, Jackson, and Wayne Counties)
Maryland: Baltimore
Massachusetts: Boston
Michigan: Detroit
Mississippi: Mid-Delta Area (Bolivar, Holmes, Humphreys, and Leflore Counties)
Missouri: Kansas City
New Jersey: Camden
New York: Harlem, Bronx
Ohio: Cleveland
Pennsylvania: Philadelphia
Texas: Houston, Rio Grande Valley Area (Cameron, Hidalgo, Starr, and Willacy Counties)

Enterprise Communities

(Listed Alphabetically by State)

Alabama: Birmingham, Chambers County, Greene County, Sumter County
Arizona: Arizona Border Area (Cochise, Santa Cruz and Yuma Counties), Phoenix
Arkansas: East Central Area (Cross, Lee, Monroe, and St. Francis Counties), Mississippi County, Pulaski County
California: Imperial County, Los Angeles (Huntington Park), San Diego, San Francisco (Bayview, Hunter's Point), Watsonville
Colorado: Denver
Connecticut: Bridgeport, New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Dade County, Jackson County, Miami, Tampa
Georgia: Albany, Central Savannah River Area (Burke, Hancock, Jefferson, McDuffie, Tallaferro, and Warren Counties), Crisp County, Dooley County
Illinois: East St. Louis, Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville, McCreary County
Louisiana: Macon Ridge Area (Catahouis, Concordia, Franklin, Morehouse, and Tensas Parishes), New Orleans, Northeast Delta Area (Madison Parish), Ouachita Parish
Massachusetts: Lowell, Springfield
Michigan: Five Cap, Flint, Muskegon

Minnesota: Minneapolis, St. Paul
Mississippi: Jackson, North Delta Area (Panola, Quitman, and Tallahatchie Counties)
Missouri: East Prairie, St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque, Moro County, Rio Arriba County, Taos County
New York: Albany, Buffalo, Kingston, Newburgh, Rochester, Schenectady, Troy
North Carolina: Charlotte, Edgecombe County, Halifax County, Robeson County, Wilson County
Ohio: Akron, Columbus, Greater Portsmouth Area (Scioto County)
Oklahoma: Choctaw County, McCurtain County, Oklahoma City
Oregon: Josephine County, Portland
Pennsylvania: Harrisburg, Lock Haven, Pittsburgh
Rhode Island: Providence
South Carolina: Charleston, Williamsburg County
South Dakota: Deadle County, Spink County
Tennessee: Fayette County, Haywood County, Memphis, Nashville, Scott County
Texas: Dallas, El Paso, San Antonio, Waco
Utah: Ogden
Vermont: Burlington
Virginia: Accomack County, Norfolk
Washington: Lower Yakima County, Seattle, Tacoma
West Virginia: Huntington, McDowell County, West Central Area (Braxton, Clay, Fayette, Nicholas, and Roane Counties)
Wisconsin: Milwaukee

BILLING CODE 4000–01–P

Application for Federal Education Assistance

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name:_____

Address:_____

_____

City _____ State _____ County _____ ZIP Code + 4 _____-_____

Organizational Unit

2. Applicant's D-U-N-S Number | | | | | | | | | |

3. Catalog of Federal Domestic Assistance #: 8 4 2 9 0 U → Title: BILINGUAL EDUCATION: COMPREHENSIVE SCHOOL GRANTS

4. Project Director:_____

Address:_____

_____

City _____ State _____ ZIP Code + 4 _____-_____

Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

E-Mail Address:_____

5. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No

(If "Yes," attach an explanation.)

6. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State
B County
C Municipal
D Township
E Interstate
F Intermunicipal
G Special District
H Independent School District
I Public College or University
J Private, Non-Profit College or University
K Indian Tribe
L Individual
M Private, Profit-Making Organization
N Other *(Specify)*:_____

7. Novice Applicant ☐ Yes ☐ No

Application Information

8. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

9. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____

☐ No *(If "No," check appropriate box below.)*

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

10. Proposed Project Dates:

Start Date:	End Date:
___/___/_____	___/___/_____

11. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #: _____ *OR* b. Assurance of Compliance #: _____

c. IRB approval date: _____ { ☐ Full IRB or ☐ Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$_____	.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

d. E-Mail Address:

e. Signature of Authorized Representative — Date: ___/___/_____

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dhis/aboutdb/intlduns.htm.**

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** Check "Yes" **or** "No" If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 11 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. **Provide this narrative information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 11.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue with the remaining parts of item 11, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH
(Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 11 on the application "Yes" and designated exemptions in 11a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 11 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education. Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	Name of Institution/ Organization

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1880--0538

Expiration Date: 10/31/99

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for ly one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

STUDENT DATA	
Name of Local Educational Agency	

SECTION A

NOTE: This section must be completed by applicants under the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

1. Total number of limited English proficient (LEP) students in the school district	
2. Total number of students in the school district	
3. Percentage of LEP students (line 1 divided by line 2)	%

SECTION B

NOTE: This section must be completed by applicants under the following program:

- **Comprehensive School Grants**

Name of project school	(1) Total number of LEP students in the school	(2) Total number of students in the school	(3) % of LEP students (Column (1) divided by column (2))
			%
			%
			%
			%
			%
			%

Name of Local Educational Agency _____

STUDENT DATA
(continued)

SECTION C

NOTE: This section must be completed by applicants under the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

1. Circle the grade level(s) that will participate in the project: PreK K 1 2 3 4 5 6 7 8 9 10 11 12

2. Total number of language groups that will participate in the project. _____

3. List the five largest participating language groups and the approximate number of students in each group.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PROJECT DOCUMENTATION

NOTE: Submit the appropriate documents and information as specified below for the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

SECTION A

A copy of applicant's transmittal letter requesting the appropriate State educational agency to comment on the application. This requirement does not apply to schools funded by the Bureau of Indian Affairs. (See 34 CFR 75.155 and 75.156 below.)

§75.155 Review procedure if State may comment on applications: Purpose of §§75.156-75.158. If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§75.156-75.158 for that purpose.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Cross-Reference: See 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372. (In addition to the requirement in §75.155 for review by the State educational agency, the application is subject to review by State Executive Order 12372 process. Applicants must complete item 16 of the application face sheet (Standard Form 424, Application for Federal Assistance) by either (a) specifying the date when the application was made available to the State Single Point of Contact for review or (b) indicating that the program has not been selected by the State for review.)

§75.156 When an applicant under §75.155 must submit its application to the State: proof of submission.
(a) Each applicant under a program covered by §75.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Department.
(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

PROJECT DOCUMENTATION

(continued)

SECTION B

Evidence of compliance with the Federal requirements for participation of students enrolled in nonprofit private schools. (See section 7116(h)(2) of Public Law 103-382 and 34 CFR 75.119, 76.652, and 76.656 below.)

Sec. 7116. Applications. "(2) in designing the program for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type to those which the program is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children."

(Authority: 20 U.S.C. 7426(h)(2))

§75.119 Information needed if private schools participate. If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656.

(Approved by the Office of Management and Budget under control number 1880-0513)
(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.652 Consultation with representatives of private school students.
(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:
(1) Which children will receive benefits under the project;
(2) How the children's needs will be identified;
(3) What benefits will be provided;
(4) How the benefits will be provided; and
(5) How the project will be evaluated.
(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

PROJECT DOCUMENTATION

(continued)

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.656 Information in an application for a subgrant.
An applicant for a subgrant shall include the following information in its application:
(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.
(b) The number of students enrolled in private schools who have been identified as eligible to benefit under the program.
(c) The number of students enrolled in private schools who will receive benefits under the program.
(d) The basis the applicant used to select the students.
(e) The manner and extent to which the applicant complied with §76.652 (consultation).
(f) The places and times that the students will receive benefits under the program.
(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e-3(a)(1))

SECTION C

Check the appropriate box below:

- **There are no eligible nonprofit private schools in the proposed service delivery area that wish to participate in the project.** ☐
- **One or more eligible nonprofit private schools in the proposed service delivery area wish to participate in the project and are listed on the enclosed Student Data form.** ☐
- **There are no eligible nonprofit private schools in the proposed service delivery area.** ☐

SECTION D

If applicable, identify on the line at the right the Empowerment Zone, Supplemental Empowerment Zone, or Enterprise Community that the proposed project will serve. (See the competitive priority and the list of designated Empowerment Zones and Enterprise Communities in previous sections of this application package.)

PROGRAM ASSURANCES

NOTE: **The authorizing statute requires applicants under certain programs to provide assurances. This form must be completed for applications under the following programs:**

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

As the duly authorized representative of the applicant, I certify that the applicant:

- Will not reduce the level of State and local funds that the applicant expends for bilingual education or special alternative instructional programs if the applicant is awarded a grant under the program.
- Will employ in the proposed project teachers who are proficient in English, including written and oral communication skills.
- Will integrate the proposed project with the applicant's overall educational program.
- Has developed this application in consultation with an advisory council, the majority of whose members are parents and other representatives of the children and youth to be served in the proposed project.

(Authority: 20 U.S.C. 7426(g))

Authorized Representative		Applicant Organization
Signature	Title	
Typed Name	Date Signed	

OMB Approval No. 0348-0040

ASSURANCES- NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to

EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official	Title	
Applicant Organization		Date Submitted

SF 424 (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c)Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a. controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*:
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying ~~Entity~~ Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

~~11. Amount of Payment *(check all that apply):*~~ ~~$ _____ ☐ actual ☐ planned~~	~~13. Type of Payment *(Check all that apply):*~~ ~~☐ a. retainer~~ ~~☐ b. one-time fee~~ ~~☐ c. commission~~ ~~☐ d. contingent fee~~ ~~○ e. deferred~~ ~~☐ f. other; specify: _____~~
~~12. Form of Payment *(check all that apply):*~~ ~~☐ a. cash~~ ~~☐ b. in-kind; specify: nature _____~~ ~~value~~	

~~14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:~~

~~*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*~~

~~15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No~~

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date:
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single

narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participant in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

GENERAL EDUCATION PROVISIONS ACT (GEPA) Requirement

Applicants should use this section to address the GEPA provision.

[FR Doc. 98–34487 Filed 12–31–98; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Monday
January 4, 1999

Part IV

Department of Education

Bilingual Education: Program Development and Implementation Grants Program; Notice Inviting Applications for New Awards for Fiscal Year 1999

DEPARTMENT OF EDUCATION

[CFDA No.: 84.288S]

Bilingual Education: Program Development and Implementation Grants Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

Note To Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program.

Purpose of Program: The purpose of this program is to provide grants to develop and implement new comprehensive, coherent, and successful bilingual education or special alternative instructional programs for limited English proficient (LEP) students, including programs of early childhood education, kindergarten through twelfth grade education, gifted and talented education, and vocational and applied technology education.

Eligible Applicants: (1) One or more local educational agencies (LEAs), (2) one or more LEAs in collaboration with an institution of higher education (IHE), community-based organization (CBO), or a State educational agency (SEA); or (3) a CBO or an IHE that has an application approved by the LEA to develop and implement early childhood education or family education programs or to conduct an instructional program that supplements the educational services provided by an LEA.

Deadline for Transmittal of Applications: February 16, 1999.

Deadline for Intergovernmental Review: April 19, 1999.

Available Funds: $10.8 million.

Estimated Range of Awards: $100,000–$175,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 72.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) 34 CFR part 299.

Description of Program

The statutory authorization for this program, and the application requirements that apply to this competition, are set out in sections 7112 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7422 and 7426)).

The grants awarded under this section are to be used to improve the education of limited English proficient students and their families. Specifically, grantees are required to serve limited English proficient students by: (a) developing and implementing comprehensive preschool, elementary, or secondary bilingual education or special alternative instructional programs that are coordinated with other relevant programs and services; and (b) providing inservice training to classroom teachers, administrators, and other school or community-based organizational personnel. Grantees may also implement family education programs, improve the instructional program, compensate personnel, and provide tutorials and academic or career counseling to limited English proficient students.

Priorities:

Competitive Priority: The Secretary under 34 CFR 75.105(c)(2)(i) and 34 CFR 299.3(b) gives preference to applications that meet the following competitive priority. The Secretary awards 5 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that will contribute to systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

Invitational Priorities: The Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Reading

Projects that focus on assisting limited English proficient students to read independently and well by the end of third grade.

Invitational Priority 2—Mathematics

Projects that focus on assisting limited English proficient students to master challenging mathematics, including the foundations of algebra and geometry, by the end of eighth grade.

Invitational Priority 3—Preparation for Postsecondary Education

Projects that focus on motivating and academically preparing limited English proficient students for successful participation in college and other postsecondary education.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.210 and sections 7116 and 7123 of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) The criteria—(1) *Need for the project*. (15 points) The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The number of children and youth of limited English proficiency in the school or school district to be served, and

(ii) The characteristics of those children and youth, such as—

(A) Language spoken;

(B) Dropout rates;

(C) Proficiency in English and the native language;

(D) Academic standing in relation to the English proficient peers of those children and youth; and

(E) If applicable, the recency of immigration.

(Authority: 20 U.S.C. 7426(g)(1)(A)).

(2) *Quality of the project design*. (25 points) (i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(B) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(C) The extent to which the proposed project is part of a comprehensive effort

to improve teaching and learning and support rigorous academic standards for students.

(D) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(E) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(F) The extent to which the proposed project encourages parental involvement.

(Authority: 34 CFR 75.210(c)(2)(i), (ii), (xii), (xvi), (xviii), and (xix)).

(3) *Quality of project services.* (15 points)(i) The Secretary considers the quality of the services to be provided by the proposed project.

(ii) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(B) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(C) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(Authority: 34 CFR 75.210(d)(1), (2), (3)(i), (v) and (vii)).

(4) *Proficiency in English and another language.* (3 points) The Secretary reviews each application to determine the extent to which the proposed project will provide for the development of bilingual proficiency both in English and another language for all participating students.

(Authority: 20 U.S.C. 7426 (i)(1)).

(5) *Quality of project personnel.* (7 points) (i) The Secretary considers the quality of the personnel who will carry out the proposed project.

(ii) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The qualifications, including relevant training and experience, of the project director or principal investigator.

(B) The qualifications, including relevant training and experience, of key project personnel.

(Authority: 34 CFR 75.210(e)(1)–(3)(i) and (ii)).

(6) *Adequacy of resources.* (7 points) (i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(A) The extent to which the budget is adequate to support the proposed project.

(B) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(C) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(D) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(Authority: 34 CFR 75.210(f)(1), (2), (iv), (v) and (vi)).

(7) *Quality of the management plan.* (13 points) (i) The Secretary considers the quality of the management plan for the proposed project.

(ii) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(A) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(B) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(C) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(Authority: 34 CFR 75.210(g)(1), (2)(i), (iv) and (v)).

(8) *Quality of project evaluation plan.* (15 points) The Secretary reviews each application to determine how well the proposed project's evaluation will meet the following requirements:

(i) Student evaluation and assessment procedures must be valid, reliable, and fair for limited English proficient students.

(ii) The evaluation must include—

(A) How students are achieving the State student performance standards, if any, including data comparing children and youth of limited English proficiency with nonlimited English proficient children and youth with regard to school retention, academic achievement, and gains in English (and, if applicable, native language) proficiency;

(B) Program implementation indicators that provide information for informing and improving program management and effectiveness, including data on appropriateness of curriculum in relationship to grade and course requirements, appropriateness of program management, appropriateness of the program's staff professional development, and appropriateness of the language of instruction; and

(C) Program context indicators that describe the relationship of the activities funded under the grant to the overall school program and other Federal, State, or local programs serving children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7426(h)(3) and 7433(c)(1)–(3)).

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more

than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 3, 1998 (63 FR 59452 through 59455).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.288S, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW., Washington, DC 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.288S), Washington, DC 20202–4725, or

(2) Hand-deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.288S), Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a checklist for applicants, various assurances, certifications, and required documentation:

a. Instructions for Application Narrative.

b. Additional Guidance.

c. Estimated Public Reporting Burden.

d. Notice to All Applicants (OMB No. 1801–0004).

e. Checklist for Applicants.

f. Application for Federal Education Assistance (ED 424) and instructions.

g. Budget Information—Non-Construction Programs (ED 524) and instructions.

h. Group Application Certification.

i. Student Data.

j. Project Documentation.

k. Assurances—Non-Construction Programs (SF 424B) and instructions.

l. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

m. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

n. Disclosure of Lobbying Activities (SF LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as ''original'' or ''copy.'' No grant may be awarded unless a completed application has been received.

FOR FURTHER INFORMATION CONTACT: Ursula Lord, U.S. Department of Education, 600 Independence Avenue, SW., room 5622, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–5709. 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.

Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

PROGRAM AUTHORITY: 20 U.S.C. 7422.

Dated: December 23, 1998.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0538 (Expiration Date: 12/31/2001). The time required to complete this information collection is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Avenue, SW, room 5605, Switzer Building, Washington, DC 20202–6510.

Application Instructions

Mandatory Page Limit for the Application Narrative

The narrative is the section of the application where you address the selection criteria used by reviewers in evaluating the application. You must limit the narrative to the equivalent of no more than 35 pages, using the following standards:

(1) A page is 8.5″ × 11″, on one side only with 1″ margins at the top, bottom, and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font. If you use a non-proportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to the Application for Federal Education Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; or the one-page abstract and table of contents described below. The page limit applies only to item 14 in the Checklist for Applicants provided below.

IF, IN ORDER TO MEET THE PAGE LIMIT, YOU USE PRINT SIZE, SPACING, OR MARGINS SMALLER THAN THE STANDARDS SPECIFIED IN THIS NOTICE, YOUR APPLICATION WILL NOT BE CONSIDERED FOR FUNDING.

Abstract

The narrative section should be preceded by a one-page abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes or curriculum vitae for project personnel; provide position descriptions instead. Do not include bibliographies, letters of support, or appendices in your application.

Empowerment Zone/Enterprise Community Priority

Applicants that wish to be considered under the competitive priority for Empowerment Zones and Enterprise Communities, as specified in a previous section of this notice, should identify in Section D of the Project Documentation Form the applicable Empowerment Zone or Enterprise Community. The application narrative should describe the extent to which the proposed project will contribute to systemic educational reform in the particular Empowerment Zone or Enterprise Community and be an integral part of the Zone's or Community's comprehensive revitalization strategies. A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

Additional Guidance

Table of Contents

The application should include a table of contents listing the various parts of the narrative in the order of the selection criteria. Be sure that the table includes the page numbers where the parts of the narrative are found.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Final Application Preparation

Use the Checklist for Applicants to verify that your application is complete. Submit three copies of the application, including an original copy containing an original signature for each form requiring the signature of the authorized representative. Do not use elaborate bindings or covers. The application package must be mailed or hand-delivered to the Application Control Center (ACC) and postmarked by the deadline date.

Submission of Application to State Educational Agency

Section 7116(a)(2) of the authorizing statute (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7426(a)(2)). Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting their application to the Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter that requests the SEA to comment on the application (34 CFR 75.156). A copy of this letter should be attached to the Project Documentation Form contained in this application package. APPLICANTS THAT DO NOT SUBMIT A COPY OF THEIR APPLICATION TO THEIR STATE EDUCATIONAL AGENCY IN ACCORDANCE WITH THESE STATUTORY AND REGULATORY REQUIREMENTS WILL NOT BE CONSIDERED FOR FUNDING.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Education Assistance Form (ED 424).
2. Group Application Certification Form (if applicable).
3. Budget Information Form (ED 524).
4. Itemization of costs for each budget year.
5. Student Data Form.

6. Project Documentation Form, including:
   Section A—Copy of transmittal letter to SEA requesting SEA to comment on the application;
   Section B—Documentation of consultation with nonprofit private school officials;
   Section C—Appropriate box checked;
   Section D—Empowerment Zone or Enterprise Community identified (if applicable).
7. Assurances—Non-Construction Programs Form (SF 424B).
8. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements Form (ED 80–0013).
9. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions Form (ED 80–0014) (if applicable).
10. Disclosure of Lobbying Activities Form (SF LLL).
11. Information that addresses section 427 of the General Education Provisions Act. (See the form below entitled *Notice to All Applicants.* (OMB No. 1801–0004).
12. One-page abstract.
13. Table of Contents.
14. Application narrative, not to exceed 35 pages.
15. One original and two copies of the application for transmittal to the Education Department's Application Control Center.

Empowerment Zones and Enterprise Communities

Empowerment Zones

California: Los Angeles
California: Oakland
Georgia: Atlanta
Illinois: Chicago
Kentucky: Kentucky Highlands*
Maryland: Baltimore
Massachusetts: Boston
Michigan: Detroit
Mississippi: Mid Delta*
Missouri/Kansas: Kansas City, Kansas City
New York: Harlem, Bronx
Ohio: Cleveland
Pennsylvania/New Jersey: Philadelphia, Camden
Texas: Houston
Texas: Rio Grande Valley*

Enterprise Communities

Alabama: Birmingham
Alabama: Chambers County*
Alabama: Greene, Sumter Counties*
Arizona: Phoenix
Arizona: Arizona Border*
Arkansas: East Central*
Arkansas: Mississippi County*
Arkansas: Pulaski County
California: Imperial County*
California: L.A., Huntington Park
California: San Diego
California: San Francisco, Bayview, Hunter's Point
California: Watsonville*
Colorado: Denver
Connecticut: Bridgeport
Connecticut: New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County*
Florida: Tampa
Florida: Miami, Dade County
Georgia: Albany
Georgia: Central Savannah*
Georgia: Crisp, Dooley Counties*
Illinois: East St. Louis
Illinois: Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville
Louisiana: Northeast Delta*
Louisiana: Macon Ridge*
Louisiana: New Orleans
Louisiana: Ouachita Parish
Massachusetts: Lowell
Massachusetts: Springfield
Michigan: Five Cap*
Michigan: Flint
Michigan: Muskegon
Minnesota: Minneapolis
Minnesota: St. Paul
Mississippi: Jackson
Mississippi: North Delta*
Missouri: East Prairie*
Missouri: St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque
New Mexico: Mora, Rio Arriba, Taos Counties*
New York: Albany, Schenectady, Troy
New York: Buffalo
New York: Newburgh, Kingston
New York: Rochester
North Carolina: Charlotte
North Carolina: Halifax, Edgecombe, Wilson Counties*
North Carolina: Robeson County*
Ohio: Akron
Ohio: Columbus
Ohio: Greater Portsmouth*
Oklahoma: Choctaw, McCurtain Counties*
Oklahoma: Oklahoma City
Oregon: Josephine*
Oregon: Portland
Pennsylvania: Harrisburg
Pennsylvania: Lock Haven*
Pennsylvania: Pittsburgh
Rhode Island: Providence
South Dakota: Deadle, Spink Counties*
South Carolina: Charleston
South Carolina: Williamsburg County*
Tennessee: Fayette, Haywood Counties*
Tennessee: Memphis
Tennessee: Nashville
Tennessee/Kentucky: Scott, McCreary Counties*
Texas: Dallas
Texas: El Paso
Texas: San Antonio
Texas: Waco
Utah: Ogden
Vermont: Burlington
Virginia: Accomack*
Virginia: Norfolk
Washington: Lower Yakima*
Washington: Seattle
Washington: Tacoma
West Virginia: West Central*
West Virginia: Huntington
West Virginia: McDowell*
Wisconsin: Milwaukee

*Denotes rural designee.

BILLING CODE 4000–01–P

Application for Federal Education Assistance

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name: _____ Organizational Unit

Address: _____

_____

City _____ State _____ County _____ ZIP Code + 4 _____ - _____

2. Applicant's D-U-N-S Number | | | | | | | | | |

3. Catalog of Federal Domestic Assistance #: 8 4 2 8 8 S ➡ Title: BILINGUAL EDUCATION: PROGRAM DEVELOPMENT AND IMPLEMENTATION GRANTS PROGRAM

4. Project Director: _____

Address: _____

City _____ State _____ ZIP Code + 4 _____ - _____

Tel. #: ( ) _____ - _____ Fax #: ( ) _____ - _____

E-Mail Address: _____

5. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No

(If "Yes," attach an explanation.)

6. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State
B County
C Municipal
D Township
E Interstate
F Intermunicipal
G Special District
H Independent School District
I Public College or University
J Private, Non-Profit College or University
K Indian Tribe
L Individual
M Private, Profit-Making Organization
N Other *(Specify)*: _____

7. Novice Applicant ☐ Yes ☐ No

Application Information

8. Type of Submission:

—PreApplication
☐ Construction
☐ Non-Construction

—Application
☐ Construction
☐ Non-Construction

9. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____

☐ No *(If "No," check appropriate box below.)*
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

10. Proposed Project Dates:

Start Date:	End Date:
___/___/_____	___/___/_____

11. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #: _____ *OR* b. Assurance of Compliance #: _____

c. IRB approval date: _____ ☐ Full IRB or ☐ Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____ - _____ Fax #: ( ) _____ - _____

d. E-Mail Address:

e. Signature of Authorized Representative | Date: ___/___/_____

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** Check "Yes" **or** "No" If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 11 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. **Provide this narrative information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 11.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue with the remaining parts of item 11, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 11 on the application "Yes" and designated exemptions in 11a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 11 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1880--0538

Expiration Date: 10/31/99

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	Name of Institution/ Organization

STUDENT DATA					
Name of Local Educational Agency					
SECTION A					
1. Total number of limited English proficient (LEP) students in the school district					
2. Total number of students in the school district					
3. Percentage of LEP students (line 1 divided by line 2)					%
SECTION B					
Name of project school	Language group(s) to be served	Grade(s) to be served	Number of students to be served		
			LEP	Non-LEP	Total
Total number of students to be served					

PROJECT DOCUMENTATION

NOTE: Submit the appropriate documents and information as specified below for the following programs:

PROGRAM DEVELOPMENT AND IMPLEMENTATION GRANT

SECTION A

A copy of applicant's transmittal letter requesting the appropriate State educational agency to comment on the application. This requirement does not apply to schools funded by the Bureau of Indian Affairs. (See 34 CFR 75.155 and 75.156 below.)

§75.155 Review procedure if State may comment on applications: Purpose of §§75.156-75.158. If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§75.156-75.158 for that purpose.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Cross-Reference: See 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372. (In addition to the requirement in §75.155 for review by the State educational agency, the application is subject to review by State Executive Order 12372 process. Applicants must complete item 16 of the application face sheet (Standard Form 424, Application for Federal Assistance) by either (a) specifying the date when the application was made available to the State Single Point of Contact for review or (b) indicating that the program has not been selected by the State for review.)

§75.156 When an applicant under §75.155 must submit its application to the State: proof of submission.
(a) Each applicant under a program covered by §75.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Department.
(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

PROJECT DOCUMENTATION

(continued)

SECTION B

Evidence of compliance with the Federal requirements for participation of students enrolled in nonprofit private schools. (See section 7116(h)(2) of Public Law 103-382 and 34 CFR 75.119, 76.652, and 76.656 below.)

Sec. 7116. Applications. "(2) in designing the program for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type to those which the program is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children."

(Authority: 20 U.S.C. 7426(h)(2))

§75.119 Information needed if private schools participate. If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656.

(Approved by the Office of Management and Budget under control number 1880-0513)
(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.652 Consultation with representatives of private school students.
(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:
(1) Which children will receive benefits under the project;
(2) How the children's needs will be identified;
(3) What benefits will be provided;
(4) How the benefits will be provided; and
(5) How the project will be evaluated.
(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

PROJECT DOCUMENTATION

(continued)

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.656 Information in an application for a subgrant.
An applicant for a subgrant shall include the following information in its application:
(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.
(b) The number of students enrolled in private schools who have been identified as eligible to benefit under the program.
(c) The number of students enrolled in private schools who will receive benefits under the program.
(d) The basis the applicant used to select the students.
(e) The manner and extent to which the applicant complied with §76.652 (consultation).
(f) The places and times that the students will receive benefits under the program.
(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e-3(a)(1))

SECTION C

Check the appropriate box below:

- There are no eligible nonprofit private schools in the proposed service delivery area that wish to participate in the project. ☐
- One or more eligible nonprofit private schools in the proposed service delivery area wish to participate in the project and are listed on the enclosed Student Data form. ☐
- There are no eligible nonprofit private schools in the proposed service delivery area. ☐

SECTION D

If applicable, identify on the line at the right the Empowerment Zone, Supplemental Empowerment Zone, or Enterprise Community that the proposed project will serve. (See the competitive priority and the list of designated Empowerment Zones and Enterprise Communities in previous sections of this application package.) _____

OMB Approval No. 0348-0040

ASSURANCES- NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to

EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official	Title
Applicant Organization	Date Submitted

SF 424 (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110–

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c)Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*:	
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $	
10. a. Name and Address of Lobbying ~~Entity~~ Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*	
~~11. Amount of Payment *(check all that apply):*~~ ~~$ _____ ☐ actual ☐ planned~~	~~13. Type of Payment *(Check all that apply):*~~ ~~☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____~~	
~~12. Form of Payment *(check all that apply):*~~ ~~☐ a. cash ☐ b. in-kind; specify: nature _____ value _____~~		

~~14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:~~

~~*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*~~

~~15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No~~

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date:
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single

narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

GENERAL EDUCATION PROVISIONS ACT (GEPA) Requirement

Applicants should use this section to address the GEPA provision.

[FR Doc. 98–34488 Filed 12–31–98; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Monday
January 4, 1999

Part V

Department of Education

Bilingual Education: Program Enhancement Projects; Notice Inviting Applications for New Awards for Fiscal Year 1999

DEPARTMENT OF EDUCATION

[CFDA No.: 84.289P]

Bilingual Education: Program Enhancement Projects; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

Notice to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program. The statutory authorization for this program, and the application requirements that apply to this competition, are contained in sections 7113 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7423 and 7426)).

Purpose of Program: The purpose of this program is to provide grants to carry out highly focused, innovative, locally designed projects to expand or enhance existing bilingual education or special alternative instructional programs for limited English proficient (LEP) students.

Eligible Applicants: (1) One or more local educational agencies (LEAs); (2) one or more LEAs in collaboration with an institution of higher education (IHE), community-based organization (CBO), or a state educational agency (SEA); or (3) a CBO or an IHE that has an application approved by the LEA to develop and implement early childhood education or family education programs or to conduct an instructional program that supplements the educational services provided by an LEA.

Deadline for Transmittal of Applications: February 16, 1999.

Deadline for Intergovernmental Review: April 19, 1999.

Available Funds: $10 million.

Estimated Range of Awards: $100,000–$150,000.

Estimated Average Size of Awards: $125,000.

Estimated Number of Awards: 80.

Note: The Department is not bound by any estimates in this notice.

Project Period: 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) 34 CFR part 299.

Description of Program

Under this section grantees are authorized to improve the education of LEP children and youth and their families by, among other things: implementing family education programs, improving the instructional program for LEP children, compensating personnel who have been trained—or are being trained—to serve LEP children and youth, providing tutorials and academic or career counseling for LEP children and youth, and providing intensified instruction. Also, grants awarded under this section may be used to provide inservice training to classroom teachers, administrators, or other school or community-based organization personnel to improve the instruction and assessment of language-minority and LEP students.

Priorities

Competitive Priority: The Secretary, under 34 CFR 75.105(c)(2)(i) and 34 CFR 299.3(b), gives preference to applications that meet the following competitive priority. The Secretary awards 5 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that will contribute to systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

Invitational Priorities: The Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1), an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Reading

Projects that focus on assisting limited English proficient students to read independently and well by the end of third grade.

Invitational Priority 2—Mathematics

Projects that focus on assisting limited English proficient students to master challenging mathematics, including the foundations of algebra and geometry, by the end of eighth grade.

Invitational Priority 3—Preparation for Postsecondary Education

Projects that focus on motivating and academically preparing limited English proficient students for successful participation in college and other postsecondary education.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.210 and sections 7116 and 7123 of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) The criteria -(1) *Need for the project.* (15 points) The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors: (i) The number of children and youth of limited English proficiency in the school or school district to be served, and (ii) The characteristics of those children and youth, such as—

(A) Language spoken;

(B) Dropout rates;

(C) Proficiency in English and the native language;

(D) Academic standing in relation to the English proficient peers of those children and youth; and

(E) If applicable, the recency of immigration.

(Authority: 20 U.S.C. 7426(g)(1)(A)).

(2) *Quality of the project design.* (25 points)

(i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(B) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(C) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(D) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(E) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(F) The extent to which the proposed project encourages parental involvement.

(Authority: 34 CFR 75.210(c)(2)(i), (ii), (xii), (xvi), (xviii), and (xix)).

(3) *Quality of project services.* (15 points)

(i) The Secretary considers the quality of the services to be provided by the proposed project.

(ii) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(B) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(C) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(Authority: 34 CFR 75.210 (d)(1),(2),(3)(i),(v) and (vii)).

(4) *Proficiency in English and another language.* (3 points) The Secretary reviews each application to determine the extent to which the proposed project will provide for the development of bilingual proficiency both in English and another language for all participating students.

(Authority: 20 U.S.C. 7426(i)(1)).

(5) *Quality of project personnel.* (7 points)

(i) The Secretary considers the quality of the personnel who will carry out the proposed project.

(ii) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The qualifications, including relevant training and experience, of the project director or principal investigator.

(B) The qualifications, including relevant training and experience, of key project personnel.

(Authority: 34 CFR 75.210(e)(1)–(3)(i) and (ii)).

(6) *Adequacy of resources.* (10 points)

(i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(A) The extent to which the budget is adequate to support the proposed project.

(B) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(C) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(D) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(Authority: 34 CFR 75.210(f)(1), (2)(iii), (iv), (v), and (vi)).

(7) *Quality of the management plan.* (15 points)

(i) The Secretary considers the quality of the management plan for the proposed project.

(ii) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(A) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(B) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(C) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(Authority: 34 CFR 75.210(g)(1), (2)(i), (iv) and (v)).

(8) *Quality of project evaluation plan.* (10 points) The Secretary reviews each application to determine how well the proposed project's evaluation will meet the following requirements:

(i) Student evaluation and assessment procedures must be valid, reliable, and fair for limited English proficient students.

(ii) The evaluation must include—

(A) How students are achieving the State student performance standards, if any, including data comparing children and youth of limited English proficiency with nonlimited English proficient children and youth with regard to school retention, academic achievement, and gains in English (and, if applicable, native language) proficiency;

(B) Program implementation indicators that provide information for informing and improving program management and effectiveness, including data on appropriateness of curriculum in relationship to grade and course requirements, appropriateness of program management, appropriateness of the program's staff professional development, and appropriateness of the language of instruction; and

(C) Program context indicators that describe the relationship of the activities funded under the grant to the overall school program and other Federal, State, or local programs serving children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7426(h)(3) and 7433(c)(1)–(3)).

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance. Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you

want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 3, 1998 (63 FR 59452 through 59455).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.289P, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW, Washington, DC 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.289P), Washington, DC 20202–4725; or

(2) Hand-deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.289P), Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a checklist for applicants, various assurances, certifications, and required documentation:

a. Instructions for Application Narrative.

b. Additional Guidance.

c. Estimated Public Reporting Burden.

d. Notice to All Applicants (OMB No. 1801–0004).

e. Checklist for Applicants.

f. Application for Federal Education Assistance (ED 424) and instructions.

g. Budget Information—Non-Construction Programs (ED 524) and instructions.

h. Group Application Certification.

i. Student Data.

j. Project Documentation.

k. Program Assurances.

l. Assurances—Non-Construction Programs (SF 424B) and instructions.

m. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

n. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

o. Disclosure of Lobbying Activities (SF LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and two copies of the application. Please mark each application as ''original'' or ''copy.'' No grant may be awarded unless a completed application has been received.

FOR FURTHER INFORMATION CONTACT: James Lockhart, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5622, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–5426. 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.

Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ofco.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Options G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7422.

Dated: December 23, 1998.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

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What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What Are Examples of How an Applicant Might Satisfy the Requirements of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

BILLING CODE 4000–01–P

GENERAL EDUCATION PROVISIONS ACT (GEPA) Requirement

Applicants should use this section to address the GEPA provision.

BILLING CODE 4000–01–C

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Education Assistance Form (ED 424).
2. Group Application Certification Form (if applicable).
3. Budget Information Form (ED 524).
4. Itemization of costs for each budget year.
5. Student Data Form.
6. Project Documentation Form, including:

Section A—Copy of transmittal letter to SEA requesting SEA to comment on the application; Section B—Documentation of consultation with nonprofit private school officials; Section C—Appropriate box checked; Section D—Empowerment Zone or Enterprise Community identified (if applicable).

7. Program Assurances Form.
8. Assurances—Non-Construction Programs Form (SF 424B).
9. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements Form (ED 80–0013).
10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions Form (ED 80–0014) (if applicable).
11. Disclosure of Lobbying Activities Form (SF LLL).
12. Information that addresses section 427 of the General Education Provisions Act. (See the above section entitled Notice to All Applicants. (OMB No. 1801–0004)).
13. One-page abstract.
14. Table of Contents.
15. Application narrative, not to exceed 30 pages.
16. One original and two copies of the application for transmittal to the Education Department's Application Control Center.

Application Instructions

Mandatory Page Limit for the Application Narrative

The narrative is the section of the application where you address the selection criteria used by reviewers in evaluating the application. You must limit the narrative to the equivalent of no more than 30 pages, using the following standards:

(1) A page is 8.5″ × 11″, on one side only with 1′ margins at the top, bottom, and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and charts, tables, figures, and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font. If you use a non-proportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to the Application for Federal Education Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; or the one-page abstract and table of contents described below. The page limit applies only to item 15 in the Checklist for Applicants provided above.

IF, IN ORDER TO MEET THE PAGE LIMIT, YOU USE PRINT SIZE, SPACING, OR MARGINS SMALLER THAN THE STANDARDS SPECIFIED IN THIS NOTICE, YOUR APPLICATION WILL NOT BE CONSIDERED FOR FUNDING.

Abstract

The narrative section should be preceded by a one-page abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detail information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes or curriculum vitae for project personnel; provide position descriptions instead. Do not include bibliographies, letters of support, or appendices in your application.

Empowerment Zone/Enterprise Community Priority

Applicants that wish to be considered under the competitive priority for Empowerment Zones and Enterprise Communities, as specified in a previous section of this notice, should identify in Section D of the Project Documentation Form the applicable Empowerment Zone or Enterprise Community. The application narrative should describe the extent to which the proposed project will contribute to systemic educational reform in the particular Empowerment Zone or Enterprise Community and be an integral part of the Zone's or Community's comprehensive revitalization strategies. A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

Additional Guidance

Table of Contents

The application should include a table of contents listing the various parts of the narrative in the order of the selection criteria. Be sure that the table includes the page numbers where the parts of the narrative are found.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Final Application Preparation

Use the Checklist for Applicants to verify that your application is complete. Submit three copies of the application, including an original copy containing an original signature for each form requiring the signature of the authorized representative. Do not use elaborate bindings or covers. The application package must be mailed or hand-delivered to the Application Control Center (ACC) and postmarked by the deadline date.

Submission of Application to State Educational Agency

Section 7116(a)(2) of the authorizing statute (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7426(a)(2)). Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting their application to the Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter that requests the SEA to comment on the application (34 CFR 75.156). A copy of this letter should be attached to the Project Documentation Form contained in this application package. APPLICANTS THAT DO NOT SUBMIT A COPY OF THEIR APPLICATION TO THEIR STATE EDUCATIONAL AGENCY IN ACCORDANCE WITH THESE STATUTORY AND REGULATORY REQUIREMENTS WILL NOT BE CONSIDERED FOR FUNDING.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0539 (Expiration Date: 12/31/2001). The time required to complete this information collection is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, DC 20202–4651.

Empowerment Zones and Enterprise Communities

Empowerment Zones

California: Los Angeles
California: Oakland
Georgia: Atlanta
Illinois: Chicago
Kentucky: Kentucky Highlands*
Maryland: Baltimore
Massachusetts: Boston
Michigan: Detroit
Mississippi: Mid Delta*
Missouri/Kansas: Kansas City, Kansas City
New York: Harlem, Bronx
Ohio: Cleveland
Pennsylvania/New Jersey: Philadelphia, Camden
Texas: Houston
Texas: Rio Grande Valley*

Enterprise Communities

Alabama: Birmingham
Alabama: Chambers County*
Alabama: Greene, Sumter Counties*
Arizona: Phoenix
Arizona: Arizona Border*
Arkansas: East Central*
Arkansas: Mississippi County*
Arkansas: Pulaski County
California: Imperial County*
California: L.A., Huntington Park
California: San Diego
California: San Francisco, Bayview, Hunter's Point
California: Watsonville*
Colorado: Denver
Connecticut: Bridgeport
Connecticut: New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County*
Florida: Tampa
Florida: Miami, Dade County
Georgia: Albany
Georgia: Central Savannah*
Georgia: Crisp, Dooley Counties*
Illinois: East St. Louis
Illinois: Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville
Louisiana: Northeast Delta*
Louisiana: Macon Ridge*
Louisiana: New Orleans
Louisiana: Ouachita Parish
Massachusetts: Lowell
Massachusetts: Springfield
Michigan: Five Cap*
Michigan: Flint
Michigan: Muskegon
Minnesota: Minneapolis
Minnesota: St. Paul
Mississippi: Jackson
Mississippi: North Delta*
Missouri: East Prairie*
Missouri: St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque
New Mexico: Mora, Rio Arriba, Taos Counties*
New York: Albany, Schenectady, Troy
New York: Buffalo
New York: Newburgh, Kingston
New York: Rochester
North Carolina: Charlotte
North Carolina: Halifax, Edgecombe, Wilson Counties*
North Carolina: Robeson County*
Ohio: Akron
Ohio: Columbus
Ohio: Greater Portsmouth *
Oklahoma: Choctaw, McCurtain Counties*
Oklahoma: Oklahoma City
Oregon: Josephine*
Oregon: Portland
Pennsylvania: Harrisburg
Pennsylvania: Lock Haven*
Pennsylvania: Pittsburgh
Rhode Island: Providence
South Dakota: Deadle, Spink Counties*
South Carolina: Charleston
South Carolina: Williamsburg County*
Tennessee: Fayette, Haywood Counties*
Tennessee: Memphis
Tennessee: Nashville
Tennessee/Kentucky: Scott, McCreay Counties*
Texas: Dallas
Texas: El Paso
Texas: San Antonio
Texas: Waco
Utah: Ogden
Vermont: Burlington
Virginia: Accomack*
Virginia: Norfolk
Washington: Lower Yakima*
Washington: Seattle
Washington: Tacoma
West Virginia: West Central*
West Virginia: Huntington
West Virginia: McDowell*
Wisconsin: Milwaukee

*Denotes rural designee.

BILLING CODE 4000–01–P

Application for Federal Education Assistance

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name:

Address:

City | State | County | ZIP Code + 4

Organizational Unit

2. Applicant's D-U-N-S Number

3. Catalog of Federal Domestic Assistance #: 8 4 2 8 9 P ➡ Title: BILINGUAL EDUCATION PROGRAM ENHANCEMENT GRANTS PROGRAM

4. Project Director:

Address:

City | State | ZIP Code + 4

Tel. #: ( ) - Fax #: ( ) -

E-Mail Address:

5. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

6. Type of Applicant *(Enter appropriate letter in the box.)*

A State
B County
C Municipal
D Township
E Interstate
F Intermunicipal
G Special District
H Independent School District
I Public College or University
J Private, Non-Profit College or University
K Indian Tribe
L Individual
M Private, Profit-Making Organization
N Other *(Specify)*:

7. Novice Applicant ☐ Yes ☐ No

Application Information

8. Type of Submission:

—PreApplication	—Application
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

9. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/___

☐ No *(If "No," check appropriate box below.)*
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

10. Proposed Project Dates:

Start Date:	End Date:
___/___/___	___/___/___

11. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #:

OR

b. Assurance of Compliance #:

c. IRB approval date: ___/___/___ ☐ Full IRB or ☐ Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) - Fax #: ( ) -

d. E-Mail Address:

e. Signature of Authorized Representative | Date: ___/___/___

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check "No."

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** Check "Yes" or "No" If research activities involving human subjects are not planned at any time during the proposed project period, check **"No." The remaining parts of item 11 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If all the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. **Provide this narrative information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 11.**

    If some or all of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue with the remaining parts of item 11, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 11 on the application "Yes" and designated exemptions in 11a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 11 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1880--0538

Expiration Date: 10/31/99

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	Name of Institution/ Organization

STUDENT DATA					
Name of Local Educational Agency					
SECTION A					
1. Total number of limited English proficient (LEP) students in the school district					
2. Total number of students in the school district					
3. Percentage of LEP students (line 1 divided by line 2)					%
SECTION B					
Name of project school	Language group(s) to be served	Grade(s) to be served	Number of students to be served		
			LEP	Non-LEP	Total
Total number of students to be served					

PROJECT DOCUMENTATION

NOTE: Submit the appropriate documents and information as specified below for the following programs:

Bilingual Education: Program Enhancement Projects

SECTION A

A copy of applicant's transmittal letter requesting the appropriate State educational agency to comment on the application. This requirement does not apply to schools funded by the Bureau of Indian Affairs. (See 34 CFR 75.155 and 75.156 below.)

§75.155 Review procedure if State may comment on applications: Purpose of §§75.156-75.158. If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§75.156-75.158 for that purpose...

(Authority: 20 U.S.C. 1221e-3(a)(1))

Cross-Reference: See 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372. (In addition to the requirement in §75.155 for review by the State educational agency, the application is subject to review by State Executive Order 12372 process. Applicants must complete item 16 of the application face sheet (Standard Form 424, Application for Federal Assistance) by either (a) specifying the date when the application was made available to the State Single Point of Contact for review or (b) indicating that the program has not been selected by the State for review.)

§75.156 When an applicant under §75.155 must submit its application to the State: proof of submission.
(a) Each applicant under a program covered by §75.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Department..
(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

PROJECT DOCUMENTATION

(continued)

SECTION B

Evidence of compliance with the Federal requirements for participation of students enrolled in nonprofit private schools. (See section 7116(h)(2) of Public Law 103-382 and 34 CFR 75.119, 76.652, and 76.656 below.)

Sec. 7116. Applications. "(2) in designing the program for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type to those which the program is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children."

(Authority: 20 U.S.C. 7426(h)(2))

§75.119 Information needed if private schools participate. If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656.

(Approved by the Office of Management and Budget under control number 1880-0513)
(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.652 Consultation with representatives of private school students.
(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:
(1) Which children will receive benefits under the project;
(2) How the children's needs will be identified;
(3) What benefits will be provided;
(4) How the benefits will be provided; and
(5) How the project will be evaluated.
(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

PROJECT DOCUMENTATION

(continued)

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.656 Information in an application for a subgrant.
An applicant for a subgrant shall include the following information in its application:
(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.
(b) The number of students enrolled in private schools who have been identified as eligible to benefit under the program.
(c) The number of students enrolled in private schools who will receive benefits under the program.
(d) The basis the applicant used to select the students.
(e) The manner and extent to which the applicant complied with §76.652 (consultation).
(f) The places and times that the students will receive benefits under the program.
(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e-3(a)(1))

SECTION C

Check the appropriate box below:

- There are no eligible nonprofit private schools in the proposed service delivery area that wish to participate in the project. ☐
- One or more eligible nonprofit private schools in the proposed service delivery area wish to participate in the project and are listed on the enclosed Student Data form. ☐
- There are no eligible nonprofit private schools in the proposed service delivery area. ☐

SECTION D

If applicable, identify on the line at the right the Empowerment Zone, Supplemental Empowerment Zone, or Enterprise Community that the proposed project will serve. (See the competitive priority and the list of designated Empowerment Zones and Enterprise Communities in previous sections of this application package.) _____

OMB Approval No. 0348-0040

ASSURANCES- NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to

EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official	Title
Applicant Organization	Date Submitted

SF 424 (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110–

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c)Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier ____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*	
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable*:	
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $	
10. a. **Name and Address of Lobbying ~~Entity~~ Registrant** *(if individual, last name, first name, MI):*	b. **Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*	
~~11. Amount of Payment *(check all that apply):*~~ ~~$ _____ ☐ actual ☐ planned~~	~~13. Type of Payment *(Check all that apply):*~~ ~~☐ a. retainer~~ ~~☐ b. one-time fee~~ ~~☐ c. commission~~ ~~☐ d. contingent fee~~ ~~○ e. deferred~~ ~~☐ f. other; specify: _____~~	
~~12. Form of Payment *(check all that apply):*~~ ~~☐ a. cash~~ ~~☐ b. in-kind; specify: nature _____ value _____~~		
~~14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:~~ ~~*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*~~		
~~15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No~~		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:**	
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions

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Federal Register

Monday
January 4, 1999

Part VI

Department of Agriculture

Cooperative State Research, Education, and Extension Service

National Research Initiative Competitive Grants Program Fiscal Year 1999: Amendment of Solicitation of Applications and Request for Input; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

National Research Initiative Competitive Grants Program Fiscal Year 1999: Amendment of Solicitation of Applications and Request for Input

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of Amendment of Solicitation of Applications Fiscal Year 1999 National Research Initiative Competitive Grants Program and Request for Input.

