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Title 3—

The President

Presidential Determination No. 89-12 of March 15, 1989

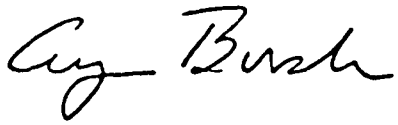
Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to Section 2(c) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2601(c)), in order to meet unexpected urgent refugee and migration needs in Africa and Asia, I hereby determine that it is important to the national interest that $17.5 million be made available from the Emergency Refugee and Migration Assistance Fund (Emergency Fund) for assistance to African and Afghan refugees and displaced persons. Up to $5 million will be contributed to the International Committee of the Red Cross (ICRC) for assistance to African refugees and displaced persons in the Horn of Africa. Up to $5 million will be contributed to the United Nations High Commissioner for Refugees (UNHCR) to support the return of Namibian refugees. Up to $2.5 million will be contributed to the United Nations Special Coordinator for Afghanistan to assist in meeting the urgent needs related to the repatriation of Afghan refugees. Up to $5 million will be contributed to the ICRC for medical assistance to Afghan refugees and displaced persons in Afghanistan and Pakistan.

You are authorized and directed to perform the appropriate congressional notifications regarding this Determination and the obligation of funds under this authority.

This Determination shall be published in the **Federal Register.**



THE WHITE HOUSE,
Washington, March 15, 1989.

[FR Doc. 89-9350
Filed 4-14-89; 10:41 am]
Billing code 3195-01-M

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Proclamation 5955 of April 13, 1989

Amending the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to Title V of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2461 *et seq.*), the President may designate specified articles provided for in the Harmonized Tariff Schedule of the United States (HTS) as eligible for preferential tariff treatment under the Generalized System of Preferences (GSP) when imported from designated beneficiary developing countries.

2. Pursuant to section 504(c) of the Trade Act (19 U.S.C. 2464(c)), beneficiary developing countries, except those designated as least-developed beneficiary developing countries pursuant to section 504(c)(2) of the Trade Act, are subject to limitations on the preferential treatment afforded under the GSP. Pursuant to section 504(c)(5) of the Trade Act, a country that has not been treated as a beneficiary developing country with respect to an eligible article may be redesignated with respect to such article if imports of such article from such country did not exceed the limitations in section 504(c)(1) (after application of paragraph (c)(2)) during the preceding calendar year. Further, pursuant to section 504(d)(1) of the Trade Act (19 U.S.C. 2464(d)(1)), the limitations provided in section 504(c)(1)(B) shall not apply with respect to an eligible article if a like or directly competitive article was not produced in the United States on January 3, 1985.

3. Subsections 502(b)(7) and 502(c)(7) of the Trade Act (19 U.S.C. 2462(b)(7) and 2462(c)(7)) provide that a country that has not taken or is not taking steps to afford internationally recognized worker rights, as defined in section 502(a)(4) of the Trade Act (19 U.S.C. 2462(a)(4)), is ineligible for designation as a beneficiary developing country for purposes of the GSP. Pursuant to section 504 of the Trade Act, the President may withdraw, suspend, or limit the application of duty-free treatment under the GSP with respect to any article or with respect to any country upon consideration of the factors set forth in sections 501 and 502(c) of the Trade Act (19 U.S.C. 2461 and 2462(c)).

4. Pursuant to sections 501, 503(a), and 504(a) of the Trade Act (19 U.S.C. 2461, 2463(a), and 2464(a)), in order to subdivide and amend the nomenclature of existing items for the purposes of the GSP, I have determined, after taking into account information and advice received under section 503(a), that the HTS should be modified to adjust the original designation of eligible articles. In addition, pursuant to Title V of the Trade Act, I have determined that it is appropriate to designate specified articles provided for in the HTS as eligible for preferential tariff treatment under the GSP when imported from designated beneficiary developing countries and that such treatment for other articles should be terminated. I have also determined, pursuant to section 504(a) and (c)(1) of the Trade Act, that certain beneficiary countries should no longer receive preferential tariff treatment under the GSP with respect to certain eligible articles. Further, I have determined, pursuant to section 504(c)(5) of the Trade Act, that certain countries should be redesignated as beneficiary developing countries with respect to specified previously designated eligible articles. These countries have been previously excluded from benefits of the GSP with respect to such eligible articles pursuant to section 504(c)(1) of the Trade Act. Last, I have determined that section 504(c)(1)(B) of the Trade Act should not apply with respect to certain eligible articles because no like or directly competitive article was produced in the United States on January 3, 1985.

5. Pursuant to subsections 502(b)(7) and 502(c)(7) and section 504 of the Trade Act, I have determined that it is appropriate to provide for the suspension of preferential treatment under the GSP for articles that are currently eligible for such treatment and that are imported from Burma or the Central African Republic. Such suspensions are the result of my determinations

that Burma and the Central African Republic have not taken and are not taking steps to afford internationally recognized worker rights, as defined in section 502(a)(4) of the Trade Act.

6. Section 201(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (the Implementation Act) (Pub.L. 100–449; 102 Stat. 1851) authorizes the President to proclaim such modifications or continuance of existing duties, such continuance of existing duty-free or excise treatment, and such additional duties, as the President determines are necessary or appropriate to carry out Article 401 of the Agreement (including the schedule of duty reductions with respect to goods originating in the territory of Canada set forth in Annexes 401.2 and 401.7). Accordingly, I have determined that it is necessary to provide for the staged reduction in duties on certain goods originating in the terrority of Canada.

7. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, of other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to Title V and section 604 of the Trade Act, and section 201 of the Implementation Act, do proclaim that:

(1) In order to provide benefits under the GSP to specified designated eligible articles when imported from any designated beneficiary developing country, the HTS is modified as provided in Annex I to this Proclamation.

(2)(a) In order to provide benefits under the GSP to specified designated eligible articles when imported from any designated beneficiary developing country, the Rates of Duty 1–Special column for the HTS subheadings enumerated in Annex II(a), II(b), and II(c) is modified by inserting in the parentheses the symbol "A," immediately before the "E" in each such item.

(b) In order to terminate preferential tariff treatment under the GSP for articles imported from all designated beneficiary developing countries, the Rates of Duty 1–Special column for the HTS subheading enumerated in Annex II(d) is modified by deleting the symbol "A," in parentheses.

(c) In order to provide preferential tariff treatment under the GSP to certain countries which have been excluded from the benefits of the GSP for certain eligible articles imported from such countries, following my determination that a country not previously receiving such benefits should again be treated as a beneficiary developing country with respect to such article, the Rates of Duty 1–Special column for each of the HTS subheadings enumerated in Annex II(e) to this Proclamation is modified: (i) by deleting from such column for such HTS subheadings the symbol "A*" in parentheses, and (ii) by inserting in such column the symbol "A" in lieu thereof.

(d) In order to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to an eligible article for purposes of the GSP, the Rates of Duty 1–Special column for each of the HTS subheadings enumerated in Annex II(f) to this Proclamation is modified: (i) by deleting from such column for such HTS subheadings the symbol "A" in parentheses, and (ii) by inserting in such column the symbol "A*" in lieu thereof.

(3) In order to provide for the suspension of preferential treatment under the GSP for Burma and the Central African Republic, to correct the status of a designated beneficiary developing country, to provide that one or more countries should be treated as beneficiary developing countries with respect to an eligible article for purposes of the GSP, and to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to an eligible article for purposes of the GSP, general note 3(c)(ii) to the HTS is modified as provided in Annex III to this Proclamation.

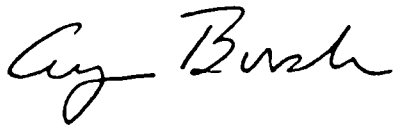
(4) In order to provide for the staged reductions on Canadian goods in the HTS subheadings modified in Annex I to this Proclamation, effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex IV to this Proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1–Special column followed by the symbol "CA" in parentheses for each of the HTS subheadings enumerated in such Annex shall be deleted and the rate of duty provided in such Annex inserted in lieu thereof.

(5) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this Proclamation are hereby superseded to the extent of such inconsistency.

(6)(a) The amendments made by paragraph (4) of this Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates indicated for the respective Annex columns.

(b) Except as provided for in paragraph (a), this Proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1989.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of April, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



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Annex I

Notes:

1. Bracketed matter is included to assist in the understanding of proclaimed modifications.

2. The following supersedes matter now in the Harmonized Tariff Schedule of the United States (HTS). The subheadings and superior descriptions are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

Effective as to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 1989.

(a) Subheading 2917.19.25 is superseded by:

	[Polycarboxylic acids, . . . :]			
	[Acyclic polycarboxylic . . . :]			
	[Other:]			
	[Maleic acid; . . . :]			
	"Other:			
2917.19.23	Maleic acid	3.7¢/kg+16.8%	Free (A,E,IL) 2.9¢/kg+13.4% (CA)	15.4¢/kg+53.5%
2917.19.27	Other	3.7¢/kg+16.8%	Free (E,IL) 2.9¢/kg+13.4% (CA)	15.4¢/kg+53.5%"

(b) Subheading 2918.19.50 is superseded by:

	[Carboxylic acids . . . :]			
	[Carboxylic acids . . . :]			
	[Other:]			
	"Other:			
2918.19.60	Malic acid	4%	Free (A,E,IL) 3.2% (CA)	25%
2918.19.90	Other	4%	Free (E,IL) 3.2% (CA)	25%"

Annex II

Modification in the HTS of an Article's Preferential Tariff Treatment under the GSP

(a) For the following HTS subheadings, in the Rates of Duty 1-Special column, insert in the parentheses the symbol "A," immediately before the "E" in each such subheading:

2907.11.00; 2917.19.15; 3817.10.00

(b) For HTS subheading 7019.10.40 insert a "Free (A)" in the Rates of Duty 1-Special column.

(c) For HTS subheading 9607.20.00, in the Rates of Duty 1-Special column, insert in the parentheses the symbol "A," immediately before the "B" in such subheading.

(d) For HTS subheading 7307.93.30, in the Rates of Duty 1-Special column, delete the symbol "A," in parentheses.

(e) For the following HTS subheadings, in the Rates of Duty 1–Special column, delete the symbol "A*" and insert an "A" in lieu thereof:

0707.00.40; 2924.29.39; 3004.90.60; 4412.99.40

(f) For the following HTS subheadings, in the Rates of Duty 1–Special column, delete the symbol "A" and insert an "A*" in lieu thereof:

0804.50.80	2903.40.00	4106.20.60	9401.40.00	9403.40.90
1102.30.00	2915.21.00	6702.90.60	9401.61.60	9403.50.90
1103.14.00	2917.35.00	6908.10.20	9401.69.80	9403.60.80
2402.10.80	2933.90.47	7113.11.20	9401.90.40	9503.90.50
2603.00.00	3903.19.00	7413.00.10	9403.30.80	9503.90.60

Annex III

Modifications to General Note 3(c)(ii)

(a) General note 3(c)(ii)(A) is modified—

(1) by deleting "Burma" and "Central African Republic" from the enumeration of independent countries; and

(2) by deleting "Saint Christopher and Nevis" from the enumeration of non-independent countries and territories, by inserting "St. Kitts and Nevis" in alphabetical order in the enumeration of independent countries, and in the associations of countries (treated as one country) for the member countries of the Caribbean Common Market (CARICOM) change "Saint Christopher and Nevis" to "St. Kitts and Nevis".

(b) General note 3(c)(ii)(B) is modified by deleting "Central African Republic" from the enumeration of least-developed beneficiary developing countries.

(c) General note 3(c)(ii)(D) is modified—

(1) by deleting the following HTS subheadings and the countries set opposite these subheadings:

0707.00.40	Mexico
2924.29.39	Bahamas
3004.90.60	Bahamas; Turkey
4412.99.40	Indonesia

(2) by adding in numerical sequence, the following HTS subheadings and countries set opposite them:

0804.50.80	Mexico
1102.30.00	Thailand
1103.14.00	Thailand
2402.10.80	Dominican Republic
2603.00.00	Papua New Guinea
2903.40.00	Israel
2915.21.00	Mexico
2917.35.00	Brazil
2933.90.47	Mexico
3903.19.00	Mexico
4106.20.60	India
6702.90.60	Thailand
6908.10.20	Thailand
7113.11.20	Thailand
7413.00.10	Peru
9401.40.00	Thailand
9401.61.60	Thailand
9401.69.80	Thailand
9401.90.40	Yugoslavia
9403.30.80	Thailand
9403.40.90	Thailand
9403.50.90	Thailand
9403.60.80	Thailand
9503.90.50	Mexico
9503.90.60	Mexico

Annex IV

Effective with respect to good originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the following tabulation.

For each of the following subheadings created by Annex I of this Proclamation, the rate of duty in the Rates of Duty 1—Special column in the HTS that is followed by the symbol "CA" in parentheses is deleted and the following rates duty inserted in lieu thereof on the date specified below.

HTS Subheading	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993
2917.19.23	2.2¢/kg+10%	1.4¢/kg+6.7%	0.7¢/kg+3.3%	Free
2917.19.27	2.2¢/kg+10%	1.4¢/kg+6.7%	0.7¢/kg+3.3%	Free
2918.19.60	2.4%	1.6%	0.8%	Free
2918.19.90	2.4%	1.6%	0.8%	Free

Presidential Documents

Memorandum of April 13, 1989

Actions Concerning the Generalized System of Preferences

Memorandum for the United States Trade Representative

Pursuant to subsections 502(b)(4) and 502(b)(7) and section 504 of the Trade Act of 1974, as amended (the Act) (19 U.S.C. 2462(b)(4), 2462(b)(7), and 2464)), I have determined to modify the application of duty-free treatment under the Generalized System of Preferences (GSP) currently being afforded to certain beneficiary developing countries, to make a determination concerning the alleged expropriation without compensation by a beneficiary developing country, and to make findings concerning whether steps have been taken or are being taken by certain beneficiary developing countries to afford internationally recognized worker rights to workers in such countries.

Specifically, after considering a private sector request for a review concerning the alleged expropriation by Venezuela of property owned by a United States person allegedly without prompt, adequate, and effective compensation, without entering into good-faith negotiations to provide such compensation or otherwise taking steps to discharge its obligations, and without submitting the expropriation claim to arbitration, I have determined to continue to review the status of such alleged expropriation by Venezuela.

Second, after considering various private sector requests for a review of whether or not certain beneficiary developing countries have taken or are taking steps to afford internationally recognized worker rights (as defined in subsection 502(a)(4) of the Act) to workers in such countries, and in accordance with section 502(b)(7) of the Act, I have determined that Israel and Malaysia have taken or are taking steps to afford internationally recognized worker rights, and I have determined that Burma and the Central African Republic have not taken and are not taking steps to afford such internationally recognized rights. Therefore, I am notifying the Congress of my intention to suspend the GSP eligibility of Burma and the Central African Republic. Finally, I have determined to continue to review the status of such worker rights in Haiti, Liberia, and Syria.

In the case of Israel, I did not review worker rights matters concerning the West Bank and Gaza Strip because they are not a part of the "country" of Israel as contemplated in section 502(b)(7) of the Act. The United States has consistently refrained from formal determinations that would have the effect of recognizing, either impliedly or expressly, the de jure incorporation of the occupied territories into Israel.

Further, in order to convert and implement prior decisions taken in terms of the Tariff Schedules of the United States (TSUS) into the nomenclature structure of the Harmonized Tariff Schedule of the United States (HTS) and after consideration of a private sector request for a waiver of the application of section 504(c) of the Act (19 U.S.C. 2464(c)) with respect to certain eligible articles from Mexico, I have determined to modify the application of duty-free treatment under the GSP currently being afforded to certain articles and to certain beneficiary developing countries.

Specifically, I have determined, pursuant to subsection 504(d)(1) of the Act (19 U.S.C. 2464(d)(1)), that the limitation provided for in subsection 504(c)(1)(B) of the Act should not apply with respect to certain eligible articles because no like or directly competitive article was produced in the United States on

January 3, 1985. Such articles are enumerated in the list of HTS subheadings in Annex A.

Second, pursuant to subsection 504(c)(3) of the Act, I have determined to waive the application of section 504(c) of the Act with respect to certain eligible articles from certain beneficiary developing countries. I have received the advice of the United States International Trade Commission on whether any industries in the United States are likely to be adversely affected by such waivers, and I have determined, based on that advice and on the considerations described in sections 501 and 502(c) of the Act (19 U.S.C. 2461 and 2462(c)), that such waivers are in the national economic interest of the United States. The waivers apply to the eligible articles of the beneficiary developing countries that are enumerated in Annex B opposite the HTS subheadings applicable to each article.

Finally, I have determined, pursuant to subsection 504(c)(2) of the Act and after taking into account the considerations described in sections 501 and 502(c) of the Act, that certain beneficiary developing countries have demonstrated a sufficient degree of competitiveness (relative to other beneficiary developing countries) with respect to certain eligible articles. Therefore, I have determined that subsection 504(c)(2)(B) of the Act should apply to such countries with respect to such articles. Such countries are enumerated in Annex C opposite the HTS subheadings applicable to each article.

These determinations shall be published in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, April 13, 1989.

[FR Doc. 89-9352
Filed 4-13-89; 10:43 am]
Billing code 3195-01-M

Annex A

HTS subheadings for which no like or directly competitive article was produced in the United States on January 3, 1985

HTS Subheading	HTS Subheading	HTS Subheading
0305.59.20	2933.51.10	8714.93.10
0501.00.00	3301.29.10	8714.93.60
0502.10.00	3301.29.20	8714.94.25
0505.90.00	3806.20.00	8714.94.40
0510.00.20	3808.10.10	9105.99.10
0709.90.10	3926.20.20	9202.90.20
0710.90.10	3926.90.70	9502.10.60
0712.90.15	4206.10.30	9502.99.10
0803.00.40	4601.20.20	9617.00.40
0807.10.50	4602.10.11	
0811.90.25	4602.10.13	
0908.20.20	4807.91.00	
1207.91.00	4823.90.50	
1211.90.60	5301.21.00	
1302.12.00	5701.10.13	
1401.20.40	5702.10.10	
1504.30.00	5702.91.20	
1515.50.00	5805.00.20	
1602.50.10	5904.10.00	
1904.90.00	6304.99.10	
2001.90.10	6304.99.40	
2001.90.42	6402.20.00	
2001.90.50	6502.00.60	
2008.30.54	6703.00.30	
2008.91.00	6802.91.30	
2008.99.15	6812.50.50	
2008.99.63	7004.10.10	
2008.99.65	7004.10.50	
2208.20.10	7004.90.50	
2208.90.12	7006.00.20	
2208.90.14	7013.10.10	
2208.90.15	7016.10.00	
2208.90.55	7103.10.40	
2208.90.72	7103.99.50	
2306.60.00	7104.10.00	
2402.20.10	7104.90.10	
2402.20.90	7116.20.20	
2504.10.10	7215.90.50	
2805.22.10	7615.20.00	
2912.30.50	8446.21.00	
2912.50.00	8447.20.10	
2918.13.10	8447.20.60	
2918.13.20	8448.51.10	
2918.23.10	8452.10.00	
2922.29.23	8525.20.15	

Annex B

HTS subheadings and countries granted Competitive Need Waivers

HTS Subheading	Country
0603.10.30	Colombia
0714.90.20	Colombia
1602.50.10	Uruguay
1701.11.00	Colombia; Philippines
2008.99.15	Philippines
2008.99.28	Colombia
2915.70.00	Malaysia; Philippines
2915.90.10	Malaysia; Philippines
3503.00.50	Colombia
3921.90.11	Colombia
4412.21.00	Philippines
4412.29.50	Philippines
4601.91.40	Philippines
4602.10.13	Philippines
4602.10.19	Philippines
4602.10.50	Philippines
6702.90.40	Macau
8003.00.00	Malaysia
8473.21.00	Malaysia
8473.29.00	Malaysia
8473.30.80	Malaysia
8473.40.20	Malaysia
8473.40.40	Malaysia
8512.10.40	Malaysia
8512.20.40	Malaysia
8512.30.00	Malaysia
8512.90.20	Malaysia
8525.10.80	Malaysia
8527.19.00	Malaysia
8527.32.00	Malaysia
8527.39.00	Malaysia
8527.90.80	Malaysia
8529.10.60	Malaysia
8529.90.50	Malaysia
8531.10.00	Malaysia
8531.20.00	Malaysia
8531.80.00	Malaysia
8541.40.20	Malaysia
9009.90.00	Malaysia
9401.50.00	Philippines
9401.90.25	Philippines
9403.80.30	Philippines
9403.90.25	Philippines
9503.10.00	Macau
9503.20.00	Macau
9503.49.00	Macau
9503.80.60	Macau
9503.90.60	Macau
9503.90.70	Mexico
9601.90.20	Philippines
9613.10.00	Philippines

Annex C

HTS subheadings and countries subject to Reduced Competitive Need Limits

HTS Subheading	Country
0603.10.70	Colombia
0704.90.20	Mexico
0708.10.40	Mexico
0710.21.40	Mexico
0804.50.80	Mexico
0807.10.70	Mexico
0810.90.40	Mexico
0813.30.00	Argentina
1005.90.20	Argentina
1102.20.00	Argentina
1103.13.00	Argentina
2005.10.00	Mexico
2005.90.55	Mexico
2005.90.90	Mexico
2007.99.50	Brazil
2202.10.00	Mexico
2202.90.90	Mexico
2203.00.00	Mexico
2208.90.45	Mexico
2504.10.10	Brazil
2804.69.10	Brazil
2843.21.00	Mexico
2843.29.00	Mexico
2905.19.00	Brazil
2915.31.00	Brazil
2916.15.50	Brazil
2917.13.00	Brazil
2917.14.10	Brazil
2917.19.50	Brazil
2917.35.00	Brazil
2918.11.10	Brazil
2937.92.10	Mexico
3004.39.00	Mexico
3207.40.10	Mexico
3703.10.30	Brazil
3703.20.30	Brazil
3703.90.30	Brazil
3823.90.40	Brazil
3904.10.00	Mexico
3904.21.00	Mexico
3904.22.00	Mexico
3921.13.50	Mexico
4107.21.00	Argentina
4107.29.30	Argentina
4303.90.00	Argentina
4409.10.60	Mexico
4411.11.00	Brazil
4411.19.20	Brazil
4411.21.00	Brazil
4411.29.60	Brazil
4421.90.10	Mexico
5607.30.20	Mexico
6406.10.65	Brazil
6406.99.60	Brazil
6702.90.60	Thailand
6802.99.00	Mexico
6810.11.00	Mexico
6908.10.20	Thailand
6909.19.10	Mexico
6910.10.00	Brazil
6910.90.00	Brazil
6911.90.00	Brazil
7004.10.20	Mexico
7103.10.40	Brazil
7103.99.50	Brazil
7104.90.50	Brazil
7114.11.70	Mexico
7114.20.00	Mexico
7115.90.20	Mexico
7116.20.20	Brazil
7202.21.50	Brazil
7202.30.00	Brazil
7314.19.00	Mexico
7402.00.00	Mexico
7407.21.50	Brazil
7407.21.90	Brazil
7903.10.00	Mexico
7903.90.30	Mexico
8408.20.20	Brazil
8408.20.90	Brazil
8408.90.90	Brazil
8409.91.91	Brazil; Mexico
8409.91.92	Mexico
8409.91.99	Brazil; Mexico
8409.99.91	Brazil
8409.99.92	Brazil

Annex C (con.)

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HTS subheadings and countries subject to Reduced Competitive Need Limits

HTS Subheading	Country
8409.99.99	Brazil
8411.99.90	Brazil
8414.51.00	Mexico
8414.59.80	Mexico
8414.60.00	Mexico
8414.90.10	Mexico
8415.10.00	Mexico
8415.81.00	Mexico
8415.82.00	Mexico
8415.83.00	Mexico
8415.90.00	Mexico
8419.32.50	Brazil
8419.89.10	Brazil
8419.90.20	Brazil
8421.23.00	Brazil; Mexico
8421.31.00	Brazil; Mexico
8425.31.00	Mexico
8425.41.00	Mexico
8425.42.00	Mexico
8426.12.00	Mexico
8426.19.00	Mexico
8426.20.00	Mexico
8426.30.00	Mexico
8426.41.00	Mexico
8426.49.00	Mexico
8426.91.00	Mexico
8426.99.00	Mexico
8428.10.00	Mexico
8428.20.00	Mexico
8428.40.00	Mexico
8428.50.00	Mexico
8428.60.00	Mexico
8428.90.00	Mexico
8429.11.00	Brazil
8429.19.00	Brazil
8429.20.00	Brazil
8429.30.00	Brazil
8429.40.00	Brazil
8429.52.50	Brazil
8429.59.50	Brazil
8430.10.00	Brazil
8430.20.00	Brazil
8430.41.00	Brazil
8430.49.80	Brazil
8430.50.50	Brazil
8430.61.00	Brazil
8430.62.00	Brazil
8430.69.00	Brazil
8431.10.00	Mexico
8431.31.00	Mexico
8431.39.00	Mexico
8431.41.00	Brazil
8431.42.00	Brazil
8431.43.80	Brazil
8431.49.10	Mexico
8431.49.90	Brazil
8465.94.00	Brazil
8471.10.00	Brazil
8479.10.00	Brazil
8479.30.00	Brazil
8479.81.00	Brazil
8479.82.00	Brazil
8479.89.70	Brazil
8479.89.90	Brazil
8479.90.40	Brazil
8479.90.80	Brazil
8483.10.10	Brazil; Mexico
8483.10.30	Brazil
8505.19.00	Mexico
8507.20.00	Mexico
8507.90.40	Mexico
8523.11.00	Mexico
8523.12.00	Mexico
8523.13.00	Mexico
8523.20.00	Mexico
8523.90.00	Mexico
8525.10.80	Mexico
8527.21.10	Brazil
8527.31.40	Brazil
8527.90.80	Mexico

Annex C (con.)