SUMMARY: This notice amends the fiscal year (FY) 1999 Solicitation of Applications for competitive grant awards in agricultural, forest, and related environmental sciences under the National Research Initiative (NRI) Competitive Grants Program published at 63 FR 46110, August 28, 1998. This amendment replaces the estimated amounts of funds available in each research program area with the actual amounts available and imposes a lower indirect cost ceiling in accordance with subsequent legislation. This amendment also adds a new research program area and new topics within two previously published research program areas. By this notice, the Cooperative State Research, Education, and Extension Service (CSREES) additionally solicits stakeholder input from any interested party regarding the FY 1999 NRI solicitation of applications for use in the development of the next request for proposals for this program.

DATES: This amendment does not alter the original deadlines for receipt of proposals as set forth previously in this solicitation of applications as published on August 28, 1998 (63 FR 46110). Proposals submitted in response to the amended research topics for animal genome and genetic mechanisms and for agricultural systems must be postmarked by February 15, 1999. Proposals submitted in response to the new research program area Epidemiological Approaches to Food Safety must be postmarked by April 5, 1999. Comments regarding this solicitation of applications are requested within six months from the issuance of this notice. Comments received after that date will be considered to the extent practicable.

For Further Information Contact: USDA/CSREES/NRI, Stop 2241, 1400 Independence Ave., SW, Washington, D.C. 20250–2241. Phone: (202) 401-5022. E-mail: nricgp@reeusda.gov. Written comments should be submitted by first-class mail to: Office of Extramural Programs; Competitive Research Grants and Awards Management; USDA-CSREES; STOP 2299; 1400 Independence Avenue, SW; Washington, D.C. 20250–2299, or via e-mail to: RFP-OEP@reeusda.gov. In your comments, please include the name of the program and the fiscal year solicitation of applications to which you are responding.

SUPPLEMENTARY INFORMATION:

Table of Contents

Stakeholder Input

CSREES is soliciting comments regarding this solicitation of applications from any interested party. These comments will be considered in the development of the next request for proposals for the program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (Pub. L. 105–185). This section requires the Secretary to solicit and consider input on a current request for proposals from persons who conduct or use agricultural research, education, or extension for use in formulating the next request for proposals for an agricultural research program funded on a competitive basis.

In your comments, please include the name of the program and the fiscal year solicitation of applications to which you are responding. Comments are requested within six months from the issuance of the solicitation of applications. Comments received after that date will be considered to the extent practicable.

Authority and Applicable Regulations

The authority for this program is contained in 7 U.S.C. 450i(b). Under this program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the United States Department of Agriculture (USDA).

Regulations applicable to this program include the following: (a) the regulations governing the NRI, 7 CFR part 3411, which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; (b) the USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher-Education, Hospitals, and Other Non-Profit Organizations, 7 CFR part 3019; (c) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; (d) the USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016; and (e) 7 U.S.C. 3103, which defines ''sustainable agriculture.''

Conflicts of Interest

For the purpose of determining conflicts of interest in accordance with 7 CFR part 3411.12, the academic and administrative autonomy of an institution shall be determined by reference to the January 1998 issue of the Codebook for Compatible Statistical Reporting of Federal Support to Universities, Colleges, and Nonprofit Institutions, prepared by Quantum Research Corporation for the National Science Foundation. Copies may be obtained from Quantum Research Corporation, 7315 Wisconsin Avenue, Suite 400W, Bethesda, MD 20814.

Project Types and Eligibility Requirements

The project types for which proposals are solicited include:

I. Conventional Projects

(a) Standard Research Grants: Research will be supported that is fundamental or mission-linked, and that is conducted by individual investigators, co-investigators within the same discipline, or multidisciplinary teams. Any State agricultural experiment station, college, university, other research institution or organization, Federal agency, national laboratory, private organization, corporation, or individual may apply. Proposals submitted by non-United States organizations will not be considered for support.

(b) Conferences: Scientific meetings that bring together scientists to identify research needs, update information, or advance an area of research are recognized as integral parts of research efforts. Any State agricultural experiment station, college, university,

other research institution or organization, Federal agency, national laboratory, private organization, corporation, or individual is an eligible applicant in this area. Proposals submitted by non-United States organizations will not be considered for support.

II. Agricultural Research Enhancement Awards

To contribute to the enhancement of research capabilities in the research program areas described herein, applications are solicited for Agricultural Research Enhancement Awards. Such applications may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, national laboratory, private organization, corporation, or individual; however, further eligibility requirements are defined in 7 CFR part 3411.3(d) and restated in the FY 1999 NRI Program Description. Applications submitted by non-United States organizations will not be considered for support. However, United States citizens applying as individuals for Postdoctoral Fellowships may perform all or part of the proposed work at a non-United States organization. Agricultural Research Enhancement Awards are available in the following categories:

(a) Postdoctoral Fellowships

(b) New Investigator Awards

(c) Strengthening Awards: Institutions in USDA EPSCoR entities are eligible for strengthening awards. For FY 1999, USDA EPSCoR states consist of the following:

Alaska
Arkansas
Connecticut
Delaware
Hawaii
Idaho
Maine
Mississippi
Montana
Nevada
New Hampshire
New Mexico
North Dakota
Rhode Island
South Carolina
South Dakota
Utah
Vermont
West Virginia
Wyoming

For FY 1999, other USDA-EPSCoR entities consist of the following:

American Samoa
District of Columbia
Guam
Micronesia
Northern Marianas
Puerto Rico
Virgin Islands

Investigators at small and mid-sized institutions (total enrollment of 15,000 or less) may also be eligible for Strengthening Awards. An institution in this instance is an organization that possesses a significant degree of autonomy, as determined by reference to the January 1998 issue of the ''Codebook for Compatible Statistical Reporting of Federal Support to Universities, Colleges, and Nonprofit Institutions'', prepared by Quantum Research Corporation for the National Science Foundation. Copies may be obtained from Quantum Research Corporation; 7315 Wisconsin Avenue; Suite 400W; Bethesda, MD 20814.

Institutions which are among the top 100 universities and colleges, except those in USDA EPSCoR states, are ineligible for strengthening awards. The top 100 institutions excluding those in USDA EPSCoR states, as listed in the table ''Federal obligations for science and engineering research and development to the 100 universities and colleges receiving the largest amounts, ranked by total amount received, by agency: fiscal year 1996'' of the ''Survey of Federal Science and Engineering Support to Universities, Colleges, and Nonprofit Institutions'' (National Science Foundation, accessible through the Internet at www.nsf.gov/sbe/srs/sfsucni/start.htm), are as follows:

Baylor College of Medicine
Boston University
California Institute of Technology
Carnegie-Mellon University
Case Western Reserve University
Colorado State University
Columbia University
Cornell University
CUNY Mount Sinai School of Medicine
Duke University
Emory University
Florida State University
Georgia Institute of Technology
Harvard University
Indiana University
Iowa State University of Science and Technology
Johns Hopkins University
Louisiana State University (All Campuses)
Massachusetts Institute of Technology
Medical College of Wisconsin
Michigan State University
New York University
North Carolina State University at Raleigh
Northwestern University
Ohio State University
Oregon Health Sciences University
Oregon State University
Pennsylvania State University
Princeton University
Purdue University
Rockefeller University
Rutgers, the State University of New Jersey
Stanford University
State University of New York at Stony Brook
State University of New York at Buffalo
Texas A&M University
Thomas Jefferson University
Tufts University
Tulane University
University of Alabama Birmingham
University of Arizona
University of California Santa Barbara
University of California San Francisco
University of California Irvine
University of California San Diego
University of California Davis
University of California Los Angeles
University of California Berkeley
University of Chicago
University of Cincinnati
University of Colorado
University of Florida
University of Georgia
University of Illinois Urbana-Champaign
University of Illinois Chicago
University of Iowa
University of Kansas
University of Kentucky (All Campuses)
University of Maryland Baltimore Prof Sch
University of Maryland College Park
University of Massachusetts Amherst
University of Massachusetts Med Schl Worcester
University of Medicine and Dentistry of New Jersey
University of Miami
University of Michigan
University of Minnesota
University of North Carolina Chapel Hill
University of Pennsylvania
University of Pittsburgh
University of Rochester
University of Southern California
University of Texas at Austin
University of Texas Health Science Center Houston
University of Texas Health Sci. Center San Antonio
University of Texas MD Anderson Cancer Center
University of Texas Medical Branch Galveston
University of Texas SW Medical Center Dallas
University of Virginia
University of Washington
University of Wisconsin Madison
Vanderbilt University
Virginia Polytech Institute and State University
Virginia Commonwealth University
Wake Forest University
Washington University
Wayne State University
Woods Hole Oceanographic Institute
Yeshiva University, New York

See the FY 1999 NRI Program Description for complete details on programs and eligibility.

Funding Categories for FY 1999

CSREES is soliciting proposals, subject to the availability of funds, for support of high priority research of importance to agriculture, forestry, and related environmental sciences, in the following research categories with the available funding:

- Natural Resources and the Environment ($19,177,982).
- Nutrition, Food Quality, and Health ($14,947,581).
- Plant Systems ($38,255,800).
- Animal Systems ($27,076,707).
- Markets, Trade, and Policy ($4,304,510).
- New Products and Processes ($7,670,370).

Support for research opportunities listed below may be derived from one or more of the above funding categories based on the nature of the scientific topic to be supported.

Pursuant to 7 U.S.C. 450i(b)(10), no less than 10 percent ($11.1M) of the available funds listed above will be made available for Agricultural Research Enhancement Awards (excluding New Investigator Awards), and no more than 2 percent ($2.2M) of the available funds listed above will be made available for equipment grants. Further, no less than 30 percent ($33.4M) of the funds listed above shall be made available for grants for research to be conducted by multidisciplinary teams, and no less than 40 percent ($44.6M) of the funds listed above shall be made available for grants for mission-linked systems research.

Pursuant to section 711 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for Fiscal Year 1999, (section 101(a) of Pub. L. No. 105–277), CSREES is prohibited from paying indirect costs exceeding 14 per centum of the total Federal funds provided under each award on competitively awarded research grants.

Research Opportunities: In addition to those published in the **Federal Register** August 28, 1998, (63 FR 46110) CSREES is soliciting proposals, for support of high priority research of importance to agriculture, forestry, and related environmental sciences, in the following Research Program areas:

Epidemiological Approaches for Food Safety: Deadline date: April 5, 1999.

Anticipated Program: Based on availability of funds, CSREES anticipates a future NRICGP solicitation of applications for a United States Rice Genome Sequencing Project Program, to be jointly administered by USDA, the National Science Foundation and Department of Energy.

CSREES is broadening the scope of existing program areas in the following manner:

Animal Genetics and Genome: In addition to topics solicited in the **Federal Register** announcement of August 28, 1998, (63 FR 46110) CSREES encourages research proposals on Animal Genome Basic Reagents and Tools. Deadline Date remains at February 15, 1999.

Agricultural Systems: In addition to topics solicited in the **Federal Register** announcement of August 28, 1998, (63 FR 46110) CSREES encourages systems research that will impact the small or mid-sized producer, land manager or land owner. Deadline date remains at February 15, 1999.

Application Materials

The FY 1999 Supplemental NRI Program Description, which contains research topic descriptions, and the NRI Application Kit, which contains detailed instructions on how to apply and the requisite forms, are available on the NRI home page, www.reeusda.gov/nri. Paper copies of these application materials may be obtained by sending an e-mail with your name, complete mailing address (not e-mail address), phone number, and materials that you are requesting to psb@reeusda.gov. Materials will be mailed to you (not e-mailed) as quickly as possible. Alternatively, paper copies may be obtained by writing or calling the office indicated below.

Proposal Services Unit, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, 1400 Independence Ave., SW, Washington, D.C. 20250–2245, Telephone: (202) 401–5048.

Materials Available on Internet

The following are among the materials available on the NRI home page (www.reeusda.gov/nri).

NRI Program Description

This document is available for the current fiscal year, and describes all of the NRI funding programs. To apply for a grant, it is also necessary to obtain the NRI Application Kit.

NRI Supplemental Program Description

This document is available for supplemental programs or emphasis areas offered for the current fiscal year. To apply for a grant, it is also necessary to obtain the NRI Application Kit.

NRI Application Kit

This document contains guidelines for proposal preparation and the requisite forms.

NRI Abstracts of Funded Research

The abstracts available on this searchable database are nontechnical abstracts written by the principal investigator of each individual grant, starting with FY 1993. Each entry also includes the title, principal investigator(s), awardee institution, dollar amount, and proposal number for each grant. The first two digits of the proposal number indicate the fiscal year in which the proposal was submitted.

NRI Annual Report

The NRI Annual Reports starting with FY 1995 are available. These reports include descriptions of the program concept, the authorization, policy, inputs to establish research needs, program execution, and outcomes, including relevant statistics. Also included are examples of recent research funded by the NRI.

Electronic Subscription to NRI Documents

The NRI mailserver will notify subscribers when publications such as its Program Description or Abstracts of Funded Research are available electronically on the World Wide Web. Subscribers will not receive the document itself, but instead will receive an e-mail containing an announcement regarding the document's availability on the NRI home page.

To subscribe:

Send an e-mail message to: majordomo@reeusda.gov

In the body of the message, include only the words: subscribe nri-epubs.

To unsubscribe:

Send an e-mail message to: majordomo@reeusda.gov

In the body of the message, include only the words: unsubscribe nri-epubs.

Please note that this is not a forum. Messages, other than those related to subscription, can not be posted to this address.

NRI Deadline Dates

The following fixed dates have been established for proposal submission deadlines for this supplementary Solicitation of Applications. To be considered for funding in any fiscal year, proposals must be transmitted by the date listed below (as indicated by postmark or date on courier bill of lading). When the deadline date falls on a weekend or Federal holiday, transmission must be made by the following business day.

Programs offered in any fiscal year depend on availability of funds and deadlines may be delayed due to unforeseen circumstances. Consult the pertinent NRI solicitation in the **Federal Register**, the NRI Program Description, or the NRI home page (www.reeusda.gov/nri) for up-to-date information.

Postmarked dates	Program codes	Program areas
February 15, 1999	43.0	Animal Genome and Genetic Mechanisms.
	100.0	Agricultural Systems.
April 5, 1999	31.1	Epidemiological Approaches to Food Safety.

Done at Washington, D.C., this 28 day of December 1998.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 98–34784 Filed 12–31–98; 8:45 am]

BILLING CODE 3410–22–P

Federal Register

Monday
January 4, 1999

Part VII

Department of Commerce

National Telecommunications and Information Administration

Telecommunications and Information Infrastructure Assistance Program; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket Number: 981203295–8295–01; CFDA: 11.552]

RIN 0660–ZA06

Telecommunications and Information Infrastructure Assistance Program

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Telecommunications and Information Administration (NTIA) issues this *Notice* describing the conditions under which applications will be received under the Telecommunications and Information Infrastructure Assistance Program (TIIAP) and how NTIA will determine which applications it will fund. TIIAP assists eligible organizations by promoting the widespread use and availability of advanced telecommunications and information technologies in the public and non-profit sectors. By providing matching grants for information infrastructure projects, this program will help develop a nationwide, interactive, multimedia information infrastructure that is accessible to all Americans, in rural as well as urban areas.

DATES: Complete applications for the Fiscal Year 1999 TIIAP grant program must be mailed or hand-carried to the address indicated below and received by NTIA no later than 9:00 p.m. EST, March 11, 1999.

ADDRESSES: Applications must be mailed to:

Telecommunications and Information Infrastructure Assistance Program, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, HCHB, Room 4092, Washington, D.C. 20230

Or hand-delivered to:

Telecommunications and Information Infrastructure Assistance Program, National Telecommunications and Information Administration, U.S. Department of Commerce, Room 1874, Herbert Clark Hoover Building, 1401 Constitution Avenue, NW, Washington, D.C. 20230

Room 1874 is located at entrance #10 on 15th Street NW, between Pennsylvania and Constitution Avenues.

FOR FURTHER INFORMATION, CONTACT: Stephen J. Downs, Director of the Telecommunications and Information Infrastructure Assistance Program. Telephone: 202/482–2048; fax: 202/501–5136; e-mail: tiiap@ntia.doc.gov.

SUPPLEMENTARY INFORMATION:

Program Purposes

NTIA announces the sixth annual round of a competitive matching grant program, the Telecommunications and Information Infrastructure Assistance Program (TIIAP). TIIAP was created to promote the development, widespread availability, and use of advanced telecommunications and information technologies to serve the public interest.

To accomplish this objective, TIIAP will provide matching grants to state, local, and tribal governments;[1] non-profit health care providers and public health institutions; schools; libraries; museums; colleges; universities; public safety providers; non-profit community-based organizations; and other non-profit entities. TIIAP will support projects that improve the quality of, and the public's access to, cultural, educational, and training resources; reduce the cost, improve the quality, and/or increase the accessibility of health care and public health services; promote responsive public safety services; improve the effectiveness and efficiency of government and public services; and foster communication, resource-sharing, and economic development within communities, both rural and urban.

Authority

Title II of the Omnibus Consolidated and Emergency Supplemental Appropriations Bill for Fiscal Year 1999, Pub. L. No. 105–277 (1998).

Funding Availability

Approximately $17 million is available for federal assistance. A small amount of funds that have been deobligated from grants awarded in previous fiscal years may also be available for Fiscal Year 1999 grants. Based on past experience, NTIA expects this year's grant round to be very competitive. In Fiscal Year 1998, NTIA received more than 750 applications collectively requesting more than $300 million in grant funds. From these applications, the Department of Commerce announced 46 TIIAP awards totaling $18.5 million in federal funds.

Based on previous grant rounds, TIIAP anticipates that the average size of a grant award will be approximately $350,000 and last between two and three years. An applicant may request up to $650,000 in total federal support.

[1] American Indian Tribes and Alaska Native Villages.

Eligible Organizations

Non-profit entities; state, local, and tribal governments; and colleges and universities are eligible to apply. Although individuals and for-profit organizations are not eligible to apply, they may participate as project partners.

Matching Funds Requirements

Grant recipients under this program will be required to provide matching funds toward the total project cost. Applicants must document their capacity to provide matching funds. Matching funds may be in the form of cash or in-kind contributions. Grant funds under this program are usually released in direct proportion to local matching funds utilized and documented as having been expended. NTIA will provide up to 50 percent of the total project cost, unless the applicant can document extraordinary circumstances warranting a grant of up to 75 percent. Generally, federal funds (such as grants) may not be used as matching funds, except as provided by federal statute. If you plan to use funds from a federal agency, you should contact the federal agency that administers the funds in question and obtain documentation from that agency's Office of General Counsel to support the use of federal funds for matching purposes.

Completeness of Application

TIIAP will initially review all applications to determine whether all required elements are present and clearly identifiable. The required elements are listed and described in the Guidelines for Preparing Applications—Fiscal Year 1999. Each of the required elements must be present and clearly identified. Failure to do so may result in rejection of the application.

Application Deadline

As noted above, complete applications for the Fiscal Year 1999 TIIAP grant program must be received by NTIA no later than 9:00 p.m. EST, March 11, 1999. A postmark date is not sufficient. Applications which have been provided to a delivery service on or before March 10, 1999, with ''delivery guaranteed'' before 9:00 p.m. on March 11, 1999, will be accepted for review if the applicant can document that the application was provided to the delivery service with delivery to the address listed above guaranteed prior to the closing date and time. Applications will not be accepted via facsimile machine transmission or electronic

mail. NTIA anticipates that it will take approximately six months to complete the review of applications and make final funding decisions.

Program Funding Priorities

NTIA supports innovative and exemplary projects that can serve as models for using information infrastructure in the public and non-profit sectors and thereby contribute to the development of an advanced National Information Infrastructure (NII).[2] NTIA believes that every project supported under TIIAP should be a nationally significant demonstration of how telecommunications and information technologies can be used to extend valuable services and opportunities to all Americans, especially the underserved. ''Underserved'' refers to individuals and communities that are subject to barriers that limit or prevent their access to the benefits of information infrastructure technologies and services. In terms of information infrastructure, these barriers may be technological, geographic, economic, physical, linguistic, or cultural.

NTIA expects each project to serve as a national model and offer potentially new and useful insights into the use of network technologies. Each project should identify specific problems or needs in a community, use information infrastructure services and technologies to offer concrete solutions, and produce measurable outcomes. TIIAP emphasizes the application of technology to meet people's needs, and not simply on the technology as an end in itself. In addition, the development of the NII depends upon the contribution of a wide variety of skills, ideas, and perspectives. Therefore, TIIAP-supported projects should, to the greatest degree possible, reach out to all members of a community and catalyze partnerships[3] to help erase the distinction between information ''haves'' and ''have-nots.''

As a national program, TIIAP supports a variety of model projects among different application areas,[4] geographic regions, and underserved populations. Each project awarded a grant, however, must be innovative in its application of technology. TIIAP defines innovation broadly. It can encompass, but is not restricted to, a new application of proven technologies; a creative strategy for overcoming traditional barriers to access; a new configuration of existing information resources; or uses of cutting edge technologies.

For FY 1999, TIIAP is especially interested in projects developed by smaller, locally-based organizations that both serve and represent technologically underserved communities across the nation. For example, these organizations may include but are not limited to: community-based organizations; small non-profits; colleges and universities serving rural communities; Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities; and organizations representing Empowerment Zones and Enterprise Communities. TIIAP wants to build the capacity of smaller organizations that work closely with the community. These non-profits often are able to understand the local dynamics that are helpful in defining the problem and creating a community-driven, successful solution.

For the FY 1999 grant competition, TIIAP is also especially interested in projects that propose to use advanced network technologies to enhance the quality and efficiency of services delivered through non-profit organizations. Driven by research efforts in academia, the federal government, and the private sector,[5] technological advances promise to improve significantly the quality of today's networks. For example, higher bandwidth networks will afford the opportunity to deliver high resolution video to the desktop; emerging wireless networks will give end users greater flexibility in how and when they can access information. TIIAP encourages applicants to explore the capabilities of these technologies.

Applicants who are not ready to prepare a project demonstrating innovative uses of advanced network technologies this year may want to consider preparing a planning grant. While the emphasis for Fiscal Year 1999 is on projects that deploy, use, and evaluate the use of information infrastructure applications, NTIA will also consider allocating a limited amount of funds to support outstanding planning projects that explore potential uses of advanced network technologies. Applications for such projects will be evaluated against the same criteria applied to all other applications.

In Fiscal Year 1999, TIIAP will support projects in five application areas: Community Networking; Education, Culture, and Lifelong Learning; Health; Public Safety; and Public Services. Each application will be reviewed with other applications in the same area. In this grant round, TIIAP is especially interested in projects that cut across application areas to better serve the needs of individuals and communities. Different application areas often share the same end users. TIIAP encourages applications in which the use of network technology enables partners in different disciplines (e.g., health, education, and public safety) to share information. For example, health providers and field emergency services that share responsibility in the rescue and care of accident victims, or schools and social service providers that work to serve the same families, could benefit by increasing coordination and information sharing.

The five application areas are described below.

Community Networking

This area focuses on multi-purpose projects that enable a broad range of community residents and organizations to communicate, share information, promote community economic development, and participate in civic activities. While TIIAP will continue to support a full range of projects in the Community Networking application area, this year TIIAP is particularly interested in projects that: (1) provide individual end users with sophisticated and useful tools for gathering, analyzing, and applying a variety of information resources to concrete community or regional problems; (2) enable small firms, non-profit providers of services, and persons involved in community development to communicate, share resources, and launch collaborative initiatives more effectively in order to promote local or regional community and economic development; or (3) develop collaborative, regional approaches which address the needs of both rural and urban populations.

Examples of Community Networking projects may include, but would not be limited to: projects involving multiple stakeholder organizations that wish to

[2] The National Information Infrastructure (NII) is a federal policy initiative to facilitate and accelerate the development and utilization of the nation's information infrastructure. The Administration envisions the NII as a seamless web of communications networks, computers, databases, and consumer electronics that will put vast amounts of information at users' fingertips. For more information on various aspects of the NII initiative, see The National Information Infrastructure: Agenda for Action, 58 Fed. Reg. 49,025 (September 21, 1993).

[3] A ''partner'' is defined as an organization that supplies cash or in kind resources and/or plays an active role in the planning and implementation of the project.

[4] For a discussion of the application areas TIIAP supports, please see Notice, page 6.

[5] The Internet2 and the Next Generation Internet initiatives are but two examples of the partnerships working to enhance the quality of today's networking technologies.

link services, reduce duplicative record-keeping, simplify and/or expand end-user access to a variety of information resources, engage in initiatives that would not have been possible without networking technologies, or provide information across various application areas within a specific geographic region.

Education, Culture, and Lifelong Learning

Projects in this area seek to improve education and training for learners of all ages and provide cultural enrichment through the use of information infrastructure in both traditional and non-traditional settings. While TIIAP will continue to support a full range of projects in the Education, Culture, and Lifelong Learning application area, this year TIIAP is particularly interested in projects which propose partnerships among multiple institutions to address lifelong learning needs.

Examples of Education, Culture, and Lifelong Learning projects may include, but would not be limited to: projects that explore creative partnerships among schools, libraries, museums, colleges, or universities to deliver network-based learning resources; projects linking workplaces and job-training sites to educational institutions; projects that enrich communities by delivering on-line informational, educational, and cultural services from public libraries, museums, and other cultural centers; and projects that allow users to collaborate in the creation of cultural works or participate actively in meaningful on-line learning exchanges.

Health

Projects in this area involve the use of information infrastructure in the delivery of health care and public health services. While TIIAP will continue to support a full range of projects in the Health application area, this year TIIAP is particularly interested in projects that support the delivery of public health services such as efforts to identify physical, mental, and environmental health problems; define priorities for public health response; prevent disease, injury, and disability; and enforce laws and regulations that protect physical, mental, and environmental health.

Examples of Health projects may include, but would not be limited to: systems that improve the care and treatment of patients in their homes; telemedicine systems that offer new approaches to extending medical and dental expertise to rural or underserved urban areas or non-traditional settings; projects designed to improve communication between health care providers and patients and enable consumers to participate more actively in their health care; projects to improve treatment of patients in emergency situations and extend trauma care services beyond the emergency room; and networks or information services aimed at disease prevention and health promotion.

Public Safety

Projects in this area will seek to increase the effectiveness of law enforcement agencies, emergency, rescue, and fire departments, the court system, or other entities involved in providing safety services that respond to, prevent, or intervene in crises. While TIIAP will continue to support a full range of projects in the Public Safety application area, this year TIIAP is particularly interested in projects that include multiple agencies (such as those that combine police, emergency medical services, fire companies, or courts) or participation across municipal boundaries.

Examples of Public Safety projects may include, but would not be limited to: projects that facilitate information exchange among public safety agencies located in single or multiple geographic areas to increase efficiency and share resources, including spectrum resources; projects that provide information in a timely manner to ''first-response officials,'' such as police officers, emergency medical technicians, and firefighters; projects that help public safety agencies provide community outreach services; and projects that aim to increase the safety and security of children and reduce domestic violence.

Public Services

Projects in this area aim to improve the delivery of services to people with a range of social service needs. This area includes, for example, employment counseling, housing and transportation support, child welfare, food assistance, and other services typically delivered by state, tribal, and local governments or by community-based non-profit organizations. While TIIAP will continue to support a full range of projects in the Public Services application area, this year TIIAP is particularly interested in projects that aim to link multiple organizations to provide a client-based focus to the delivery of services. Such projects would focus on the comprehensive needs of individuals and families who require the coordinated services of multiple organizations.

Examples of Public Services projects may include, but would not be limited to: projects that use information technology creatively to promote self-sufficiency and independence among individuals and families; electronic information and referral services that provide information on a variety of community-based and government services; projects that make public agencies more accessible and responsive to community residents; electronic benefits transfer projects; projects that employ geographic information systems to study demographic or environmental trends and target community strategies to assist individuals; and projects that focus on the needs of special communities, such as seniors or individuals with disabilities.

Limitations on Project Scope

Projects funded by TIIAP must meet the Program Funding Priorities described in this Notice. Projects must involve innovative approaches to the delivery of useful, practical services in real-world environments within the grant award period.

Listed below are types of projects TIIAP will not support in Fiscal Year 1999.

(1) One-Way Networks. TIIAP will not support construction or extensions of one-way networks, that is, networks which deliver information to a passive audience; all networks and services proposed for TIIAP support must be interactive.[6] For example, TIIAP will not fund one-way broadcast systems, tape duplication and/or delivery projects, or any project which does not permit the end user in some fashion to select the information he or she will receive.

(2) Single-Organization Projects. TIIAP will not support projects whose primary emphasis is on the internal communications needs of a single organization, even if the organization has a considerable number of offices in different cities or regions of the country. For example, TIIAP will not consider projects that create or expand Local Area Networks or internal e-mail systems whose end users are principally, or exclusively, staff members of a single organization. However, TIIAP will support applications that extend communications among multiple organizations and agencies within a governmental jurisdiction. Projects should, to the maximum degree feasible,

[6] ''Interactivity'' is defined as the capacity of a communications system to allow end users to communicate directly with other users, either in real time (as in a video teleconference) or on a store-and-forward basis (as with electronic mail), or to seek and gain access to information on an on-demand basis, as opposed to a broadcast basis.

include appropriate partnerships, with plans for inter-organizational communications among the partners.

(3) Replacement or Upgrade of Existing Facilities. TIIAP will not support any projects whose purpose is to upgrade or replace existing systems, add workstations or servers to existing networks, or complete the installation of a network.

In addition, TIIAP will not support projects whose primary purpose is to develop content, hardware, or software, to provide training on the use of the information infrastructure,[7] or to build voice-based systems.

(1) Content Development Projects. Many projects necessarily involve some modification or development of content.[8] Therefore, TIIAP will support projects in which the creation or conversion of content is part of a larger effort to utilize information infrastructure technologies to address real-world problems. However, TIIAP will not support projects whose primary purpose is to develop data resources, or in any other way produce information content. For example, TIIAP will not consider projects which are designed only to develop curriculum, create databases, convert existing paper-based information to a digital format, digitize existing graphics collections, or establish World Wide Web sites.

(2) Hardware or Software Development Projects. Some projects may require limited software development or the customization or modification of existing software or hardware in order to meet particular end-user requirements or to enable the exchange of information across networks. However, the creation of a software or hardware product cannot be a project's primary purpose.

(3) Training Projects. While TIIAP does consider training to be an essential aspect of most implementation projects, TIIAP will not support projects whose primary purpose is to provide training in the use of software applications, Internet use, or other use of information infrastructure.

(4) Voice-based Systems. Two-way, interactive voice networks are an important element of the existing information infrastructure. Voice as a means for conveying information and voice input tools play critical roles in ensuring people with disabilities have access to network technology. However, TIIAP will not support projects whose primary purpose is to either build or install voice-based communication networks such as call centers or two-way radio networks.

Review Criteria

Reviewers will review and rate each application using the following criteria. The relative weights of each criterion are identified in parentheses.

1. Project Definition (10%)

Each application will be judged on the overall purpose of the proposed project and its potential impact on a community. In assessing the ''Project Definition,'' reviewers will examine the degree to which the applicant clearly: (1) identifies a specific problem(s) or need(s) within the community to be served; (2) proposes a feasible means of addressing the community's problem(s) employing network services and technologies; and (3) identifies anticipated outcomes and potential impacts that are both realistic and measurable.

Reviewers will assess the degree to which an applicant convincingly links the three major elements—problem, solution, and outcomes.

2. Evaluation (15%)

Each application will be rated on the quality of its plans for evaluation and its potential to measure both the effectiveness and efficiency of the proposed solution(s) and anticipated outcome(s) of the project.

Reviewers also will assess the degree to which the evaluation links to the overall formulation of project goals and objectives (i.e., the problem, solution, and anticipated outcomes identified in the ''Project Definition'' section) and the Review Criteria treated below.

When examining an applicant's evaluation, reviewers will assess the evaluation design, an implementation plan for the evaluation, and the allocation of resources (i.e., budget, staff, and management) for evaluation. Reviewers will also analyze the evaluation questions; the methodological approach for answering the evaluation questions; how data will be collected; and how the data will be analyzed. Finally, reviewers will assess the qualifications of any proposed evaluators.

3. Significance (20%)

When considering ''Significance,'' reviewers will assess the degree to which the proposed project is innovative and can serve as a model.

When rating the degree to which an application demonstrates innovation, reviewers will use their experience as experts in their respective fields to determine whether a proposed project introduces a unique or novel approach and extends the state-of-the-art in a given application area. As noted in the section on ''Program Funding Priorities,'' reviewers will assess innovation broadly, examining both the technology to be used and the application of technology in a particular setting, to serve a particular population, or to solve a particular problem. Reviewers will examine each project in a national context and ask: (1) how an application compares with, complements, or improves upon other activities in a given application area, and (2) what insight(s) a proposed project could add to what is known about using network technologies in a given application area.

With respect to identifying projects that could serve as models for other communities across the country, reviewers will draw on their own experience as experts in the field to assess the degree to which a project has the potential to be readily duplicated or adapted to other communities across the country.

4. Project Feasibility (15%)

Each application will be rated on the overall feasibility of the proposed project and its plan of implementation. In assessing project feasibility, reviewers will focus on the following issues: the technical approach; the qualifications of the applicant team; the proposed budget and implementation schedule; and the applicant's plan for sustaining the project beyond the grant period.

Reviewers will assess how the proposed system would work, how it would operate with other systems, the technological alternatives that have been examined, the plans for the maintenance and/or upgrading of the system, and the capability of the system to accommodate growth and new technological developments. Applicants are expected to make use of existing infrastructure and commercially available telecommunications services, unless extraordinary circumstances require the construction of new network facilities.

In assessing the qualifications of the project team, reviewers will assess the applicant and its partners to determine if they have the resources, expertise, and experience necessary to undertake the project and complete it within the

[7] ''Information infrastructure'' includes telecommunication networks, computers, other end-user devices, software, standards, and skills that collectively enable people to connect to each other and to a vast array of services and information resources.

[8] ''Content development'' refers to the creation of information resources, such as databases or World Wide Web sites, for the purpose of dissemination through one or more on-line services.

proposed period. Reviewers will also examine the proposed duration of the project to determine if the implementation schedule is reasonable.

Reviewers will analyze the budget in terms of clarity and cost-effectiveness. The proposed budget should be appropriate to the tasks proposed and sufficiently detailed so that reviewers can easily understand the relationship of items in the budget to the project narrative.

Finally, reviewers will examine the potential long-term viability of the applicant's plans. In evaluating the plan, reviewers will consider the economic circumstances of the community or communities to be served by the proposed project and the applicant's strategies to sustain the project after the completion of the grant.

5. Community Involvement (20%)

Each application will be rated on the overall level of community involvement in the development and implementation of the proposed project. Reviewers will pay particular attention to the partnerships involved, the strength and diversity of support for the project within the community, the support for the project's end users,[9] and any applicable privacy and security issues.

Reviewers will examine the breadth of community involvement to ensure it includes the development of partnerships among unaffiliated organizations,[10] from the public, non-profit, or private sectors, as an integral part of each project. TIIAP considers partners to be organizations that supply cash or in-kind resources and/or play an active role in the planning and implementation of the project. Reviewers will:

(1) Examine the steps the applicant has taken to involve a variety of community stakeholders in project development and the plans for ongoing community involvement in the project. Reviewers will look for evidence of demand, from the community, the end users, and the potential beneficiaries, for the services proposed by the project;

(2) Consider the degree of attention paid to the needs, skills, working conditions, and living environments of the targeted end users. Reviewers will also consider the extent to which applicants involve representatives from a broad range of potential users in both the design and implementation of the project and consider the varying degrees of abilities of all end users, including individuals with disabilities;

(3) Assess the applicant's plans for training end users, upgrading their skills, and building community awareness and knowledge of the project;

(4) Evaluate the steps applicants have taken to involve and document the support of a variety of stakeholder groups and organizations; and

(5) examine the applicant's efforts to safeguard the privacy of the end users and beneficiaries[11] of the project. In circumstances where proprietary or sensitive individual data is involved, reviewers will closely examine the applicant's strategies for addressing the privacy and confidentiality of user data.

6. Reducing Disparities (15%)

Reviewers will assess the degree to which each application targets underserved communities specifically and/or reaches out to underserved groups within a broader community. ''Underserved'' refers to individuals and communities that are subject to barriers that limit or prevent their access to the benefits of information infrastructure and services. These barriers may be technological, geographic, economic, physical, linguistic, or cultural. For example,

(1) A rural community may be geographically isolated from information resources and lack local technical expertise to help install and manage the network infrastructure;

(2) An inner city neighborhood may contain large numbers of potential end users who lack the technical and financial resources to access the information infrastructure; or

(3) People with disabilities may need a variety of special hardware or software interfaces to facilitate their use of the information infrastructure.

Reviewers will assess evidence of community need and the applicant's proposed strategies for overcoming barriers to the access and use of information technologies. Reviewers will focus on the applicant's strategies for reaching out to targeted groups and for tailoring services which address the learning mechanisms, attitudes, abilities, and customs of the community.

7. Documentation and Dissemination (5%)

Applicants will also be rated on the quality of their plans for documentation and dissemination. Reviewers will assess whether an applicant has allocated sufficient funds and resources to document project activities and disseminate project findings and lessons learned.

Applicants will be rated on the extent to which their documentation plans include effective record keeping strategies that will assist in the applicant's assessment of the project and facilitate future evaluations of the applicant's efforts. Reviewers will also assess an applicant's plans for disseminating the knowledge gained as a result of the project.

Eligible Costs

Eligible Costs. Allowable costs incurred under approved projects shall be determined in accordance with applicable federal cost principles, i.e., OMB Circular A–21, A–87, A–122, or Appendix E of 45 C.F.R. Part 74. If included in the approved project budget, TIIAP will allow costs for personnel; fringe benefits; computer hardware, software, and other end-user equipment; telecommunication services and related equipment; consultants, evaluators, and other contractual services; travel; rental of office equipment, furniture, and space; and supplies. All costs must be reasonable and directly related to the project.

Indirect Costs. The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant federal agency or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Ineligible Costs

Costs associated with the construction or major renovation of buildings are not eligible. While costs for the construction of new network facilities are eligible costs, applicants are expected to make use of existing infrastructure and commercially available telecommunications services. Only under extraordinary circumstances will the construction of new network facilities be approved. Costs of the professional services, such as instruction, counseling, or medical care, provided via a network supported through this program are not eligible.

Note that costs that are ineligible for TIIAP support may not be included as part of the applicant's matching fund

[9] An ''end user'' is one who customarily employs or seeks access to, rather than provides, information infrastructure. An end user may be a consumer of information (e.g., a member of the public employing a touch-screen public access terminal); may be involved in an interactive communication with other end users; or may use information infrastructure to provide services to the public.

[10] ''Unaffiliated'' organizations are institutions that do not have formal associations or relationships with the applicant.

[11] Project beneficiaries are those individuals or organizations deriving benefits from a project's outcome(s). A project beneficiary may also, but not necessarily, be a project end user.

contribution. In addition, the Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999 places restrictions on eligible costs for applicants which are recipients of Universal Service Fund discounts and applicants receiving assistance from the Department of Justice's Regional Information Sharing Systems Program as part of the project costs.

This statute provides:

> That notwithstanding any other provision of law, no entity that receives telecommunications services at preferential rates under section 254(h) of the Communications Act of 1934 (47 U.S.C. 254(h)) or receives assistance under the regional information sharing systems grant program of the Department of Justice under part M of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796h) may use funds under a grant under this heading to cover any costs of the entity that would otherwise be covered by such preferential rates or such assistance, as the case may be.[12]

Accordingly, recipients of the above-described preferential rates or assistance are prohibited from including any costs that would be covered by such preferential rates or assistance in their proposed TIIAP grant budget.

Award Period

Successful applicants will have between 12 and 36 months to complete their projects. While the completion time will vary depending on the complexity of the project, NTIA has found that most applicants require at least two years to complete and fully evaluate their projects. Accordingly, NTIA encourages applicants to propose projects that last two to three years.

Selection Process

NTIA will publish a notice in the Federal Register listing all applications received by TIIAP. Listing an application in such a notice merely acknowledges receipt of an application that will compete for funding with other applications. Publication does not preclude subsequent return or disapproval of the application, nor does it ensure that the application will be funded. The selection process will last approximately six months and involves four stages:

(1) During the first stage, each eligible application will be reviewed by a panel of outside readers, who have demonstrated expertise in both the programmatic and technological aspects of the application. The review panels will evaluate applications according to the review criteria provided in this Notice and make non-binding written recommendations to the program.

(2) Upon completion of the external review process, program staff may analyze applications as necessary. Program staff analysis will be based on the degree to which a proposed project meets the program's funding scope as described in the section entitled ''Limitations on Project Scope;'' the eligibility of costs and matching funds included in an application's budget; [13] and the extent to which an application complements or duplicates projects previously funded or under consideration by NTIA or other federal programs. The analysis of program staff will be provided to the TIIAP Director in writing.

The TIIAP Director then prepares and presents a slate of recommended grant awards to the Office of Telecommunications and Information Applications' (OTIA) Associate Administrator for review and approval. [14] The Director's recommendations and the Associate Administrator's review and approval will take into account the following selection factors:

1. The evaluations of the outside reviewers;
2. The analysis of program staff;
3. The degree to which the proposed grants meet the program's priorities as described in the section entitled ''Program Funding Priorities;''
4. The geographic distribution of the proposed grant awards;
5. The variety of technologies and strategies employed by the proposed grant awards;
6. The extent to which the proposed grant awards represent a reasonable distribution of funds across application areas;
7. The promotion of access to and use of the information infrastructure by rural communities and other underserved groups;
8. Avoidance of redundancy and conflicts with the initiatives of other federal agencies; and
9. The availability of funds.

(3) Upon approval by the OTIA Associate Administrator, the Director's recommendations will then be presented to the Selecting Official, the NTIA Administrator. The NTIA Administrator selects the applications to be negotiated for possible grant award taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the selection factors described above and the program's stated purposes as set forth in the section entitled ''Program Purposes.''

(4) After applications have been selected in this manner, negotiations will take place between TIIAP staff and the applicant. These negotiations are intended to resolve any differences that exist between the applicant's original request and what TIIAP proposes to fund, and if necessary, to clarify items in the application. Not all applicants who are contacted for negotiation will necessarily receive a TIIAP award. Final selections made by the Administrator will be based upon the recommendations by the Director and the OTIA Associate Administrator and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes as set forth in the section entitled ''Program Purposes,'' upon the conclusion of negotiations.

Use of Program Income

Applicants are advised that any program income generated by a proposed project is subject to special conditions. Anticipated program income must be documented appropriately in the project budget. In addition, should an application be funded, unanticipated program income must be reported to TIIAP, and the budget for the project must be renegotiated to reflect receipt of this program income. Program income means gross income earned by the recipient that is either directly generated by a supported activity, or earned as a result of the award. In addition, federal policy prohibits any recipient or subrecipient receiving federal funds from the use of equipment acquired with these funds to provide services to non-federal outside organizations for a fee that is less than private companies charge for equivalent services. This prohibition does not apply to services provided to outside organizations at no cost.

Policy on Sectarian Activities

Applicants are advised that on December 22, 1995, NTIA issued a notice in the **Federal Register** on its policy with regard to sectarian activities. Under NTIA's policy, while religious activities cannot be the essential thrust of a grant, an application will not be ineligible where sectarian activities are only incidental or attenuated to the overall project purpose for which funding is requested. Applicants for whom this policy may be

[12] Title II of the Omnibus Consolidated and Emergency Supplemental Appropriations Bill for Fiscal Year 1999, Pub. L. No. 105–277 (1998).

[13] See discussion of ''Eligible Costs'' and ''Matching Funds Requirements'' in this Notice.

[14] The Office of Telecommunication and Information Applications is the division of the National Telecommunications and Information Administration that supervises NTIA's grant awards programs.

relevant should read the policy that was published in the **Federal Register** at 60 FR 66491, Dec. 22, 1995.

Waiver Authority

It is the general intent of NTIA not to waive any of the provisions set forth in this Notice. However, under extraordinary circumstances and when it is in the best interest of the federal government, NTIA, upon its own initiative or when requested, may waive the provisions in this Notice. Waivers may only be granted for requirements that are discretionary and not mandated by statute. Any request for a waiver must set forth the extraordinary circumstances for the request and be included in the application or sent to the address provided in the ''Addresses'' section above. NTIA will not consider a request to waive the application deadline for an application until the application has been received.

Other Information

Electronic Information. Information about NTIA and TIIAP, including this document and the Guidelines for Preparing Applications—Fiscal Year 1999, can be retrieved electronically via the Internet using the World Wide Web. Use http://www.ntia.doc.gov to reach the NTIA home page and follow directions to locating information about TIIAP. TIIAP can also be reached via electronic mail at tiiap@ntia.doc.gov.

Application Forms. Standard Forms 424 (OMB Approval Number 0348–0044), Application for Federal Assistance; 424A (OMB Approval Number 0348–0043), Budget Information—Non-Construction Programs; and 424B (OMB Approval Number 0348-0040), Assurances—Non-Construction Programs, (Rev 4–92), and other Department of Commerce forms shall be used in applying for financial assistance. These forms are included in the Guidelines for Preparing Applications—Fiscal Year 1999, which can be obtained by contacting NTIA by telephone, fax, or electronic mail, as described in the ''Addresses'' section above. TIIAP requests one original and five copies of the application. Applicants for whom the submission of five copies presents financial hardship may submit one original and two copies of the application. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number. In addition, all applicants are required to submit a copy of their application to their state Single Point of Contact (SPOC) offices, if they have one. For information on contacting state SPOC offices, refer to the Guidelines for Preparing Applications—Fiscal Year 1999.

Because of the high level of public interest in projects supported by TIIAP, the program anticipates receiving requests for copies of successful applications. Applicants are hereby notified that the applications they submit are subject to the Freedom of Information Act. To assist NTIA in making disclosure determinations, applicants may identify sensitive information and label it ''confidential.''

Type of Funding Instrument. The funding instrument for awards under this program shall be a grant.

Federal Policies and Procedures. Recipients and subrecipients are subject to all applicable federal laws and federal and Department of Commerce policies, regulations, and procedures applicable to federal financial assistance awards.

Pre-Award Activities. If an applicant incurs any project costs prior to the project start date negotiated at the time the award is made, it does so solely at its own risk of not being reimbursed by the government. Applicants are hereby notified that, notwithstanding any oral or written assurance that they may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

No Obligation for Future Funding. If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

Past Performance. Unsatisfactory performance of an applicant under prior federal financial assistance awards may result in that applicant's proposal not being considered for funding.

Delinquent Federal Debts. No award of federal funds shall be made to an applicant who has an outstanding delinquent federal debt until:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received; or

3. Other arrangements satisfactory to the Department of Commerce are made.

Purchase of American Made Products. Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

Name Check Review. All non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management, honesty, or financial integrity.

Primary Applicant Certifications. All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

1. Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 C.F.R. Part 26, Section 105) are subject to 15 C.F.R. Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace—Grantees (as defined at 15 C.F.R. Part 26, Section 605) are subject to 15 C.F.R. Part 26, Subpart F, ''Government wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

3. Anti-Lobbying—Persons (as defined at 15 C.F.R. Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. § 1352, ''Limitation on use of appropriated funds to influence certain federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosure—Any applicant that has paid or will pay for lobbying in connection with a covered federal action, such as the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities'' (OMB Control Number 0348–0046), as required under 15 C.F.R. part 28, Appendix B.

Lower Tier Certifications. Recipients shall require applicants/bidders for

subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

False Statements. A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. § 1001.