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HTS subheadings and countries subject to Reduced Competitive Need Limits

HTS Subheading	Country
8529.10.60	Mexico
8529.90.50	Mexico
8539.90.00	Mexico
8543.20.00	Mexico
8543.30.00	Mexico
8543.80.90	Mexico
8543.90.80	Mexico
8548.00.00	Mexico
9017.10.00	Brazil
9017.20.40	Brazil
9017.90.00	Brazil
9025.11.20	Brazil
9026.10.20	Brazil
9026.20.40	Brazil
9026.80.20	Brazil
9031.10.00	Brazil
9031.20.00	Brazil
9031.80.00	Brazil
9031.90.60	Brazil
9032.89.60	Brazil
9032.90.60	Brazil
9033.00.00	Brazil
9303.30.40	Brazil
9401.30.40	Yugoslavia
9401.40.00	Thailand
9401.61.40	Yugoslavia
9401.61.60	Thailand
9401.69.60	Yugoslavia
9401.69.80	Thailand
9403.30.80	Thailand
9403.40.90	Thailand
9403.50.90	Thailand
9403.60.80	Thailand
9405.10.80	Mexico
9405.20.80	Mexico
9405.40.80	Mexico
9502.91.00	Mexico
9503.10.00	Mexico
9503.30.80	Mexico
9503.70.80	Mexico
9503.80.20	Mexico
9503.80.40	Mexico
9503.80.80	Mexico
9503.90.50	Mexico
9503.90.60	Mexico
9504.20.60	Brazil
9508.00.00	Brazil
9613.80.20	Mexico
9613.90.40	Mexico

Rules and Regulations

Federal Register
Vol. 54, No. 73
Tuesday, April 18, 1989

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Schedule B Appointment Authority for Professional and Administrative Career Positions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This regulation, which was previously published as a final rule on August 31, 1982 (47 FR 38257), provided for the filling of Professional and Administrative Career (PAC) positions at the GS–5 and GS–7 levels in certain occupations under a Schedule B PAC authority during the period when the Office of Personnel Management did not have a register of competitive eligibles to fill vacancies in those occupations. Pursuant to the direction of the United States Court of Appeals for the D.C. Circuit and the United States District Court for the District of Columbia, OPM supplemented the rulemaking record to include publication of the cost data upon which OPM relied in making its decision in 1982. Having complied with the Courts' instructions, OPM will continue to permit agencies to use a Schedule B authority in the PAC occupations under the same conditions as stated previously and will continue to terminate that authority with respect to particular occupations as competitive registers are established for those occupations.

EFFECTIVE DATE: May 18, 1989.

FOR FURTHER INFORMATION CONTACT: James S. Green, Associate General Counsel, Office of General Counsel—(202) 632–5087.

SUPPLEMENTARY INFORMATION: At 54 FR 3457 dated January 24, 1989, the Office of Personnel Management published a notice of proposed rulemaking. Pursuant to the direction of the United States Court of Appeals for the DC Circuit (*NTEU* v. *Horner*, Nos. 87–5102 & 87–5191) and the United States Court for the District of Columbia (Civil Action No. 84–2573), OPM supplemented the rulemaking record which had been developed in 1982 for the purpose of receiving comments. The original final rule had been published on August 31, 1982 (47 FR 38257). The purpose of supplementing the rulemaking record was to permit OPM to explain further the cost data upon which it relied in 1982 when it authorized agencies to use a Schedule B authority to appoint eligible applicants to positions in the Professional and Administrative Career (PAC) occupations at the GS–5 and GS–7 levels where agencies were unable to fill vacancies through internal recruitment.

Pursuant to the terms of a consent decree which was entered by the U.S. District Court for the District of Columbia (*Luevano* v. *Devine*, Civil Action No. 79–271), OPM, in 1982, eliminated the Professional and Administrative Career Examination (PACE) which was formerly used to examine applicants for the PAC occupations. By 1982, the existing PACE registers had become or would shortly have become inadequate for staffing needs. OPM permitted agencies to use a Schedule B appointing authority to fill vacancies in PAC occupations until it could replace that authority with job-specific, competitive examinations for the approximately 118 PAC occupations. Since 1986, by Executive Order 12596, PAC employees hired under the Schedule B appointment authority have been converted non-competitively into the competitive service at the GS–9 level where the employing agency had determined that the employee's qualifications and performance warranted such conversion.

Two comments were received on OPM's publication regarding the use of Schedule B based on certain cost considerations, one from a private citizen and one from a labor union which represents Federal employees in some agencies. Both expressed their concern that the use of Schedule B as an appointing authority in the excepted service would undermine basic merit principles.

Appointments under Schedule B are made subject to the same basic qualification requirements as appointments in the competitive service, requiring that selections be made soley on the basis of merit and fitness. As such, use of Schedule B is subject to the same statutory requirements at 5 U.S.C. 2301 and 2302 governing merit system principles and prohibited personnel practices.

Each agency determines when and in what manner to advertise individual PAC vacancies based on current staffing needs. Procedures in evaluating individual applications under Schedule B may take the form of a straight numerical ranking of candidates based on a rating of each applicant's education and experience similar to the traditional unassembled testing methods used in competitive examinations. Agencies may group and rank applicants into adjective categories such as "qualified" or "highly qualified" or into score ranges such as "90–100," "80–89," or "70–79."

Additionally, agencies are required to consider veterans preference. Under Schedule B appointments, veterans have always been listed first in their respective category. Disabled veterans precede all others regardless of numerical rating. Thus, some veterans may experience a greater advantage, in some instances, because they are placed first in their category as opposed to being merely first in terms of their numerical score.

The rationale for the published rule involved only cost considerations as required by the Courts' orders. However, the union has raised several other concerns that did not involve cost considerations but to which OPM's response is nevertheless warranted. The union expressed the concern that agencies should use only internal procedures until competitive examinations are developed rather than continue to use Schedule B. From its inception, OPM has emphasized that agencies may use Schedule B a an appointing authority to fill vacancies through external sources where they have been unable to fill such vacancies through other means such as reassignment, transfer, reinstatement or promotion (FPM Letter 213–32 (4), paragraph 6 (September 9, 1982) and 47 FR 28257 (August 31, 1982)). Indeed, internal appointments have always been the primary method of filling PAC positions at the GS–5 and GS–7 levels, regardless of whether external

appointments were through PACE, alternative competitive examining, or through Schedule B.

Agency success in complying with the instruction to use Schedule B as a last resort is reflected in the small proportion of external hiring which has actually occurred under the Schedule B PAC authority. In the calendar years between 1983 and 1986, external PAC hires at the GS-5 and GS-7 levels under Schedule B ranged from between 14 to 20 percent of all hires in the PAC occupations. In 1987, only 10 percent of all such hires were from external sources. In the first six months of 1988, less than 8 percent of all PAC hires at the GS-5 and GS-7 levels were from external sources. Thus, today over 90 percent of all hiring in the PAC occupations at those levels is through the kind of competitive examination and appointment process which the union suggests is appropriate or through internal procedures such as reinstatement, transfer, reassignment or promotion, not through Schedule B appointment.

External PAC hires, whether through Schedule B or through competitive examining procedures, represent a very small portion of OPM's overall examining responsibility. For example, in calendar year 1987, in PAC occupations for which competitive examinations had not yet been developed, external PAC hires under Schedule B at the GS-5 and GS-7 levels represented only sixty-eight hundredths of one percent of total new hires in all occupations under all appointing authorities in the Executive Branch agencies, excluding postal employees. OPM's resources for developing and revising examinations for external recruitment in the PAC occupations must be viewed in comparison to its total examining responsibilities in all occupations.

The union also raises certain concerns regarding OPM's obligations under the *Luevano* consent decree, concerns which are based on the union's possible misunderstanding of that decree. To the extent that the union's comments relate to OPM's decision to terminate the use of the PACE and to permit agencies to use Schedule B until competitive examinations could be developed cost-effectively, OPM now takes this opportunity to respond to and to correct any misunderstandings of that decree.

The union suggests that OPM entered into the consent decree and then shortly thereafter abandoned its agreement to replace the PACE with competitive examinations. When the Court preliminarily approved the decree in late 1980, OPM believed that it would have the budgetary and personnel resources to replace the PACE with job-specific examinations in all PAC occupations in accordance with the decree's timetable. However, due to subsequent, government-wide reductions in Federal hiring and actual reductions in OPM's own budgetary and personnel allocations, events which began to occur after the preliminary approval of the decree and subsequent to final approval in February 1982, OPM believed it had to concentrate its limited resources initially on developing examinations in those occupations which traditionally had the largest number of vacancies. The extensive discussion of cost data and personnel and budget reductions is set forth in the proposed rule at 54 FR 3457-3458 (January 24, 1989) which is referenced herein.

The union states that the decree allowed a phased replacement of the PACE and that OPM's budget should have been adequate to develop alternative tests during the three-year, phase-in period. OPM has already explained that development of many job-specific tests was considered to be too expensive in view of OPM's budgetary constraints and the anticipated reductions in hiring. Indeed, the vast majority of occupations subject to Schedule B had fewer than 20 external hires on average from 1983 to the present. In addition, while the decree allowed for a three-year, phase-out period of PACE, a minimum of 50 percent of the appointments in all PAC jobs had to be by alternative examinations after one year, 80 percent after two years, and 100 percent at the end of three years. That schedule did not lend itself to the gradual development of scores of new tests which the union comments seem to suggest.

The union also states that OPM's cost figures are misleading because the figures are based on developing separate tests for each covered occupation. The union offers its view that the decree allows OPM to group similar jobs under a single test and that, by doing so, OPM could, or should, have been able to reduce its costs. Under the decree, OPM was permitted to develop a single examination to cover more than one PAC occupation only where the occupations are similar *and* where there are relatively few vacancies to fill in those occupations. Not all such small-fill occupations can be covered by a single examination, however, because some lack the requisite homogeneity and, thus, are unsuitable for grouping. Even if grouping is acceptable in some cases, development of the remaining job-specific, competitive examinations is still enormously expensive.

The union also suggests that OPM's recently announced intention to group occupations for a proposed new examining system undercuts OPM's position that grouping was not feasible at the time of the Schedule B decision. However, that view ignores the extensive developmental work which must precede any decision to group the different PAC occupations for purposes of examination. Additionally, as has been stated on several occasions, and as OPM has expressed to the Court in the *Luevano* case, OPM's proposal to group occupations into general categories for examining purposes has been forwarded to the *Luevano* plaintiffs for their consideration as required under the decree. OPM is awaiting their response to that proposal and no final decision can be reached until that time.

The union also asserts that OPM's rationale for using Schedule B was to undermine the consent decree. The facts simply do not support that assertion. Rather than undermining the decree, the use of Schedule B has actually enhanced Federal employment opportunities for individuals who belong to minority groups. Prior to the abolition of the PACE in 1982, minority hiring under PACE averaged only 5.9 percent between 1973 and 1980. After the abolition of the PACE and under Schedule B, overall minority hiring between 1982 to 1986 rose to 22.7 percent. In 1986 and again in 1987, minority hiring rose to 24 percent.

It is OPM's plan to establish competitive registers for all remaining PAC occupations at the entry level in the near future. In the interim, agencies may continue to utilize Schedule B as an appointing authority where they are unable to fill PAC positions through internal recruitment. Once competitive registers are established for the remaining PAC occupations, agency authority to use Schedule B to fill PAC occupations will terminate. Incumbent Schedule B employees who have performed satisfactory service immediately prior to the date on which the competitive register is established for that occupation may have their positions converted to competitive appointments pursuant to the regulations at 5 CFR 315.701.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains solely to procedures for appointment of employees by Federal agencies.

List of Subjects in 5 CFR Part 213

Government employees.

Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is republishing its final regulation under 5 CFR 213.3202(l), originally published on August 31, 1982 (47 FR 38257) and amended on July 6, 1987 (52 FR 25193), as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for Part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, 8337(h), and 8457.

2. In § 213.3202, paragraph (l), is republished to read as follows:

§ 213.3202 Entire Executive Civil Service.

* * * * *

(l) Professional and administrative career (PAC) positions at the GS–5 or GS–7 grade level which are subject to the decree entered on November 19, 1981, by the United States District Court for the District of Columbia in the civil action known as *Leuvano* v. *Devine* and numbered as No. 79–271, which were not removed from coverage of the Professional and Administrative Career Examination (PACE) prior to the effective date of the consent decree, and which are to be filled, under the conditions described below, by appointment of individuals other than those who at the time of such appointment already have competitive status in the Federal civil service. When a Federal agency needs to fill a PAC position that was not removed from PACE coverage before the consent decree became effective, and the agency has made maximum use of priority placement sources and has given appropriate consideration to available and qualified status applicants, then OPM may authorize the agency to make a new appointment under this paragraph. Such appointments shall be authorized and made pursuant to such Schedule B requirements for PAC positions as shall be prescribed in the Federal Personnel Manual. Terms of use of this appointment authority shall be established by an appointment authority agreement to be executed for each position excepted from the competitive service pusuant to this authority. The appointment authority agreement will remain in effect with respect to particular GS–5 and GS–7 PAC positions only so long as there is no competitive examination available to fill those positions. Establishment of a register under an alternative competitive examination for any PAC position(s) at grades GS–5 and GS–7 will immediately terminate all agreements permitting new Schedule B appointments to such position(s) under this authority. Individuals appointed before termination of the agreements may, however, continue to serve under those appointments at grades GS–5 and GS–7 until they are appointed to a competitive position in accordance with applicable civil service laws, rules, and regulations. An incumbent of a Schedule B PAC position may be converted to a career or career-conditional appointment under the provisions of Executive Order 12596, subject to the conditions set out in § 315.170 of this chapter.

[FR Doc. 89–9182 Filed 4–17–89; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 89–053]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations governing the interstate movement of cattle and bison because of tuberculosis by raising the designation of Oregon from a modified accredited state to an accredited-free state.

EFFECTIVE DATE: May 18, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Room 734, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7715.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective January 12, 1989 (54 FR 1145–1146, Docket Number 88–191), we amended the regulations in 9 CFR Part 77 governing the interstate movement of cattle and bison by removing Oregon from the list of modified accredited states in § 77.1 and adding it to the list of accredited-free states in that section. Comments on the interim rule were required to be postmarked or received on or before March 13, 1989. We did not receive any comments. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule". Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

The groups affected by this action will be certain livestock owners in Oregon, as well as buyers and importers of Oregon cattle. Changing the status of Oregon will improve the marketability of cattle and bison from Oregon, since some prospective cattle and bison buyers prefer to buy from accredited-free states. This will result in a beneficial economic impact on some small entities. However, based on our experience in similar designations of other states, the impact should not be significant.

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

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the

Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR Part 77 and that was published at 54 FR 1145–1146 on January 12, 1989.

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51 and 371.2(d).

Done at Washington, DC, this 12th day of April 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–9199 Filed 4–17–89; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 50, 51, 52, and 170

RIN 3150-AC61

Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is now adding a new part to its regulations which provides for issuance of early site permits, standard design certifications, and combined construction permits and operating licenses with conditions for nuclear power reactors. The new part sets out the review procedures and licensing requirements for applications for these new licenses and certifications. The final action is intended to achieve the early resolution of licensing issues and enhance the safety and reliability of nuclear power plants.

EFFECTIVE DATE: May 18, 1989.

ADDRESS: Documents relative to this final rule may be examined and copied for a fee at the NRC Public Document Room, 2120 L Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steven Crockett, Attorney, Office of the General Counsel, telephone (301) 492–1600, on procedural matters, or Jerry Wilson, Office of Nuclear Regulatory Research, telephone (301) 492–3729, on technical matters, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission has long sought nuclear power plant standardization and the enhanced safety and licensing reform which standardization could make possible. For more than a decade, the Commission has been adding provisions to 10 CFR Part 50 and Part 2 that allow for limited degrees of standardization, and for as many years, the Commission has been proposing legislation to Congress on the subject. The Commission was frequently asked by Members of Congress to what extent legislation on the subject was necessary, and in doing the analysis necessary to reply to these questions, the Commission came to believe that much of what it sought could be accomplished within its current statutory authority. Thus the Commission embarked on standardization rulemaking.

The rulemaking process has been lengthy and highly public. A year and a half ago, the Commission announced its intent to pursue standardization rulemaking in its Policy Statement on Nuclear Power Plant Standardization (52 FR 34884; September 15, 1987). The Policy Statement set forth the principles that would guide the rulemaking and provided for a forty-five-day comment period on the Policy Statement. On October 20, 1987, about mid-way through the comment period the NRC staff held a public workshop on the Policy Statement. During the Workshop, the staff presented a detailed outline of the proposed rule and answered preliminary questions about it. A transcript of the workshop may be found in the Commission's public document room, Gelman Building, 2120 L Street, NW, Washington, DC. After a lengthy internal consideration of the comments received on the Policy Statement and the outline of the rule presented at the Workshop, and after public briefings of the Commission and the Advisory Committee on Reactor Safeguards (ACRS), the Commission issued a proposed rule (53 FR 32060; Auguest 23, 1988) and provided for a sixty-day comment period. The comment period was extended to 75 days on October 24, 1988 (53 FR 41609). Mid-way through that period the NRC staff again held a public workshop, this time on the text of the proposed rule.[1]

During the second, 75-day comment period, the Commission received over 70 sets of comments, ranging from one-page letters to multi-paged documents, one of which included an annotated rewrite of the whole rule. The commenters included the Department of Energy (DOE), agencies and offices in the states of Connecticut, Indiana, New York, and North Carolina, the Nuclear Utility Management and Resources Council (NUMARC), the American Nuclear Energy Council, Westinghouse, General Electric, Combustion Engineering, Stone & Webster, the U.S. Chamber of Commerce, the Union of Concerned Scientists (UCS), the Nuclear Information and Resource Service (NIRS), the Ohio Citizens for Responsible Energy (OCRE), the Maryland Nuclear Safety Coalition, and several utilities, corporations, public interest groups, and individuals. All the comments may be viewed in the agency's public document room.

The Commission has carefully considered all the comments and wishes to express its sincere appreciation of the often considerable efforts of the commenters. While the broad outlines, and even many of the details, of the proposed rule remained unchanged in the final rule, few sections of the proposed rule have escaped revision in light of the comments, and some have been thoroughly revised. In the remainder of this section of this final rule preamble, the Commission makes two general responses to comments and then summarizes both the comments and its responses to them. In Section II of this final rule preamble, the Commission responds to comments on the chief issues raised by the comments. While Section II often touches on the broad policies which lie behind the rule, readers wishing to know more about those broad policies may consult the statement of considerations which was published with the proposed rule. In Section III, which proceeds section-by-section through the final rule, the Commission notes minor changes and offers some minor clarifications of the meaning of some provisions. For a complete record of the differences

[1] Given this lengthy and public process, the Commission is unpersuaded by commenters on the proposed rule who claim that the public was not given enought time to consider the rule. For example, the Nuclear Information Resource Service (NIRS) says that given the importance of the rule, one "would think that the NRC would encourage the widest possible public participation on this rule, perhaps even by making special efforts to solicit comment." That is, of course, precisely what the Commission did.

between the proposed rule and the final rule, readers may consult the comparative text of the final rule, which is available in the agency's public document room.

Two General Responses to Comments

Before summing up the comments and the Commission's responses to them, the Commission wishes to make clear what it has not tried to do in this rulemaking. First, although this is an important rulemaking, it does not resolve all the safety, environmental, and political issues facing nuclear power. The Commission received urgings to undertake deep reforms before issuing this final rule. The Commission was, for instance, urged to streamline the hearing procedures in 10 CFR Part 2, Subpart G, restructure the utilities' liabilities under the Price-Anderson Act, decide once and for all what safety criteria shall be applied to all future plants, solve the problem of nuclear waste, turn all health and safety regulation—not just the NRC's—over to the states, reconsider whether economic considerations should ever enter into safety decisions, conduct local running referenda on whether a given nuclear power plant should be built, and have Congress directly review designs. In sum, the Commission was urged to do everything before it did anything.

However, the Commission has stuck to the simple aim in this rulemaking of providing procedures for the standardization of nuclear power plants and more generally for the early resolution of safety and environmental issues in licensing proceedings. The Commission has declined to tie the fate of this rulemaking to the progress of the agency's many other ongoing efforts, such as revision of the agency's hearing procedures, implementation of the Policy Statement on Safety Goals (51 FR 30028; August 21, 1986), development of techniques of analysis of risk and cost, and preparation for the licensing of a high-level waste repository. The final rule necessarily touches on substance whenever it sets forth requirements for the technical content of applications for early site permits, design certifications, or combined licenses, or discusses the applicability of existing standards to new designs and new situations. But even here, the Commission has avoided establishing new safety or environmental standards, although the Commission may choose to adopt additional safety standards applicable to new designs prior to the advent of design certifications.

Second, many saw this rule as the occasion for arguments over the future viability of nuclear power in the United States. On the one hand, the Commission is vigorously accused of promoting the nuclear industry and shutting local governments and individual citizens out of the licensing process. On the other hand, the Commission is told that the licensing process is "the reason" for "the loss of the nuclear option", and that reform of that process is the "sine qua non" of the viability of that option.

Certainly, the Commission hopes that this rule will have a beneficial effect on the licensing process. In other words, the Commission hopes that effort has not been wasted on a rule which will never be used. But the Commission is not out to secure, single-handedly, the viability of the industry or to shut the general public out. The future of nuclear power depends not only on the licensing process but also on economic trends and events, the safety and reliability of the plants, political fortunes, and much else. The Commission's intent with this rulemaking is only to have a sensible and stable procedural framework in place for the consideration of future designs, and to make it possible to resolve safety and environmental issues before plants are built, rather than after.

Summary of the Comments and the Commission's Responses

The comments on the proposed rule are characterized both by their broad agreement that standardization and early resolution of licensing issues are desirable, and by their often deep differences on what kinds of designs should be certified, how they should be certified, and what consequences certification should have for the licensing process.

As to what kinds of designs should be certified, except for the very few who opposed any licensing of any nuclear power plant, no commenter opposes the certification of designs which differ significantly from the designs which have been built thus far; but some; UCS, for instance, say that only "advanced" designs should be certified, and many, including UCS, DOE, and Westinghouse, say that only designs for whole plants should be certified.

While not withholding certification from incomplete designs or designs which are not advanced, the final rule has moved a long way from the position the Commission took in the legislative proposal it made shortly before this rulemaking began. There, certification was held out only for evolutionary light water designs, but was permitted for the design of any "major portion" of a plant. The final rule provides for certification of advanced designs and permits certification of designs of less than full scope only in highly restricted circumstances.

As to how designs should be certified, most commenters think the Commission has authority to certify either by rule or by license. However, some commenters see advantages in certification by license. OCRE, for instance, says that certification by license is more appropriate, and some industry commenters think that more protections are available to the holder of a design license than are available to the "holder" of a design rule. Some commenters prefer certification by license because they believe that a hearing on a license has to be a formal adjudication.

The final rule reflects the Commission's long-standing preference for certification by rulemaking (see the old 10 CFR Part 50, Appendix 0, paragraph 7), and for certification hearing procedures which, while they permit formal procedures when needed, do not assume that formal procedures are the best means for resolving every safety issues.

Finally, the deepest differences among the commenters concern the consequences of standardization and other devices for early resolution of licensing issues for the licensing process. One commenter believes that, once a plant is built under a combined license, there need be no hearing at all before operation begins. Several of these commenters characterize the proposed rule's provision for an opportunity for a hearing just before operation as the old two-step licensing process under a different name. Others believe not only that there should be such a hearing but also that resolution of issues in earlier proceedings does not entail any restriction on the issues which may be raised in the hearing after construction Many of these commenters attribute to the Commission an intent to do away with public participation in the licensing process.

The Commission has given more consideration to this issue than to any other procedural question raised by the proposed rule. As a result, the proposed rule's provisions on hearings just before operation have been revised in the final rule (the revised provisions are discussed in more detail below). However, the final rule still provides for an opportunity for a hearing on limited issues before operation under a combined license. But the mere fact of this opportunity does not mean that the rule is hiding the old two-step process under a different name. By far the greater part of the issues which in the past have been considered in operating

license hearings would, under the new rule, be considered at the combined license stage or in a certification proceeding, including the bulk of emergency planning issues. Similarly, the mere fact that any hearing prior to operation would be limited does not mean that the Commission is attempting to remove the public from the licensing process. The rule does not prevent the public from participating in the resolution of any operating license issue. It simply moves the bulk of the issues up front in the licensing process to the design certification, early site permit, and combined license parts of the process.