Intergovernmental Review. Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' It has been determined that this notice is a ''not significant'' rule under Executive Order 12866.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 98–34228 Filed 12–31–98; 8:45 am]

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Federal Register

Monday
January 4, 1999

Part VIII

Department of Education

National Institute on Disability and Rehabilitation Research; Notice of Proposed Funding Priorities for Fiscal Years 1999–2000 for Certain Centers and Projects; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Funding Priorities

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priorities for Fiscal Years 1999–2000 for Certain Centers and Projects.

SUMMARY: The Secretary proposes funding priorities for two Rehabilitation Research and Training Centers (RRTCs) and two Disability and Rehabilitation Research Projects (DRRPs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1999–2000. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: Comments must be received on or before February 3, 1999.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202–2645. Comments may also be sent through the Internet: comments@ed.gov

You must include the term ''Disability and Rehabilitation Research Projects and Centers'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains proposed priorities under the Disability and Rehabilitation Research Projects and Centers Program for two RRTCs related to: measuring rehabilitation outcomes; and rehabilitation of persons with disabilities from minority backgrounds. The notice also contains proposed priorities for two DRRPs related to: dissemination of disability and rehabilitation research; and the international exchange of information and experts. There are references in the proposed priorities to NIDRR's Long-Range Plan (LRP). The LRP can be accessed on the World Wide Web at: http://www.ed.gov/legislation/FedRegister/announcements/1998–4/102698a.html. These proposed priorities support the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764).

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of a particular project depends on the final priority, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the publication of the notice of final priorities.

Rehabilitation Research and Training Centers

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(b)(2)). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide that training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Description of Rehabilitation Research and Training Centers

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternate formats to ensure that they are accessible to individuals with a range of disabling conditions.

NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Proposed General Requirements

The Secretary proposes that the following requirements apply to these RRTCs pursuant to these absolute priorities unless noted otherwise. An applicant's proposal to fulfill these proposed requirements will be assessed using applicable selection criteria in the peer review process. The Secretary is interested in receiving comments on these proposed requirements:

Each RRTC must provide: (1) training on research methodology and applied research experience; and (2) training on knowledge gained from the Center's research activities to persons with disabilities and their families, service providers, and other appropriate parties.

Each RRTC must develop and disseminate informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

Each RRTC must involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, training, and dissemination activities, and in evaluating the Center.

The RRTC must conduct a state-of-the-science conference and publish a comprehensive report on the final outcomes of the conference. The report must be published in the fourth year of the grant.

The RRTC must coordinate with other entities carrying out related research or training activities.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities.

Proposed Priority 1: Measuring Rehabilitation Outcomes

Introduction

Chapter Four of NIDRR's proposed LRP (63 FR 57204) discusses issues in medical rehabilitation, including research on rehabilitation outcomes. There is a need to develop more effective outcomes measurement tools to determine the effectiveness, including the cost-effectiveness, of medical rehabilitation interventions and products. Chapter Seven of the Proposed LRP (63 FR 57211) reviews the importance of documenting outcomes across service settings and programs. The proposed LRP identifies long-term outcomes, such as employment, community integration, and quality of life, as an important component of the new paradigm of disability that expands the focus of research from the individual to society and the environment. NIDRR expects this RRTC to integrate the new paradigm of disability in its research activities. The new paradigm maintains that disability is a product of an interaction between characteristics of the individual and characteristics of the natural, man-made, cultural, social environments.

Medical rehabilitation outcomes research has focused on function. NIDRR supported the development and application of the Functional Independence Measure (FIM), a criterion-referenced scale that has been widely accepted in inpatient rehabilitation settings. NIDRR also supported the development of the Craig Handicap Assessment and Reporting Technique that contains scales for assessing the World Health Organization dimensions of ''handicap'' (i.e., participation) and is currently being refined to measure cognitive components of disability.

While researchers have been able to demonstrate gain in function, as measured by instruments like the FIM, there is no conclusive evidence regarding the specific impact of therapeutic intervention on functional gain (Heinemann, A. et al., ''Relation of Rehabilitation Intervention to Functional Outcome,'' *Final Technical Report*, Center for Functional Assessment Research, University of Buffalo, pg. 11, 1998). In addition, medical rehabilitation providers are being asked to demonstrate the relationship between short-term functional gain and long-term outcomes for persons with disabilities (Wilkerson, D. and Johnston, M., ''Clinical Program Monitoring Systems,'' in *Assessing Medical Rehabilitation Practices—The Promise of Outcomes Research*, pgs. 275–305, 1997).

In addition to the widespread use of the FIM as a measure of function, there are other commonly used measures. Also, there are multiple measures related to other types of outcomes, including quality of life, community integration, and consumer satisfaction. Providers, consumers, and other stakeholders have difficulty comparing outcomes because use of outcome measures across settings is not standardized (Wilkerson, D. and Johnston, M., ibid.).

Proposed Priority

The Secretary proposes to establish an RRTC for the purpose of developing improved methods that assess the effectiveness of medical rehabilitation services. The RRTC must:

(1) Develop and test a theoretical model or models assessing long-term outcomes as part of a system of evaluating medical rehabilitation effectiveness;

(2) Investigate the extent to which the effectiveness of medical rehabilitation services can be determined by applying functional outcomes measures to specific rehabilitation interventions;

(3) Identify gaps in existing measures of medical rehabilitation effectiveness, assessing not only the FIM's, but also other instruments' utility as a measure of the impact of therapeutic interventions on function across rehabilitation settings;

(4) Revise or develop and test measures of medical rehabilitation effectiveness to address gaps identified by (3) above; and

(5) Evaluate and describe the uses of medical rehabilitation outcome data by payers, providers, and consumers.

In carrying out these purposes, the RRTC must coordinate with the RRTC on Health Care for Individuals with Disabilities—Issues in Managed Health Care, the National Center on Medical Rehabilitation Research, the Department of Veterans Affairs, and the Health Care Financing Administration.

Proposed Priority 2: Rehabilitation of Persons With Disabilities From Minority Backgrounds

Introduction

Chapter Two of NIDRR's proposed LRP (63 FR 57194) discusses and highlights methodological problems in the categorization and definition of disability, including identifying and measuring consequences of disability in minority populations. Disabilities in minority populations may be associated with factors such as health, poverty, family structure, environment, aging, substance abuse, chronic disease, and violence-related trauma in ways that are substantially different from non-minority populations. Chapter 3 of the proposed LRP identifies the need for minority populations research that provides information about employment factors, including identifying rehabilitation strategies that are based on knowledge about the characteristics of racial and ethnic minorities.

For the purpose of this proposed priority, persons for minority backgrounds include one or more of the following minorities: Asian-Americans, Hispanics or Latinos, Black or African-Americans, and Native Hawaiians or other Pacific Islanders. American

Indians and Alaskan Natives are not included as a target population for this RRTC because other NIDRR grants address their needs directly.

Proposed Priority

The Secretary proposes to establish an RRTC on rehabilitation of persons with disabilities from minority backgrounds for the purpose of evaluating their rehabilitation needs and improving their rehabilitation outcomes. The RRTC must:

(1) Identify methodological problems in determining the rehabilitation needs of persons with disabilities from minority backgrounds, including subpopulations within these groups, and propose strategies to address these methodological problems;

(2) Based on paragraph (1), identify implications for rehabilitation research, training, policy development, and services;

(3) Assess the outcomes of rehabilitation for persons with disabilities from minority backgrounds, as measured by two or more variables (e.g., functional abilities, health and wellness, employment, and psychosocial status), and analyze the effects of minority status on rehabilitation outcomes; and

(4) Identify, develop, and evaluate rehabilitation methodologies, models and interventions for specific minorities in selected areas drawn from the NIDRR Research Agenda in Section Two of the proposed LRP.

In carrying out the purpose of the priority, the RRTC must:

- Include concepts of health self-assessment and consumer decision-making related to participation in the labor force; and
- Coordinate with the Centers for Disease Control and Prevention's Center on Minority Health.

Disability and Rehabilitation Research Projects

Authority for Disability and Rehabilitation Research Projects (DRRPs) is contained in section 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(a)). DRRPs carry out one or more of the following types of activities, as specified in 34 CFR 350.13—350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance. Disability and Rehabilitation Research Projects develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, DRRPs improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

Proposed Priority 3: Dissemination of Disability and Rehabilitation Research

Introduction

Chapter Eight of NIDRR's proposed LRP (63 FR 57213) describes the importance of effective knowledge dissemination and utilization (D&U). NIDRR proposes to establish a center that will serve as the cornerstone of NIDRR's D&U efforts by carrying out research on effective dissemination methodologies and providing technical assistance to all of NIDRR's grantees as well as to the wide array of consumers of disability research findings.

Proposed Priority

The Secretary proposes to establish a DRRP for the purpose of increasing the usefulness of NIDRR-funded research findings. The National Center for the Dissemination of Disability Research must:

(1) Identify and evaluate effective methodologies for disseminating disability research to persons with disabilities and their families, service providers, policymakers, and other researchers;

(2) Provide technical assistance on D&U methodologies to all NIDRR grantees including, but not limited to, addressing cultural relevance, ensuring physical accessibility of information, and developing effective dissemination plans.

(3) Develop, implement, and evaluate a plan for collaboration among NIDRR projects that primarily disseminate information in order to enhance dissemination and avoid duplication of activities; and

(4) Develop, implement, and evaluate methods that diverse public audiences can use to access NIDRR-funded research findings.

Proposed Priority 4: International Exchange of Information and Experts

Introduction

The Rehabilitation Act of 1973, as amended, provides NIDRR with the authority to exchange experts and technical assistance in field of rehabilitation of individuals with disabilities as well as conduct a program for international research and demonstration (Section 204 (b)(6)). Cooperative international research activities can offer new perspectives on solving rehabilitation problems, provide data for the evaluation of domestic programs, and assist U.S. rehabilitation practitioners to improve the effectiveness of the services they provide, especially for minority and immigrant populations.

Proposed Priority

The Secretary proposes to establish a DRRP for the purpose of improving rehabilitation services by obtaining and disseminating information on international rehabilitation research and practices. The project must:

(1) Develop and maintain a database of international rehabilitation research and make this database available to grantees supported by NIDRR, the Office of Special Education Programs, and the Rehabilitation Services Administration;

(2) Conduct rehabilitation research conferences involving participants from the U.S. and other countries;

(3) Conduct an international exchange of research and technical assistance experts between other countries and the United States; and

(4) Disseminate information on cultural perspectives on rehabilitation to entities that provide rehabilitation or conduct rehabilitation research and training activities involving persons from foreign backgrounds.

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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection,

during and after the comment period, in Room 3424, Switzer Building, 330 C Street S.W., Washington, D.C., between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR Parts 350.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Projects, and 84.133B, Rehabilitation Research and Training Centers)

Dated: December 28, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–34750 Filed 12–31–98; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Monday
January 4, 1999

Part IX

Department of Education

Notice Inviting Applications for Designation as Eligible Institutions for Fiscal Year 1999 for the Strengthening Institutions and Hispanic-Serving Institutions (HSI) Programs; Notice

DEPARTMENT OF EDUCATION

[CFDA NO.: 84.031H]

Notice Inviting Applications for Designation as Eligible Institutions for Fiscal Year (FY) 1999 for the Strengthening Institutions and Hispanic-Serving Institutions (HSI) Programs

Purpose of This Notice: This notice supersedes the institutional eligibility notice published in the **Federal Register** of September 23, 1998 (63 FR 50960–50961) for the Strengthening Institutions and Hispanic-Serving Institutions (HSI) Programs. This notice incorporates statutory changes to the institutional eligibility provisions in those programs that were made by the Higher Education Amendments of 1998, Public Law 105–244, and became effective on October 1, 1998. Those changes include, for example, the addition of a waiver option for American Indian Tribally Controlled Colleges and Universities. This notice also replaces the low-income table set forth in the September 23, 1998 notice with a Base Year 1996–97 Low-Income Levels Table.

Because the statutory changes made by the Higher Education Amendments of 1998 to the Strengthening and HSI Programs became effective on October 1, 1998, the Department will not have adequate time to implement the ''early application procedures'' contained in the September 23, 1998 notice for this year. Therefore, the Department will not use those early application procedures for this fiscal year. As a result, the Department will not accept amended or corrected applications after the deadline dates set forth in this notice.

For the reader's convenience, this notice repeats all the relevant application information contained in the September 23, 1998 **Federal Register** notice in order to provide a single reference point for information about the institutional eligibility application process.

Purpose of These Programs

Under the Strengthening Institutions Program authorized under Part A of Title III of the Higher Education Act of 1965, as amended (HEA), institutions of higher education, including American Indian Tribally Controlled Colleges and Universities and Alaska Native and Native Hawaiian—Serving Institutions, are eligible to receive funds if they meet specific statutory and regulatory requirements. Similarly, Hispanic-Serving Institutions may receive funds under the HSI Program, now authorized under Title V of the HEA, if they meet specific statutory and regulatory requirements.

An institution that is designated as an eligible institution under those programs may receive a grant under those programs, and may also receive a waiver of certain non-Federal share requirements under the Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Work Study (FWS), and Undergraduate International Studies and Foreign Language Programs (UISFLP). These first two programs are student financial assistance programs authorized under Title IV of the HEA; the third program is authorized under Title VI of the HEA. Qualified institutions may receive these waivers even if they are not recipients of grant funds under the Title III or Title V programs.

Deadline for Transmittal of Applications: February 15, 1999 for applicants who wish to compete for new grants under the Strengthening Institutions and HSI Programs; May 28, 1999 for applicants who wish to apply only for FSEOG, FWS, or UISFLP waivers. Accordingly, if an institution is interested in applying both for a grant and a waiver, it must submit its application by February 15, 1999.

Applications Available: January 15, 1999.

Eligibility Information: To qualify as an eligible institution under the HSI Program, an institution must first qualify as an eligible institution under the Strengthening Institutions Program. To qualify as an eligible institution under the Strengthening Institutions Program, an applicant, including an American Indian Tribally Controlled College or University or an Alaska Native or Native Hawaiian Serving Institution, must (1) be accredited or preaccredited by a nationally recognized accrediting agency; (2) be legally authorized by the State in which it is located to be junior or community colleges (except that an American Indian Tribally Controlled College or University merely must qualify as a junior or community college) or provide a bachelor's degree program; and (3) have a high enrollment of needy students. In addition, its education and general (E&G) expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction. The complete eligibility requirements are found in the Strengthening Institutions Program regulations, 34 CFR 607.2–607.5. The regulations may also be accessed by visiting the following Department of Education web site on the World Wide Web: http:/www.ed.gov/offices/OPE/OHEP

Enrollment of Needy Students: Under 34 CFR 607.3(a), an institution is considered to have a high enrollment of needy students if—(1) at least 50 percent of its degree students received financial assistance under one or more of the following programs: Federal Pell Grant, FSEOG, FWS, and Federal Perkins Loan Programs; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offered similar instruction.

To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base year 1996–1997 must be more than the median for its category of comparable institutions provided in the table set forth below in this notice.

Educational and General Expenditures per Full-Time Equivalent Student: An institution should compare its average E&G expenditures per FTE student to the average E&G expenditure per FTE student for its category of comparable institutions contained in the table set forth below in this notice. If the institutions's average E&G expenditure for the 1996–1997 base year is less than the average for its category of comparable institutions, it meets this eligibility requirement.

An institution's E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

Table

[The following table identifies the relevant median Federal Pell Grant percentages and the average E&G expenditures per FTE student for the 1996–1997 base year for the four categories of comparable institutions]

Student	Median Pell Grant percentage	Average E & G FTE
2-year Public Institutions	26.9	$ 8,132
2-year Non-Profit Private Institutions	39.1	12,322
4-year Public Institutions	28.7	17,067
4-year Non-Profit Private Institutions	27.1	24,756

Waiver Information: Institutions of higher education that are unable to meet the needy student enrollment requirement or the E&G expenditure requirement may apply to the Secretary for waivers of these requirements, as described in 34 CFR 607.3(b) and 607.4(c) and (d). *Institutions requesting a waiver of the needy student requirement must include the detailed information as set forth in the instructions for completing the application.*

The waiver authority provided in 34 CFR 607.3(b)(2) and (3), refers to ''low-income'' students and families. The regulations define ''low-income'' as an amount that does not exceed 150 percent of the amount equal to the poverty level in 1996–97 base year as established by the U.S. Bureau of the Census, 34 CFR 607.3(c). For the purposes of this waiver provision, the following table sets forth the low-income levels for the various sizes of families:

FY 1996–97 ANNUAL LOW-INCOME LEVELS

Size of family unit	Contiguous 48 States, the District of Columbia and outlying	Alaska	Hawaii
1	11,610	14,490	13,365
2	15,540	19,410	17,880
3	19,470	24,330	22,395
4	23,400	29,250	26,910
5	27,330	34,170	31,425
6	31,260	39,090	35,940
7	35,190	44,010	40,455
8	39,120	48,930	44,970

For family units with more than eight members, add the following amount for each additional family member: $3,930 for the contiguous 48 states, the District of Columbia and outlying jurisdictions; $4,920 for Alaska; and $4,515 for Hawaii.

The figures shown as low-income levels represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. The Census levels were published by the U.S. Department of Health and Human Services in the **Federal Register** on February 24, 1998 (63 FR 9235–9238).

In reference to the waiver option specified in § 607.3(b)(4) of the regulations, information about ''metropolitan statistical areas'' may be obtained by requesting the *Metropolitan Statistical Areas, 1993*, order number PB93–192664, from the National Technical Information Services, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number (703) 487–4650. There is a charge for this publication.

Applicable Regulations: Regulations applicable to the eligibility process include the Strengthening Institutions Program Regulations in 34 CFR part 607, and the Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 82, 85, and 86.

For Applications or Information Contact: Ellen M. Sealey, Margaret A. Wheeler or Anne S. Young, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 600 Independence Avenue, S.W., (Portals CY–80) Washington, D.C. 20202–5335. Telephone (202) 708–8866, 708–9926 and 708–8839. 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.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting the FIRS. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1057, 1059c and 1065a.

Dated: December 28, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–34751 Filed 12–31–98; 8:45 am]

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Federal Register

Monday
January 4, 1999

Part X

Department of Education

Office of Special Education and Rehabilitative Services; Grant Applications Under Part D, Subpart 2 of the Individuals with Disabilities Education Act Amendments of 1997; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Grant Applications Under Part D, Subpart 2 of the Individuals With Disabilities Education Act Amendments of 1997.

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1999.

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for fiscal year 1999 competitions under four programs authorized by the Individuals with Disabilities Education Act (IDEA), as amended. The four programs are: (1) Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities (three priorities); (2) Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities (one priority); (3) Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (one priority); and (4) Special Education—Technology and Media Services for Individuals with Disabilities (two priorities).

This notice supports the National Education Goals by helping to improve results for children with disabilities.

Waiver of Rulemaking

It is generally the practice of the Secretary to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice.

General Requirements

(a) Projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see Section 606 of IDEA);

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see Section 661(f)(1)(A) of IDEA);

(c) Projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, D.C. during each year of the project; and

(d) In a single application, an applicant must address only one absolute priority in this notice.

Note: The Department of Education is not bound by any estimates in this notice.

Information collection resulting from this notice has been submitted to OMB for review under the Paperwork Reduction Act and has been approved under control number 1820–0028, expiration date July 31, 2000.

Research And Innovation To Improve Services And Results for Children With Disabilities [CFDA 84.324]

Purpose of Program: To produce, and advance the use of, knowledge to: (1) improve services provided under IDEA, including the practices of professionals and others involved in providing those services to children with disabilities; and (2) improve educational and early intervention results for infants, toddlers, and children with disabilities.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) The selection criteria for Absolute Priorities 1–3 are drawn from the EDGAR general selection criteria menu. The specific selection criteria for each of the priorities are included in the funding application packet for the three competitions.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only applications that meet these absolute priorities:

Absolute Priority 1—Directed Research Projects (84.324D)

This priority provides support for projects that advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals who work with children with disabilities in regular education environments and natural environments, to provide those children effective instruction and interventions that enable them to learn and develop successfully. Under this priority, projects must support innovation, development, exchange of information, and use of advancements in knowledge and practice designed to contribute to the improvement of early intervention, instruction, and learning of infants, toddlers, and children with disabilities.

Focus 1—Inclusion of Students With Disabilities in Large-Scale Assessment Programs

The IDEA amendments of 1997 include a number of provisions related to State and district-wide assessment programs. These provisions call for (1) the participation of children with disabilities in general State and district-wide assessment programs, with appropriate accommodations where necessary (Sec. 612(a)(17)(A)); (2) the provision of alternate assessments for children with disabilities who cannot participate in State or district-wide assessment programs (Sec. 612(a)(17)(A)(I)(ii)), (3) public reporting on the participation and performance of students with disabilities in general assessment programs and alternate assessments (Sec. 612(a)(17)(B)), and (4) individualized decision making during the development of the IEP about modifications in the administration of State and district-wide assessments and participation in alternate assessments (Sec. 614(d)(1)(A)(v)).

Focus 1 supports projects that pursue systematic programs of applied research to (a) determine how State and local educational agencies can best meet these requirements, and/or (b) study the effects of State and local efforts to meet these requirements. Projects may focus on one or more specific requirements or issues.

The Secretary intends to fund at least one project focusing on low-incidence disabilities, i.e., visual impairments (including blindness), hearing impairments (including deafness), orthopedic impairments, autism, traumatic brain injury, other health impairments, and multiple and severe disabilities. The Secretary intends to make approximately 3 awards in Focus Area 1.

Focus 2—Instructional Interventions and Results for Children With Disabilities

The successful implementation of the IDEA Amendments of 1997 requires a strong emphasis on access to and support for children with disabilities in general education curricula. Research is needed to describe, test, and validate instructional practices that have the potential for generating positive results for children with disabilities as they strive to meet State and local standards and performance goals set for all students. The research must focus on children in preschool, elementary, middle, or high school. The Secretary intends to award at least 2 projects for each of the following grade levels;

preschool, elementary, middle, and high school.

Projects supported under Focus 2 must investigate one or more issues related to content-area results for children with disabilities. These issues may include, but are not limited to:

(a) The relationship of instructional interventions in core subjects to results. Core subjects include, for example, language arts, mathematics, science, and social studies.

(b) The relationship of contextual variables to results. Contextual variables include, for example, classroom design, groupings, or management strategies; curricular design, delivery, or materials; family and staff interaction.

(c) How to provide instructional and curricular accommodations to ensure that students with disabilities have access to the general education curriculum.

The Secretary intends to fund approximately 12 awards in Focus 2.

Focus Area 3—Early and Prescriptive Assessment of Children With Learning or Emotional Disabilities

Analyses of identification rates for children with disabilities have repeatedly documented that, in general, children with physical, sensory, speech, and severe cognitive disabilities are recognized relatively early, and children with learning and emotional disabilities, relatively late. Between first grade and fourth grade the number of children identified with learning disabilities and emotional disturbance triples. In contrast, research has shown that early intervention is particularly effective for children with learning or emotional disabilities, to improve educational results and reduce behavioral difficulties.

Attempts to explain the late identification patterns for children with learning or emotional disabilities have targeted weaknesses in assessment practices, and the consequent reluctance of schools to engage in potentially stigmatizing erroneous identification. Nevertheless, this reluctance has undoubtedly resulted in the denial of appropriate services to many young children at the age when they would obtain the greatest benefit from targeted interventions.

Research is needed to examine and document effective and prescriptive assessment procedures that will contribute to the accurate identification of young children (3 through 9 years of age) with learning or emotional disabilities, and will lead to specification of appropriate services to maximize their social and educational development. The procedures and services to be studied must incorporate multiple assessment approaches including observational techniques and, where appropriate, prereferral strategies to enhance the accuracy of assessment and prevent misidentification of children. The research must document the effectiveness of methods to accurately identify and prescribe interventions for young children with learning or emotional disabilities, including students who may be determined eligible for special education under the classifications of specific learning disabilities, emotional disturbance, development delay, or other health impaired. Given the common co-occurrence of learning and behavioral problems in young children with any of these disabilities, and the importance of including appropriate objectives in IEPs that cover both of these areas when necessary, all applicants for research awards under this focus area must conduct research on early assessment procedures that examine both emotional/behavioral and learning domains.

The Secretary intends to award approximately 4 projects in Focus 3.