II. The Principal Issues

1. Requirements for Applications for Design Certification

Because design certification is the key procedural device in Part 52 for bringing about enhanced safety and early resolution of licensing issues, the Commission begins its discussion of the principal issues with responses to comments on the proposed rule's requirements for applications for certification.

a. "Advanced" Designs

The proposed rule provided for certification both of evolutionary light-water designs, that is, improved versions of the light-water designs now in operation, and of "advanced" designs, that is, designs which differ significantly from the evolutionary light-water designs, or which incorporate, to a greater extent than evolutionary light-water designs do, simplified, inherent, passive, or other innovative means to accomplish their safety functions (the distinction between evolutionary light-water designs and advanced designs is discussed at greater length below). The proposed rule required that some advanced designs could not be certified until full-scale prototypes of them were built and tested. While agreeing with the requirement for prototype testing of some advanced designs, several commenters, UCS prominent among them, say that certification should be held out only to advanced designs. UCS argues that without such a limitation on the designs which could be offered up for certification, the proposed rule would discriminate against the development of advanced designs of greater safety, because, given the choice between seeking certification of a familiar design and seeking certification of a design which the Commission might require to be tested in a full-scale prototype, an applicant would choose to avoid having to build a prototype.

As is noted above, the rule, unlike the legislative proposals which preceded it, provides for certification of advanced designs. However, it also provides for certification of evolutionary light-water designs. The Commission's legislative proposals on standardization have always focused on these designs, on the grounds that the light-water designs now in operation provide a high degree of protection to public health and safety. Moreover, the Commission does not believe that the requirement in some cases for a prototype is such a burden. Whatever burden having to test a prototype may be, the burden may be lessened by agreements of cost-sharing among utilities and other organizations, and by licensing the prototype for commercial operation. It is well to remember also that, under the rule, prototype testing is required only for certification or an unconditional final design approval, if at all. A final design approval under 10 CFR Part 52, Appendix O (formerly in Part 50) can be granted subject to conditions requiring prototype testing. See 10 CFR Part 52, Appendix O, paragraph 5. Moreover, a licensed prototype may be replicated.

b. Requirement to Address Unresolved Safety Issues and Safety Goals

Several commenters object to the proposed rule's requirement that applicants for certification propose technical resolutions of Unresolved Safety Issues and high- and medium-priority Generic Safety Issues. This requirement, and similar ones relating to probabilistic risk assessments and the Commission's Three Mile Island requirements for new plants, 10 CFR 50.34(f), were announced in the Commission's Severe Accident Policy Statement (50 FR 32138; August 8, 1985) and in the Commission's Policy Statement on Standardization (52 FR 34884; September 15, 1987). Some commenters call it "inappropriate" to impose this burden on applicants. Others say that no resolution of one of these issues should be imposed on a design unless the resolution had passed a cost-benefit test.

The Commission believes that it is not inappropriate to require that an applicant for certification show either that a particular issue is not relevant to the design proffered in the application, or that the applicant has in hand a design-specific resolution of the issue (the applicant is of course not required to propose a generic resolution of the issue). As to cost-benefit tests, the Commission will of course apply them to the resolution of safety issues where the resolutions are being imposed on existing plants and adequate protection is already secured. See 10 CFR 50.109 and *UCS* v. *NRC*, 824 F.2d 108 (D.C. Cir. 1987). However, initial certification does not involve backfitting. Designers will, of course, strive for a cost-effective design, but the Commission declines to incorporate a cost-benefit test in the standards for certification.

c. Requirements on Scope of Design and on Prototypes

In the statement of considerations accompanying the proposed rule, the Commission noted that the proposed rule permitted certification of incomplete designs only in limited cases, while the legislation the Commission had proposed to the 100th Congress had been less stringent about scope of design. The Commission invited comment on whether the final rule should return to the policy reflected in the proposed legislation. DOE, Westinghouse, and UCS, among others, argue that only designs of complete power plants—excluding site-specific elements of course—should be certified. NUMARC, however, advocates a return to the policy of the legislation proposed to the 100th Congress. One engineering firm argues that requiring complete designs would limit market forces that could contribute to standardization.

The final rule is even more stringent about completeness of design than the proposed rule was. The final rule's provisions on scope, see § 52.47, reflect a policy that certain designs, especially designs which are evolutions of light-water designs now in operation, should not be certified unless they include all of a plant which can affect safe operation of the plant except its site-specific elements. See § 52.47(b). Examples of designs which are evolutions of currently operating light-water designs are General Electric's ABWR, Westinghouse's SP/90, and Combustion Engineering's System 80+. Full-scope may also be required of certain advanced designs, namely, the "passive" light-water designs such as General Electric's SBWR and Westinghouse's AP600. Considerations of safety, not market forces, constitute the basis for the final rule's requirement that these designs be full-scope designs. Long experience with operating light-water designs more than adequately demonstrates the adverse safety impact which portions of the balance of plant can have on the nuclear island. Given this experience, certification of these designs must be based on a consideration of the whole plant, or else the certifications of those designs will lack that degree of finality which should be the mark of certification.

However, the Commission has not adopted UCS's position that no design of incomplete scope could ever be certified. There is no reason to conclude that there could never be a design which protects the nuclear island against adverse effects caused by events in the balance of plant. The final rule therefore provides the opportunity for certification of designs of less than complete scope, if they belong to the class of advanced designs. See § 52.47(b). Examples of designs in this class include the passive light-water designs mentioned above and non-light-water designs such as General Electric's PRISM, Rockwell's SAFR, and General Atomic's MHTGR. But here too the rule sets a high standard: Certification of an advanced design of incomplete scope will be given only after a showing, using a full-scale prototype, that the balance of plant cannot significantly affect the safe operation of the plant.

Standardization along these lines may indeed limit some market forces, particularly those which encourage a highly differentiated range of products. However, the final rule's requirements on scope in no way limit innovative arrangements among vendors and architect-engineers for bringing new designs before the Commission.

The final rule is clearer than the proposed rule was in identifying those designs which cannot be certified without a program of testing. For purposes of determining which designs must undergo a testing program to be certified, the rule distinguishes between all advanced designs—be they passive light-water or non-light water—and evolutionary light-water designs. Some testing may be required of all advanced designs. Passive light-water designs are to some extent also evolutions of the light-water designs now licensed, but they have design features which are not present on plants licensed and operating in the United States. Therefore the rule requires that the maturity of the passive light-water designs be demonstrated through a combination of experience, appropriate tests, or analyses, but most likely not through prototype testing. See § 52.47(b)(2). While analyses may be relied upon by the staff to demonstrate the acceptability of a particular safety feature which evolved from previous experience or to justify the acceptability of a scale model test, it is very unlikely that an advanced design would be certified solely on the basis of analyses. Prototype testing is likely to be required for certificaton of advanced non-light-water designs because these revolutionary designs use innovative means to accomplish their safety functions, such as passive decay heat removal and reactivity control, which have not been licensed and operated in the United States. See id.

d. Certification by Rulemaking

The proposed rule provided for design certification by rulemaking. Here the proposed rule was in accord with the old 10 CFR Part 50, Appendix O, paragraph 7 (this paragraph is now being replaced by Subpart B of Part 52). However, in the notice of proposed rulemaking, the Commission invited comments on whether certification should be by license rather than rule. Although the Commission expressed some doubts on the matter, commenters generally agree that the Commission has the authority to license designs. Some industry commenters and some public interest groups alike go further and argue that certification by license is preferable. Industry commenters arguing this position believe that the rights and obligations which attach to a license are clearer than those which attach to a rule. For instance, a license is possessed by some entity and, under Commission law, cannot be transferred without that entity's consent. Some public interest groups prefer certification by license because they believe that the hearing on a license would have to be a formal adjudication.

The Commission continues to believe that certification by rule is preferable to certification by license. As DOE says, a design certification will, like a rule, have generic application. Moreover, certification by rulemaking leaves the Commission free to adapt hearing procedures to the requirements of the subject matter, rather than rely exclusively on formal adjudicatory devices even when they are not useful (hearing procedures are more fully discussed below). Finally, certification by rulemaking permits the Commission to consider reactor designs submitted by foreign corporations. However, the Commission will give priority to designs for which there is a demonstrated interest in the United States. The Commission will review other designs as resources permit.

For the reasons just given, the final rule retains provisions for certification by rulemaking. Westinghouse suggests also adding provisions for certification by license, leaving it to the applicant to choose between certification by license and certification by rulemaking. The Commission, however, prefers rulemaking and sees no advantage to providing such an option.

NUMARC, while supporting certification by rule, suggests adding provisions analogous to existing provisions in 10 CFR Part 50 for transfer or revocation of a license. See 10 CFR 50.80 and 50.100. However, a rule certifying a design does not, strictly speaking, belong to the designer. Therefore, such a rule cannot be transferred or revoked by adjudicatory enforcement. Applying § 50.80, in particular, to a rule certifying a design would be akin to giving the vendor of the design a patent, but the Commission has no authority to issue patents.

Nonetheless, the vendor whose design is certified by rule is not without protection. Section 52.63(a), the Administrative Procedure Act, and, ultimately, judicial review protect the vendor against arbitrary amendment or recission of the certification rule, and the law of patents and trade secrets protects the vendor against unlawful use of the design. In order to give the vendor more opportunity to treat elements of the design as trade secrets, the final rule provides that proprietary information contained in an application for design certification shall be given the same treatment that such information would be given in a proceeding on an application for a construction permit or an operating license under 10 CFR Part 50. See § 52.51. Moreover, an applicant referencing a design certification and seeking to use a designer other than the designer which achieved the certification would have to comply with §§ 52.63(c) and 52.73, and the other designer would have to pay a portion of the cost of review of the application for certification. See 10 CFR 170.12 (d) and (e), as amended in this document.

e. Applicability of Existing Standards

With one exception, the proposed rule did not say what safety standards would be applied to a design proffered for certification, or even precisely what existing information requirements applicants would have to meet.[2] In its lengthy and highly detailed comments, NUMARC proposes adding to the rule a large number of highly specific cross-references to Part 50, and a statement that no other portions of Part 50 apply.

The final rule provides that the standards set out in 10 CFR Part 20, Part 50 and its appendices, and Parts 73 and 100 will apply to the new designs where those standards are technically relevant to the design proposed for the facility. See new § 52.48. Application of Parts 20, 50, 73, and 100 to the certification of new

[2] The proposed rule did state that an application for certification would have to demonstrate that the design compiled with the technically relevant portions of the Commission's Three Mile Island requirements set forth in 10 CFR 50.34(f). See § 52.47(a), 53 FR 32073 (proposed rule).

designs, as reflected in § 52.48, should go a long way toward establishing the regulatory standard that new designs must meet, and thereby provide the regulatory stability that is an essential prerequisite to realizing the benefits of standardization. The Commission recognizes that new designs may incorporate new features not addressed by the current standards in Parts 20, 50, 73 or 100 and that, accordingly, new standards may be required to address any such new design features. Therefore, the NRC staff shall, as soon as practicable, advise the Commission of the need for criteria for judging the safety of designs offered for certification that are different from or supplementary to current standards in 10 CFR Parts 20, 50, 73, and 100. The Commission shall consider the NRC staff's views and determine whether additional rulemaking is needed or appropriate to resolve generic questions that are applicable to multiple designs. The objective of such rulemaking would be to incorporate any new standards in Part 50 or Part 100, as appropriate, rather than to develop such standards in the context of the Commission's review and approval of individual applications for design certifications. On the other hand, new design features that are unique to a particular design would be addressed in the context of a rulemaking proceeding for that particular design.

f. Hearings on Applications for Design Certifications

Like the proposed rule, the final rule provides for notice and comment rulemaking on an application for a design certification, together with an opportunity for an informal hearing on an application for a design certification. The rule also permits the use of more formal procedures where they are the only procedures available for resolving a given issue properly. See § 52.51. UCS and others argue that any hearing on certification should be a formal adjudication. In particular, UCS argues that the certification proceeding will be dealing with adjudicative, as opposed to legislative, facts and therefore should be fully adjudicatory. UCS characterizes adjudicative facts as "uniquely related to activities of the parties that are at issue" and legislative facts as "facts about industry practices, economic impact, scientific data, and other information about which the parties have no special information."

UCS' argument proves too much. If the facts to be considered in a certification proceeding are wholly adjudicative, then, because those facts are like the facts considered in any rulemaking on safety issues, every such rulemaking must be a formal adjudication. However, this conclusion is clearly not the law; therefore, the facts in a certification proceeding are not wholly adjudicatory. Moreover, if such facts must be categorized at all, they are more "legislative" than "adjudicative", as UCS defines those terms, for while they are "related to activities of the parties", they are not uniquely so, and they are facts about "industry practices, scientific data", engineering principles, and the like.

Several commenters also argue that the certification proceeding should be a formal adjudication because cross-examination is an unsurpassed means for discovering the truth. Again, the argument proves too much, namely, that every rulemaking, indeed every species of lawmaking, should be formal adjudication. Part 52 does not assume the superiority, or even the usefulness, of formal procedures for resolving every issue; but it does provide for their use where they are the only means available for resolving an issue properly.

g. Fees for Review of Applications

The final rule adheres to the fee policy embodied in the proposed rule. An applicant for design certification does not have to pay an application fee, but the applicant will have to pay the full cost of the NRC review of the application, although not until the certification is referenced in an application for a construction permit or combined license, or, failing that, not until the certification expires. The details of the scheme of deferral of the fees appear in conforming amendments to the recently amended 10 CFR Part 170 (53 FR 52632; December 29, 1988).

UCS asserts that the provision for deferral of fees for NRC review is "unconscionable". To the contrary, the Commission believes that there is nothing "unconscionable" about deferral of fees for a program whose aim is to enhance safety.

Some industry commenters assert that the requirement for payment of the full cost of NRC review presents an "insurmountable disincentive" to the development of certified designs. Some industry commenters propose putting a ceiling on fees for certification review, in order to help vendors better estimate the costs of developing and certifying a design. The Commission fully recognizes that it will be difficult for a vendor to estimate the costs of taking a design through to certification. However, a ceiling on fees only displaces the burden of that uncertainty from the vendor to the public. In recent years, the NRC has been obliged by statute to charge fees which return to the Federal Treasury a portion of the costs incurred in regulation. Deferral of fees is more in line with the policies behind those statutes than is putting the burden of uncertainty on the public.

h. Finality

Standardization has the double aim of enhancing safety and making it possible to resolve design issues before construction. Of these two aims, enhanced safety is the chief, because pre-construction resolution of design issues could be achieved simply through combined construction permits and operating licenses with conditions. Achievement of the enhanced safety which standardization makes possible will be frustrated if too frequent changes to either a certified design or the plants referencing it are permitted.

The proposed rule put forward principally three means of preventing a continual regression from standardization. First, the proposed rule required that any amendment proffered by the "holder" of a certification be considered in a notice and comment rulemaking and granted if the amendment complied with the Atomic Energy Act and the Commission's regulations. Second, the proposed rule prohibited the licensee of a plant built according to a certified design from making any change to any part of the plant which was described in the certification unless the licensee had been granted an exemption under 10 CFR 50.12 from the rule certifying the design. Third, the proposed rule stated that the Commission would not backfit a certified design or the plants built according to it unless a backfit were necessary to assure compliance with the applicable regulations or to assure adequate protection of public health and safety. See § 52.63 of the proposed rule, 53 FR 32074, col. 3, to 32075, col. 2. The Commission invited comment on whether the amendment and exemption standards were stringent enough, and on whether the backfitting standard gave certifications a reasonable degree of finality. See 53 FR 32067, col. 2.

The comments focus on the standard of amending the certification, one group of comments wanting to make it harder for the "holder" of a certification to get an amendment, and another group wanting to make it easier. Several commenters say that the proposed rule wrongly makes it easier for the designer to amend the certified design than it is for the Commission to backfit the design. To correct this perceived imbalance, UCS, among others, proposes that no amendment be granted unless it constitutes a safety enhancement, and

that any amendment granted be backfitted on all plants built according to the design being amended. OCRE proposes that, at a minimum, no amendment should be granted which would entail a decrease in safety. On the other side, NUMARC proposes virtually the same standard as a maximum: Any amendment which has no safety impact should be granted. DOE in effect argues that the Commission does not have authority to ask for more than OCRE's minimum, because this type of amendment would be proposed for economic, plant efficiency, or other business reasons and the NRC has no expertise or authority in areas involving business judgments. The law firm of Bishop, Cook, Purcell, and Reynolds, representing several utilities, proposes a backfitting standard more stringent than the one in the proposed rule: The Commission should not impose backfits on a design for the sake of compliance with applicable regulations unless the lack of compliance has an adverse impact on safety. Going even further in the same vein, the U.S. Chamber of Commerce proposes that even where the lack of compliance has an adverse impact on safety, the backfit should have to pass muster under a cross-benefit analysis.

The final rule places a designer on the same footing as the Commission or any other interested member of the public. No matter who proposes it, a change will not be made to a design certification while it is in effect unless the change is necessary to bring the certification into compliance with Commission regulations applicable and in effect when the certification was issued, or to assure adequate protection of public health and safety. See § 52.63(a)(1). Thus, the final rule cannot be said to make it easier for a designer to amend a certification than for the Commission to backfit the design. But more important, the final rule thus provides greater assurance that standardization and the concomitant safety benefits will be preserved.

The Commission is not adopting Bishop, Cook's suggestion that compliance be required only when non-compliance would have an adverse impact on safety. Licensees seeking relief from a design certification, who believe that non-compliance would have no adverse impact on safety, should request an exemption under 10 CFR 50.12. Neither is the Commission adopting the suggestion of the U.S. Chamber of Commerce that cost-benefit analysis be used to determine whether to impose backfits on designs to bring them into compliance with applicable regulations. The Atomic Energy Act allows the Commission to consider costs only in deciding whether to establish or whether to enforce through backfitting safety requirements that are not necessary to provide adequate protection. See *UCS* v. *NRC*, 824 F.2d 108, 120 (1987).

The final rule, like the proposed rule, permits applicants for combined licenses issued under the rule, and licensees of a plant built according to a certified design, to request an exemption under 10 CFR 50.12 from a rule certifying a design. Among the comments on the appropriateness of using § 50.12 in the standardization context were NIRS' comment that § 50.12 permitted exemptions at a "whim" and DOE's suggestion that no exemptions should be granted at all. Out of respect for the unforeseen, the Commission has decided to adhere to § 50.12, but the final rule does require that, before an exemption can be granted, the effect which the exemption might have on standardization and its safety benefits must be considered.

As a further guard against a loss of standardization, the final rule, again like the proposed rule, also prohibits a licensee of a plant built according to a certified design from making any change to any part of the plant which is described in the certification unless the licensee has been granted an exemption under 10 CFR 50.12 from the rule certifying the design. Because the certification is a rule, 10 CFR 50.12, not 50.59, is the standard for determining whether the licensee may make changes to the certified portion of the design of the plant without prior approval from the NRC. NUMARC says that, given the practicalities of construction and the limited resources of the NRC staff, licensees need the flexibility afforded by § 50.59. However, the Commission believes that the certifications themselves and § 50.12 will provide the necessary flexibility with respect to the certified portion of the plant (or at least as much flexibility as is consistent with achieving the safety benefits of standardization), while § 50.59 will continue to apply to the uncertified portion. How much flexibility § 50.12 will provide depends in large part on how much detail is present in a design certification, and just how much is present will be an issue which will have to be resolved in each certification rulemaking. The Commission does expect, however, that there will be less detail in a certification than in an application for certification, and that a rule certifying a design is likely to encompass roughly the same design features that § 50.59 prohibits changing without prior NRC approval. Moreover, the level of design detail in certifications should afford licensees an opportunity to take advantage of improvements in equipment.

The comments on the proposed rule raise two other important finality issues, both connected with backfitting. The first bears on the criteria for renewal of a design certification. The proposed rule provided that the Commission would grant a request for renewal of a design certification if the design complied with regulations in effect at renewal and any more stringent safety requirements which would bring about a substantial increase in safety at a cost justified by the increase (strictly speaking, the backfit rule would not apply at renewal, but the proposal nonetheless incorporated the backfit rule's cost-benefit standards). See § 52.59(a), 53 FR 32074, col. 3. Bishop, Cook, among others, proposes that the standard for renewal be compliance with regulations in effect not at renewal but rather at the time the certification was originally issued, together with any other more stringent requirements which are justified under the backfit rule. The proposed rule's criteria were in fact equivalent to Bishop, Cook's in their impact on a given design certification, but they differed in their impact on the timing of some backfit analyses, the proposed rule providing that some would be done in rulemakings while the given certification was in effect. However, the final rule adopts Bishop, Cook's proposal because it more clearly says that imposition of more stringent requirements on a design during a renewal proceeding will be governed by backfit standards.

The second of the other important finality issues raised by the comments concerns the finality of 10 CFR Part 52, Appendix O (formerly in Part 50) final design approvals (FDAs) already in effect on the effective date of this rule. Section 52.47(a)(2) of the proposed rule stated that holders of FDAs in effect on the effective date of the rule might have to submit more information to the staff in connection with the review for certification. NUMARC proposes adding a "grandfather" clause which would prohibit the Commission from imposing, during the certification proceeding, any change on that part of the design which is covered by an already effective FDA unless the change meets the criteria of the backfit rule.

Adoption of NUMARC's proposal would not only entail a significant change in the force of an FDA, it would also extend the range of application of

the backfit rule. Under existing NRC regulations, an FDA binds the staff in a licensing proceeding but not in a certification proceeding; and even in a licensing proceeding, the staff may, on the grounds of significant new information or other good cause, reconsider an earlier determination. See 10 CFR Part 52, Appendix O, paragraph 5. Moreover, the FDA does not bind the Commission or the Commission's adjudicatory panels. Id. at paragraph 6. The backfit rule applies to any proposal which would require the holder of an FDA to meet a new standard in order to remain in possession of the FDA, see 10 CFR 50.109(a)(1), but the backfit rule does not change the force an FDA has in a licensing proceeding or certification proceeding.

NUMARC's proposal, however, would bind both the staff and the Commission in a certification proceeding and would add a cost-benefit test to the tests which must be met before a determination made in an FDA could be reconsidered. NUMARC's proposal thus would effectively amend both the backfit rule and the cited paragraphs of Appendix O: It would, in effect, turn any existing FDA into a partial certification. Here the Commission would rather adhere to the finality provisions in the existing regulations, including Appendix O and the backfit rule. The Commission believes that, in this situation, these provisions adequately balance the need for finality with the need for flexibility to deal with unforeseen safety advances or risks.

2. Early Site Permits

What design certification is to the early resolution of design issues, the early site permit is to the early resolution of site-related issues. Both the certification and the permit make it possible to resolve important licensing issues before a construction permit proceeding. They in effect make possible the banking of designs and sites, thereby making the licensing of a given plant more efficient. However, some commenters question whether the Commission should issue early site permits. The Attorney General of New York, for instance, sees no need for early site permits and questions whether there could be grounds adequate to support approval of a site for twenty years, the term of early site permits under the proposed rule (the final rule provides that permits will have terms of between ten and twenty years). He points out that under the NRC's current regulations, NRC early decisions on site suitability issues raised in connection with a construction permit generally remain effective for only five years. See 10 CFR 2.606 and 10 CFR Part 52, Appendix Q (formerly in Part 50), paragraph 5. The Connecticut Siting Council strongly suggests that the State of Connecticut would be unable to participate in an NRC hearing on an application for an early site permit unless the application proposed a "specific" nuclear power plant. Finally, one commenter is concerned that land approved under an early site permit might never be used for a nuclear power plant, and thus development of the land for a non-nuclear use would have been needlessly delayed.

The Commission believes that early site permits can usefully serve as vehicles for resolving most site issues before large commitments of resources are made. Moreover, the Commission believes that a term of ten to twenty years for early site permits will make early site permits more useful for early resolution of site issues than would the five-year term in 10 CFR 2.606 and 10 CFR Part 52, App. Q, because the longer term will require less frequent reassessments of issues than would the shorter term. The five-year term is a function not of the reliability of the information available to make the decisions, but rather of the fact that the decisions made under those provisions may only resolve isolated site issues [3] and anticipate site utilization in the very near term. The Commission is confident that there will be information adequate to support site approvals lasting up to 20 years. After all, the Commission licenses plants and their sites for operation for periods of up to twice twenty years. Where adequate information is not available, early site permits will not be issued.

The Commission is also confident that enough information on reactor design will be available in an early site permit proceeding to permit sound judgments about environmental impacts and thus to enable state and local agencies such as the Connecticut Siting Council to participate effectively in an early site permit proceeding. The Council says that for it to meaningfully participate in a decision on an application for an early site permit, the application would have to contain "projected emission, discharges, site impacts, safety factors, and exact operational parameters * * * proposed for a site". It is just such information which both the proposed rule and the final rule would require of applicants for early site permits. See § 52.17(a).

Last, although the Commission acknowledges the possibility that non-nuclear development of a site would be postponed when a site is reserved for a nuclear plant and then a plant never built there, the Commission believes that such a possibility does not loom very large. Persons are not likely to go to the expense of applying for an early site permit unless there is a good prospect that the site will be used for a nuclear power plant. Moreover, it may be that many of the sites for which early site permits might be sought are already set aside for use by utilities; thus, even though non-nuclear development of the site might be postponed, non-utility uses of the site would not be. Last, even during the period in which an early site permit is in effect, non-nuclear uses of the site are not prohibited altogether. See § 52.35.

The comments on the proposed rule raise two other important issues concerning the rule's provisions on early site permits. The first issue concerns the division of authority between the Federal government and local governments over the siting of nuclear power facilities. The New York State Energy Office is concerned that the proposed rule leaves the impression that only an early site permit from the NRC is necessary to set aside land for a nuclear power plant. To the contrary, the rule does not, indeed, could not, change the division of authority between the Federal government and the states over the siting of nuclear plants. An early site permit constitutes approval of a site only under the Federal statutes and regulations administered by the Commission, not under any other applicable laws.

The last important issue raised by the comments on early site permits concerns the proposed rule's requirement that the application contain a plan for redress of the site in the event that the site preparation work and similar work and similar work allowed by 10 CFR 50.10(e)(1) is performed and the site permit expires before it is referenced in an application for a construction permit or combined license issued under the rule. The proposed rule required that the plan provide reasonable assurance that redress carried out under the plan would achieve a "self-maintaining, environmentally stable, and aesthetically acceptable site" which conformed to local zoning laws. The only important difference between the proposed and final rules on this subject is that the final rule requires such a plan only of applicants who wish to perform

[3] Thus, the Commission declines to follow the suggestion of the engineering firm of Stone & Webster that partial early site permits be issued. It is not likely that resolutions of isolated site issues could have the degree of finality which a permit lasting ten to twenty years must have.

the activities allowed by 10 CFR 50.10(e)(1). NUMARC says that this requirement is "inherently unworkable" and would involve the Commission in matching redress against a variety of local zoning laws.

To the contrary, the rule's provisions on site redress, including the provision on zoning, are modeled on the redress requirements imposed on the Clinch River Breeder Reactor project. See In the Matter of the U.S. Department of Energy, et al. (Clinch River Breeder Reactor Plant), LBP-85-7, 21 NRC 507 (1985). Moreover, the Commission has long required that applicants' environmental reports discuss compliance with local laws, including zoning laws. See 10 CFR 51.45(d). Apparently, NUMARC is not opposed to redress per se, for NUMARC's proposed revision of § 52.25 of the proposed rule speaks of the possibility that redress of adverse environmental impacts might be necessary. The Commission is only requiring that such redress follow the precedent established at Clinch River and proceed according to a plan incorporated in the early site permit. Containing a redress plan, the permit itself will constitute assurance that, if site preparation activities are carried out but the site never used for a nuclear power plant, the site will not be left in an unacceptable condition.

3. Combined Licenses

a. The Commission's Authority to Issue Combined Licenses

There are two important questions in connection with the proposed rule's provisions on combined construction permits and operating licenses with conditions. The first is whether the Commission has the authority to issue combined licenses. The second is whether, in cases where all design issues are resolved before construction begins, there should be a hearing after construction is complete, and if so, what issues should be considered at the hearing.

Comments on whether the Commission has the authority to issue combined licenses tend to mirror the commenters' views on what kind of hearing should be held after construction is complete. In other words, the discussion of this issue tends to be result-oriented. Thus, many who believe that there should be a hearing after construction, and that it should be as full a hearing as operating license hearings often are, argue that the Commission has no authority to issue combined licenses. They claim that section 185 of the Atomic Energy Act mandates a two-step licensing process (for the text of section 185, see below). They often cite *Power Reactor Development Co.* v. *International Union of Electrical Workers*, 367 U.S. 396 (1961) as support for this interpretation of section 185. To these arguments, those who believe that there should be no hearing, or else only a highly restricted hearing, after construction is complete reply that section 161h of the Atomic Energy Act gives the Commission authority to combine a construction permit and an operating license in a single license (for the text of section 161h, see below).

A closer look at section 161h and 185 shows that section 161h clearly gives the Commission authority to combine a construction permit and operatin glicense in a single license and that section 185 is not inconsistent with section 161h. Section 161h says, in pertinent part, that the Commission has the authority to "consider in a single application one or more of the activities for which a license is required by this Act [and] combine in a single license one or more of such activities . . ." 42 U.S.C. 2201. The plain language of this section clearly applies to the combining of construction permits and operating licenses, for both construction and operation of nuclear power facilities are "activities for which a license is required by this Act", namely by sections 101 and 185 of the Act, see 42 U.S.C. 2231 and 2235, and section 103a of the Act makes any license to operate a commercial nuclear power facility "subject to such conditions as the Commission may by rule or regulation establish . . ." See 42 U.S.C. 2233. Had Congress intended that construction permits and operating licenses for commercial nuclear power plants be excluded from the language of section 161h, surely Congress would have said so right in that section, for the plain language of that section invites their inclusion, and they are the most important licenses issued under the Act.

Section 185 is not to the contrary. Section 185 says, in pertinent part,

> CONSTRUCTION PERMITS.—All applicants for licenses to construct . . . utilization facilities shall . . . be initially granted a construction permit. . . . Upon the completion of the construction . . . of the facility, upon the filing of any additional information needed to bring the original application up to date, and upon finding that the facility authorized has been constructed and will operate in conformity with the application as amended and in conformity with the provisions of this Act and of the rules and regulations of the Commission, and in the absence of any good cause being shown to the Commission why the granting of a license would not be in accordance with the provisions of this Act, the Commission shall thereupon issue a license to the applicant. . . .

42 U.S.C. 2235. To be sure, the section speaks in terms of a construction permit's being issued first, and then a license (presumably an operating license). However, the contrast between the two licenses is not fundamental to the section. The substance of the section is clearly indicated by the title of the section and by the list of findings the Commission must make. The section may be paraphrased thus: A construction permit is not a grant of authority to operate once construction is complete; before operation begins, the original application must be brought up to date, and the Commission must make certain affirmative findings. Thus the critical matter is not the separation of the two licenses, but the need for specific findings before operation. With this substance, both the proposed rule and the final rule are entirely in accord (the pertinent provisions of the final rule will be described in more detail below).

Moreover, in differentiating between a "construction permit" and a later "license", section 185 is not taking exception to section 161h. Section 185 does not say, for instance, "Notwithstanding anything in section 161h to the contrary, applicants shall be granted initially only a construction permit." By speaking of a separate issuance of a license after completion of construction, section 185 simply conforms itself to the simplest case, in which the licenses are in their elementary, uncombined states, and avoids having to make an already long section longer in order to acknowledge the case which section 161h makes possible. Moreover, section 185 acknowledges section 161h implicitly when it speaks not of a separate application for an operating license but simply of an updating of the original application. Therefore, neither the proposed rule nor the final rule can be faulted for not providing for a separate issuance of an operating license.

This interpretation of section 185 is confirmed by the legislative history of the section. In 1954, when Congress was considering proposed amendments to the Atomic Energy Act of 1946, representatives of the industry complained that the proposed section 185 required that construction of a facility be completed "under a mere construction permit, without any assurance at that stage that there will be issued any license to . . . operate it after it has met all the specifications of the construction permit." Atomic Energy Act of 1954: Hearings on S. 3323 and H.R. 8862 before the Joint Committee on

Atomic Energy, 83rd Congress, 2d Session, 113 (May 10, 1954). These representatives proposed instead that power facility applicants should be able to obtain a single license covering all aspects of their activities—construction, possession of fuel, and operation—and that the license should contain the conditions the applicant would have to meet before operation of a constructed facility could begin. Id. at 113 and 118. On this proposal, the following colloquy took place:

Representative HINSHAW. That seems to me to be reasonable, that you should put all the conditions into 1 license that can be put into 1 license. That would be fair enough.

Chairman COLE. Would you mind my interruption? Why cannot that be done under the terms of the bill as it is now?

Mr. McQUILLEN [representing Detroit Edison]. I think it undoubtedly would be so operated.

Chairman COLE. Of course it would.

Id. at 119. Chairman Cole said this even though neither of the draft bills before the Committee contained the text of what is now section 161h. Twelve days later, as if to put the matter beyond all doubt, the Committee incorporated the present text of section 161h into both bills. The final rule provides for just such a single license, with conditions, as was discussed in this colloquy.

Power Reactor Development Co. v. *Electrical Workers,* 367 U.S. 396 (1961), is not to the contrary. The issue in that case was not whether the Commission had the authority to combine a construction permit with an operating license with conditions, but whether the Commission could postpone the ultimate safety findings until construction was complete. The Court ruled that the Commission could, and found support for its conclusion in section 185, which showed, the Court said, that "Congress contemplated a step-by-step procedure." 367 U.S. at 405. But the Court did not say, "section 185 mandates a separate issuance of an operating license, notwithstanding section 161h." The interpretation of section 161h of the Act was not at issue.

b. Hearings After Construction Is Complete

The first issue concerning hearings after completion of construction under a combined license is whether there should be such hearings at all. Most commenters, whatever their affiliation, believe that there should be the opportunity for such hearings. They disagree only over how limited the hearings should be. DOE argues that there should be no such hearings at all. As the principal support for its argument, DOE cites the section of the Administrative Procedure Act (APA) which says, in effect, that adjudication is not required in cases in which the agency decision rests "solely on inspections, tests, or elections". See 5 U.S.C. 554(a)(3). Under Part 52's provisions of combined licenses, a combined license will contain the tests, inspection, and analyses, and acceptance criteria therefor, which are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will operate in conformity with the license and the Act. See § 52.97. DOE's argument amounts to the claim that the kind of tests and inspections spoken of in Part 52 is the same as the kind of tests and inspections spoken of in the APA.

The Commission agrees that findings which rest solely on the results of tests and inspections should not be adjudicated, and the final rule so provides. See § 52.103. However, not every finding the Commission must make before operation begins under a combined license will necessarily always be based on wholly self-implementing acceptance criteria and therefore encompassed within the APA exception. The Commission does not believe that it is prudent to decide now, before the Commission has even once gone through the process of judging whether a plant built under a combined license is ready to operate, that every finding the Commission will have to make at that point will be cut-and-dried—proceeding according to highly detailed "objective criteria" entailing little judgment and discretion in their application, and not involving questions of "credibility, conflicts, and sufficiency", questions which the Court in *UCS* v. *NRC,* 735 F.2d 1437 (D.C. Cir. 1984), held were marks of issues which should be litigated at least under the facts of that case. Indeed, trying to assure that the tests, inspections, and related acceptance criteria in the combined license are wholly self-implementing may well only succeed in introducing inordinate delay into the hearing on the application for a combined license.

Thus, the question becomes whether the rule should provide an opportunity for a post-construction hearing on the issues which are not excepted from adjudication by the APA. Whether the Commission could or should go further under its governing statutes we leave to future consideration and experience; this rule adopts an approach within the bounds of our legal authority which sets reasonable limits on any post-construction hearing. In this regard, every commenter who believes there should be such an opportunity for hearing also believes that an issue in the hearing should be whether construction has been completed in accord with the terms of the combined license, and the final rule so provides. Also, under section 185 of the Atomic Energy Act, the Commission must find, prior to facility operation, that the facility has been constructed and will operate in conformity with the application and the rules and regulations of the Commission. This statutory finding, in the context of Subpart C of this rule, translates into two separate but related regulatory findings: that compliance with the acceptance criteria in the combined license will provide reasonable assurance that the facility has been constructed and will operate in accordance with the Commission's requirements, and that the acceptance criteria have in fact been satisfied. The former finding will be made prior to issuance of the combined license, and will necessarily be the subject of any combined license hearing under section 189a of the Act. The latter finding cannot by its nature be made until later, after construction is substantially complete, and therefore cannot by its nature be the subject of any hearing prior to issuance of the combined license. Thus, to the extent that an opportunity for hearing should be afforded prior to operation, it should be confined to the single issue that cannot have been litigated earlier—whether the acceptance criteria are satisfied. No commenter has offered any legal argument to the contrary.[4]

Commenters disagree greatly on whether any other issue should be considered in a hearing. The proposed rule provided that intervenors could contend that significant new information showed that some modification to the site or the design was necessary to assure adequate protection. To this, NUMARC responds that "no one could seriously consider ordering a new plant with the licensing uncertainties it would face." NUMARC proposes a complete rewrite of § 52.103, elements of which are discussed below. Several industry commenters point to the "added burdens" that applicants would be assuming under the proposed rule as grounds for severely limiting the issues for hearing. Rockwell International, for instance, claims that, with the hearing

[4] Section 185 also says that, prior to operation, there must be an "absence of good cause being shown to the Commission why the granting of the license would not be in accordance with the provisions of the Act." We think that this implicit opportunity to show "good cause" is satisfied by affording an opportunity for hearing on all findings that will be made prior to facility operation.

under § 52.103, there will be four public hearings for each plant.

Public interest groups also take a dim view of the proposed rule's limitations on the hearing, though their reasons are not the industry's. UCS says that a licensing proceeding without uncertainty is a sham. OCRE goes further and asserts that the uncertainty should be distributed equally: "In a perfectly fair proceeding, [the] chance [of winning] would be 50%." The Maryland Nuclear Safety Coalition counts only two hearings for each plant. NIRS says that many problems with the current generation of reactors were cured under the full two-step licensing process.

This latter group of commenters appears to be opposed to any limitation on the post-construction hearing, for not one of them proposes a concrete alternative to the proposed rule's provisions on the hearing. UCS does say that the hearing should encompass "all issues that are material to the NRC's approval of an operating license for the plant", but that statement is either so general as to be just another way to put the question of what issues should be encompassed, or it is the claim that, when it comes time to determine whether the plant has been built in conformity with the terms of the combined license, all the operating license issues resolved before construction should be treated as if they had never been resolved. Many commenters do in fact seem to be making such a claim, for they contend against any limits on the post-construction hearing at the same time that they support the idea that design issues should be resolved before construction.

There have to be substantial limits on the issues that can be raised after construction. A licensing proceeding without any uncertainty in result may be a sham, but the bulk of the uncertainty should be addressed and resolved prior to, not after, construction. Part 52 does not remove uncertainty, it simply reallocates it to the beginning of the licensing process. The alternative apparently offered by opponents of limits on the post-construction hearing is, in effect, to double the uncertainty by considering every design issue twice.[5]

[5] Even according to OCRE's notion of a "perfectly fair" proceeding, in which perfect fairness could be achieved by replacing judges with tosses of coins, design issues should not be resolved twice. If they were, intervenors would have two 50% chances to win—that is, to prevent operation of the plant—on design issues. But two even chances are equivalent to a 75% chance overall (e.g., the chance of coming up heads once in two tosses of a coin is 3 out of 4), and a proceeding in which one party has a 75% chance of winning is not, according to OCRE, "perfectly fair".

To the extent that these commenters offer any practical arguments in favor of this approach, they are not persuasive. Rockwell International may engage in some double-counting when it asserts that there are four public hearings for each plant, but when the Maryland Nuclear Safety Coalition says that the public can debate licensing issues only in an early site permit hearing and after construction, and therefore needs another hearing on design issues, it inexplicably simply ignores the mandatory public hearing on the application for the combined license and the opportunity for a public hearing on an application for a design certification. Moreover, contrary to NIRS, shortcomings in certain plants were not discovered because the licensing proceedings consisted of two steps but rather because design issues had to be resolved and construction made to conform to design before operation began. Part 52 provides for no less.

The final rule adopts a straight-forward approach to limiting the issues in any post-construction hearing on a combined license. As a matter of logic, every conceivable contention which could be raised at that stage would necessarily take one of two general forms. It would allege either that construction had not been completed—and the plant would not operate—in conformity with the terms of the combined license, or that those terms were themselves not in conformity with the Atomic Energy Act and pertinent Commission requirements. The final rule makes issues of conformity with the terms of the combined license part of any post-construction hearing, unless those issues are excepted from adjudication by the APA exception for findings which are based solely on the results of tests and inspections. The final rule does not attempt to say in advance what issues might fall under that exception. The comments are nearly unanimous in the opinion that issues of conformity with the combined license are properly encompassed in any post-construction hearing. Moreover, this limited opportunity for hearing is consistent with the Commission's belief that, even if section 185 did not speak at all to the need for a conformity finding, the Commission itself would need to make such a finding prior to operation in order to conclude, in the language of section 103, that operation is not inimical to the health and safety of the public. The final rule also provides that issues of whether the terms of the combined license are themselves inadequate are to be brought before the Commission under the provisions of 10 CFR 2.206. This approach to issues concerning the inadequacy of the combined license is well-founded in the discretion afforded the Commission under section 185 of the Act to determine what constitutes "good cause" for not permitting operation, and in the analogy which this approach has with the way construction permits are treated in operating license proceedings. Contentions alleging inadequacies in a construction permit are not now admissible in an operating license proceeding. Similarly, under the final rule, contentions alleging inadequacies in a combined license are not admissible in a post-construction hearing. Moreover, as we noted, this approach fully satisfies applicable law.

III. Other Issues

These are taken up section by section. Not discussed are most of the many changes made to the proposed rule for the sake of clarity, brevity, consistency, specificity, and the like. Worth noting, however, is that this **Federal Register** notice moves Appendices M, N, O, and Q of Part 50 to Part 52, so that, except for Subpart F of 10 CFR Part 2, all of the Commission's regulations on standardization and early resolution of licensing issues will be in one part of 10 CFR Chapter I. Readers are reminded that a comparative text showing all deletions from, and additions to, the proposed rule is available in the NRC's public document room.

1. Early Site Permits

At the suggestion of NUMARC and others, § 52.17 now gives applicants for early site permits the option of submitting partial or complete emergency plans, for final approval. Also, the section requires a redress plan only of applicants who wish to be able to perform the site preparation work and similar work allowed under 10 CFR 50.10(e)(1). Last, incorporating suggestions by UCS and others, the section says what factors should be considered in determining whether the area surrounding the site is "amenable" to emergency planning. To avoid suggesting that the Commission is adopting new emergency planning standards, § 52.17 abandons the proposed language of "amenability to emergency planning" in favor of language drawn from existing regulations on emergency planning.

Section 52.18 now makes clear that need for power is not a consideration at the early site permit stage.

In a number of places—§§ 52.23, 52.53, 52.87, and portions of other sections—the rule provides explicitly for ACRS

review of issues to make clear that, even though the Atomic Energy Act does not, in terms, give the ACRS a role in the granting of early site permits, design certifications, or combined licenses, the ACRS is to have the same role with respect to these devices that it does with respect to construction permits, operating licenses, and the like. Wherever the ACRS is spoken of in Part 52, the intention is that the ACRS review the pertinent issues according to the standards specified therein.

As in the proposed rule, § 52.25 provides that the holder of an early site permit which contains a site redress plan, or the applicant for a construction permit or combined license which references such an early site permit, may perform the activities at the site allowed by 10 CFR 50.10(e)(1) without first obtaining the separate authorization required by § 50.10. The New York State Energy Office appears to take this to mean that the holder of the permit may perform the work without NRC approval. To the contrary, the early site permit which contains a redress plan is itself NRC approval. The law firm of LeBoeuf, Lamb, Leiby & MacRae, representing several utilities, argues that recent case law, especially NRDC v. EPA, 859 F.2d 156 (D.C. Cir. 1988), calls into question the Commission's limitations on non-safety related construction before issuance of a permit. LeBoeuf, Lamb concludes that § 52.25 and related portions of Part 52 should be deleted and the limitations in § 50.10 reviewed in the light of the case law. The Office of the General Counsel is undertaking a review and will recommend to the Commission if any changes to these sections are warranted. In the meantime, the Commission has decided to keep Part 52's provisions on site work intact and consistent with the related provisions in Part 50.

Section 52.27 now contains some of the material which appeared in § 52.29 of the proposed rule. OCRE objects to the provision in § 52.27 which treats an early site permit as valid beyond the date of expiration in proceedings based on applications which have referenced the early site permit. OCRE argues that this provision allows clever applicants to avoid new site requirements by referencing an early site permit just before it expires. At bottom, this is really an argument that early site permits should have shorter durations. The Commission is confident that the agency will be able to make site judgments which will retain their validity for the durations provided for in the final rule. However, the final rule does provide that the duration of an original permit can be fixed at a term shorter than twenty years. See § 52.27(a).

In its comment on § 52.31, LeBoeuf, Lamb suggests that at renewal, the burden should be on the Commission to show why an early site permit should not be renewed, but that a given permit should be renewed only once, and for not more than ten years. The final rule retains the provisions of the proposed rule, because they provide more flexibility to both the Commission and holders of permits.

Much of the discussion in Sections II.1.f. and II.3.b. above on the finality of design certifications and hearings after construction is relevant to the provisions in § 52.39 on the finality of early site permits. Section 52.39 now states that, except in certain limited circumstances, issues resolved in a proceeding on an early site permit shall be treated as resolved in any later proceeding on an application which references the early site permit. One of the circumstances involves petitions under 10 CFR 2.206 that the terms of the early site permit should be modified; § 52.39(a)(2)(iii) assumes that the Commission shall resolve the issues raised by the petition in accordance with the standard in paragraph (a)(1) of the same section.

2. Design Certifications

In the proposed rule, § 52.45 contained material on scope of design and testing of prototypes. This material now appears, in modified form, in § 52.47. The phrase "essentially complete nuclear power plant," which is used in 52.45, is defined as a design which includes all structures, systems, and components which can affect safe operation of the plant except for site-specific elements such as the service water intake structure and the ultimate heat sink. Therefore, those portions of the design that are either site specific (such as the service water intake structure or the ultimate heat sink) or include structures, systems and components which do not affect the safe operation of the facility (such as warehouses and sewage treatment facilities) may be excluded from the scope of design. In addition, an essentially complete design is a design that has been finalized to the point that procurement specifications and construction and installation specifications can be completed and made available for audit if it is determined that they are required for Commission review in accordance with the requirements of § 52.47(a). Procurement specifications would have to identify the equipment and material performance requirements and include the necessary codes, standards, and other acceptance and performance criteria to which the equipment and materials will be fabricated and tested. Construction and installation specifications would have to identify the criteria and methods by which systems, structures and components are erected or installed in the facility and include acceptance, performance, inspection, and testing requirements and criteria.

In § 52.47, the provisions on testing of prototypes have been reworded to avoid suggesting a presumption that designs of the affected class could be certified only after successful testing of a prototype. One individual and the U.S. Metric Association urged that the rule require that technical information in applications be in metric units. The NRC staff believes there is much merit in this proposal, but because the public has not had an opportunity to comment on it, it is not incorporated in the final rule. The NRC staff is considering proposing an amendment to Part 52 on the subject for Commission review.

On §§ 52.53, 52.55, and 52.63, see the remarks in Section III.1. above on §§ 52.23, 52.27, and 52.39, respectively. Also, § 52.55 of the proposed rule set ten years as the duration of certifications. The final rule extends the duration to fifteen years, to permit more operating experience with a given design to accumulate before the certification comes up for renewal or ceases to be available to applicants for combined licenses. In addition, § 52.63(a)(3) now limits Commission-ordered modifications of design-certified elements of a specific plant to situations in which the modification is necessary for adequate protection and special circumstances as defined in 10 CFR 50.12(a) are present. This double requirement does not mean that if a specific plant presents an undue risk but no special circumstances are present the plant will not be modified. Rather, the modification will take place through modification of the certified design itself, as provided for elsewhere in the same section.

Theoretically, it would be possible for an applicant whose application referenced a certified design to select designer(s) other than the designer(s) which had achieved certification of the standard design. Section 52.63(c) makes clear that such an applicant might be required to provide information which is normally contained in procurement specifications and construction and installation specifications and which is consistent with the certified design and available for audit by the NRC staff.

Also, § 52.73 requires a demonstration that the new designer is qualified to supply the design. Last, the new designer would have to pay a portion of the cost of the review of the application for certification. See 10 CFR 170.12(d) and (e), as amended in this document. It is expected, as a practical matter, that applicants referencing a certified design would select the designer which had achieved certification of the standard design.

3. Combined Licenses

Section 52.73 now provides that the entity that obtained certification for a design must be the entity that supplies the design to an applicant for a combined license referencing the design, unless it is demonstrated that another entity is qualified to supply the design. This provision was added because an entity supplying the design should be qualified to do so; the entity which obtained the certification will have demonstrated its qualifications by obtaining the certification.

The last sentence of § 52.75 of the proposed rule now appears in § 52.79 of the final rule.

DOE proposes redrafting § 52.79 to require that no application for a combined license be considered unless it references a certified design. The final rule does not contain this restriction because there may be circumstances in which a combined license would properly utilize a non-standard design, and because such a restriction would mean, among other things, that every prototype would have to be licensed in a fully two-step process. In connection with § 52.79's provisions on submission of complete emergency plans, NIRS somehow concludes that Subpart C's provisions on emergency planning "extend", to the detriment of state and local governments, the "realism" doctrine set forth in 10 CFR 50.47 and recently affirmed in Commonwealth of Massachusetts v. NRC, 856 F.2d 378 (1st Cir. 1988). Apparently, NIRS believes that to settle emeregency planning issues before construction is to "extend" the doctrine. To the contrary, although Subpart C assumes the "realism" doctrine, as it is entitled to do, it does not extend it. The doctrine remains precisely what it is in § 50.47. Moreover, the Commission's aim in drafting Subpart C's provisions on emergency planning has been to follow to the maximum feasible extent the National Governors' Association's Recommendation, at its 79th annual meeting, in 1987, that ". . . emergency plans should be approved by the NRC before it issues the construction permit for any new nuclear power plant."