Focus 4—Improving the Delivery of Early Intervention, Special Education or Related Services to Children With Disabilities From High Poverty Backgrounds

The association between socioeconomic status and enrollment in special education has been well documented. Poverty has been associated with an increased risk of children being born with a lower than average birth weight. Low birth weight babies are at higher risk of developing learning disabilities, hyperactivity, emotional problems, mental illness, neurodevelopmental problems, and visual and hearing impairments. When poverty and low birth weight occur together, the number of students who need special education services is greater than would be predicted for those factors independently (Nineteenth Annual Report to Congress on the Implementation of IDEA). Available data from the National Longitudinal Transition Study show that 68 percent of students in special education live in a household where the income is less than $25,000 per year versus 39 percent of the general population of youth.

A number of problems that affect educational outcomes for children are associated with poverty. Children of low-income families on average miss more days of school (Sherman, 1994). A pattern of underachievement is also associated with children of low-income families (Carnegie Corporation, 1996). Students from low-income families are twice as likely to drop out of high school as their middle income peers, and 11 times more likely to drop out than their upper-income peers (Sherman, 1994).

Research projects supported under this focus must identify, examine, and document information about the specific factors that contribute to effective early intervention, special education, or related services for children with disabilities from high poverty backgrounds.

Invitational Priority

The Secretary is particularly interested in applications that address issues related to young women and girls with disabilities from high poverty backgrounds. However, under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

The Secretary intends to award approximately 3 projects in Focus 4.

Project Period for All Focus Areas: Up to 36 months.

Maximum Award for All Focus Areas: The Secretary rejects and does not consider an application that proposes a budget exceeding $180,000 for any single budget period of 12 months. This maximum award applies to any application for any Focus area. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Eligible Applicants: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

Page Limits for All Focus Areas: Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating an application. An applicant must limit Part III to the equivalent of no more than 50 double-spaced pages, using the following standards: (1) A ''page'' is 8½″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides); (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Absolute Priority 2—Model Demonstration Projects for Children with Disabilities (84.324T)

This priority supports model demonstration projects that develop, implement, evaluate, and disseminate new or improved approaches for providing early intervention, special education and related services to infants, toddlers, and children with disabilities, ages birth through 21. Projects supported under this priority are expected to be major contributors of models or components of models for service providers and for outreach projects funded under the Individuals with Disabilities Education Act.

Under this absolute priority, the Secretary expects to fund projects across the full range of age, disability, and service issue categories. In addition, the Secretary intends, under section 661(e)(2) of IDEA, to fund a limited number of projects in each of the focus areas listed below.

Requirements for All Demonstration Projects

A model demonstration project must—

(a) Develop and implement the model with specific components or strategies that are based on theory, research, or evaluation data;

(b) Evaluate the model by using multiple measures of results to determine the effectiveness of the model and its components or strategies. With the exception of projects under focus area 3, Local or State Child Find, all projects must include measures of individual child change and other indicators of the effects of the model (e.g., family outcomes, peer outcomes, teacher outcomes), and cost data associated with implementing the model; and

(c) Produce detailed procedures and materials that would enable others to replicate the model.

Federal financial participation for a project funded under this priority will not exceed 90 percent of the total annual costs of development, implementation, evaluation, and dissemination of the project.

In addition to the annual two day Project Director's meeting in Washington, D.C. mentioned in the General Requirements section of this notice, projects must budget for another annual two-day trip to Washington, D.C. to collaborate with the Federal project officer and the other projects funded under this priority, to share information and discuss project implementation issues.

Focus Areas

Focus Area 1—Instructional Models To Improve Early Reading Results for Children With Learning Disabilities.

Children with learning disabilities typically need highly purposeful, strategic, systematic, and carefully designed instruction to learn to read. The purpose of this focus area is to develop models to improve the early reading results for children with learning disabilities in kindergarten through third grade. As a result of research conducted over the last several years, researchers have found that the models must incorporate research-based principles of phonemic awareness, alphabetic understanding and knowledge, and the appreciation of meaning. The models must also reflect research-based principles including, creating an appreciation of the written word; developing awareness of printed language; learning the alphabet; understanding the relation of letters and words; understanding that language is made of words, syllables, and phonemes; learning letter sounds; sounding out new words; identifying words in print accurately and easily; knowing spelling patterns; and learning to read critically.

Projects are required to evaluate their effectiveness. Where appropriate, the Secretary particularly encourages projects under this focus area to include information related to the following measures—

(a) Multiple measures of student's beginning reading knowledge and skills;

(b) The extent to which children with learning disabilities access the general education curriculum, including participation in national and State assessments; and

(c) Descriptions of the instructional models, including basal reading programs, supplemental materials, and instructional approaches.

The Secretary intends to make approximately 3 awards in Focus Area 1.

Focus Area 2—Appropriate Services for Children With Deaf-Blindness

This focus area supports model projects to meet the needs of children with deaf-blindness. Projects may include, for example, related services such as assistive technology devices, innovative approaches, media and materials to address language and communication, sensory functioning, and orientation and mobility skills for students attending their local schools. Projects may address the heterogeneous nature of the students' needs, ranging from advanced curricula for some students to lifelong support for others. Projects are required to evaluate their effectiveness. Where appropriate, the Secretary particularly encourages projects under this focus area to include information related to the following measures:

(a) Changes in family satisfaction with the provision of services and the child's education; and

(b) Changes in the teacher's assessment of the provision of services.

The Secretary intends to make approximately 3 awards in Focus Area 2.

Focus Area 3—Local or State Child Find

Local or State Child Find Projects under this area support development of local or State Child Find models to identify all eligible children under IDEA Part C (e.g., children with specific disabilities or children with developmental delays). Projects must test and describe the environments that promote successful child find practices (e.g., success in identifying all eligible children with disabilities or screening of all children for hearing loss or low birth weight.

Projects are required to evaluate their effectiveness. Where appropriate, the Secretary particularly encourages projects under this focus area to include information related to the following measures—

(a) Changes in the number and proportion of children served under Part C, ages birth to 3;

(b) Changes in the number of children referred to the State Child Find system from all sources, public and private;

(c) Changes in the number and proportion of children served ages birth to one year old, as measured relative to the total number of children served under IDEA, Part C within the geographic area served by the project; and

(d) Changes in the collaboration efforts and linkages among other agencies in States that provide services for infants and toddlers at-risk for disabilities.

The Secretary intends to make approximately 3 awards in Focus Area 3.

Focus Area 4—Services Through Age 21

Projects under this focus area support models that provide appropriate transition services to students ages 18 through 21 who have not exited and are not expected to exit secondary schools with ''regular'' diplomas. To the extent possible, the models should be developed in age appropriate environments such as community-based work settings, community colleges, or other adult learning environments. Students included in these models are expected to remain eligible for special education services until they reach their State's maximum age for services. Students must be included in the IDEA Part B Child Count.

Projects are required to evaluate their effectiveness. Where appropriate, the Secretary particularly encourages projects under this focus area to include information related to the following measures—

(a) Participation of youth with disabilities and their families in the planning and implementation of services;

(b) Participation of adult service agencies or providers in the planning and implementation of services;

(c) Utilization of work incentives under the Supplemental Security Income (SSI) Program; and

(d) Change in the percentage of students participating in employment and other post school activities.

The Secretary intends to make approximately 3 awards in Focus Area 4.

Project Period For All Focus Areas: Up to 48 months.

Maximum Award for All Focus Areas: The Secretary rejects and does not consider an application that proposes a budget exceeding $180,000 (exclusive of any matching funds) for any single budget period of 12 months.

The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Eligible Applicants: For Focus areas 1–3, eligible applicants include, State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations. For Focus area 4, eligible applicants are limited to local educational agencies only.

Page Limits for All Focus Areas: Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating an application. An applicant must limit Part III to the equivalent of no more than 40 double-spaced pages, using the following standards: (1) A ''page'' is $8\frac{1}{2}'' \times 11''$ (on one side only) with one-inch margins (top, bottom, and sides); (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Absolute Priority 3—Research Institute To Improve Results for Adolescents With Disabilities in General Education Academic Curricula (84.324S)

Background: The purpose of this priority is to support an institute that will conduct research and development activities aimed at improving results for secondary school-aged (grades 9 through 12) students with disabilities participating in the general education academic curricula. Research must be conducted on how students with disabilities learn challenging academic content, as well as on a broad array of instructional and contextual variables that influence skill acquisition among high school students with disabilities.

Although various school reforms have been implemented that are intended to help all students succeed academically, multiple and significant challenges face both general and special educators. For example, findings from the National Longitudinal Transition Study indicate that students with disabilities are spending, on average, nearly 70 percent of their school day in regular education classrooms where exposure to general education academic curricula is most common. However, it is uncertain if academic content is learned when fewer than one-quarter of students with disabilities move on to two or four-year colleges. Furthermore, when special education and other related services are being increasingly provided in regular education classrooms, a stronger collaboration among general and special educators is needed. For example, general educators play an increasingly prominent role in the education of students with disabilities, not only as classroom teachers for academic content, but also in the IEP process. Therefore, the redefinition of responsibilities for both general and special educators will require the learning of new content and new strategies for teaching and assessing students.

Furthermore, many high school students with disabilities have significant skill deficiencies that create significant barriers which enable them to benefit from instruction offered in the general education academic curricula. Studies are needed to develop instructional strategies that enable students with disabilities to understand, remember, and integrate content information contained in academic curricula, and to examine factors which define the instructional dynamic within high school classrooms between teachers and students and between groups of students.

Some of the specific questions about which more knowledge is needed include: Are current practices sufficient for teaching complex, high school subject content within the context of restructured high schools to students with disabilities, including students who live in poverty? How do classroom teachers best structure and deliver content information? How can teachers best organize instruction within an academically diverse class to ensure that all students master and can generalize targeted content? What are the critical instructional and contextual variables that influence skill acquisition among adolescents with disabilities? How can this knowledge inform the improvement of instructional practice?

For real change to occur, secondary special and general education teachers who serve children with disabilities in the general education academic curricula need to know of, and be able to use, research-based practices. Moreover, it is necessary to develop effective ways of disseminating research results and effective research-based practices to teachers and other school personnel. This calls for ambitious, innovative, and collaborative approaches to infuse research findings into professional practice. Effective approaches for translating research to secondary school practice can help ensure that students with disabilities

have access to and achieve success in general education curricula with high, measurable standards, and that they will be prepared to succeed in post-secondary education.

Priority

The Secretary establishes an absolute priority for a research institute to improve results for high school students with disabilities by enhancing learning in general education academic curricula. A project funded under this priority must—

(a) Review and identify the critical gaps in the current knowledge in the following areas:

(1) How high school students with disabilities learn challenging academic content, specifically in core high school courses (e.g., math, science, English, social studies, and foreign language);

(2) How teachers learn and use effective and efficient, research-based instructional practices including necessary instructional accommodations and supports to help students with disabilities achieve in a rigorous, standards-based curriculum. We know that certain teaching strategies (e.g., intensive instruction; individualized, instructional decision-making and planning; curriculum that provides contextualized learning opportunities) enable students to learn in a more efficient manner; and

(3) How contextual factors in secondary classrooms and schools influence teaching and learning. For example, scheduling, cross-disciplinary teaching and cooperative teaching approaches, and the use of technology to support instruction and learning are often-cited factors that improve learning for all students;

(b) Design and conduct a strategic program of research that addresses knowledge gaps identified in paragraph (a) by:

(1) Conducting a rigorous research program and employing collaborative research team models (e.g., teacher-researcher partnership research, action research);

(2) Conducting the program of research in organizationally and demographically diverse high school settings, including high poverty rural and urban schools; and

(3) Collaborating with other research institutes supported under the Individuals with Disabilities Education Act, and other experts and researchers in related subject matter and methodological fields in designing and conducting the activities of the institute;

(c) Design, implement, and evaluate a dissemination approach that links research to practice and promotes the use of current knowledge and ongoing research findings in the professional development of teachers. This approach must—

(1) Serve as a ''blueprint'' for maximizing the use of research-based knowledge to improve and sustain effective and efficient instructional practices of general and special education teachers in high school academic courses;

(2) Actively engage teachers, administrators, and related service personnel in learning about, adapting, and evaluating research;

(3) Be comprehensive, flexible and responsive to new knowledge and to changing school environments;

(4) Include a rigorous evaluation methodology with multiple outcome measures to assess its effectiveness across diverse sites;

(5) Be implemented and evaluated in organizationally and demographically diverse settings including high poverty urban and rural high schools; and

(6) Be developed in coordination with other U. S. Department of Education-sponsored efforts and technical assistance providers, including other research institutes, centers, and information clearinghouses;

(d) Develop approaches to disseminating effective research-based information and practices to secondary education teachers who serve high school students with disabilities participating in general education academic curricula; and

(e) The project must budget three trips annually to Washington, D. C. (two trips to meet with U.S. Department of Education officials and one trip, as specified in the general requirements for all projects, to attend the Office of Special Education Programs Project Director's Conference).

Under this priority, The Secretary will make one award for a cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the project for the fourth and fifth years of the project period, the Secretary, in addition to the requirements of 34 CFR 75.253(a), will consider—

(a) The recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day site visit to the project, are to be performed during the last half of the project's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the project's budget for year two. These costs are estimated to be approximately $6,000;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project's design and methodology demonstrates the potential for advancing significant new knowledge.

Project Period: Up to 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $700,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Eligible Applicants: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

Page Limits: Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating an application. An applicant must limit Part III to the equivalent of no more than 75 double-spaced pages, using the following standards: (1) A ''page'' is 8½″ × 11″ (on one side only) with one-inch margins (top, bottom, and sides); (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Special Education—Personnel Preparation To Improve Services and Results for Children With Disabilities [CFDA 84.325]

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education, to work with children with disabilities; and (2) to ensure that those personnel have the skills and knowledge, derived from practices that have been determined through research and experience to be successful, that are needed to serve those children.

Eligible Applicants: Local educational agencies and institutions of higher education.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) The selection criteria for this priority are drawn from the EDGAR general selection criteria menu. The specific selection criteria for this priority are included in the funding application packet for this competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority: Under section 673 of the Act and 34 CFR 75.105 (c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only those applications that meet this absolute priority:

Absolute Priority 1—Partnerships To Link Personnel Training and School Practice (84.325P)

Background: Teachers need to be prepared to provide effective instruction across the full range of student abilities. An overwhelming majority of all students with disabilities spend at least a portion of their school day in a general education classroom. The movement toward inclusive education in today's schools requires that general and special education teachers work together to meet the needs of students with disabilities. However, extensive data indicate that general education teachers do not feel that they have the knowledge and skills necessary to meet the educational needs of these students in their classrooms and that special education teachers are required to assume roles (e.g., consulting with general education teachers, co-teaching in general education classrooms, and supervising paraprofessional staff) for which they are insufficiently prepared.

In order to meet the challenge of preparing general and special education teachers to be effective in addressing the needs, and improving the results, of students with disabilities in inclusive schools, teacher preparation programs must be grounded in the structural, organizational, and instructional realities of schools, while schools must facilitate continuous improvement of teacher knowledge and skills. Institutions that prepare teachers and the schools in which teachers work both have a responsibility to ensure that teachers (special and regular education) can effectively fulfill their roles in working with children with disabilities.

Too often the sole relationship between preparation programs and local schools is limited to setting up practicum settings for trainees. Faculty members at Institutions of Higher Education (IHEs) are most often minimally involved in practicum supervision. Yet, universities and schools can no longer afford to work in isolation. Similarly, training regular and special education teachers can no longer be viewed as separate functions. The following priority is intended to develop models for building and enhancing partnerships between training institutions and local schools in order to strengthen the quality and effectiveness of preservice preparation programs and ongoing professional development activities for teachers and instructional leaders (both special and regular education) who serve children with disabilities.

The power of the partnerships supported through this priority should not be underestimated. The Secretary expects projects to develop models that connect preservice and inservice development for professional personnel and will have a significant impact on the improvement of educational practices that will lead to better results for children. It is intended that these models will provide a means by which local schools and IHEs can simultaneously improve their work and effectiveness.

Priority

The Secretary establishes an absolute priority to support projects that develop, implement, and evaluate innovative models for engaging general education and special education faculty in IHEs and general education and special education teachers and instructional leaders in local schools and districts in a dynamic and enduring partnership to enhance and simultaneously improve the quality of preservice preparation and ongoing professional development of teachers and instructional leaders. Partnership activities must be designed to ensure that both special education and regular education professionals have the knowledge and skills necessary to improve results for children with disabilities.

Projects funded under this priority must:

(a) Develop a partnership model for linking IHE personnel training programs with local school practice that is guided by a conceptual framework incorporating relevant, research-based knowledge and practice. The partnership model must include the following features:

(1) A systematic approach to professional development at all stages of the training continuum by focusing on continuous learning by teachers, instructional leaders, and faculties of IHE education programs;

(2) The integration of theory and practice to produce more practical, contextualized theory and more theoretically grounded, broadly informed practice;

(3) A strong commitment to research-based change that is continually responsive to personnel needs and to advances in the knowledge base; and

(4) A description of the benefits that will accrue to all stakeholders, including, but not limited to, IHE faculty, teachers-in-training, practicing professionals in local schools, and students with disabilities, as a result of the implementation of the proposed partnership model.

(b) Provide substantial evidence that the proposed model will serve a broad-based need.

(c) Establish an advisory panel of relevant stakeholders and potential users to provide guidance that will help to assure the model developed has broad applicability.

(d) Include the following partnerships activities:

(1) Identification of a common core of knowledge and skills that are appropriate for all prospective general and special education teachers, are aligned with critical teaching standards and with high student content and performance standards, and for which there is broad based support among all stakeholders;

(2) Clarification of the current and emerging roles and responsibilities of special educators in inclusive schools, including identification of the specialized knowledge and skill competencies that these educators must perform effectively, and for which there is broad based support among all stakeholders;

(3) Modification of curricula and materials used for preservice preparation of general and special education teachers that is consistent

with the requirements under paragraph (a) and is conducted through collaboration between IHEs and schools or districts; and

(4) Development of an approach for providing intensive, ongoing professional development that will advance the career-long learning of school and IHE personnel and ensure that children with disabilities achieve to high standards.

(e) Conduct ongoing formative evaluations of project activities, and a final evaluation to assess the success of the partnership model in enhancing the skills, knowledge, and practices of professional personnel that will lead to improved results for children with disabilities.

(f) Develop a plan for sustaining implementation of the model beyond the period of Federal funding for this project.

(g) Produce a model ''blueprint'' or case study that would permit others to replicate or implement the model and includes comprehensive information related to paragraphs (a) through (d) and comprehensive outcomes of the final evaluation required under paragraph (e).

(h) In addition to the annual two day Project Directors' meeting in Washington, D.C. listed in the General Requirements section of this notice, budget for another annual two-day trip to Washington, D.C. to collaborate with the Federal project officer and other projects funded under this priority by sharing information and discussing model development, implementation, and dissemination issues, including the carrying out of cross-project dissemination activities.

To be considered for an award, an applicant must satisfy the following requirements:

(a) Any applicant that is not a local educational agency or a State educational agency must demonstrate that it has engaged in a cooperative effort with one or more State educational agencies or, if appropriate, lead agencies for providing early intervention services, to plan, carry out, and monitor the project Section 673 (f)(2)(B) of the Act;

(b) Projects that provide student financial assistance may only provide such assistance for the preservice preparation of special education, related services, early intervention, and leadership personnel to serve children ages 3 through 21, and early intervention personnel who serve infants and toddlers; and

(c) Ensure that individuals who receive student financial assistance under the proposed project will subsequently provide, special education and related services to children with disabilities, or early intervention services to infants and toddlers with disabilities, for a period of two years for every year for which assistance was received or repay all or part of the cost of that assistance. Applicants must describe how they will notify scholarship recipients of this work or repay requirement, which is specified under section 673(h)(1) of the Act (20 U.S.C. 1473(h)(1)). The requirement must be implemented consistently with section 673(h)(1) of the Act and with applicable regulations in effect prior to the awarding of grants under this priority.

Under this priority, the project period is up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the project for the fourth and fifth years of the project period, the Secretary, in addition to the requirements of 34 CFR 75.253(a), will consider—

(a) The recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day site visit to the project, are to be performed during the last half of the project's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the project's budget for year two. These costs are estimated to be approximately $6,000;

(b) The timeliness and effectiveness with which all requirements of the grant have been or are being met by the project; and

(c) The degree to which the project's design and methodology demonstrates the potential for advancing significant new knowledge.

Project Period: Up to 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $300,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating an application. An applicant must limit Part III to the equivalent of no more than 50 double-spaced pages, using the following standards: (1) A ''page'' is 8½″×11″ (on one side only) with one-inch margins (top, bottom, and sides); (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

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Special Education-Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities [CFDA 84.326]

Purpose of Program: The purpose of this program is to provide technical assistance and information through such mechanisms as institutes, regional resource centers, clearinghouses and programs that support States and local entities in building capacity, to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and address systemic-change goals and priorities.

Eligible Applicants: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The selection criteria for this priority are drawn from the EDGAR general selection criteria menu. The specific selection criteria for this priority are included in the funding application packet for this competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority: Under section 685 of the Individuals with Disabilities Education Act and 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this

competitions only those applications that meet this absolute priority:

Absolute Priority—National Clearinghouse on Deaf-Blindness (84.326U)

Background

As a result of the uniqueness and complexity of serving children and young adults with deaf-blindness, there is a significant need to provide and disseminate information on a national basis to those with deaf-blindness and to their families, stakeholders, service providers, and other interested parties. The current trend of these children to live and attend neighborhood schools has caused an increase in the number and variety of individuals who require access to current, organized, authoritative, and synthesized information pertaining to deaf-blindness.

In an effort to effectively address this informational need and to improve results for children who are deaf-blind, the following priority supports a national clearinghouse that will make widely available specialized knowledge, effective practices, research, and other informational resources related to deaf-blindness.

Priority

The Secretary proposes an absolute priority for the purpose of establishing and operating a national clearinghouse on deaf-blindness to improve outcomes for children and individuals who are deaf-blind.

The clearinghouse must —

(a) Identify, collect, organize, and disseminate information related to deaf-blindness, including research-based and other practices that are supported by statistical or narrative data establishing their effectiveness in improving results for children who are deaf-blind. Information made available through the clearinghouse shall relate, at a minimum, to the following items—

(1) Early intervention, special education, and related services, for children with deaf-blindness;

(2) Related medical, health, social, and recreational services;

(3) The nature of deaf-blindness and the barriers to education and employment that it causes;

(4) Identified legal issues that are currently affecting persons with deaf-blindness; and

(5) Postsecondary education for individuals with deaf-blindness.

(b) Disseminate research and information on deaf-blindness to a wide variety of audiences employing multiple dissemination mechanisms and approaches, including the establishment and maintenance of a user-friendly Web site that permits the downloading of all clearinghouse information data bases and incorporates hotlinks to other relevant information sources. The data bases must also include national bibliographic, personnel, and organizational resources;

(c) Employ state-of-the-art technology, while linking researchers with practitioners in order to identify, collect, develop, and disseminate information;

(d) Assist State and local educational agencies, and other related agencies and organizations, in developing and implementing systemic-change goals for children with deaf-blindness;

(e) Respond to information requests from professionals, parents, students, institutions of higher education, and other interested individuals. The clearinghouse shall also develop and implement appropriate strategies for disseminating information to under-represented groups, including those with limited English proficiency;

(f) Carry out clearinghouse activities by collaborating with appropriate agencies, organizations, and consumer groups that have specific expertise in addressing the needs of children with deaf-blindness and building capacity to improve results for these children;

(g) Develop a broad, coordinated network of professionals, related organizations and associations, mass media, other clearinghouses, and governmental agencies at the Federal, regional, State, and local level for purposes of promoting awareness of issues related to deaf-blindness and referring individuals to appropriate resources;

(h) Expand and broaden the use of current informational resources by developing materials that synthesize established and emerging knowledge into easily understandable products with accessible formats; and

(i) Establish and implement a comprehensive system of evaluation to annually determine the impact of the clearinghouse activities on children with deaf-blindness, identify relevant achievements, and identify strategies for improvement.

Under this priority, the project period is up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the project for the fourth and fifth years of the project period, the Secretary, in addition to the requirements of 34 CFR 75.253(a), will consider—

(a) The recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day site visit to the project, are to be performed during the last half of the project's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the project's budget for year two. These costs are estimated to be approximately $6,000;

(b) The timeliness and effectiveness with which all requirements of the grant have been or are being met by the project; and

(c) The degree to which the project's design and methodology demonstrates the potential for advancing significant new knowledge.