Section 52.83 now provides that the initial term of a combined license shall not exceed forty years from the date on which the Commission makes the findings required by § 52.103(c).

On § 52.87, see the discussion in Section III.1. on § 52.23.

NUMARC proposed removing from § 52.89 any reference to design certifications, on the grounds that environmental impact statements should not be prepared in connection with certification rulemakings. The references in this section to design certifications are not meant to imply that environmental impact statements must be prepared in connection with design certifications.

Section 52.99 has been reworded to reflect more clearly that the inspection carried out during construction under a combined license will be based on the tests, inspections, analyses, and related acceptance criteria proposed by the applicant, approved by the staff, and incorporated in the combined license. Several industry commenters proposed adding to this section a requirement that the staff prepare a review schedule in connection with each combined license. However, such a requirement would be largely duplicative of a long-standing staff practice under which the staff prepares an annual inspection plan which allocates resources according to the priorities among all pending inspection tasks. The annual plan should assure the timeliness of staff review of construction under a combined license. Section 52.99 envisions a "sign-as-you-go" process in which the staff signs off on inspection units and notice of the staff's sign-off is published in the **Federal Register**. UCS says that it is "totally inappropriate" for the Commission, while construction is going on, to sign off on inspections and thus put matters beyond dispute which might otherwise be raised after construction is complete. However, UCS has misunderstood the Commission's role in the inspection process. While construction is going on, only the staff signs off on inspections. The Commission makes no findings with respect to construction until construction is complete. Section 52.99 has been modified to make this point more clearly.

UCS and other commenters object to the section in § 52.103 of the proposed rule which provided interested persons thirty days after notice of proposed authorization of operation in which to request a hearing on the specified grounds. Yet the thirty-day requirement was drawn from section 189a of the Act. Neither the Act nor Part 52 imagines that it would be acceptable for interested persons to wait until notice is received before they examine the record of construction. These time periods are like the sixty-day limit in the Hobbs Act, 28 U.S.C. 2344, for petitions for direct judicial review of an agency rule. These limits assume that the petitioner is familiar with the fundamentals of the record before the limited period begins. The limited period is then provided for consideration of options, consultation with other interested persons, and drafting of pleadings. In any event, the final rule provides sixty days, in consideration of the pleading standard § 52.103 imposes on petitioners. Moreover, as noted above, to assist interested persons in becoming familiar with the construction record, § 52.99 now provides that notice of staff approvals of construction will be published periodically in the **Federal Register**. Any hearing held under § 52.103(b)(2)(1) will use informal procedures to the maximum extent practicable and permissible under law. In particular, the Commission intends to make use of the provisions in 5 U.S.C. 554, 556, and 557 which are applicable to determining applications for initial licenses. Under § 52.103(b)(2)(ii), the NRC staff will review the § 2.206 petition and make appropriate recommendations to the Commission concerning the petition. The Commission itself will issue a decision granting or denying the petition in whole or in part.

Finally, Urenco, Inc., is concerned that the last subsection of § 52.103 not be taken to suggest that the Commission would have to make separate findings for each of the numerous "modules" of a gaseous diffusion facility. The issue of how the modules of a gaseous diffusion facility should be licensed is beyond the scope of this rulemaking; § 52.103 therefore cannot suggest that the Commission would have to make separate findings for each of the modules of such a facility.

IV. Replicate Plant Concept

In the notice of proposed rulemaking, the Commission published a revised policy statement on replication of plants and invited comment on the revised policy. See 53 FR 32067, col. 3, to 32068, col. 1. Several industry commenters remarked that the statement's requirement that the application for replication be submitted within five years of the date of issuance of the staff safety evaluation report for the base plant effectively made replication unavailable for the short term. They recommended removing the restriction,

or at least lengthening it. The Commission has decided to retain this restriction. The five-year figure is in fact already a lengthening of the analogus figure in the immediately preceding version of the policy statement. The restriction is a reflection of the Commission's belief that applications which reach back further than a given number years probably ought to be considered as custom-plant applications.

Policy on Replication

The replicate plant concept involves an application by a utility for a license to construct or operate one or more nuclear power plants of essentially the same design as one already licensed.

The design of the plant already licensed (termed the base plant design) may be replicated at both the construction permit and operating license stages, and in applications for combined construction permits and operating licenses in a one-step licensing process. Replication of an approved base plant design at the construction permit stage is a prerequisite for its replication at the operating license stage. Although replication of the base plant design at the operating license stage is not mandatory, that is, the operating license application may be submitted as a custom plant application, it is strongly recommended.

An application for a replicate plant must demonstrate compliance with the four licensing requirements for new plant designs as set forth in the Commission's Severe Accident Policy Statement (50 FR 32138; August 8, 1985).

Each application proposing to replicate a previously licsensed plant will be subjected to a qualification review to determine the acceptability of the base plant for replication and to define specific matters that must be addressed in the application for the replicate plant. A further requirement for qualification is that the application for a replicate plant must be submitted within five years of the date of issuance of the staff safety evaluation report for the base plant. The qualification review will consider the following information:

(1) The arrangement made with the developers of the base plant design for its replication;

(2) The compatibility of the base plant design with the characteristics of the site proposed for the replicate plant;

(3) A description of any changes to the base plant design, with justification for the changes;

(4) The status of any matters identified for the base plant design in the safety evaluation report, or subsequently identified by the ACRS or during the public hearings on the base plant application as requiring later resolution;

(5) Identification of the major contractors, with justification for the acceptability of any that are different than those used by the base plant applicant; and

(6) A discussion of how the replicate plant design will conform to any changes to the Commission's regulations which have become effective since the issuance of the license for the base plant.

Environmental Impact—Categorical Exclusion

The final rule amends the procedures currently found in Part 50 and its appendices for the filing and reviewing of applications for construction permits, operating licenses, early site reviews, and standard design approvals. As such they meet the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(3). That section applies to "[a]mendments to . . . Part [] 50 . . . which relate to (i) procedures for filing and reviewing applications for licenses or construction permits or other forms of permission. . . ." As the Commission explained in promulgating this exclusion, "[a]lthough amendments of this type affect substantive parts of the Commission's regulations, the amendments themselves relate solely to matters of procedure. [They] . . . do not have an effect on the environment." 49 FR 9352, 9371, col. 3 (March 12, 1984) (final environmental protection regulations).[6] Accordingly, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with these final rules.[7]

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements have been submitted to the Office of Management and Budget (OMB) for any review appropriate under the Act. The effective date of this rule provides for the ninety days required for OMB review of the information collection requirements contained in the rule.

Public reporting burden for this collection of information is estimated to average 22,000 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the 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 Records and Reports Management Branch, Division of Information Suppport Services, Office of Information and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Paperwork Reduction Project (3150-0000), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

As presently constituted, the American population of nuclear power reactors consists largely of one-of-a-kind designs. Experience has shown that the highly individualistic character of this population has consumed enormous resources in the processes of design, construction, and safety review. Because, typically, design of a plant was not complete when construction of it began, many safety questions were not resolved until late in the licensing proceeding for that plant. The late resolution of questions introduced great uncertainty into proceedings, because the process of resolution often entailed lengthy safety reviews, construction delays, and backfits. Moreover, the low incidence of duplication among designs has meant that experience gained in the construction and operation of a given plant has often not been useful in the construction and operation of any other plant, and has made the generic

[6] It makes no substantive difference for the purpose of the categorical exclusion that the amendments are in a new Part 52 rather than in Part 50. The amendments are, in fact, amendments to the Part 50 procedures and could have been placed in that part.

[7] The requirements concerning testing of full-size prototypes of advanced reactors, see § 52.47, may appear not to fit into the category excluded by § 51.22(c)(3), since to comply with the requirements, an applicant may have to build and test a prototype plant, an act clearly with an environmental impact. Nonetheless, § 52.47 is eligible for exclusion under § 51.22(c)(3). Unlike, for instance, the promulgation of a safety rule which applies to operating plants, the formal action of promulgating § 52.47 has only a potential impact on the environment. That impact becomes actual only if a designer chooses to pursue certification of a certain kind of advanced design. Under the present circumstances, no meaningful environmental assessment or impact statement can be made. Cf. 49 FR at 9372, cols. 2-3 (entering into an agreement with a State under Section 274 of the Atomic Energy Act has no immediate or measurable environmental impact and therefore warrants a categorical exclusion). The issuance of the construction permit and operating license for a prototype plant would, of course, be a major federal action with a significant impact on the environment, and would entail the preparation of an environmental impact statement. Cf. id., col. 3 (the States must prepare detailed environmental analyses before they license certain activities).

resolution of continuing safety issues more complicated.

In the face of this experience with a population of unique plants, there have long been fundamentally only three alternatives for Commission action, the last two of them not mutually exclusive: either make no effort to bring about an increased degree of standardization, or propose legislation on standardization, or enact by rulemaking as much of a scheme for promoting standardization as the Commission's current statutory authority permits. The Commission has for some time concluded against the first alternative, having decided that a substantial increase in standardization would enhance the safety and reliability of nuclear power plants and require fewer resources in safety reviews of plants, and that the Commission should have in place provisions for the review of standardized designs and other devices for assuring early resolution of safety questions. The Commission has therefore pursued standardization both by proposing legislation—without success—and by promulgating rules, in particular Appendices M, N, and O to Part 50 (now Part 52) of 10 CFR. Lacking legislation on standardization, the Commission believes that the most suitable alternative for encouraging further standardization is to fill out and expand the Commission's regulatory scheme for standardization and early resolution of safety issues.

Therefore, the Commission now promulgates a new set of regulations, to be placed in a new part in 10 CFR, Part 52. This new part facilitates the early resolution of safety issues by providing for pre-construction-permit approval of power plant sites, Commission certification of standardized designs, and the issuance of licenses which combine permission to construct a plant with permission to operate it once construction of it has been successfully completed. Ideally, a future applicant will reference an approved site and a certified design in an application for a combined license, thus obviating the need for an extensive review of the application and construction. The provision in Part 52 for Commission certification of designs has the additional objective of encouraging the use of standardized designs, thereby adding to the benefits of early resolution the safety benefits of accumulated experience and the economic benefits of economies of scale and transferable experience.

Quantification of the costs and benefits of this rulemaking is probably not possible. Much depends on the extent to which the industry pursues standardization. Clearly, if the Commission and the industry spend the resources necessary to certify a score of designs and then no applicant references any of them, those resources will have been largely wasted. On the other hand, it is just as clear that if a score of plants uses a single certified design, there will have been a great saving of the resources of the industry, the agency, and the interested public alike. To be added to the uncertainties surrounding the industry's response, there are also uncertainties concerning the costs of the certification process, and the costs of developing the designs themselves, especially the advanced designs, which may require testing of prototypes. However, if the industry finds it in its interest to proceed with the development of nuclear power, there is every reason to expect that the safety and economic benefits of standardization will far outweigh the upfront costs of design and Commission certification: Review time for applications for licenses will be drastically reduced, the public brought into the process before construction, construction times shortened, economies of scale created, reliability of plant performance increased, maintenance made easier, qualified vendor support made easier to maintain, and, most important, safety enhanced.

Thus, the rationale for proceeding with this rulemaking: There is no absolute assurance that certified designs will in fact be used by the utilities; however, it is certain that if the reasonably expected benefits of standardization are to be gained, then the Commission must have the procedural mechanisms in place for review of applications for early site approvals, design certifications, and combined licenses. The most fundamental choice is, of course, the industry's, to proceed or not with standardization, according to its own weighing of costs and benefits. But the Commission must be ready to perform its review responsibilities if the industry chooses standardization.

Regulatory Flexibility Act Certification

The final rule will not have a significant impact on a substantial number of small entities. The final rule will reduce the procedural burden on NRC licensees by improving the reactor licensing process. Nuclear power plant licensees do not fall within the definition of small businesses in section 3 of the Small Business Act, 15 U.S.C. 632, the Small Business Size Standards of the Small Business Administration in 13 CFR Part 121, or the Commission's Size Standards published at 50 FR 50241 (Dec. 9, 1985). The impact on intervenors or potential intervenors will be neutral. For the most part, the final rule will affect the timing of hearings rather than the scope of issues to be heard. For example, many site and design issues will be considered earlier, in connection with the issuance of an early site permit or standard design certification, rather than later, in connection with a facility licensing proceeding. Similarly, a combined licensed proceeding will include consideration of many of the issues that would ordinarily be deferred until the operating license proceeding. Thus, the timing rather than the cost of participating in NRC licensing proceedings will be affected. Intervenors may experience some increased preparation costs if they seek to reopen previously decided issues because of the increased showing that will be required. Once a hearing commences, however, an intervenor's costs should be decreased because the issues will be more clearly defined than under existing practice. Therefore, in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared.

Backfit Analysis

This rule does not modify or add to the systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to construct or operate a facility. However, it could be argued that this rule modifies and adds to the procedures or organization required to design a facility, since the rule adds to, or else at least spells out, the requirements for applicants for design certifications. Moreover, the rule, at the very least, substantially modifies the expectations of anyone who had hoped to apply for a design certification under the previously existing section 7 of Appendix 0, particularly of any such who presently hold preliminary or final design approvals under that Appendix.

Nonetheless, the Commission believes that the backfit rule does not apply to this rule and, therefore, that no backfit analysis pursuant to 10 CFR 50.109(c) is required for this rule. The backfit rule was not intended to apply to every action which substantially changes settled expectations. Clearly, the backfit rule would not apply to a rule which would impose more stringent requirements on all future applicants for construction permits, even though such a

rule arguably might have an adverse impact on a person who was considering applying for a permit but had not done so yet. In this latter case, the backfit rule protects the construction permit holder, not the prospective applicant, or even the present applicant. The final rule below is of the character of such a hypothetical rule. The final rule arguably imposes more stringent requirements for design certification and thereby may have an adverse impact on some persons. However, the effects of the final rule will be largely prospective, and the rule does not require any present holder of a design approval (no person holds a design certification) to meet new standards in order to remain in possession of such an approval.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear Materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirments, Standard design, Standard design certification.

10 CFR Part 170

Byproduct material, Nuclear materials, Nuclear power plants and reactors, Penalty, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the Commission is adding to 10 CFR Chapter I a new Part 52 and adopting amendments to 10 CFR Parts 2, 50, 51, and 170:

1. Part 52 is added to read as follows:

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS: AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

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Appendix P—[Reserved]
Appendix O—Standardization of Design: Staff Review of Standard Designs
Appendix Q—Pre-Application Early Review of Site Suitability Issues

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

General Provisions

§ 52.1 Scope.

This part governs the issuance of early site permits, standard design certifications, and combined licenses for nuclear power facilities licensed under section 103 or 104b of the Atomic Energy Act of 1954, as amended (68 Stat. 919), and Title II of the Energy Reorganization Act of 1974 (88 Stat. 1242).

§ 52.3 Definitions.

As used in this part,

(a) "Combined license" means a combined construction permit and operating license with conditions for a nuclear power facility issued pursuant to Subpart C of this part.

(b) "Early site permit" means a Commission approval, issued pursuant to Subpart A of this part, for a site or sites for one or more nuclear power facilities.

(c) "Standard design" means a design which is sufficiently detailed and complete to support certification in accordance with Subpart B of this part, and which is usable for a multiple number of units or at a multiple number of sites without reopening or repeating the review.

(d) "Standard design certification", "design certification", or "certification" means a Commission approval, issued pursuant to Subpart B of this part, of a standard design for a nuclear power facility. A design so approved may be

referred to as a "certified standard design".

(e) All other terms in this part have the meaning set out in 10 CFR 50.2, or section 11 of the Atomic Energy Act, as applicable.

§ 52.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 52.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*). OMB has approved the information collection requirements contained in this part under control number 3150(b).

(b) The approved information collection requirements contained in this part appear in §§ 52.15, 52.17, 52.29, 52.45, 52.47, 52.57, 52.75, 52.77, and 52.79.

Subpart A—Early Site Permits

§ 52.11 Scope of subpart.

This subpart sets out the requirements and procedures applicable to Commission issuance of early site permits for approval of a site or sites for one or more nuclear power facilities separate from the filing of an application for a construction permit or combined license for such a facility.

§ 52.13 Relationship to Subpart F of 10 CFR Part 2 and Appendix Q of this part.

The procedures of this subpart do not replace those set out in Subpart F of 10 CFR Part 2 or Appendix Q of this part. Subpart F applies only when early review of site suitability issues is sought in connection with an appliction for a permit to construct certain power facilities. Appendix Q applies only when NRC staff review of one or more site suitability issues is sought separately from and prior to the submittal of a construction permit. A Staff Site Report issued under Appendix Q in no way affects the authority of the Commission or the presiding officer in any proceeding under Subpart F or G of 10 CFR Part 2. Subpart A applies when any person who may apply for a construction permit under 10 CFR Part 50 or for a combined license under 10 CFR Part 52 seeks an early site permit from the Commission separately from an application for a construction permit or a combined license for a facility.

§ 52.15 Filing of applications.

(a) Any person who may apply for a construction permit under 10 CFR Part 50, or for a combined license under 10 CFR Part 52, may file with the Director of Nuclear Reactor Regulation an application for an early site permit. An application for an early site permit may be filed notwithstanding the fact that an application for a construction permit or a combined license has not been filed in connection with the site or sites for which a permit is sought.

(b) The application must comply with the filing requirements of 10 CFR 50.30 (a), (b), and (f) as they would apply to an application for a construction permit. The following portions of § 50.4, which is referenced by § 50.30(a)(1), are applicable: paragraphs (a), (b) (1)–(3), (c), (d), and (e).

§ 52.17 Contents of applications.

(a)(1) The application must contain the information required by 10 CFR 50.33 (a)–(d), the first three sentences of § 50.34(a)(1), and, to the extent approval of emergency plans is sought under paragraph (b)(2)(ii) of this section, the information required by § 50.33 (g) and (j), and § 50.34(b)(6)(v). In particular, the application should describe the following:

(i) The number, type, and thermal power level of the facilities for which the site may be used;

(ii) The boundaries of the site;

(iii) The proposed general location of each facility on the site;

(iv) The anticipated maximum levels of radiological and thermal effluents each facility will produce;

(v) The type of cooling systems, intakes, and outflows that may be associated with each facility;

(vi) The seismic, meteorological, hydrologic, and geologic characteristics of the proposed site (see Appendix A to 10 CFR Part 100);

(vii) The location and description of any nearby industrial, military, or transportation facilities and routes; and

(viii) The existing and projected future population profile of the area surrounding the site.

(2) A complete environmental report as required by 10 CFR 51.45 and 51.50 must be included in the application, provided, however, that such environmental report must focus on the environmental effects of construction and operation of a reactor, or reactors, which have characteristics that fall within the postulated site parameters, and provided further that the report need not include an assessment of the benefits (for example, need for power) of the proposed action, but must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed.

(b) (1) The application must identify physical characteristics unique to the proposed site, such as egress limitations from the area surrounding the site, that could pose a significant impediment to the development of emergency plans.

(2) The application may also either:

(i) Propose major features of the emergency plans, such as the exact sizes of the emergency planning zones, that can be reviewed and approved by NRC in consultation with FEMA in the absence of complete and integrated emergency plans; or

(ii) Propose complete and integrated emergency plans for review and approval by the NRC, in consultation with the Federal Emergency Management Agency, in accord with the applicable provisions of 10 CFR 50.47.

(3) Under paragraphs (b)(1) and (2)(i) of this section, the application must include a description of contacts and arrangements made with local, state, and federal governmental agencies with emergency planning responsibilities. Under the option set forth in paragraph (b)(2)(ii) of this section, the applicant shall make good faith efforts to obtain from the same governmental agencies certifications that: (i) The proposed emergency plans are practicable; (ii) These agencies are committed to participating in any further development of the plans, including any required field demonstrations, and (iii) that these agencies are committed to executing their responsibilities under the plans in the event of an emergency. The application must contain any certifications that have been obtained. If these certifications cannot be obtained, the application must contain information, including a utility plan, sufficient to show that the proposed plans nonetheless provide reasonable assurance that adequate protective measures can and will be taken, in the event of a radiological emergency at the site.

(c) If the applicant wishes to be able to perform, after grant of the early site permit, the activities at the site allowed by 10 CFR 50.10(e)(1) without first obtaining the separate authorization required by that section, the applicant shall propose, in the early site permit, a plan for redress of the site in the event that the activities are performed and the site permit expires before it is referenced in an application for a

construction permit or a combined license issued under Subpart C of this part. The application must demonstrate that there is reasonable assurance that redress carried out under the plan will achieve an environmentally stable and aesthetically acceptable site suitable for whatever non-nuclear use may conform with local zoning laws.

§ 52.18 Standards for review of applications.

Applications filed under this subpart will be reviewed according to the applicable standards set out in 10 CFR Part 50 and its appendices and Part 100 as they apply to applications for construction permits for nuclear power plants. In particular, the Commission shall prepare an environmental impact statement during review of the application, in accordance with the applicable provisions of 10 CFR Part 51, provided, however, that the draft and final environmental impact statements prepared by the Commission focus on the environmental effects of construction and operation of a reactor, or reactors, which have characteristics that fall within the postulated site parameters, and provided further that the statements need not include an assessment of the benefits (for example, need for power) of the proposed action, but must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed. The Commission shall determine, after consultation with the Federal Emergency Management Agency, whether the information required of the applicant by § 52.17(b)(1) shows that there is no significant impediment to the development of emergency plans, whether any major features of emergency plans submitted by the applicant under § 52.17(b)(2)(i) are acceptable, and whether any emergency plans submitted by the applicant under § 52.17(b)(2)(ii) provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

§ 52.19 Permit and renewal fees.

The fees charged for the review of an application for the initial issuance or renewal of an early site permit are set forth in 10 CFR 170.12, together with a schedule for their deferred recovery. There is no application fee.

§ 52.21 Hearings.

An early site permit is a partial construction permit and is therefore subject to all procedural requirements in 10 CFR Part 2 which are applicable to construction permits, including the requirements for docketing in §§ 2.101(a)(1)–(4), and the requirements for issuance of a notice of hearing in §§ 2.104(a), (b)(1)(iv) and (v), (b)(2) to the extent it runs parallel to (b)(1)(iv) and (v), and (b)(3), provided that the designated sections may not be construed to require that the environmental report or draft or final environmental impact statement include an assessment of the benefits of the proposed action. In the hearing, the presiding officer shall also determine whether, taking into consideration the site criteria contained in 10 CFR Part 100, a reactor, or reactors, having characteristics that fall within the parameters for the site can be constructed and operated without undue risk to the health and safety of the public. All hearings conducted on applications for early site permits filed under this part are governed by the procedures contained in Subpart G of Part 2.

§ 52.23 Referral to the ACRS.

The Commission shall refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall report on those portions of the application which concern safety.

§ 52.24 Issuance of early site permit.

After conducting a hearing under § 52.21 of this subpart and receiving the report to be submitted by the Advisory Committee on Reactor Safeguards under § 52.23 of this subpart, and upon determining that an application for an early site permit meets the applicable standards and requirements of the Atomic Energy Act and the Commission's regulations, and that notifications, if any, to other agencies or bodies have been duly made, the Commission shall issue an early site permit, in the form and containing the conditions and limitations, as the Commission deems appropriate and necessary.

§ 52.25 Extent of activities permitted.

(a) If an early site permit contains a site redress plan, the holder of the permit, or the applicant for a construction permit or combined license who references the permit, may perform the activities at the site allowed by 10 CFR 50.10(e)(1) without first obtaining the separate authorization required by that section, provided that the final environmental impact statement prepared for the permit has concluded that the activities will not result in any significant adverse environmental impact which cannot be redressed.

(b) If the activities permitted by paragraph (a) of this section are performed at any site for which an early site permit has been granted, and the site is not referenced in an application for a construction permit or a combined license issued under Subpart C of this part while the permit remains valid, then the early site permit must remain in effect solely for the purpose of site redress, and the holder of the permit shall redress the site in accordance with the terms of the site redress plan required by § 52.17(c). If, before redress is complete, a use not envisaged in the redress plan is found for the site or parts thereof, the holder of the permit shall carry out the redress plan to the greatest extent possible consistent with the alternate use.

§ 52.27 Duration of permit.

(a) Except as provided in paragraph (b) of this section, an early site permit issued under this subpart may be valid for not less than ten nor more than twenty years from the date of issuance.

(b) (1) An early site permit continues to be valid beyond the date of expiration in any proceeding on a construction permit application or a combined license application which references the early site permit and is docketed either before the date of expiration of the early site permit, or, if a timely application for renewal of the permit has been filed, before the Commission has determined whether to renew the permit.

(2) An early site permit also continues to be valid beyond the date of expiration in any proceeding on an operating license application which is based on a construction permit which references the early site permit, and in any hearing held under § 52.103 of this part before operation begins under a combined license which references the early site permit.

(c) An applicant for a construction permit or combined license may, at its own risk, reference in its application a site for which an early site permit application has been docketed but not granted.

§ 52.29 Application for renewal.