Project Period: Up to 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $400,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating an application. An applicant must limit Part III to the equivalent of no more than 40 double-spaced pages, using the following standards: (1) A ''page'' is 8½″×11″ (on one side only) with one-inch margins (top, bottom, and sides); (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Special Education—Technology and Media Services for Individuals With Disabilities [CFDA 84.327]

Purpose of Program: The purpose of this program is to promote the development, demonstration, and utilization of technology and to support educational media activities designed to be of educational value to children with disabilities. This program also provides support for some captioning, video description, and cultural activities.

Eligible Applicants: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The selection criteria for the Local News and Public Information and Closed Captioned Spanish Television Programs priorities are drawn from the EDGAR general selection criteria menu. The specific selection criteria for this priority are included in the funding application packet for this competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority: Under section 687 and 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only those applications that meet this absolute priority:

Absolute Priority 1—Closed Captioned Television Programs—Local News and Public Information (84.327L)

Background

The wide availability of closed captioning services for local television programming desired by individuals who are deaf or hard of hearing has been limited by the lack of start-up funds for equipment and real-time captioning by local captioning agencies. This effort to provide real-time captioning of local programming is further hampered by difficulties in the training, recruitment, and retention of stenocaptioners who are sufficiently skilled to provide captioning for on-air broadcast.

Priority

This activity will support cooperative agreements to provide funds for start up costs and for the captioning of local television programming utilizing the real-time stenographic method preferred by consumers who are deaf or hard of hearing, and will result in an increase of the capacity of the industry to respond to demands for accurate real-time captioning.

To be considered for funding under this competition, a project must—

(1) Include procedures and criteria for selecting programs for captioning that take into account the preferences of consumers who are deaf or hard of hearing;

(2) Provide and maintain back-up systems that will ensure successful, timely captioning service;

(3) Identify and support a consumer advisory group, which would meet at least annually, to provide the captioning agency and program providers ongoing feedback regarding the quality of captioning;

(4) Identify the total number of hours and cost per hour for each of the programs captioned;

(5) Identify for each program to be captioned, the source, and amount of any private or other public support, if any;

(6) Provide a plan for ongoing training for stenocaptioners which may include mentoring and;

(7) Implement procedures for monitoring the extent to which the project provides full and accurate captioning and uses this information to make refinements in captioning operations.

Captions produced under these awards may be reformatted or otherwise adapted by owners or rights holders of programming, including networks, and syndicators, for future airings or other distributions.

Competitive preference: Within this absolute priority, the Secretary will give the following competitive preference: An additional 20 points to an applicant who, during 1998, was not a grantee or a subcontractor of a grantee under the captioning program of IDEA and does not propose to use a subcontractor who was a grantee or a subcontractor of a grantee under this program during the same period of time.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $80,000 for Local News and Public Information, for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit Part III to the equivalent of no more than 40 double-spaced pages, using the following standards: (1) A ''page'' is 8½″×11″ (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Absolute Priority 2—Closed-Captioned Spanish Television Programs (84.327F)

Background

Individuals who are deaf or hard of hearing, including children, teens, and late-deafened adults are found in every segment of society, including the Latino community which is the fastest growing minority group within the United States. Currently, Latino individuals who are deaf or hard of hearing lack access to widely available television programming originally broadcast in Spanish.

Priority

This priority supports cooperative agreements to provide for a variety of programs, including, educational, sports, and national news and public information programs broadcast or cablecast in Spanish to be captioned in that language so that Latino individuals who are deaf or hard of hearing can have access to those same programs as their family and friends.

To be considered for funding under this competition, a project must—

(1) Include procedures and criteria for selecting programs for captioning that take into account the preferences of consumers, parents, students, and educators, for particular programs, the

diversity of programming available, and the contribution of programs to the general educational and cultural experiences of individuals who are deaf or hard of hearing;

(2) Provide and maintain back-up systems that will ensure successful, timely captioning service;

(3) Identify the extent to which the programming is widely available;

(4) Identify and support a consumer advisory group, which would meet at least annually, to provide the captioning agency and program providers ongoing feedback regarding the quality of captioning;

(5) Identify the total number of hours captioned, the captioning method used, and the captioning cost per hour for each of the programs captioned;

(6) Identify for each program to be captioned the source, and amount of any private or other public support, if any;

(7) Provide assurances from program providers clarifying the extent to which programs captioned under this project will air, and will continue to air, without modification; and

(8) Implement procedures for monitoring the extent to which the project provides full and accurate captioning and uses this information to make refinements in captioning operations; and

Captions produced under these awards may be reformatted or otherwise adapted by owners or rights holders of programming, including networks, and syndicators, for future airings or other distributions.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 for Closed Captioned Spanish Television Programs, for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit Part III to the equivalent of no more than 40 double-spaced pages, using the following standards: (1) A ''page'' is 8½″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides); (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

For Applications and General Information Contact: Requests for applications and general information should be addressed to the Grants and Contracts Services Team, 600 Independence Avenue, S.W., room 3317, Switzer Building, Washington, D.C. 20202–2641. The preferred method for requesting information is to FAX your request to: (202) 205–8717. Telephone: (202) 260–9182.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Individuals with disabilities may obtain a copy of this notice or the application packages referred to in this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by contacting the Department as listed above. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Intergovernmental Review

All programs in this notice except for the Research and Innovation are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an inter-governmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for those programs.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT—APPLICATION NOTICE FOR FISCAL YEAR 1999

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Maximum award (per year)*	Project period	Page limit**	Estimated number of awards
84.324 Directed Research Projects:							
Focus 1—Inclusion of Students with Disabilities in Large-Scale Assessment Programs.	1/15/98	3/8/98	5/7/99	$180,000	Up to 36 mos.	50	3
Focus 2—Instructional Interventions and Results for Children with Disabilities.	1/15/98	3/8/98	5/7/99	.....	.....	.....	12
Focus 3—Early Prescriptive Assessment of Children with Learning or Emotional Disabilities.	1/15/98	3/8/98	5/7/99	.....	.....	.....	4
Focus 4—Improving the Delivery of Early Intervention, Special Education or Related Services to Children with Disabilities from High Poverty Backgrounds.	1/15/98	3/8/98	5/7//99	.....	.....	.....	3
84.324T Model Demonstration Projects:							

INDIVIDUALS WITH DISABILITIES EDUCATION ACT—APPLICATION NOTICE FOR FISCAL YEAR 1999—Continued

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Maximum award (per year)*	Project period	Page limit**	Estimated number of awards
Focus 1—Instructional Models to Improve Early Reading Results for Children with Learning Disabilities.	1/15/98	3/1/98	4/30/99	180,000	Up to 48 mos.	40	3
Focus 2—Appropriate Services for Children with Deaf-Blindness.	1/15/98	3/1/98	4/30/99	.....	.....	.....	3
Focus 3—Local or State Child Find	1/15/98	3/1/98	4/30/99	.....	.....	.....	3
Focus 4—Services Through Age 21	1/15/98	3/1/98	4/30/99	.....	.....	.....	3
84.324S Research Institute to Improve Results for Adolescents with Disabilities in General Education Academic Curricula.	1/15/98	3/1/98	4/30/99	700,000	Up to 60 mos.	75	1
84.325P Partnerships to Link Personnel Training and School Practice.	1/15/98	3/1/98	4/30/99	300,000	Up to 60 mos.	50	4
84.326U National Clearinghouse on Deaf-Blindness.	1/15/98	3/8/98	5/7/99	400,000	Up to 60 mos.	40	1
84.327L Closed Captioned Television Programs—Local News and Public Information.	1/15/98	3/1/98	4/30/99	80,000	Up to 36 mos.	40	10
84.327F Closed Captioned Spanish TV Programs.	1/15/98	3/1/98	4/30/99	200,000	Up to 36 mos.	40	3

*The Secretary rejects and does not consider an application that proposes a budget exceeding the amount listed for each priority for any single budget period of 12 months.

**Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted above. Please refer to the ''Page Limit'' requirements included under each priority and competition description in this notice. The Secretary rejects and does not consider an application that does not adhere to this requirement.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Dated: December 28, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–34752 Filed 12–31–98; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Monday
January 4, 1999

Part XI

Department of Commerce

International Trade Administration

International Trade Commission

Initiation of Five-Year (''Sunset'') Reviews and Import Investigations; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Reviews

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

ACTION: Notice of Initiation of Five-Year (''Sunset'') Reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''sunset'') reviews of the antidumping and countervailing duty orders, findings, and/or suspended investigations listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notices of *Institution of Five-Year Reviews* covering these same orders and/or suspended investigations.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Scott E. Smith, or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, (202) 482–6397 or (202) 482–3207, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205-3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (*see Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping and countervailing duty orders, findings, or suspended investigations:

DOC case No.	ITC case No.	Country	Product
A–614–502	A–246	New Zealand	Brazing Copper Wire & Rod.
A–791–502	A–247	South Africa	Brazing Copper Wire & Rod.
A–588–405	A–207	Japan	Cellular Mobile Phones.
A–570–501	A–244	China, PR	Paint Brushes.
A–570–003	A–103	China, PR	Shop Towels.
C–535–001	C–202	Pakistan	Shop Towels.
C–333–401	C-None	Peru	Cotton Shop Towels.
A–538–802	A–514	Bangladesh	Shop Towels.
A–570–504	A–282	China, PR	Candles.
A–588–045	AA–124	Japan	Steel Wire Rope.
A–201–806	A–547	Mexico	Steel Wire Rope.
A–580–811	A–546	Korea (South)	Steel Wire Rope.
A–351–505	A–278	Brazil	Malleable Cast Iron Pipe Fittings.
A–580–507	A–279	Korea (South)	Malleable Cast Iron Pipe Fittings.
A–583–507	A–280	Taiwan	Malleable Cast Iron Pipe Fittings.
A–588–605	A–347	Japan	Malleable Cast Iron Pipe Fittings.
A–549–601	A–348	Thailand	Malleable Cast Iron Pipe Fittings.

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping (''AD'') or countervailing duty (''CVD'') order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*e.g.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address: ''http://www.ita.doc.gov/import____admin/records/sunset/''.

All submissions in the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (1998). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. We ask that parties notify the Department in writing of any additions or corrections to the list. We also would appreciate written notification if you no longer represent a party on the service list.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (*see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*, 63 FR 24391 (May 4, 1998)).

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (1998)) wishing to participate in the sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of

intent to participate are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(1)(ii). In accordance with the *Sunset Regulations*, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive a notice of intent to participate from a domestic interested party, the *Sunset Regulations* provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the *Sunset Regulations* for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 (1998) for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: December 21, 1998.

Robert LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–34802 Filed 12–31–98; 8:45 am]

BILLING CODE 3510–DS–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–282 (Review)]

Petroleum Wax Candles From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on petroleum wax candles from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on petroleum wax candles from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is February 23, 1999. Comments on the adequacy of responses may be filed with the Commission by March 19, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On August 28, 1986, the Department of Commerce issued an antidumping duty order on imports of petroleum wax candles from China (51 F.R. 30686). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined the *Domestic Like Product* as petroleum wax candles.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as producers of petroleum wax candles.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is August 28, 1986.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (*Sunset Regulations*, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (1998), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 23, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is March 19, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since 1985.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand

conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 24, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–34803 Filed 12–31–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–124 (Review); Investigations Nos. 731–TA–546–547 (Review)]

Steel Wire Rope From Japan; Carbon Steel Wire Rope From Korea and Mexico

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on steel wire rope from Japan and carbon steel wire rope from Korea and Mexico.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on steel wire rope from Japan and carbon steel wire rope from Korea and Mexico would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is February 23, 1999. Comments on the adequacy of responses may be filed with the Commission by March 19, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On October 15, 1973, the Department of the Treasury issued an antidumping finding on imports of steel wire rope from Japan (38 F.R. 28571). On March 25, 1993, the Department of Commerce issued an antidumping duty order on imports of carbon steel wire rope from Mexico (58 F.R. 16173). On March 26, 1993, the Department of Commerce issued an antidumping duty order on imports of carbon steel wire rope from Korea (58 F.R. 16397). The Commission is conducting reviews to determine whether revocation of the finding and/or orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions.—The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Japan, Korea, and Mexico.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination concerning steel wire rope from Japan, as subsequently clarified by the Commission (38 F.R. 27560, October 4, 1973), the Commission defined the Domestic Like Product as steel wire rope, except brass electroplated steel truck tire cord of cable construction specially packaged for protection against moisture and atmosphere. In its original determinations concerning carbon steel wire rope from Korea and Mexico, the Commission defined the Domestic Like Product as all steel wire rope, whether made of carbon steel or stainless steel. One Commissioner defined the Domestic Like Product differently.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination concerning steel wire rope from Japan, as subsequently clarified (38 F.R. 27560, October 4, 1973), the Commission defined the Domestic Industry as producers of steel wire rope, except brass electroplated steel truck tire cord of cable construction specially packaged for protection against moisture and atmosphere. (The Commission stated that there was no domestic production of the latter brass tire cord product.) In its original determinations concerning carbon steel wire rope from Korea and Mexico, the Commission defined the Domestic Industry as producers of all steel wire rope, whether made of carbon or stainless steel. One Commissioner defined the Domestic Industry differently.

(5) The Order Dates are the dates that the antidumping duty orders under review became effective. In the review concerning steel wire rope from Japan, the Order Date is October 15, 1973. In the reviews concerning carbon steel wire rope from Mexico and Korea, the Order Dates are March 25, 1993, and March 26, 1993, respectively.

(6) An Importer is any person or firm engaged, either directly or through a

parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 23, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is March 19, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Japan that currently export or have exported Subject Merchandise to the United States or other countries since 1972. A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Korea and Mexico that currently export or have exported Subject Merchandise to the United States or other countries since 1992.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 24, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–34804 Filed 12–31–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–278–280 and 347–348 (Review)]

Malleable Cast Iron Pipe Fittings From Brazil, Korea, Taiwan, Japan, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on malleable cast iron pipe fittings from Brazil, Korea, Taiwan, Japan, and Thailand.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on malleable cast iron pipe fittings from Brazil, Korea, Taiwan, Japan, and Thailand would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is February 23, 1999. Comments on the adequacy of responses may be filed with the Commission by March 19, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On May 21, 1986, the Department of Commerce issued an antidumping duty order on imports of malleable cast iron pipe fittings from Brazil (51 F.R. 18640). On May 23, 1986, the Department of Commerce issued antidumping duty orders on imports of malleable cast iron pipe fittings from Korea and Taiwan (51 F.R. 18917). On July 6, 1987, the Department of Commerce issued an antidumping duty order on imports of malleable cast iron pipe fittings from Japan (52 F.R. 25281). On August 20, 1987, the Department of Commerce issued an antidumping duty order on imports of malleable cast iron pipe fittings from Thailand (52 F.R. 31440). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions.—The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the

scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Brazil, Japan, Korea, Taiwan, and Thailand.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined the Domestic Like Product as malleable cast iron pipe fittings.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of malleable cast iron pipe fittings.

(5) The Order Dates are the dates that the antidumping duty orders under review became effective. In the review concerning malleable cast iron pipe fittings from Brazil, the Order Date is May 21, 1986. In the reviews concerning malleable cast iron pipe fittings from Korea and Taiwan, the Order Date is May 23, 1986. In the review concerning malleable cast iron pipe fittings from Japan, the Order Date is July 6, 1987. In the review concerning malleable cast iron pipe fittings from Thailand, the Order Date is August 20, 1987.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 23, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is March 19, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of

imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Brazil, Korea, and Taiwan that currently export or have exported Subject Merchandise to the United States or other countries since 1985. A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Japan and Thailand that currently export or have exported Subject Merchandise to the United States or other countries since 1986.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 24, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–34805 Filed 12–31–98; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–103 (Review), 701–TA–202 (Review), 701–TA–E (Review), and 731–TA–514 (Review)]

Cotton Shop Towels From China, Pakistan, Peru, and Bangladesh

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on cotton shop towels from China and Bangladesh, the countervailing duty order on cotton shop towels from Pakistan, and the suspended countervailing duty investigation on cotton shop towels from Peru.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on cotton shop towels from China and Bangladesh, revocation of the countervailing duty order on cotton shop towels from Pakistan, and termination of the suspended countervailing duty investigation on cotton shop towels from Peru would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is February 23, 1999. Comments on the adequacy of responses may be filed with the Commission by March 19, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On October 4, 1983, the Department of Commerce issued an antidumping duty order on imports of cotton shop towels from China (48 F.R. 45277). On March 9, 1984, the Department of Commerce issued a countervailing duty order on imports of cotton shop towels from Pakistan (49 F.R. 8974). On September 12, 1984, the Department of Commerce suspended a countervailing duty investigation on imports of cotton shop towels from Peru (49 F.R. 35835). On March 20, 1992, the Department of Commerce issued an antidumping duty order on imports of cotton shop towels from Bangladesh (57 F.R. 9688). The Commission is conducting reviews to determine whether revocation of the orders and/or termination of the suspended investigation would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions.—The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Bangladesh, China, Pakistan, and Peru.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations concerning China and Pakistan, the Commission defined the Domestic Like Product as shop towels. In its original determination concerning Bangladesh, the Commission defined the Domestic Like Product as shop towels, whether blended or all cotton, regardless of the origin of the fabric. The Commission in the Bangladesh determination indicated that this definition was not different in substance than the definition used in the original determinations concerning China and Pakistan. There was no Commission determination concerning the suspended countervailing duty investigation concerning Peru. Therefore, for purposes of this notice concerning Peru, you should consider the Domestic Like Product to be shop towels, whether blended or all cotton, regardless of the origin of the fabric.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations concerning China and Pakistan, the Commission defined the Domestic Industry as all producers of shop towels. In its original determination concerning Bangladesh, the Commission defined the Domestic Industry as all producers of the Domestic Like Product, including integrated producers, converters, and toll producers. There was no Commission determination concerning the suspended countervailing duty investigation concerning Peru. Therefore, for purposes of this notice concerning Peru, the Domestic Industry is all producers of the Domestic Like Product, including integrated producers, converters, and toll producers.

(5) The Order Dates are the dates that the antidumping duty and countervailing duty orders under review became effective and the countervailing duty investigation was suspended. In the review concerning China, the Order Date is October 4, 1983. In the review concerning Pakistan, the Order Date is March 9, 1984. In the review concerning Peru, the Order Date is September 12, 1984. In the review concerning Bangladesh, the Order Date is March 20, 1992.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 23, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is March 19, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by

facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty and countervailing duty orders and termination of the suspended investigation on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since the years the petitions were filed. The Subject Countries and the years the petitions were filed are listed below:

Subject Countries	Years
China	1982
Pakistan	1983
Peru	1984
Bangladesh	1990

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in thousands of towels and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of towels and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of towels and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the *Order Dates*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad).

Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, Subject Merchandise 'produced in the Subject Countries, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 24, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–34806 Filed 12–31–98; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–244 (Review)]

Natural Bristle Paint Brushes From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on natural bristle paint brushes from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on natural bristle paint brushes from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is February 23, 1999. Comments on the adequacy of responses may be filed with the Commission by March 19, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On February 14, 1986, the Department of Commerce issued an antidumping duty order on imports of natural bristle paint brushes from China (51 F.R. 5580). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions.—The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is China.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as all domestically produced paint brushes (including natural bristle and synthetic filament paint brushes).

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as all domestic producers of paint brushes.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is February 14, 1986.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing

such responses is February 23, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is March 19, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1985.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in thousands of units and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of units and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products;

and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 24, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–34807 Filed 12–31–98; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA–207 (Review)]

Cellular Mobile Telephones and Subassemblies From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on cellular mobile telephones and subassemblies from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on cellular mobile telephones and subassemblies from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is February 23, 1999. Comments on the adequacy of responses may be filed with the Commission by March 19, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On December 19, 1985, the Department of Commerce issued an antidumping duty order on imports of cellular mobile telephones and subassemblies from Japan (50 F.R. 51724). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined eight Domestic Like Products. The Commission determined that domestically produced transportable cellular mobile telephones and vehicular cellular mobile telephones are a single like product. The Commission also determined that the subassemblies dedicated to the performance of each of the following seven essential functions of a complete cellular mobile telephone are separate like products: audio processing, signal processing (logic), frequency transmitting, frequency receiving, frequency comparing (synthesizing), duplexing (enabling sending and receiving at the same time), and power amplifying. Certain Commissioners defined the Domestic Like Product differently in the original determination. In response to the October 31, 1988, order of the United States Court of International Trade remanding the investigation, the Commission found one Domestic Like Product consisting of complete cellular mobile telephones and subassemblies thereof. Certain Commissioners defined the Domestic Like Product differently in the remand determination. For purposes of this notice, there is one Domestic Like Product, complete cellular mobile telephones and subassemblies thereof.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined eight Domestic Industries: one Domestic Industry consisting of firms that manufacture complete cellular mobile telephones or transceivers or control units and the other seven domestic industries consisting of producers of the specified subassemblies for cellular mobile telephones. Certain Commissioners defined the Domestic Industry differently in the original determination. In response to the October 31, 1988, order of the United States Court of International Trade remanding the investigation, the Commission found one Domestic Industry consisting of producers of complete cellular mobile telephones and subassemblies thereof. Certain Commissioners defined the Domestic Industry differently in the remand determination. For purposes of this notice, there is one Domestic Industry, producers of complete cellular mobile telephones and subassemblies thereof.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is December 19, 1985.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will

maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 23, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is March 19, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since 1984.

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars,

landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 24, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–34808 Filed 12–31–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–246–247 (Review)]

Brazing Copper Wire and Rod From New Zealand and South Africa

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on brazing copper wire and rod from New Zealand and South Africa.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on brazing copper wire and rod from New Zealand and South Africa would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is February 23, 1999. Comments on the adequacy of responses may be filed with the Commission by March 19, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On December 4, 1985, the Department of Commerce issued an antidumping duty order on imports of brazing copper wire and rod from New Zealand (50 F.R. 49740). On January 29, 1986, the Department of Commerce issued an antidumping duty order on imports of brazing copper wire and rod from South Africa (51 F.R. 3640). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions.—The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are New Zealand and South Africa.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined the Domestic Like Product as low-fuming brazing copper wire and rod of either 680 or 681 alloy, whether bare or flux-coated.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined one Domestic Industry to include firms that only flux-coat bare low-fuming brazing copper wire and rod, as well as firms that manufacture bare low-fuming brazing copper wire and rod.

(5) The Order Dates are the dates that the antidumping duty orders under review became effective. In the review concerning brazing copper wire and rod from New Zealand, the Order Date is December 4, 1985. In the review concerning brazing copper wire and rod from South Africa, the Order Date is January 29, 1986.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the tSubject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to

participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 23, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is March 19, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1985.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including

antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 24, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–34809 Filed 12–31–98; 8:45 am]

BILLING CODE 7020–02–P

Federal Register

Monday
January 4, 1999

Part XII

The President

**Notice of December 30, 1998—
Continuation of Libyan Emergency**

Federal Register
Vol. 64, No. 1
Monday, January 4, 1999

Presidential Documents

Title 3—

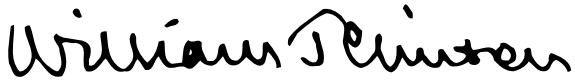
The President

Notice of December 30, 1998

Continuation of Libyan Emergency

On January 7, 1986, by Executive Order 12543, President Reagan declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Libya. On January 8, 1986, by Executive Order 12544, the President took additional measures to block Libyan assets in the United States. Every President has transmitted to the Congress and the **Federal Register** a notice continuing this emergency each year since 1986.

The crisis between the United States and Libya that led to the declaration of a national emergency on January 7, 1986, has not been resolved. The Government of Libya has continued its actions and policies in support of terrorism, despite the calls by the United Nations Security Council, in Resolutions 731 (1992), 748 (1992), and 883 (1993), that it demonstrate by concrete actions its renunciation of terrorism. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Libya. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
December 30, 1998.