(a) Not less than twelve nor more than thirty-six months prior to the end of the initial twenty-year period, or any later renewal period, the permit holder may apply for a renewal of the permit. An application for renewal must contain all information necessary to bring up to date the information and data contained in the previous application.

(b) Any person whose interests may be affected by renewal of the permit

may request a hearing on the application for renewal. The request for a hearing must comply with 10 CFR 2.714. If a hearing is granted, notice of the hearing will be published in accordance with 10 CFR 2.703.

(c) An early site permit, either original or renewed, for which a timely application for renewal has been filed, remains in effect until the Commission has determined whether to renew the permit. If the permit is not renewed, it continues to be valid in certain proceedings in accordance with the provisions of § 52.27(b).

(d) The Commission shall refer a copy of the application for renewal to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall report on those portions of the application which concern safety and shall apply the criteria set forth in § 52.31.

§ 52.31 Criteria for renewal.

(a) The Commission shall grant the renewal if the Commission determines that the site complies with the Atomic Energy Act and the Commission's regulations and orders applicable and in effect at the time the site permit was originally issued, and any new requirements the Commission may wish to impose after a determination that there is a substantial increase in overall protection of the public health and safety or the common defense and security to be derived from the new requirements and that the direct and indirect costs of implementation of those requirements are justified in view of this increased protection.

(b) A denial of renewal on this basis does not bar the permit holder or another applicant from filing a new application for the site which proposes changes to the site or the way in which it is used which correct the deficiencies cited in the denial of the renewal.

§ 52.33 Duration of renewal.

Each renewal of an early site permit may be for not less than ten nor more than twenty years.

§ 52.35 Use of site for other purposes.

A site for which an early site permit has been issued under this subpart may be used for purposes other than those described in the permit, including the location of other types of energy facilities. The permit holder shall inform the Director of Nuclear Reactor Regulation of any significant uses for the site which have not been approved in the early site permit. The information about the activities must be given to the Director in advance of any actual construction or site modification for the activities. The information provided could be the basis for imposing new requirements on the permit, in accordance with the provisions of § 52.39. If the permit holder informs the Director that the holder no longer intends to use the site for a nuclear power plant, the Director shall terminate the permit.

§ 52.37 Reporting of defects and noncompliance; revocation, suspension, modification of permits for cause.

For purposes of Part 21 and 10 CFR 50.100, an early site permit is a construction permit.

§ 52.39 Finality of early site permit determinations.

(a)(1) Notwithstanding any provision in 10 CFR 50.109, while an early site permit is in effect under §§ 52.27 or 52.33 the Commission may not impose new requirements, including new emergency planning requirements, on the early site permit or the site for which it was issued, unless the Commission determines that a modification is necessary either to bring the permit or the site into compliance with the Commission's regulations and orders applicable and in effect at the time the permit was issued, or to assure adequate protection of the public health and safety or the common defense and security.

(2) In making the findings required for issuance of a construction permit, operating license, or combined license, or the findings required by § 52.103 of this part, if the application for the construction permit, operating license, or combined license references an early site permit, the Commission shall treat as resolved those matters resolved in the proceeding on the application for issuance or renewal of the early site permit, unless a contention is admitted that a reactor does not fit within one or more of the site parameters included in the site permit, or a petition is filed which alleges either that the site is not in compliance with the terms of the early site permit, or that the terms and conditions of the early site permit should be modified.

(i) A contention that a reactor does not fit within one or more of the site parameters included in the site permit may be litigated in the same manner as other issues material to the proceeding.

(ii) A petition which alleges that the site is not in compliance with the terms of the early site permit must include, or clearly reference, official NRC documents, documents prepared by or for the permit holder, or evidence admissible in a proceeding under Subpart G of Part 2, which show, prima facie, that the acceptance criteria have not been met. The permit holder and NRC staff may file answers to the petition within the time specified in 10 CFR 2.730 for answers to motions by parties and staff. If the Commission, in its judgment, decides, on the basis of the petitions and any answers thereto, that the petition meets the requirements of this paragraph, that the issues are not exempt from adjudication under 5 U.S.C. 554(a)(3), that genuine issues of material fact are raised, and that settlement or other informal resolution of the issues is not possible, then the genuine issues of material fact raised by the petition must be resolved in accordance with the provisions in 554, 556, and 557 which are applicable to determining application for initial licenses.

(iii) A petition which alleges that the terms and conditions of the early site permit should be modified will be processed in accord with 10 CFR 2.206. Before construction commences, the Commission shall consider the petition and determine whether any immediate action is required. If the petition is granted, then an appropriate order will be issued. Construction under the construction permit or combined license will not be affected by the granting of the petition unless the order is made immediately effective.

(iv) Prior to construction, the Commission shall find that the terms of the early site permit have been met.

(b) An applicant for a construction permit, operating license, or combined license who has filed an application referencing an early site permit issued under this subpart may include in the application a request for a variance from one or more elements of the permit. In determining whether to grant the variance, the Commission shall apply the same technically relevant criteria as were applicable to the application for the original or renewed site permit. Issuance of the variance must be subject to litigation during the construction permit, operating license, or combined license proceeding in the same manner as other issues material to those proceedings.

Subpart B—Standard Design Certifications

§ 52.41 Scope of subpart.

This subpart set out the requirements and procedures applicable to Commission issuance of rules granting standard design certification for nuclear power facilities separate from the filing of an application for a construction permit or combined license for such facility.

§ 52.43 Relationship to Appendices M, N, and O of this part.

(a) Appendix M to this part governs the issuance of licenses to manufacture nuclear power reactors to be installed and operated at sites not identified in the manufacturing license application. Appendix N governs licenses to construct and operate nuclear power reactors of duplicate design at multiple sites. These appendices may be used independently of the provisions in this subpart unless the applicant also wishes to use a certified standard design approved under this subpart.

(b) Appendix O governs the staff review and approval of preliminary and final standard designs. A staff approval under Appendix O is no way affects the authority of the Commission or the presiding officer in any proceeding under Subpart G of 10 CFR Part 2. Subpart B of Part 52 governs Commission approval, or certification, of standard designs by rulemaking.

(c) A final design approval under Appendix O is a prerequisite for certification of a standard design under this subpart. An application for a final design approval must state whether the applicant intends to seek certification of the design. If the applicant does so intend, the application for the final design approval must, in addition to containing the information required by Appendix O, comply with the applicable requirements of Part 52, Subpart B, particularly §§ 52.45 and 52.47.

§ 52.45 Filing of applications.

(a)(1) Any person may seek a standard design certification for an essentially complete nuclear power plant design which is an evolutionary change from light water reactor designs of plants which have been licensed and in commercial operation before the effective date of this rule.

(2) Any person may also seek a standard design certification for a nuclear power plant design which differs significantly from the light water reactor designs described in paragraph (a)(1) of this section or utilizes simplified, inherent, passive, or other innovative means to accomplish its safety functions.

(b) An application for certification may be filed notwithstanding the fact that an application for a construction permit or combined license for such a facility has not been filed.

(c)(1) Because a final design approval under Appendix O of this part is a prerequisite for certification of a standard design, a person who seeks such a certification and does not hold, or has not applied for, a final design approval, shall file with the Director of Nuclear Reactor Regulation an application for a final design approval and certification.

(2) Any person who seeks certification but already holds, or has applied for, a final design approval, also shall file with the Director of Nuclear Reactor Regulation an application for certification, because the NRC staff may require that the information before the staff in connection with the review for the final design approval be supplemented for the review for certification.

(d) The applicant must comply with the filing requirements of 10 CFR 50.30(a) (1)–(4), and (6) and 50.30(b) as they would apply to an application for a nuclear power plant construction permit. The following portions of § 50.4, which is referenced by § 50.30(a)(1), are applicable to the extent technically relevant: paragraphs (a); (b), except for paragraphs (6); (c); and (e).

§ 52.47 Contents of applications.

(a) The requirements of this paragraph apply to all applications for design certification.

(1) An application for design certification must contain:

(i) The technical information which is required of applicants for construction permits and operating licenses by 10 CFR Part 20, Part 50 and its appendices, and Parts 73 and 100, and which is technically relevant to the design and not site-specific;

(ii) Demonstration of compliance with any technically relevant portions of the Three Mile Island requirements set forth in 10 CFR 50.34(f);

(iii) The site parameters postulated for the design, and an analysis and evaluation of the design in terms of such parameters;

(iv) Proposed technical resolutions of those Unresolved Safety Issues and medium- and high-priority Generic Safety Issues which are identified in the version of NUREG–0933 current on the date six months prior to application and which are technically relevant to the design;

(v) A design-specific probabilistic risk assessment;

(vi) Proposed tests, inspections, analyses, and acceptance criteria which are necessary and sufficient to provide reasonable assurance that, if the tests, inspections and analyses are performed and the acceptance criteria met, a plant which references the design is built and will operate in accordance with the design certification.

(vii) The interface requirements to be met by those portions of the plant for which the application does not seek certification. These requirements must be sufficiently detailed to allow completion of the final safety analysis and design-specific probabilistic risk assessment required by paragraph (a)(1)(v) of this section;

(viii) Justification that compliance with the interface requirements of paragraph (a)(1)(vii) of this section is verifiable through inspection, testing (either in the plant or elsewhere), or analysis. The method to be used for verification of interface requirements must be included as part of the proposed tests, inspections, analyses, and acceptance criteria required by paragraph (a)(1)(vi) of this section; and

(ix) A representative conceptual design for those portions of the plant for which the application does not seek certification, to aid the staff in its review of the final safety analysis and probabilistic risk assessment required by paragraph (a)(1)(v) of this section, and to permit assessment of the adequacy of the interface requirements called for by paragraph (a)(1)(vii) of this subsection.

(2) The application must contain a level of design information sufficient to enable the Commission to judge the applicant's proposed means of assuring that construction conforms to the design and to reach a final conclusion on all safety questions associated with the design before the certification is granted. The information submitted for a design certification must include performance requirements and design information sufficiently detailed to permit the preparation of acceptance and inspection requirements by the NRC, and procurement specifications and construction and installation specifications by an applicant. The Commission will require, prior to design certification, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if such information is necessary for the Commission to make its safety determination.

(3) The staff shall advise the applicant on whether any technical information beyond that required by this section must be submitted.

(b) This paragraph applies, according to its provisions, to particular applications:

(1) The application for certification of a nuclear power plant design which is an evolutionary change from light water reactor designs of plants which have been licensed and in commercial operation before the effective date of this rule must provide an essentially complete nuclear power plant design

except for site-specific elements such as the service water intake structure and the ultimate heat sink.

(2)(i) Certification of a standard design which differs significantly from the light water reactor designs described in paragraph (b)(1) of this section or utilizes simplified, inherent, passive, or other innovative means to accomplish its safety functions will be granted only if

(A) (*1*) The performance of each safety feature of the design has been demonstrated through either analysis, appropriate test programs, experience, or a combination thereof;

(*2*) Interdependent effects among the safety features of the design have been found acceptable by analysis, appropriate test programs, experience, or a combination thereof;

(*3*) Sufficient data exist on the safety features of the design to assess the analytical tools used for safety analyses over a sufficient range of normal operating conditions, transient conditions, and specified accident sequences, including equilibrium core conditions; and

(*4*) The scope of the design is complete except for site-specific elements such as the service water intake structure and the ultimate heat sink; or

(B) There has been acceptable testing of an appropriately sited, full-size, prototype of the design over a sufficient range of normal operating conditions, transient conditions, and specified accident sequences, including equilibrium core conditions. If the criterion in paragraph (b)(2)(i)(A)(*4*) of this section is not met, the testing of the prototype must demonstrate that the non-certified portion of the plant cannot significantly affect the safe operation of the plant.

(ii) The application for final design approval of a standard design of the type described in this subsection must propose the specific testing necessary to support certification of the design, whether the testing be prototype testing or the testing required in the alternative by paragraph (b)(2)(i)(A) of this section.

The Appendix O final design approval of such a design must identify the specific testing required for certification of the design.

(3) An application seeking certification of a modular design must describe the various options for the configuration of the plant and site, including variations in, or sharing of, common systems, interface requirements, and system interactions. The final safety analysis and the probabilistic risk assessment should also account for differences among the various options, including any restrictions which will be necessary during the construction and startup of a given module to ensure the safe operation of any module already operating.

§ 52.48 Standards for review of applications.

Applications filed under this subpart will be reviewed for compliance with the standards set out in 10 CFR Part 20, Part 50 and its appendices, and Parts 73 and 100 as they apply to applications for construction permits and operating licenses for nuclear power plants, and as those standards are technically relevant to the design proposed for the facility.

§ 52.49 Fees for review of applications.

The fees charged for the review of an application for the initial issuance or renewal of a standard design certification are set out in 10 CFR 170.12, together with a schedule for their deferred recovery. There is no application fee.

§ 52.51 Administrative review of applications.

(a) A standard design certification is a rule that will be issued in accordance with the provisions of Subpart H of 10 CFR Part 2, as supplemented by the provisions of this section. The Commission shall initiate the rulemaking after an application has been filed under § 52.45 and shall specify the procedures to be used for the rulemaking.

(b) The rulemaking procedures must provide for notice and comment and an opportunity for an informal hearing before an Atomic Safety and Licensing Board. The procedures for the informal hearing must include the opportunity for written presentations made under oath or affirmation and for oral presentations and questioning if the Board finds them either necessary for the creation of an adequate record or the most expeditious way to resolve controversies. Ordinarily, the questioning in the informal hearing will be done by members of the Board, using either the Board's questions or questions submitted to the Board by the parties. The Board may also request authority from the Commission to use additional procedures, such as direct and cross examination by the parties, or may request that the Commission convene a formal hearing under Subpart G of 10 CFR Part 2 on specific and substantial disputes of fact, necessary for the Commission's decision, that cannot be resolved with sufficient accuracy except in a formal hearing. The staff will be a party in the hearing.

(c) The decision in such a hearing will be based only on information on which all parties have had an opportunity to comment, either in response to the notice of proposed rulemaking or in the informal hearing. Notwithstanding anything in 10 CFR 2.790 to the contrary, proprietary information will be protected in the same manner and to the same extent as proprietary information submitted in connection with applications for construction permits and operating licenses under 10 CFR Part 50, provided that the design certification shall be published in Chapter I of this Title.

§ 52.53 Referral to the ACRS.

The Commission shall refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall report on those portions of the application which concern safety.

§ 52.54 Issuance of standard design certification.

After conducting a rulemaking proceeding under § 52.51 on an application for a standard design certification and receiving the report to be submitted by the Advisory Committee on Reactor Safeguards under § 52.53, and upon determining that the application meets the applicable standards and requirements of the Atomic Energy Act and the Commission's regulations, the Commission shall issue a standard design certification in the form of a rule for the design which is the subject of the application.

§ 52.55 Duration of certification.

(a) Except as provided in paragraph (b) of this section, a standard design certification issued pursuant to this subpart is valid for fifteen years from the date of issuance.

(b) A standard design certification continues to be valid beyond the date of expiration in any proceeding on an application for a combined license or operating license which references the standard design certification and is docketed either before the date of expiration of the certification, or, if a timely application for renewal of the certification has been filed, before the Commission has determined whether to renew the certification. A design certification also continues to be valid beyond the date of expiration in any hearing held under § 52.103 before operation begins under a combined

license which references the design certification.

(c) An applicant for a construction permit or combined license may, at its own risk, reference in its application a design for which a design certification application has been docketed but not granted.

§ 52.57 Application for renewal.

(a) Not less than twelve nor more than thirty-six months prior to expiration of the initial fifteen-year period, or any later renewal period, any person may apply for renewal of the certification. An application for renewal must contain all information necessary to bring up to date the information and data contained in the previous application. The Commission will require, prior to renewal of certification, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if such information is necessary for the Commission to make its safety determination. Notice and comment procedures must be used for a rulemaking proceeding on the application for renewal. The Commission, in its discretion, may require the use of additional procedures in individual renewal proceedings.

(b) A design certification, either original or renewed, for which a timely application for renewal has been filed remains in effect until the Commission has determined whether to renew the certification. If the certification is not renewed, it continues to be valid in certain proceedings, in accordance with the provisions of § 52.55.

(c) The Commission shall refer a copy of the application for renewal to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall report on those portions of the application which concern safety and shall apply the criteria set forth in § 52.59.

§ 52.59 Criteria for renewal.

(a) The Commission shall issue a rule granting the renewal if the design, either as originally certified or as modified during the rulemaking on the renewal, complies with the Atomic Energy Act and the Commission's regulations applicable and in effect at the time the certification was issued, and any other requirements the Commission may wish to impose after a determination that there is a substantial increase in overall protection of the public health and safety or the common defense and security to be derived from the new requirements and that the direct and indirect costs of implementation of those requirements are justified in view of this increased protection. In addition, the applicant for renewal may request an amendment to the design certification. The Commission shall grant the amendment request if it determines that the amendment will comply with the Atomic Energy Act and the Commission's regulations in effect at the time or renewal. If the amendment request entails such an extensive change to the design certification that an essentially new standard design is being proposed, an application for a design certification shall be filed in accordance with § 52.45 and 52.47 of this part.

(b) Denial of renewal does not bar the applicant, or another applicant, from filing a new application for certification of the design, which proposes design changes which correct the deficiencies cited in the denial of the renewal.

§ 52.61 Duration of renewal.

Each renewal of certification for a standard design will be for not less than ten nor more than fifteen years.

§ 52.68 Finality of standard design certifications.

(a)(1) Notwithstanding any provision in 10 CFR 50.109, while a standard design certification is in effect under § 52.55 or 52.61, the Commission may not modify, rescind, or impose new requirements on the certification, whether on its own motion, or in response to a petition from any person, unless the Commission determines in a rulemaking that a modification is necessary either to bring the certification or the referencing plants into compliance with the Commission's regulations applicable and in effect at the time the certification was issued, or to assure adequate protection of the public health and safety or the common defense and security. The rulemaking procedures must provide for notice and comment and an opportunity for the party which applied for the certification to request an informal hearing which uses the procedures described in § 52.51 of this subpart.

(2) Any modification the NRC imposes on a design certification rule under paragraph (a)(1) of this section will be applied to all plants referencing the certified design, except those to which the modification has been rendered technically irrelevant by action taken under paragraphs (a)(3), (a)(4), or (b) of this section.

(3) While a design certification is in effect under § 52.55 or § 52.61, unless (i) a modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time the certification was issued, or to assure adequate protection of the public health and safety or the common defense and security, and (ii) special circumstances as defined in 10 CFR 50.12(a) are present, the Commission may not impose new requirements by plant-specific order on any part of the design of a specific plant referencing the design certification if that part was approved in the design certification. In addition to the factors listed in § 50.12(a), the Commission shall consider whether the special circumstances which § 50.12(a)(2) requires to be present outweigh any decrease in safety that may result from the reduction in standardization caused by the plant-specific order.

(4) Except as provided in 10 CFR 2.758, in making the findings required for issuance of a combined license or operating license, or for any hearing under § 52.103, the Commission shall treat as resolved those matters resolved in connection with the issuance or renewal of a design certification.

(b)(1) An applicant or licensee who references a standard design certification may request an exemption from one or more elements of the design certification. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). In addition to the factors listed in § 50.12(a), the Commission shall consider whether the special circumstances which § 50.12(a)(2) requires to be present outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption. The granting of an exemption on request of an applicant must be subject to litigation in the same manner as other issues in the operating license or combined license hearing.

(2) Subject § 50.59, a licensee who references a standard design certification may make changes to the design of the nuclear power facility, without prior Commission approval, unless the proposed change involves a change to the design as described in the rule certifying the design. The licensee shall maintain records of all changes to the facility and these records must be maintained and available for audit until the date of termination of the license.

(c) The Commission will require, prior to granting a construction permit, combined license, or operating license which references a standard design certification, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if such information is necessary for the

Commission to make its safety determinations, including the determination that the application is consistent with the certified design. This information may be acquired by appropriate arrangements with the design certification applicant.

Subpart C—Combined Licenses

§ 52.71 Scope of Subpart.

This subpart sets out the requirements and procedures applicable to Commission issuance of combined licenses for nuclear power facilities.

§ 52.73 Relationship to Subparts A and B.

An application for a combined license under this subpart may, but need not, reference a standard design certification issued under Subpart B of this part or an early site permit issued under Subpart A of this part, or both. In the absence of a demonstration that an entity other than the one originally sponsoring and obtaining a design certification is qualified to supply such design, the Commission will entertain an application for a combined license which references a standard design certification issued under Subpart B only if the entity that sponsored and obtained the certification supplies the certified design for the applicant's use.

§ 52.75 Filing of applications.

Any person except one excluded by 10 CFR 50.38 may file an application for a combined license for a nuclear power facility with the Director of Nuclear Reactor Regulation. The applicant shall comply with the filing requirements of 10 CFR 50.4 and 50.30 (a) and (b), except for paragraph (b)(6) of § 50.4, as they would apply to an application for a nuclear power plant construction permit. The fees associated with the filing and review of the application are set out in 10 CFR Part 170.

§ 52.77 Contents of applications; general information.

The application must contain all of the information required by 10 CFR 50.33, as that section would apply to applicants for construction permits and operating licenses, and 10 CFR 50.33a, as that section would apply to an applicant for a nuclear power plant construction permit. In particular, the applicant shall comply with the requirement of § 50.33a(b) regarding the submission of antitrust information.

§ 52.79 Contents of applications; technical information.

(a)(1) In general, if the application references an early site permit, the application need not contain information or analyses submitted to the Commission in connection with the early site permit, but must contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the design of the facility falls within the parameters specified in the early site permit, and to resolve any other significant environmental issue not considered in any previous proceeding on the site or the design.

(2) If the application does not reference an early site permit, the applicant shall comply with the requirements of 10 CFR 50.30(f) by including with the application an environmental report prepared in accordance with the provisions of Subpart A of 10 CFR Part 51.

(3) If the application does not reference an early site permit which contains a site redress plan as described in § 52.17(c), and if the applicant wishes to be able to perform the activities at the site allowed by 10 CFR 50.10(e)(1), then the application must contain the information required by § 52.17(c).

(b) The application must contain the technically relevant information required of applicants for an operating license by 10 CFR 50.34. The final safety analysis report and other required information may incorporate by reference the final safety analysis report for a certified standard design. In particular, an application referencing a certified design must describe those portions of the design which are site-specific, such as the service water intake structure and the ultimate heat sink. An application referencing a certified design must also demonstrate compliance with the interface requirements established for the design under § 52.47(a)(1), and have available for audit procurement specifications and construction and installation specifications in accordance with § 52.47(a)(2). If the application does not reference a certified design, the application must comply with the requirements of § 52.47(a)(2) for level of design information, and shall contain the technical information required by §§ 52.47(a)(1) (i), (ii), (iv), and (v) and (3), and, if the design is modular, § 52.47(b)(3).

(c) The application for a combined license must include the proposed test, inspections, and analyses which the licensee shall perform and the acceptance criteria therefor which are necessary and sufficient to provide reasonable assurance that, if the tests, inspections and analyses are performed and the acceptance criteria met, the facility has been constructed and will operate in conformity with the combined license. Where the application references a certified standard design, the test, inspections, analyses and acceptance criteria contained in the certified design must apply to those portions of the facility design which are covered by the design certification.

(d) The application must contain emergency plans which provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the site.

(1) If the application references an early site permit, the application may incorporate by reference emergency plans, or major features of emergency plans, approved in connection with the issuance of the permit.

(2) If the application does not reference an early site permit, or if no emergency plans were approved in connection with the issuance of the permit, the applicant shall make good faith efforts to obtain certifications from the local and State governmental agencies with emergency planning responsibilities (i) that the proposed emergency plans are practicable, (ii) that these agencies are committed to participating in any further development of the plans, including any required field demonstrations, and (iii) that these agencies are committed to executing their responsibilities under the plans in the event of an emergency. The application must contain any certifications that have been obtained. If these certifications cannot be obtained, the application must contain information, including a utility plan, sufficient to show that the proposed plans nonetheless provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the site.

§ 52.81 Standards for review of applications.

Applications filed under this subpart will be reviewed according to the standards set out in 10 CFR Parts 20, 50, 51, 55, 73, and 100 as they apply to applications for construction permits and operating licenses for nuclear power plants, and as those standards are technically relevant to the design proposed for the facility.

§ 52.83 Applicability of Part 50 provisions.

Unless otherwise specifically provided in this subpart, all provisions of 10 CFR Part 50 and its appendices applicable to holders of construction permits for nuclear power reactors also apply to holders of combined licenses issued under this subpart. Similarly, all provisions of 10 CFR Part 50 and its

appendices applicable to holders of operating licenses also apply to holders of combined licenses issued under this subpart, once the Commission has made the findings required under § 52.103, provided that, as applied to a combined license, 10 CFR 50.51 must require that the initial duration of the license may not exceed 40 years from the date on which the Commission makes the findings required under § 52.103. However, any limitations contained in Part 50 regarding applicability of the provisions to certain classes of facilities continue to apply.

§ 52.85 Administrative review of applications.

A proceeding on a combined license is subject to all applicable procedural requirements contained in 10 CFR Part 2, including the requirements for docketing (§ 2.101) and issuance of a notice of hearing (§ 2.104). All hearings on combined licenses are governed by the procedures contained in Part 2, Subpart G.

§ 52.87 Referral to the ACRS.

The Commission shall refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall report on those portions of the application which concern safety and shall apply the criteria set forth in § 52.81, in accordance with the finality provisions of this part.

§ 52.89 Environmental review.

If the application references an early site permit or a certified standard design, the environmental review must focus on whether the design of the facility falls within the parameters specified in the early site permit and any other significant environmental issue not considered in any previous proceeding on the site or the design. If the application does not reference an early site permit or a certified standard design, the environmental review procedures set out in 10 CFR Part 51 must be followed, including the issuance of a final environmental impact statement, but excluding the issuance of a supplement under § 51.95(a).

§ 52.91 Authorization to conduct site activities.

(a)(1) If the application references an early site permit which contains a site redress plan as described in § 52.17(c) the applicant is authorized by § 52.25 to perform the site preparation activities described in 10 CFR 50.10(e)(1).

(2) If the application does not reference an early site permit which contains a redress plan, the applicant may not perform the site preparation activities allowed by 10 CFR 50.10(e)(1) without first submitting a site redress plan in accord with § 52.79(a)(3) and obtaining the separate authorization required by 10 CFR 50.10(e)(1). Authorization must be granted only after the presiding officer in the proceeding on the application has made the findings and determination required by 10 CFR 50.10(e)(2) and has determined that the site redress plan meets the criteria in § 52.17(c).

(3) Authorization to conduct the activities described in 10 CFR 50.10(e)(3)(i) may be granted only after the presiding officer in the combined license proceeding makes the additional finding required by 10 CFR 50.10(e)(3)(ii).

(b) If, after an applicant for a combined license has performed the activities permitted by paragraph (a) of this section, the application for the license is withdrawn or denied, and the early site permit referenced by the application expires, then the applicant shall redress the site in accord with the terms of the site redress plan. If, before redress is complete, a use not envisaged in the redress plan is found for the site or parts thereof, the applicant shall carry out the redress plan to the greatest extent possible consistent with the alternate use.

§ 52.93 Exemptions and variances.

(a) Applicants for a combined license under this subpart, or any amendment to a combined license, may include in the application a request, under 10 CFR 50.12, for an exemption from one or more of the Commission's regulations, including any part of a design certification rule. The Commission shall grant such a request if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a) or 52.63(b)(1) if the exemption includes any part of the design certification rule.

(b) An applicant for a combined license, or any amendment to a combined license, who has filed an application referencing an early site permit issued under this subpart may include in the application a request for a variance from one or more elements of the permit. In determining whether to grant the variance, the Commission shall apply the same technically relevant criteria as were applicable to the application for the original or renewed site permit. Issuance of the variance must be subject to litigation during the combined license proceeding in the same manner as other issues material to that proceeding.

§ 52.97 Issuance of combined licenses.

(a) The Commission shall issue a combined license for a nuclear power facility upon finding that the applicable requirements of 10 CFR 50.40, 50.42, 50.43, 50.47, and 50.50 have been met, and that there is reasonable assurance that the facility will be constructed and operated in conformity with the license, the provisions of the Atomic Energy Act, and the Commission's regulations.

(b) The Commission shall identify in the license the tests, inspections, and analyses that the licensee shall perform and the acceptance criteria therefor which are necessary and sufficient to provide reasonable assurance that, if the tests, inspections, and analyses are performed and the acceptance criteria met, the facility has been constructed and will be operated in conformity with the license, the provisions of the Atomic Energy Act, and the Commission's regulations. Any modification to, addition to, or deletion from the terms of a combined license, including any modification to, addition to, or deletion from the tests, inspections, analyses, or related acceptance criteria contained in such license, is a proposed amendment to such license. There shall be an opportunity for a hearing on the proposed amendments, and any hearing held must be completed before operation of the facility.

§ 52.99 Inspection during construction.

After issuance of a combined license, the NRC staff shall assure that the required inspections, tests, and analyses are performed and that the prescribed acceptance criteria are met. Holders of combined licenses shall comply with the provisions of 10 CFR 50.70 and 50.71. At appropriate intervals during construction, the NRC staff shall publish in the **Federal Register** notices of the successful completion of inspections, tests, and analyses.

§ 52.101 Pre-operational antitrust review.

If, before the Commission makes the findings required uner § 52.103, the Commission, after consultation with the Attorney General, determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission in connection with the issuance of the combined license, the antitrust review required by section 105c(2) of the Atomic Energy Act must be completed prior to commencement of commercial operation of the facility. Upon completion of this review, the Director of Nuclear Reactor Regulation may impose any additional license

conditions as authorized by section 105c of the Atomic Energy Act.

§ 52.103 Operation under a combined license.

(a) Not less than 180 days before loading of fuel into the reactor, the holder of the combined license shall, in writing, notify the Commission of the expected dates of both fuel loading and criticality. The Commission shall publish notice of these dates in the **Federal Register**. The **Federal Register** notice must also advise persons whose interests may be affected by facility operation of their rights under paragraph (b) of this section.

(b)(1) Not later than 60 days after publication of the notice required by paragraph (a) of this section, any person whose interest may be affected by facility operation may file one or both of the following in writing:

(i) A petition which shows, prima facie, that one or more of the acceptance criteria in the combined license have not been met and, as a result, there is good cause to modify or prohibit operation; or

(ii) A petition to modify the terms and conditions of the combined license.

(2)(i) A good cause petition filed under paragraph (b)(1)(i) of this section will be granted by the Commission only if it includes, or clearly references, official NRC documents, documents prepared by or for the combined license holder, or evidence admissible in a proceeding under Subpart G of Part 2, which show, prima facie, that the acceptance criteria have not been met. The combined license holder and NRC staff may file answers to the petition within the time specified in 10 CFR 2.730 for answers to motions by parties and staff. If the Commission in its judgment decides, on the basis of the petitions and any answers thereto, that the petition meets the requirements of this paragraph, that the issues raised by the petition are not exempt from adjudication under 5 U.S.C. 554(a)(3), that genuine issues of material fact are raised, and that settlement or other informal resolution of the issues is not possible, then the genuine issues of material fact raised by the petition must be resolved in accordance with the provisions in 5 U.S.C. 554, 556, and 557 which are applicable to determining applications for initial licenses. In such cases, the notice of hearing from the Commission must specify the procedures to be followed. Matters exempt from adjudication under 5 U.S.C. 554(a)(3) may be decided by the Commission solely on the basis of the showing of good cause and any responsive pleadings.

(ii) A petition to modify the terms and conditions of the combined license will be processed as a request for action in accord with 10 CFR 2.206. The petitioner shall file the petition with the Secretary of the Commission. Before the licensed activity allegedly affected by the petition (fuel loading, low power testing, etc.) commences, the Commission shall consider the petition and determine whether any immediate action is required. If the petition is granted, then an appropriate order will be issued. Fuel loading and operation under the combined license will not be affected by the granting of the petition unless the order is made immediately effective.

(c) Prior to fuel loading, the Commission shall find that the acceptance criteria in the combined license have been met and that, accordingly, the facility has been constructed and will operate in conformity with the Atomic Energy Act and the Commission's regulations. If the combined license is for a modular design, each reactor module may require a separate finding as construction proceeds.

Appendices A–L [Reserved]

Appendix M—Standardization of Design; Manufacture of Nuclear Power Reactors; Construction and Operation of Nuclear Power Reactors Manufactured Pursuant to Commission License

Section 101 of the Atomic Energy Act of 1954, as amended, and § 50.10 of this chapter require a Commission license to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export any production or utilization facility. The regulations in Part 50 require the issuance of a construction permit by the Commission before commencement of construction of a production or utilization facility, and the issuance of an operating license before operation of the facility. The provisions of Part 50 relating to the facility licensing process are, in general, predicated on the assumption that the facility will be assembled and constructed on the site at which it is to be operated. In those circumstances, both facility design and site-related issues can be considered in the initial, construction permit stage of the licensing process.

However, under the Atomic Energy Act, a license may be sought and issued authorizing the manufacture of facilities but not their construction and installation at the sites on which the facilities are to be operated. Prior to the "commencement of construction", as defined in § 50.10(c) of this chapter of a facility (manufactured pursuant to such a Commission license) on the site at which it is to operate—that is preparation of the site and installation of the facility—a construction permit that, among other things, reflects approval of the site on which the facility is to be operated, must be issued by the Commission. This appendix sets out the particular requirements and provisions applicable to such situations where nuclear power reactors to be manufactured pursuant to a Commission license and subsequently installed at the site pursuant to a Commission construction permit, are of the type described in § 50.22 of this chapter. It thus codifies one approach to the standardization of nuclear power reactors.

1. Except as otherwise specified in this appendix or as the context otherwise indicates, the provisions in Part 50 applicable to construction permits, including the requirement in § 50.58 of this chapter for review of the application by the Advisory Committee on Reactor Safeguards and the holding of a public hearing, apply in context, with respect to matters of radiological health and safety, environmental protection, and the common defense and security, to licenses pursuant to this Appendix M to manufacture nuclear power reactors (manufacturing licenses) to be operated at sites not identified in the license application.

2. An application for a manufacturing license pursuant to this Appendix M must be submitted, as specified in § 50.4 of this chapter and meet all the requirements of §§ 50.34(a) (1)–(9) and 50.34a (a) and (b) of this chapter except that the preliminary safety analysis report shall be designated as a "design report" and any required information or analyses relating to site matters shall be predicated on postulated site parameters which must be specified in the application. The application must also include information pertaining to design features of the proposed reactor(s) that affect plans for coping with emergencies in the operation of the reactor(s).

3. An applicant for a manufacturing license pursuant to this Appendix M shall submit with his application an environmental report as required of applicants for construction permits in accordance with Subpart A of Part 51 of this chapter, provided, however, that such report shall be directed at the manufacture of the reactor(s) at the manufacturing site; and, in general terms, at the construction and operation of the reactor(s) at a hypothetical site or sites having characterisitics that fall within the postulated site parameters. The related draft and final environmental impact statement prepared by the Commission's regulatory staff will be similarly directed.

4. (a) Sections 50.10 (b) and (c), 50.12(b), 50.23, 50.30(d), 50.34(a)(10), 50.34a(c), 50.35 (a) and (c), 50.40(a), 50.45, 50.55(d), 50.56 of this chapter and Appendix J of Part 50 do not apply to manufacturing licenses. Appendices E and H of Part 50 apply to manufacturing licenses only to the extent that the requirements of these appendices involve facility design features.

(b) The financial information submitted pursuant to § 50.33(f) of this chapter and Appendix C of Part 50 shall be directed at a demonstration of the financial qualifications of the applicant for the manufacturing license to carry out the manufacturing activity for which the license is sought.

5. The Commission may issue a license to manufacture one or more nuclear power reactors to be operated at sites not identified in the license application if the Commission finds that:

(a) The applicant has described the proposed design of and the site parameters postulated for the reactor(s), including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features of components incorporated therein for the protection of the health and safety of the public.

(b) Such further technical or design information as may be required to complete the design report and which can reasonably be left for later consideration, will be supplied in a supplement to the design report.

(c) Safety features or components, if any, which require research and development have been described by the applicant and the applicant has identified, and there will be conducted a research and development program reasonably designed to resolve any safety questions associated with such features of components; and

(d) On the basis of the foregoing, there is reasonable assurance that (i) such safety questions will be satisfactorily resolved before any of the proposed nuclear power reactor(s) are removed from the manufacturing site and (ii) taking into consideration the site criteria contained in Part 100 of this chapter, the proposed reactor(s) can be constructed and operated at sites having characteristics that fall within the site parameters postulated for the design of the reactor(s) without undue risk to the health and safety of the public.

(e) The applicant is technically and financially qualified to design and manufacture the proposed nuclear power reactor(s).

(f) The issuance of a license to the applicant will not be inimical to the common defense and security or to the health and safety of the public.

(g) On the basis of the evaluations and analyses of the environmental effects of the proposed action required by Subpart A of Part 51 of this chapter and paragraph 3 of this Appendix, the action called for is the issuance of the license.

Note: When an applicant has supplied initially all of the technical information required to complete the application, including the final design of the reactor(s), the findings required for the issuance of the license will be appropriately modified to reflect that fact.

6. Each manufacturing license issued pursuant to this appendix will specify the number of nuclear power reactors authorized to be manufactured and the latest date for the completion of the manufacture of all such reactors. Upon good cause shown, the Commission will extend such completion date for a reasonable period of time.

7. The holder of a manufacturing license issued pursuant to this Appendix M shall submit to the Commission the final design of the nuclear power reactor(s) covered by the license as soon as such design has been completed. Such submittal shall be in the form of an application for amendment of the manufacturing license.

8. The prohibition in § 50.10(c) of this chapter against commencement of construction of a production or utilization facility prior to issuance of a construction permit applies to the transport of a nuclear power reactor(s) manufactured pursuant to this appendix from the manufacturing facility to the site at which the reactor(s) will be installed and operated. In addition, such nuclear power reactor(s) shall not be removed from the manufacturing site until the final design of the reactor(s) has been approved by the Commission in accordance with paragraph 7.

9. An application for a permit to construct a nuclear power reactor(s) which is the subject of an application for a manufacturing license pursuant to this Appendix M need not contain such information or analyses as have previously been submitted to the Commission in connection with the application for a manufacturing license, but shall by §§ 50.34(a) and 50.34a of this chapter, sufficient information to demonstrate that the site on which the reactor(s) is to be operated falls within the postulated site parameters specified in the relevant manufacturing license application.

10. The Commission may issue a permit to construct a nuclear power reactor(s) which is the subject of an application for a manufacturing license pursuant to this Appendix M if the Commission (a) finds that the site on which the reactor is to be operated falls within the postulated site parameters specified in the relevant application for a manufacturing license and (b) makes the findings otherwise required by Part 50. In no event will a construction permit be issued until the relevant manufacturing license has been issued.

11. An operating license for a nuclear power reactor(s) that has been manufactured under a Commission license issued pursuant to this Appendix M may be issued by the Commission pursuant to § 50.57 and Subpart A of Part 51 of this chapter except that the Commission shall find, pursuant to § 50.57(a)(1), that construction of the reactor(s) has been substantially completed in conformity with both the manufacturing license and the construction permit and the applications therefor, as amended, and the provisions of the Act, and the rules and regulations of the Commission. Notwithstanding the other provisions of this paragraph, no application for an operating license for a nuclear power reactor(s) that has been manufactured under a Commission license issued pursuant to this Appendix M will be docketed until the application for an amendment to the relevant manufacturing license required by paragraph 7 has been docketed.

12. In making the findings required by this part for the issuance of a construction permit or an operating license for a nuclear power reactor(s) that has been manufactured under a Commission license issued pursuant to this appendix, or an amendment to such a manufacturing license, construction permit, or operating license, the Commission will treat as resolved those matters which have been resolved at an earlier stage of the licensing process, unless there exists significant new information that substantially affects the conclusion(s) reached at the earlier stage or other good cause.

Appendix N—Standardization of Nuclear Power Plant Designs: Licenses To Construct and Operate Nuclear Power Reactors of Duplicate Design at Multiple Sites

Section 101 of the Atomic Energy Act of 1954, as amended, and § 50.10 of this chapter require a Commission license to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import or export any production or utilization facility. The regulations in Part 50 require the issuance of a construction permit by the Commission before commencement of construction of a production or utilization facility, except as provided in § 50.10(e) of this chapter, and the issuance of an operating license before the operation of the facility.

The Commission's regulations in Part 2 of this chapter specifically provide for the holding of hearings on particular issues separately from other issues involved in hearings in licensing proceedings (§ 2.761a, Appendix A, section I(c)), and for the consolidation of adjudicatory proceedings and of the presentations of parties in adjudicatory proceedings such as licensing proceedings (§§ 2.715a, 2.716).

This appendix sets out the particular requirements and provisions applicable to situations in which applications are filed by one or more applicants for licenses to construct and operate nuclear power reactors of essentially the same design to be located at different sites.[1]

1. Except as otherwise specified in this appendix or as the context otherwise indicates, the provisions of Part 50, applicable to construction permits and operating licenses, including the requirement in § 50.58 of this chapter for review of the application by the Advisory Committee on Reactor Safeguards and the holding of public hearings, apply to construction permits and operating license subject to this Appendix N.

2. Applications for construction permits submitted pursuant to this Appendix must include the information required by §§ 50.33, 50.33a, 50.34(a) and 50.34a (a) and (b) of this chapter, and be submitted as specified in § 50.4 of this chapter. The applicant shall also submit the information required by § 51.50 of this chapter.

For the technical information required by §§ 50.34(a) (1) through (5) and (8) and 50.34a (a) and (b) of this chapter, reference may be made to a single preliminary safety analysis of the design [2] which, for the purposes of

[1] If the design for the power reactor(s) proposed in a particular application is not identical to the others, that application may not be processed under this appendix and Subpart D of Part 2 of this chapter.

[2] As used in this appendix, the design of a nuclear power reactor included in a single referenced safety analysis report means the design of those structures, systems and components important to radiological health and safety and the common defense and security.

§ 50.34(a)(1) includes one set of site parameters postulated for the design of the reactors, and an analysis and evaluation of the reactors in terms of such postulated site parameters. Such single preliminary safety analysis shall also include information pertaining to design features of the proposed reactors that affect plans for coping with emergencies in the operation of the reactors, and shall describe the quality assurance program with respect to aspects of design, fabrication, procurement and construction that are common to all of the reactors.

3. Applications for operating licenses submitted pursuant to this Appendix N shall include the information required by §§ 50.33, 50.34 (b) and (c), and 50.34a(c) of this chapter. The applicant shall also submit the information required by § 51.53 of this chapter. For the technical information required by §§ 50.34(b) (2) through (5) and 50.34a(c), reference may be made to a single final safety analysis of the design.

Appendix O—Standardization of Design: Staff Review of Standard Designs

This appendix sets out procedures for the filing, staff review and referral to the Advisory Committee on Reactor Safeguards of standard designs for a nuclear power reactor of the type described in § 50.22 of this chapter or major portions thereof.

1. Any person may submit a proposed preliminary of final standard design for a nuclear power reactor of the type described in § 50.22 to the regulatory staff for its review. Such a submittal may consist of either the preliminary or final design for the entire reactor facility or the preliminary or final design of major portions thereof.

2. The submittal for review of the standard design must be made in the same manner and in the same number of copies as provided in §§50.4 and 50.30 of this chapter for license applications.

3. The submittal for review of the standard design shall include the information described in §§ 50.33 (a) through (d) of this chapter and the applicable technical information required by §§ 50.34 (a) and (b), as appropriate, and 50.34a of this chapter (other than that required by §§ 50.34(a) (6) and (10), 50.34(b)(1), (6) (i), (ii), (iv), and (v) and 50.34(b) (7) and (8)). The submittal shall also include a description, analysis and evaluation of the interfaces between the submitted design and the balance of the nuclear power plant. With respect to the requirements of §§ 50.34(a)(1) of this chapter, the submittal for review of a standard design shall include the site parameters postulated for the design, and an analysis and evaluation of the design in terms of such postulated site parameters. The information submitted pursuant to § 50.34(a)(7) of this chapter, shall be limted to the quality assurance program to be applied to the design, procurement and fabrication of the structures, systems, and components for which design review has been requested and the information submitted pursuant to § 50.34(a)(9) of this chapter shall be limited to the qualifications of the person submitting the standard design to design the reactor or major portion thereof. The submittal shall also include information pertaining to design features that affect plans for coping with emergencies in the operation of the reactor or major portion thereof.

4. Once the regulatory staff has initiated a technical review of a submittal under this appendix, the submittal will be referred to the Advisory Committee on Reactor Safeguards (ACRS) for a review and report.

5. Upon completion of their review of a submittal under this appendix, the regulatory staff shall publish in the **Federal Register** a determination as to whether or not the preliminary or final design is acceptable, subject to such conditions as may be appropriate, and make available in the Public Document Room an analysis of the design in the form of a report. An approved design shall be utilized by and relied upon by the regulatory staff and the ACRS in their review of any individual facility license application which incorporates by reference a design approved in accordance with this paragraph unless there exists significant new information which substantially affects the earlier determination or other good cause.

6. The determination and report by the regulatory staff shall not constitute a commitment to issue a permit or license, or in any way affect the authority of the Commission, Atomic Safety and Licensing Appeal Panel, Atomic Safety and Licensing Board Panel, and other presiding officers in any proceeding under Subpart G of Part 2 of this chapter.

7. Information requests to the approval holder regarding an approved design shall be evaluated prior to issuance to ensure that the burden to be imposed on respondents is justified in view of the potential safety significance of the issue to be addressed in the requested information. Each such evaluation performed by the NRC staff shall be in accordance with 10 CFR 50.54(f) and shall be approved by the Executive Director for Operations or his or her designee prior to issuance of the request.

Appendix P [Reserved]

Appendix Q—Pre-Application Early Review of Site Suitability Issues

This appendix sets out procedures for the filing, Staff review, and referral to the Advisory Committee on Reactor Safeguards (ACRS) of requests for early review of one or more site suitability issues relating to the construction and operation of certain utilization facilities separately from and prior to the submittal of applications for construction permits for the facilities. The appendix also sets out procedures for the preparation and issuance of Staff Site Reports and for their incorporation by reference in applications for the construction and operation of certain utilization facilities. The utilization facilities are those which are subject to § 51.20(b) of this chapter and are of the type specified in § 50.21(b) (2) or (3) or § 50.22 of this chapter or are testing facilities. This appendix does not apply to proceedings conducted pursuant to Subpart F or Part 2 of this chapter.

1. Any person may submit information regarding one or more site suitability issues to the Commission's Staff for its review separately from and prior to an application for a construction permit for a facility. Such a submittal shall be accompanied by any fee required by Part 170 of this chapter and shall consist of the portion of the information required of applicants for construction permits by §§ 50.33 (a)–(c) and (e) of this chapter, and, insofar as it relates to the issue(s) of site suitability for which early review is sought, by §§ 50.34(a)(1) and 50.30(f) of this chapter, except that information with respect to operation of the facility at the projected initial power level need not be supplied.

2. The submittal for early review of site suitability issue(s) must be made in the same manner and in the same number of copies as provided in §§ 50.4 and 50.30 of this chapter for license applications. The submittal must include sufficient information concerning range of postulated facility design and operation parameters to enable the Staff to perform the requested review of site suitability issues. The submittal must contain suggested conclusions on the issues of site suitability submitted for review and must be accompanied by a statement of the bases or the reasons for those conclusions. The submittal must also list, to the extent possible, any long-range objectives for ultimate development of the site, state whether any site selection process was used in preparing the submittal, describe any site selection process used, and explain what consideration, if any, was given to alternative sites.

3. The staff shall publish a note of docketing of the submittal in the **Federal Register**, and shall send a copy of the notice of docketing to the Governor or other appropriate official of the State in which the site is located. This notice shall identify the location of the site, briefly describe the site suitability issue(s) under review, and invite comments from Federal, State, and local agencies and interested persons within 120 days of publication or such other time as may be specified, for consideration by the staff in connection with the initiation or outcome of the review and, if appropriate by the ACRS, in connection with the outcome of their review. The person requesting review shall serve a copy of the submittal on the Governor or other appropriate official of the State in which the site is located, and on the chief executive of the municipality in which the site is located or, if the site is not located in a municipality, on the chief executive of the county. The portion of the submittal containing information requested of applicants for construction permits by §§ 50.33 (a)–(c) and (e) and 50.34(a)(1) of this chapter will be referred to the ACRS for a review and report. There will be no referral to the ACRS unless early review of the site safety issues under § 50.34(a)(1) is requested.

4. Upon completion of review by the staff and, if appropriate by the ACRS, of a submittal under this appendix, the staff shall prepare a Staff Site Report which shall identify the location of the site, state the site suitability issues reviewed, explain the nature and scope of the review, state the conclusions of the staff regarding the issues

reviewed and state the reasons for those conclusions. Upon issuance of a Staff Site Report, the staff shall publish a notice of the availability of the report in the **Federal Register** and shall place copies of the report in the Commission's Public Document at 2120 L Street NW., Lower Level (Room LL-6), Washington, DC 20037, and in a Local Public Document Room(s) located near the site identified in the Staff Site Report. The staff shall also send a copy of the report to the Governor or other appropriate official of the State in which the site is located, and to the chief executive of the municipality in which the site is located or, if the site is not located in a municipality, to the chief executive of the county.

5. Any Staff Site Report prepared and issued in accordance with this appendix may be incorporated by reference, as appropriate, in an application for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specific in § 50.21(b) (2) or (3) or § 50.22 of this chapter or is a testing facility. The conclusions of the Staff Site Report will be reexamined by the staff where five years or more have elapsed between the issuance of the Staff Site Report and its incorporation by reference in a construction permit application.

6. Issuance of a Staff Site Report shall not constitute a commitment to issue a permit or license, to permit on-site work under § 50.10(e) of this chapter, or in any way affect the authority of the Commission, Atomic Safety and Licensing Appeal Panel, Atomic Safety and Licensing Board Panel, and other presiding officers in any proceeding under Subpart F and/or G of Part 2 of this chapter.