[FR Doc. 98–34836
Filed 12–31–98; 8:45 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 64, No. 1

Monday, January 4, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids	**202–523–5227**
Laws	**523–5227**

Presidential Documents

Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**

Other Services

Electronic and on-line services (voice)	**523–4534**
Privacy Act Compilation	**523–3187**
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FEDERAL REGISTER PAGES AND DATES, JANUARY

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 4, 1999

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Potatoes (Irish) grown in—

Colorado; published 12-3-98

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Clear title; farm product purchasers protection:

Effective financing statements; statewide central filing systems; establishment and management; published 12-3-98

AGRICULTURE DEPARTMENT

Rural Utilities Service

Electric and telecommunications borrowers; fidelity and insurance requirements; published 1-4-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; published 1-4-99

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Historically underutilized business zone (HUBZone) empowerment contracting program; published 12-18-98

Technical amendments; published 12-18-98

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

California; published 12-3-98

Maryland; published 11-5-98

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Connecticut; published 11-2-98

Air quality planning purposes; designation of areas:

Arizona; published 11-20-98

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Universal service—

Universal service worksheet; contributor reporting requirements and reimbursement clarification; published 12-4-98

Radio services, special:

Private land mobile services—

700 MHz band; public safety radio spectrum; priority access service requirements; published 11-2-98

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Historically underutilized business zone (HUBZone) empowerment contracting program; published 12-18-98

Technical amendments; published 12-18-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:

Adjuvants, production aids, and sanitizers—

Butylated reaction product of p-cresol and dicyclopentadiene; published 1-4-99

LABOR DEPARTMENT

Federal Contract Compliance Programs Office

Affirmative action and nondiscrimination obligations of contractors and subcontractors:

Individuals with disabilities; special disabled veterans; published 11-4-98

Special disabled veterans and Vietnam era veterans; published 11-4-98

LABOR DEPARTMENT

Workers' Compensation Programs Office

Federal Employees Compensation Act:

Disability and death of noncitizen Federal employees outside U.S.; compensation; published 11-25-98

Correction; published 12-23-98

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Historically underutilized business zone (HUBZone) empowerment contracting program; published 12-18-98

Technical amendments; published 12-18-98

SECURITIES AND EXCHANGE COMMISSION

Securities:

Brokers and dealers reporting requirement—

Year 2000 compliance; published 11-3-98

Over-the-counter derivatives dealers; published 11-3-98

Correction; published 11-12-98

STATE DEPARTMENT

Visas; nonimmigrant documentation:

Visa waiver pilot program—

Probationary entry status elimination; published 1-4-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

HOAC-Austria; published 11-23-98

McCauley Propeller Systems; published 12-18-98

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Radio standards and procedures:

Wireless communications devices requirements; published 9-4-98

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Compressed natural gas fuel container integrity; material and manufacturing process requirements; published 12-3-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Kiwifruit research, promotion, and consumer information order; comments due by 1-11-99; published 11-10-98

Oranges, grapefruit, tangerines, and tangelos grown in Florida and imported grapefruit; comments due by 1-11-99; published 11-10-98

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Asian longhorned beetle; comments due by 1-11-99; published 11-13-98

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:

Women, infants, and children; special supplemental nutrition program—

Food and nutrition services and administration funding formulas rule; comments due by 1-11-99; published 10-13-98

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:

Consumer protection standards—

Washing and chilling processes; retained water in raw meat and poultry products; poultry chilling performance standards; comments due by 1-13-99; published 12-14-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Pacific halibut and sablefish; individual fishing quota program; modified hired skipper requirements; comments due by 1-15-99; published 12-16-98

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[5] Jan. 1, 1998
3 (1997 Compilation and Parts 100 and 101)	(869–034–00002–9)	19.00	[1] Jan. 1, 1998
4	(869–034–00003–7)	7.00	[5] Jan. 1, 1998
5 Parts:			
1–699	(869–034–00004–5)	35.00	Jan. 1, 1998
700–1199	(869–034–00005–3)	26.00	Jan. 1, 1998
1200–End, 6 (6 Reserved)	(869–034–00006–1)	39.00	Jan. 1, 1998
7 Parts:			
1–26	(869–034–00007–0)	24.00	Jan. 1, 1998
27–52	(869–034–00008–8)	30.00	Jan. 1, 1998
53–209	(869–034–00009–6)	20.00	Jan. 1, 1998
210–299	(869–034–00010–0)	44.00	Jan. 1, 1998
300–399	(869–034–00011–8)	24.00	Jan. 1, 1998
400–699	(869–034–00012–6)	33.00	Jan. 1, 1998
700–899	(869–034–00013–4)	30.00	Jan. 1, 1998
900–999	(869–034–00014–2)	39.00	Jan. 1, 1998
1000–1199	(869–034–00015–1)	44.00	Jan. 1, 1998
1200–1599	(869–034–00016–9)	34.00	Jan. 1, 1998
1600–1899	(869–034–00017–7)	58.00	Jan. 1, 1998
1900–1939	(869–034–00018–5)	18.00	Jan. 1, 1998
1940–1949	(869–034–00019–3)	33.00	Jan. 1, 1998
1950–1999	(869–034–00020–7)	40.00	Jan. 1, 1998
2000–End	(869–034–00021–5)	24.00	Jan. 1, 1998
8	(869–034–00022–3)	33.00	Jan. 1, 1998
9 Parts:			
1–199	(869–034–00023–1)	40.00	Jan. 1, 1998
200–End	(869–034–00024–0)	33.00	Jan. 1, 1998
10 Parts:			
0–50	(869–034–00025–8)	39.00	Jan. 1, 1998
51–199	(869–034–00026–6)	32.00	Jan. 1, 1998
200–499	(869–034–00027–4)	31.00	Jan. 1, 1998
500–End	(869–034–00028–2)	43.00	Jan. 1, 1998
11	(869–034–00029–1)	19.00	Jan. 1, 1998
12 Parts:			
1–199	(869–034–00030–4)	17.00	Jan. 1, 1998
200–219	(869–034–00031–2)	21.00	Jan. 1, 1998
220–299	(869–034–00032–1)	39.00	Jan. 1, 1998
300–499	(869–034–00033–9)	23.00	Jan. 1, 1998
500–599	(869–034–00034–7)	24.00	Jan. 1, 1998
600–End	(869–034–00035–5)	44.00	Jan. 1, 1998
13	(869–034–00036–3)	23.00	Jan. 1, 1998
14 Parts:			
1–59	(869–034–00037–1)	47.00	Jan. 1, 1998
60–139	(869–034–00038–0)	40.00	Jan. 1, 1998
140–199	(869–034–00039–8)	16.00	Jan. 1, 1998
200–1199	(869–034–00040–1)	29.00	Jan. 1, 1998
1200–End	(869–034–00041–0)	23.00	Jan. 1, 1998
15 Parts:			
0–299	(869–034–00042–8)	22.00	Jan. 1, 1998
300–799	(869–034–00043–6)	33.00	Jan. 1, 1998
800–End	(869–034–00044–4)	23.00	Jan. 1, 1998
16 Parts:			
0–999	(869–034–00045–2)	30.00	Jan. 1, 1998
1000–End	(869–034–00046–1)	33.00	Jan. 1, 1998
17 Parts:			
1–199	(869–034–00048–7)	27.00	Apr. 1, 1998
200–239	(869–034–00049–5)	32.00	Apr. 1, 1998
240–End	(869–034–00050–9)	40.00	Apr. 1, 1998
18 Parts:			
1–399	(869–034–00051–7)	45.00	Apr. 1, 1998
400–End	(869–034–00052–5)	13.00	Apr. 1, 1998
19 Parts:			
1–140	(869–034–00053–3)	34.00	Apr. 1, 1998
141–199	(869–034–00054–1)	33.00	Apr. 1, 1998
200–End	(869–034–00055–0)	15.00	Apr. 1, 1998
20 Parts:			
1–399	(869–034–00056–8)	29.00	Apr. 1, 1998
400–499	(869–034–00057–6)	28.00	Apr. 1, 1998
500–End	(869–034–00058–4)	44.00	Apr. 1, 1998
21 Parts:			
1–99	(869–034–00059–2)	21.00	Apr. 1, 1998
100–169	(869–034–00060–6)	27.00	Apr. 1, 1998
170–199	(869–034–00061–4)	28.00	Apr. 1, 1998
200–299	(869–034–00062–2)	9.00	Apr. 1, 1998
300–499	(869–034–00063–1)	50.00	Apr. 1, 1998
500–599	(869–034–00064–9)	28.00	Apr. 1, 1998
600–799	(869–034–00065–7)	9.00	Apr. 1, 1998
800–1299	(869–034–00066–5)	32.00	Apr. 1, 1998
1300–End	(869–034–00067–3)	12.00	Apr. 1, 1998
22 Parts:			
1–299	(869–034–00068–1)	41.00	Apr. 1, 1998
300–End	(869–034–00069–0)	31.00	Apr. 1, 1998
23	(869–034–00070–3)	25.00	Apr. 1, 1998
24 Parts:			
0–199	(869–034–00071–1)	32.00	Apr. 1, 1998
200–499	(869–034–00072–0)	28.00	Apr. 1, 1998
500–699	(869–034–00073–8)	17.00	Apr. 1, 1998
700–1699	(869–034–00074–6)	45.00	Apr. 1, 1998
1700–End	(869–034–00075–4)	17.00	Apr. 1, 1998
25	(869–034–00076–2)	42.00	Apr. 1, 1998
26 Parts:			
§§ 1.0-1–1.60	(869–034–00077–1)	26.00	Apr. 1, 1998
§§ 1.61–1.169	(869–034–00078–9)	48.00	Apr. 1, 1998
§§ 1.170–1.300	(869–034–00079–7)	31.00	Apr. 1, 1998
§§ 1.301–1.400	(869–034–00080–1)	23.00	Apr. 1, 1998
§§ 1.401–1.440	(869–034–00081–9)	39.00	Apr. 1, 1998
§§ 1.441-1.500	(869-034-00082-7)	29.00	Apr. 1, 1998
§§ 1.501–1.640	(869–034–00083–5)	27.00	Apr. 1, 1998
§§ 1.641–1.850	(869–034–00084–3)	32.00	Apr. 1, 1998
§§ 1.851–1.907	(869–034–00085–1)	36.00	Apr. 1, 1998
§§ 1.908–1.1000	(869–034–00086–0)	35.00	Apr. 1, 1998
§§ 1.1001–1.1400	(869–034–00087–8)	38.00	Apr. 1, 1998
§§ 1.1401–End	(869–034–00088–6)	51.00	Apr. 1, 1998
2–29	(869–034–00089–4)	36.00	Apr. 1, 1998
30–39	(869–034–00090–8)	25.00	Apr. 1, 1998
40–49	(869–034–00091–6)	16.00	Apr. 1, 1998
50–299	(869–034–00092–4)	19.00	Apr. 1, 1998
300–499	(869–034–00093–2)	34.00	Apr. 1, 1998
500–599	(869–034–00094–1)	10.00	Apr. 1, 1998
600–End	(869–034–00095–9)	9.00	Apr. 1, 1998
27 Parts:			
1–199	(869–034–00096–7)	49.00	Apr. 1, 1998

Title	Stock Number	Price	Revision Date
200–End	(869–034–00097–5)	17.00	[6] Apr. 1, 1997
28 Parts:			
0-42	(869–034–00098–3)	36.00	July 1, 1998
43-end	(869-034-00099-1)	30.00	July 1, 1998
29 Parts:			
0–99	(869–034–00100–9)	26.00	July 1, 1998
100–499	(869–034–00101–7)	12.00	July 1, 1998
500–899	(869–034–00102–5)	40.00	July 1, 1998
900–1899	(869–034–00103–3)	20.00	July 1, 1998
1900–1910 (§§ 1900 to 1910.999)	(869–034–00104–1)	44.00	July 1, 1998
1910 (§§ 1910.1000 to end)	(869–034–00105–0)	27.00	July 1, 1998
1911–1925	(869–034–00106–8)	17.00	July 1, 1998
1926	(869–034–00107–6)	30.00	July 1, 1998
1927–End	(869–034–00108–4)	41.00	July 1, 1998
30 Parts:			
1–199	(869–034–00109–2)	33.00	July 1, 1998
200–699	(869–034–00110–6)	29.00	July 1, 1998
700–End	(869–034–00111–4)	33.00	July 1, 1998
31 Parts:			
0–199	(869–034–00112–2)	20.00	July 1, 1998
200–End	(869–034–00113–1)	46.00	July 1, 1998
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–034–00114–9)	47.00	July 1, 1998
191–399	(869–032–00115–4)	51.00	July 1, 1997
400–629	(869–034–00116–5)	33.00	July 1, 1998
630–699	(869–034–00117–3)	22.00	July 1, 1998
700–799	(869–034–00118–1)	26.00	July 1, 1998
800–End	(869–034–00119–0)	27.00	July 1, 1998
33 Parts:			
1–124	(869–034–00120–3)	29.00	July 1, 1998
125–199	(869–034–00121–1)	38.00	July 1, 1998
200–End	(869–034–00122–0)	30.00	July 1, 1998
34 Parts:			
1–299	(869–034–00123–8)	27.00	July 1, 1998
300–399	(869–034–00124–6)	25.00	July 1, 1998
400–End	(869–034–00125–4)	44.00	July 1, 1998
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–034–00127–1)	20.00	July 1, 1998
200–299	(869–034–00128–9)	21.00	July 1, 1998
300–End	(869–034–00129–7)	35.00	July 1, 1998
37	(869–034–00130–1)	27.00	July 1, 1998
38 Parts:			
0–17	(869–034–00131–9)	34.00	July 1, 1998
18–End	(869–034–00132–7)	39.00	July 1, 1998
39	(869–034–00133–5)	23.00	July 1, 1998
40 Parts:			
1–49	(869–034–00134–3)	31.00	July 1, 1998
50–51	(869–034–00135–1)	24.00	July 1, 1998
52 (52.01–52.1018)	(869–034–00136–0)	28.00	July 1, 1998
52 (52.1019–End)	(869–034–00137–8)	33.00	July 1, 1998
53–59	(869–034–00138–6)	17.00	July 1, 1998
60	(869–034–00139–4)	53.00	July 1, 1998
61–62	(869–034–00140–8)	18.00	July 1, 1998
63	(869–034–00141–6)	57.00	July 1, 1998
64–71	(869–034–00142–4)	11.00	July 1, 1998
72–80	(869–034–00143–2)	36.00	July 1, 1998
81–85	(869–034–00144–1)	31.00	July 1, 1998
86	(869–034–00144–9)	53.00	July 1, 1998
87-135	(869–034–00146–7)	47.00	July 1, 1998
136–149	(869–034–00147–5)	37.00	July 1, 1998
150–189	(869–034–00148–3)	34.00	July 1, 1998
190–259	(869–034–00149–1)	23.00	July 1, 1998
260–265	(869–034–00150–9)	29.00	July 1, 1998
266–299	(869–034–00151–3)	33.00	July 1, 1998
300–399	(869–034–00152–1)	26.00	July 1, 1998
400–424	(869–034–00153–0)	33.00	July 1, 1998
425–699	(869–034–00154–8)	42.00	July 1, 1998
700–789	(869–034–00155–6)	41.00	July 1, 1998
790–End	(869–034–00156–4)	22.00	July 1, 1998
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–034–00157–2)	13.00	July 1, 1998
101	(869–034–00158–1)	37.00	July 1, 1998
102–200	(869–034–00158–9)	15.00	July 1, 1998
201–End	(869–034–00160–2)	13.00	July 1, 1998
42 Parts:			
1–399	(869–034–00161–1)	34.00	Oct. 1, 1998
400–429	(869–032–00161–8)	35.00	Oct. 1, 1997
430–End	(869–032–00162–6)	50.00	Oct. 1, 1997
43 Parts:			
1–999	(869–032–00163–4)	31.00	Oct. 1, 1997
1000–end	(869–032–00164–2)	50.00	Oct. 1, 1997
44	(869–032–00165–1)	31.00	Oct. 1, 1997
45 Parts:			
1–199	(869–032–00166–9)	30.00	Oct. 1, 1997
200–499	(869–032–00167–7)	18.00	Oct. 1, 1997
500–1199	(869–032–00168–5)	29.00	Oct. 1, 1997
1200–End	(869–032–00169–3)	39.00	Oct. 1, 1997
46 Parts:			
1–40	(869–032–00170–7)	26.00	Oct. 1, 1997
41–69	(869–032–00171–5)	22.00	Oct. 1, 1997
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–032–00173–1)	27.00	Oct. 1, 1997
140–155	(869–032–00174–0)	15.00	Oct. 1, 1997
156–165	(869–032–00175–8)	20.00	Oct. 1, 1997
166–199	(869–032–00176–6)	26.00	Oct. 1, 1997
200–499	(869–032–00177–4)	21.00	Oct. 1, 1997
500–End	(869–034–00179–3)	16.00	Oct. 1, 1998
47 Parts:			
0–19	(869–032–00179–1)	34.00	Oct. 1, 1997
20–39	(869–032–00180–4)	27.00	Oct. 1, 1997
40–69	(869–032–00181–2)	23.00	Oct. 1, 1997
70–79	(869–032–00182–1)	33.00	Oct. 1, 1997
80–End	(869–032–00183–9)	43.00	Oct. 1, 1997
48 Chapters:			
1 (Parts* 1–51)	(869–034–00185–8)	51.00	Oct. 1, 1998
1 (Parts 52–99)	(869–032–00185–5)	29.00	Oct. 1, 1997
2 (Parts 201–299)	(869–032–00186–3)	35.00	Oct. 1, 1997
3–6	(869–032–00187–1)	29.00	Oct. 1, 1997
7–14	(869–032–00188–0)	32.00	Oct. 1, 1997
15–28	(869–032–00189–8)	33.00	Oct. 1, 1997
29–End	(869–032–00190–1)	25.00	Oct. 1, 1997
49 Parts:			
1–99	(869–034–00192–1)	31.00	Oct. 1, 1998
100–185	(869–032–00192–8)	50.00	Oct. 1, 1997
186–199	(869–032–00193–6)	11.00	Oct. 1, 1997
200–399	(869–032–00194–4)	43.00	Oct. 1, 1997
400–999	(869–032–00195–2)	49.00	Oct. 1, 1997
1000–1199	(869–034–00197–1)	17.00	Oct. 1, 1998
1200–End	(869–032–00197–9)	14.00	Oct. 1, 1997
50 Parts:			
1–199	(869–032–00198–7)	41.00	Oct. 1, 1997
200–599	(869–032–00199–5)	22.00	Oct. 1, 1997
600–End	(869–032–00200–2)	29.00	Oct. 1, 1997

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–034–00049–6)	46.00	Jan. 1, 1998
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[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 July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[5] 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.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.

CFR ISSUANCES 1999
Complete Listing of 1998 Editions and Projected January, 1999 Editions

This list sets out the CFR issuances for the 1998 editions and projects the publication plans for the **January, 1999** quarter. A projected schedule that will include the **April, 1999** quarter will appear in the first **Federal Register** issue of April.

For pricing information on available 1998–1999 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

Titles revised as of January 1, 1998:

Title	
CFR Index	200–End
1–2 (Cover only)	**10 Parts:**
	1–50
3 (Compilation)	51–199
	200–499
4 (Cover only)	500–End
5 Parts:	**11**
1–699	
700–1199	**12 Parts:**
1200–End	1–199
	200–219
6 [Reserved]	220–299
	300–499
7 Parts:	500–599
1–26	600–End
27–52	
53–209	**13**
210–299	
300–399	**14 Parts:**
400–699	1–59
700–899	60–139
900–999	140–199
1000–1199	200–1199
1200–1599	1200–End
1600–1899	
1900–1939	**15 Parts:**
1940–1949	0–299
1950–1999	300–799
2000–End	800–End
8	**16 Parts:**
	0–999
9 Parts:	1000–End
1–199	

Titles revised as of April 1, 1998:

Title	
17 Parts:	**18 Parts:**
1–199	1–399
200–239	400–End
240–End	
	19 Parts:
1–140	700–1699
141–199	1700–End
200–End	
	25
20 Parts:	
1–399	**26 Parts:**
400–499	1 (§§ 1.0-1–1.60)
500–End	1 (§§ 1.61–1.169)
	1 (§§ 1.170–1.300)
21 Parts:	1 (§§ 1.301–1.400)
1–99	1 (§§ 1.401–1.440)
100–169	1 (§§ 1.441–1.500)
170–199	1 (§§ 1.501–1.640)
200–299	1 (§§ 1.641–1.850)
300–499	1 (§§ 1.851–1.907)
500–599	1 (§§ 1.908–1.1000)
600–799	1 (§§ 1.1001–1.1400)
800–1299	1 (§ 1.1401–End)
1300–End	2–29
	30–39
22 Parts:	40–49
1–299	50–299
300–End	300–499
	500–599
23	600–End
24 Parts:	**27 Parts:**
0–199	1–199
200–499	200–End
500–699	

Titles revised as of July 1, 1998:

Title	
28 Parts:	**35**
0–42	
43–End	**36 Parts:**
	1–199
29 Parts:	200–299
0–99	300–End
100–499	
500–899	**37**
900–1899	
1900–1910.999	**38 Parts:**
1910.1000–End	0–17
1911–1925	18–End
1926	
1927–End	**39**
30 Parts:	**40 Parts:**
1–199	1–49
200–699	50–51
700–End	52 (§ 52.01—52.1018)
	52 (§ 52.1019 to end)
31 Parts:	53–59
0–199	60
200–End	61–62
	63
32 Parts:	64–71
1–190	72–80
191–399	81–85
400–629	86
630–699 (Cover only)	87–135
700–799	136–149
800–End	150–189
	190–259
33 Parts:	260–265
1–124	266–299
125–199	300–399
200–End	400–424
	425–699
34 Parts:	700–789
1–299	790–End
300–399	
400–End	

41 Parts:
Chs. 1–100
Ch. 101
Chs. 102–200
Ch. 201–End

Titles revised as of October 1, 1998:

Title

42 Parts:
1–399
400–429
430–End

43 Parts:
1–999
1000–End

44

45 Parts:
1–199
200–499
500–1199
1200–End

46 Parts:
1–40
41–69
70–89
90–139
140–155
156–165
166–199
200–499
500–End

47 Parts:
0–19
20–39
40–69
70–79
80–End

48 Parts:
Ch. 1 (1–51)
Ch. 1 (52–99)
Ch. 2 (201–299)
Chs. 3–6
Chs. 7–14
Ch. 15–28
Ch. 29–End

49 Parts:
1–99
100–185
186–199
200–399
400–999
1000–1199
1200–End

50 Parts:
1–199
200–599
600–End

CFR Index
200–End

Projected January 1, 1999 issuances:

Title

1–2 (Cover only)

3 (Compilation)

4 (Cover only)

5 Parts:
1–699
700–1199
1200–End

6 [Reserved]

7 Parts:
1–26
27–52
53–209
210–299
300–399
400–699
700–899
900–999
1000–1199
1200–1599
1600–1899
1900–1939
1940–1949
1950–1999
2000–End

8

9 Parts:
1–199
200–End

10 Parts:
1–50
51–199
200–499
500–End

11

12 Parts:
1–199
200–219
220–299
300–499
500–599
600–End

13

14 Parts:
1–59
60–139
140–199
200–1199
1200–End

15 Parts:
0–299
300–799
800–End

16 Parts:
0–999
1000–End

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 1999

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
January 4	January 19	February 3	February 18	March 5	April 5
January 5	January 20	February 4	February 19	March 8	April 5
January 6	January 21	February 5	February 22	March 8	April 6
January 7	January 22	February 8	February 22	March 8	April 7
January 8	January 25	February 8	February 22	March 9	April 8
January 11	January 26	February 10	February 25	March 12	April 12
January 12	January 27	February 11	February 26	March 15	April 12
January 13	January 28	February 12	March 1	March 15	April 13
January 14	January 29	February 16	March 1	March 15	April 14
January 15	February 1	February 16	March 1	March 16	April 15
January 19	February 3	February 18	March 5	March 22	April 19
January 20	February 4	February 19	March 8	March 22	April 20
January 21	February 5	February 22	March 8	March 22	April 21
January 22	February 8	February 22	March 8	March 23	April 22
January 25	February 9	February 24	March 11	March 26	April 26
January 26	February 10	February 25	March 12	March 29	April 26
January 27	February 11	February 26	March 15	March 29	April 27
January 28	February 12	March 1	March 15	March 29	April 28
January 29	February 16	March 1	March 15	March 30	April 29