7. The staff will not conduct more than one review of site suitability issues with regard to a particular site prior to the full construction permit review required by Subpart A of Part 51 of this chapter. The staff may decline to prepare and issue a Staff Site Report in response to a submittal under this appendix where it appears that, (a) in cases where no review of the relative merits of the submitted site and alternative sites under Subpart A of Part 51 of this chapter is requested, there is a reasonable likelihood that further staff review would identify one or more preferable alternative sites and the staff review of one or more site suitability issues would lead to an irreversible and irretrievable commitment of resources prior to the submittal of the analysis of alternative sites in the Environmental Report that would prejudice the later review and decision on alternative sites under Subpart F and/or G of Part 2 and Subpart A of Part 51 of this chapter; or (b) in cases where, in the judgment of the staff, early review of any site suitability issue or issues would not be in the public interest, considering (1) the degree of likelihood that any early findings on those issues would retain their validity in later reviews, (2) the objections, if any, of cognizant state or local government agencies to the conduct of an early review on those issues, and (3) the possible effect on the public interest of having an early, if not necessarily conclusive, resolution of those issues.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

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

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 2.110 [Amended]

3. In paragraph (a)(1), the reference to Appendix O of Part 50 is amended to refer to Appendix O of Part 52, and in paragraph (a)(2) the reference to Appendix Q of Part 50 is amended to refer to Appendix Q of Part 52.

§ 2.400 [Amended]

4. The reference to Appendix N of Part 50 is amended to refer to Appendix N of Part 52.

§ 2.401 [Amended]

5. In the heading and paragraph (a), the references to Appendix N of Part 50 are amended to refer to Appendix N of Part 52.

§ 2.402 [Amended]

6. In paragraph (a), the reference to Appendix N of Part 50 is amended to refer to Appendix N of Part 52.

§ 2.403 [Amended]

7. In the heading and paragraph (a), the references to Appendix N of Part 50 are amended to refer to Appendix N of Part 52.

§ 2.404 [Amended]

8. In the heading and text of the section, the references to Appendix N of Part 50 are amended to refer to Appendix N of Part 52.

§ 2.406 [Amended]

9. The reference to Appendix N of Part 50 is amended to refer to Appendix N of Part 52.

§ 2.500 [Amended]

10. The reference to Appendix M of Part 50 is amended to refer to Appendix M of Part 52.

§ 2.501 [Amended]

11. In the heading and paragraph (a), the references to Appendix M of Part 50 are amended to refer to Appendix M of Part 52.

§ 2.502 [Amended]

12. In the heading and text of the section, the references to Appendix M of Part 50 are amended to refer to Appendix M of Part 52.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

13. The authority citation for Part 50 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 50.109 [Amended]

14. In paragraph (a)(1)(iv), the references to Appendices M, N and O of Part 50 are amended to refer to Appendices M, N and O of Part 52.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

15. The authority citation for Part 51 continues to read in part as follows:

Authority: Section 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 51.20 [Amended]

16. In paragraph (a)(6), the reference to Appendix M of Part 50 is amended to refer to Appendix M of Part 52.

§ 51.54 [Amended]

17. The reference to Appendix M of Part 50 is amended to refer to Appendix M of Part 52.

§ 51.55 [Amended]

18. In paragraph (b), the reference to Appendix M of Part 50 is amended to refer to Appendix M of Part 52.

§ 51.76 [Amended]

19. The reference to Appendix M of Part 50 is amended to refer to Appendix M of Part 52.

§ 51.77 [Amended]

20. The reference to 10 CFR Part 50, Appendix M is amended to refer to 10 CFR Part 52, Appendix M.

PART 170—FEES FOR FACILITIES AND MATERIALS LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

21. Section 170.2 is amended by revising paragraphs (g) and (k) to read as follows:

§ 170.2 Scope.

* * * * *

(g) An applicant for or holder of a production or utilization facility construction permit, operating license, or manufacturing license issued pursuant to Part 50 of this chapter, or an early site permit, standard design certification, or combined license issued pursuant to Part 52 of this chapter;

* * * * *

(k) Applying for or already has applied for review, under 10 CFR Part 52, Appendix Q, of a facility site prior to the submission of an application for a construction permit;

* * * * *

22. Section 170.3 is amended by revising paragraph (l) to read as follows:

§ 170.3 Definitions.

* * * * *

(l) "Manufacturing license" means a license pursuant to Appendix M of Part 52 of this chapter to manufacture a nuclear power reactor(s) to be operated at sites not identified in the license application.

* * * * *

23. Section 170.12 is amended by revising paragraphs (b), (d), and (e)(2) to read as follows:

§ 170.12 Payment of fees.

* * * * *

(b) *License fees.* Fees for applications for permits and licenses that are subject to fees based on the full cost of the review are payable upon notification by the Commission. Except as provided below, each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commission until the review is completed. There is no application fee for early site permits issued under 10 CFR Part 52. Fees for the review of an application for an early site permit are deferred as follows: The permit holder shall pay the applicable fees for the permit at the time an application for a construction permit or combined license referencing the early site permit is filed. If, at the end of the initial period of the permit, no facility application referencing the early site permit has been docketed, the permit holder shall pay any outstanding fees for the permit. Each bill must identify the applications and costs related to each. Fees for applications for materials licenses not subject to full cost recovery must accompany the application when it is filed.

* * * * *

(d) *Renewal fees.* (1) Fees for applications for renewals that are subject to full cost of the review are payable upon notification by the Commission. There is no fee for an application for renewal of an early site permit or a standard design certification issued under 10 CFR Part 52. Each applicant other than an applicant for renewal of an early site permit or a standard design certification will be billed at six-month intervals for all accumulated costs on each application that the applicant has on file for review by the Commission until the review is completed. Each bill must identify the applications and the costs related to each.

(2) Fees for review of an application for renewal of a standard design certification shall be deferred as follows: The full cost of review for a renewed standard design certification must be paid by the applicant for renewal or other entity supplying the design to an applicant for a construction permit, combined license issued under Part 52, or operating license, as appropriate, in five (5) equal installments; an installment is payable each of the first five times the renewed certification is referenced in an application for a construction permit, combined license, or operating license. The applicant for renewal shall pay the installment, unless another entity is supplying the design to the applicant for the construction permit, combined license, or operating license, in which case the other entity shall pay the installment. If the design is not referenced, or if all costs are not recovered, within ten years after the date of renewal of the certification, the applicant for renewal shall pay the costs for the review of the application for renewal, or remainder of those costs, at that time.

(3) Fees for the review of an application for renewal of an early site permit shall be deferred as follows: The holder of the renewed permit shall pay the applicable fees for the renewed permit at the time an application for a construction permit or combined license referencing the permit is filed. If, at the end of the renewal period of the permit, no facility application referencing the early site permit has been docketed, the permit holder shall pay any outstanding fees for the permit.

(4) Renewal fees for materials licenses and approvals not subject to full cost review must accompany the application when it is filed.

(e) *Approval fees.*

* * * * *

(2)(i) There is no application fee for standardized design approvals or certifications issued under 10 CFR Part 52. The full cost of review for a standardized design approval or certification must be paid by the holder of the design approval, the applicant for certification, or other entity supplying the design to an applicant for a construction permit, combined license issued under Part 52, or operating license, as appropriate, in five (5) equal installments. An installment is payable each of the first five times the approved/certified design is referenced in an application for a construction permit, combined license issued under 10 CFR Part 52, or operating license. In the case of a standard design certification, the applicant for certification shall pay the installment, unless another entity is supplying the design to the applicant for the construction permit, combined license, or operating license, in which case the other entity shall pay the installment.

(ii)(A) In the case of a design which has been approved but not certified and for which no application for certification is pending, if the design is not referenced, or if all costs are not recovered, within five years after the date of the preliminary design approval (PDA) or the final design approval (FDA), the applicant shall pay the costs, or remainder of those costs, at that time;

(B) In the case of a design which has been approved and for which an application for certification is pending, no fees are due until after the certification is granted. If the design is not referenced, or if all costs are not recovered, within ten years after the date of certification, the applicant shall pay the costs, or remainder of those costs, at that time.

(C) In the case of a design for which a certification has been granted, if the design is not referenced, or if all costs are not recovered, within ten years after the date of the certification, the applicant shall pay the costs for the review of the application, or remainder of those costs, at that time.

* * * * *

23. Section 170.21 is amended by amending the Schedule of Facility Fees by revising Part A. Nuclear Power Reactors, revising foot note 4, and adding a new second entry to Part F. Advanced Reactors to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard reference design approvals, special projects, and inspections.

* * * * *

SCHEDULE OF FACILITY FEES

(See footnotes at end of table)

Facility categories and type of fees	Fees [1] [2]
. Nuclear Power Reactors	
Application for Construction Permit	$125,000
Early Site Permit, Construction Permit, Combined License, Operating License.	Full Cost.
Amendment, Renewal, Dismantling-Decommissioning and Termination, Other Approvals.	Full Cost.
Inspections [3]	Full Cost.
* * * * * * *	
F. Advanced Reactors	
Application for Construction Permit	$125,000
Early Site Permit, Construction Permit, Combined License, Operating License.	Full Cost.
* * * * * * *	

[1] Fees will not be charged for orders issued by the Commission pursuant to § 2.204 of this chapter nor for amendments resulting specifically from such Commission orders. Fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g. §§ 50.12, 73.5) and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100% of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined thorugh that period when authority is granted for full power operating power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100% of full rated power, the total costs for the license will be at that decided lower operating power level and not at the 100% capacity.

[2] All charges will be based on expenditures for professional staff time and appropriate contractual support services. However, in no event will the charges be less than the application fee or, where no application fee is specified, will charges be less than $150. For those applications currently in file, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984 rule. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984 rule, but are still pending completion of the review, the costs incurred after the ceiling was reached up to the effective date of this rule will not be billed to the applicant. Any professional hours expended on or after the effective date of this rule will be assessed at the rate established by § 170.20. This rate will be reviewed and adjusted annually as necessary to take into consideration increased or decreased costs to the Commission. If such rate increases or decreases in a given fiscal year, the new rate will be published in the FEDERAL REGISTER. In the event a review covers a combination of licensing actions in a one-step licensing process such as a combined construction permit and operating license review (interim, temporary, or other), the fees charged will be the total of the costs for the licensing action.

[3] Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or followup of a licensed program. Inspections are performed throughout the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the term and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

[4] Collection of the review costs for a preliminary design approval (PDA) and final design approval (FDA) are deferred, respectively, for a period of five years from the approval; except that, if the design is referenced during that period, 20 percent of the total costs will be payable by the holder of the design approval or certificate as each reference is made until the full costs are paid. If the design is certified, the five year deferral period is extended to 10 years from the certification, with the same proviso that 20 percent of the costs will be payable each time the design is referenced. In the event the full costs are not recovered by the end of the applicable deferral period, the holder of the design approval or certificate must pay the remainder of any costs not previously recovered by the NRC. For more on the schedules for payment of fees for reviews of applications for PDAs, FDAs, standard design certifications, and renewals of certifications, see §§ 170.12 (d) and (e) of this part. Applications for amendments to PDAs, FDAs, and certifications are subject to full costs and will be billed upon completion of the review.

Dated at Rockville, MD, this 7th day of April 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-8832 Filed 4-17-89; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 89-1319]

Equity-Risk Investments

Date: April 12, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board (the "Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is hereby amending 12 CFR 563.9-8, its regulation governing investments by institutions the deposits of which are insured by the FSLIC ("insured institutions") in equity securities, real estate, service corporations, operating subsidiaries, certain land loans, and nonresidential construction loans ("equity-risk investments").

The final rule amends the equity-risk investment regulation by extending the regulation for 180 days, until October 13, 1989. This regulation was scheduled to sunset on April 16, 1989. The Board believes that the additional 180 days will allow it to evaluate more carefully the empirical evidence resulting from the Board's recent proposal to amend its regulatory capital requirements and the report on equity-risk investment sent to the Congress on February 10, 1989, pursuant to the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100-86, 101 Stat. 552, 661, § 1203 (1987). Moreover, the Board anticipates that within the 180 day period, legislation will be passed directly affecting a number of areas covered by the Board's equity-risk investment regulation.

EFFECTIVE DATE: April 16, 1989.

FOR FURTHER INFORMATION CONTACT: Richard M. Schwartz, Attorney, (202) 906-6897; Deborah Dakin, Regulatory Counsel, (202) 906-6445; Karen Solomon, Associate General Counsel, (202) 906-7240, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, DC 20552; Robert Fishman, Senior Policy Analyst, (202) 331-4592, Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: On December 23, 1988, the Board proposed to amend its equity-risk investment rule.[1] Board Res. No. 88-1393 (Dec. 22, 1988), 54 FR 155 (Jan. 4, 1989). The Board proposed to extend the current equity-risk investment rule for 120 days.[2] The regulation was scheduled to sunset on April 16, 1989. *See* 12 CFR 563.9-8(h) (1988).

The Board received six comments in response to its proposal. Three of the comments were from insured institutions, two were from trade associations, and one was from a U.S. government-sponsored corporation. Of the four comments that addressed the 120 day extension of the equity-risk investment regulation, all four supported the extension.

For the reasons set forth below, the Board has determined to enlarge the extension of the equity-risk investment regulation, from the 120 days originally proposed to 180 days. In its proposal, the Board stated that it believed that an extension was necessary because additional time was needed to study the empirical evidence accompanying related Board activity. Since the proposal, proposed legislation has been

[1] The Board thereby met the requirement in the CEBA that the Board provide notice to the congressional banking committees not less than 90 days before final action is given by the Board to any regulation that repeals or modifies the Board's equity-risk investment regulation. CEBA, 1203(c)(1), 101 Stat. at 662. No comments were received from those committees regarding the December 23, 1988, proposal.

[2] The Board also proposed to remove the exclusion from the definition of "equity security" in 12 CFR 563.9-8(b)(2) for stock issued by the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"), purchased by insured institutions on or after December 14, 1988, or some other appropriate date. By reproposal published elsewhere in today's **Federal Register** the Board is deferring final consideration of the Fannie Mae/Freddie Mac issue.

introduced that will have a direct impact upon the thrift industry and many of the operations of the Board. Any final legislation is likely to have a significant effect on investments covered by the current equity-risk investment regulation. The Board believes that the 180-day period is necessary in order to evaluate any such effects and allow for any necessary modifications to the regulation. While the legislative process is continuing, the Board is continuing to reexamine the entire equity-risk investment regulation, and may propose revisions for notice and comment, based upon the Board's experience with the current regulation.

The equity-risk investment regulation has been an important component of the Board's regulatory oversight of the safe and sound operation of all insured institutions. The Board believes that the regulation has served a useful function in controlling risks. Therefore, the Board is, at this time, deferring the sunset date of the current equity-risk investment rule for 180 days, from April 16, 1989, until October 13, 1989.

As discussed in the proposal, the Board has recently proposed substantial revisions to its capital regulations ("capital proposal"). Board Res. No. 88-1342 (Dec. 15, 1988), 53 FR 51800 (Dec. 23, 1988). The capital proposal would place all equity-risk investments in a 300 percent credit risk category (in comparison with a 100 percent risk category for commercial loans) for purposes of determining how much capital an institution should maintain against this type of investment. It also discussed the possibility of establishing more than one risk category for equity-risk investments presenting different levels of credit risk.

The Board continues to believe that it is important to correlate its actions on the required capital and equity-risk regulations. The additional time provided by extending the equity-risk investment regulation will give the Board the benefit of studying the empirical evidence received in response to the capital proposal, as well as in-house studies performed in response to that portion of the capital proposal.

Second, in addition to work performed by Board staff in furtherance of a final capital regulation, the Board recently completed a report discussing several aspects of equity-risk investments as mandated by section 1203 of the CEBA. That report, submitted to the House Committee on Banking, Finance and Urban Affairs and the Senate Committee on Banking, Housing and Urban Affairs in February, 1989, contained, among other things: (1) analyses of the effect of direct investment activities on different sized insured institutions, state- and federally chartered insured institutions, and insured institutions in each of the Supervisory Examinations Rating Classifications; (2) findings concerning the degree to which losses to the FSLIC were the result of direct investment activities; and (3) a comparison of the effects of direct investment activities made both prior to and on or after April 16, 1987. Clearly, the information contained in this report will provide the Board and its staff additional data needed to make reasoned decisions as to both the viability of many subsections of the current equity-risk regulation and the necessity of limiting or modifying the current regulation.

Finally, as stated above, the Board now believes that an 180-day extension of the equity-risk investment regulation is necessary because of the likelihood of final legislation, passed within that period, that would materially affect the regulation.

In sum, the Board believes that a short extension of the current equity-risk investment rule sunset date, from April 16, 1989 to October 13, 1989, will provide the Board the necessary time to study the empirical evidence available as a result of the aforementioned activities and to make and review any necessary proposals for changes in the equity-risk investment regulation without a lapse in the Board's oversight in this critical area.

Pursuant to 5 U.S.C. 553(b) and 12 CFR 508.14, the Board hereby finds that good cause exists for making this final rule effective April 16, 1989, rather than the usual thirty days following publication in the **Federal Register**. The regulation would otherwise expire on that date, causing a lapse that would be seriously detrimental to the effective supervision of insured institutions that make equity-risk investments. Because this rule is materially similar to the proposal, no delay is necessary to allow institutions to become familiar with the rule's provisions or make adjustments in their conduct. Therefore, good cause exists for dispensing with the thirty-day delay of effective date.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objections and legal basis underlying the proposed rule.* These elements are incorporated above in the SUPPLEMENTARY INFORMATION regarding the final rule.

2. *Small entities to which the proposed rule would apply.* The final rule would apply to all insured institutions.

3. *Impact of the proposed rule on small entities.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). The final rule treats all institutions identically regardless of their size for the reasons discussed in the SUPPLEMENTARY INFORMATION set forth above.

4. *Overlapping or conflicting Federal rules.* There are no known rules that duplicate, overlap or conflict with this final rule.

5. *Alternative to the rule.* There are no alternatives that would be less burdensome that the final rule in addressing the concerns expressed in the SUPPLEMENTARY INFORMATION set forth above.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Currency, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board amends Part 563, Subchapter D, Chapter V, Title 12, *Code of Federal Regulations,* as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401-407, 48 Stat. 1255-1260, as amended (12 U.S.C. 1724-1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943-1948 Comp., p. 1071.

§ 563.9-8 [Amended]

2. Paragraph (h) of § 563.9-8 is amended by removing the date "April 16, 1989" and adding in lieu thereof the date "October 13, 1989."

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-9197 Filed 4-17-89; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 192 and 178

[T.D. 89-46]

RIN 1515-AA65

Customs Regulations Amendments Relating to Exportation of Used Self-Propelled Vehicles

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding a new part concerning the exportation of used self-propelled vehicles. It sets forth the requirements for lawful exportation of such vehicles as well as the penalties and liabilities for attempted unlawful exportation and unlawful exportation. These regulations are necessary to implement a provision of the Trade and Tariff Act of 1984 dealing with the unlawful exportation of used self-propelled vehicles.

EFFECTIVE DATE: May 18, 1989.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: Harriett D. Blank (202) 566-8317. Operational Aspects: Charles Davies (202) 566-2140.

SUPPLEMENTAL INFORMATION:

Background

The Motor Vehicle Theft Enforcement Act of 1984 (Pub. L. 98-547), amended the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*), by adding a new section 627 (19 U.S.C. 1627), relating to the unlawful importation or exportation of certain vehicles and equipment. Subsequently, the Tariff Act of 1930 was further amended by section 205 of the Trade and Tariff Act of 1984 (Pub. L. 98-573), which also added a new section 627, similar to section 627 of Pub. L. 98-547. The amendments made by Pub. L. 98-573 are set forth as 19 U.S.C. 1627a. It should be noted that section 7367(c)(6) of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690) has repealed 19 U.S.C. 1627.

Section 1627a provides for civil penalties of not more than $10,000 for each new violation of knowingly importing, exporting, or attempting to import or export (1) any stolen self-propelled vehicle, vessel or aircraft; or (2) any self-propelled vehicle or part of a self-propelled vehicle from which the vehicle identification number (VIN) has been removed, obliterated, tampered with or altered. Also, any violation of 19 U.S.C. 1627a subjects the vehicle, vessel, aircraft, or part thereof to seizure and forfeiture. In addition, any person attempting to export a used self-propelled vehicle must present both the vehicle and a document describing the vehicle, which includes the VIN, to Customs before lading if the vehicle is to be transported by vessel or aircraft, or before export if the vehicle is to be transported by rail, highway, or under its own power. Failure to comply with this provision subjects the violator to a civil penalty of $500 for each violation.

Pub. L. 98-573 was enacted in response to the ever-increasing incidents of the theft of motor vehicles and other conveyances and their exportation from the U.S. It is estimated that approximately 200,000 stolen vehicles are exported each year, primarily by professional thieves or people employed by them to effect the exportation. The recovery rate for stolen vehicles decreased from 80 percent in 1967 to 62.9 percent in 1984.

There is also a growing problem concerning the exportation of vehicle components. The parts are often shipped in sealed containers, making detection more difficult.

The legislation concerning the exporting and importing of self-propelled vehicles, other conveyances or parts thereof with altered vehicle identification numbers established penalties for violations and provided for the seizure and forfeiture of the vehicles, other conveyances or parts. It is expected that these sanctions will both deter the exportation of stolen vehicles and improve the recovery rate of those vehicles which are stolen.

The legislation also directed that regulations be prescribed by the Secretary of the Treasury with regard to the procedures for the lawful exportation of used self-propelled vehicles.

First Proposal

On March 17, 1987, Customs published a notice in the **Federal Register** (52 FR 8308), proposing regulations to implement 19 U.S.C. 1627 and 1627a. It was proposed to establish a new Part 192, Customs Regulations (19 CFR Part 192).

Sections 192.1 through 192.4 of subpart A of Part 192 would set forth the procedures for the lawful exportation of used self-propelled vehicles. They would require a person attempting to export such a vehicle to furnish documentation sufficient to prove to Customs that the vehicle is lawfully owned by the exporter. This documentation would include the VIN. Definitions of "self-propelled vehicle," "used," "ultimate purchaser," and "export," all terms used in Pub. L. 98-573, would be defined in § 192.1.

As proof of ownership of the vehicle by the exporter, Customs would accept an original certificate of title, or a memorandum of ownership, or a right of possession, or any other document sufficient to prove lawful ownership, such as a bill of sale or a sales invoice. In lieu of an original document, Customs would accept a certified copy.

It was also proposed that the exporter must present 2 facsimiles of the original document or certified copy. Customs would authenticate both facsimile documents, one of which would remain in the possession of the exporter, and the other of which will be collected by Customs for forwarding to the National Automobile Theft Bureau (NATB), on the same day. While Customs would not retain copies of the documentation relating to the exportation, the NATB would enter the VIN and other information on the exported vehicles into their database for recordkeeping purposes.

Authentication by Customs would include the stamping of the facsimile documents with the date of their presentation. As to exportations at a land border, where the vehicle is to be transported by rail, highway, or under its own power, it was proposed that the date would most likely be the date of exportation. At sea borders, where the vehicle is to be transported by vessel, or at airports, where the vehicle is to be transported by aircraft, the date of presentation of the facsimile documents could often precede the actual date of exportation.

Second Proposal

After careful consideration of comments in response to this proposal, it was determined that certain modifications were needed. Accordingly, Customs published a second proposal on this subject in the **Federal Register** (53 FR 31367) on August 18, 1988, containing modifications to the original proposal. These modifications included: (1) Requiring that presentation of the vehicle and documentation occur at the port of exportation; (2) requiring that in the case of automobiles, trucks, motorcycles and buses, original or certified copies of Certificates of Title and two facsimiles of the original or certified copy be presented; (3) permitting the document presented to Customs to include the product identification number rather than the VIN, if the vehicle for which the document is presented does not have a VIN; (4) requiring that the vehicles and documents describing the vehicle to be exported be presented at the port of exportation at least three days before

actual exportation regardless of the specific mode of exportation; and (5) expanding § 192.3, Customs Regulations, to state that a $500 penalty will be assessed against an exporter who has already exported a vehicle without complying with the requirements set forth in Part 192, as well as an exporter attempting to export a vehicle without complying with the regulations.

Discussion of Comments

Eighteen comments were received in response to the second proposal. Eleven comments agreed in total with the regulations, as proposed, and seven recommended further modifications. A discussion of the comments recommending further modifications and our responses follow:

Comment: One commenter suggested that the definition of the term "export" be expanded to mean "the transportation of merchandise out of the U.S."

Response: We disagree. The definition of "export" as the "transportation of merchandise out of the U.S. for the purpose of being entered into the commerce of a foreign country" is a long accepted Customs definition. The commenter stated that the current definition of "export" would not include, for example, a vehicle that was stolen in the U.S. and transported to Mexico where it would be stripped for parts with the parts being shipped back into the U.S. The commenter is mistaken. The vehicle in the example would be considered "exported" under Customs definition.

Comment: One commenter stated that the $500 penalty set forth in § 192.4, Customs Regulations, is not enough.

Response: The penalty amount was set by Congress when it enacted 19 U.S.C. 1627a.

Comment: One commenter recommended that inspectors physically verify all VIN numbers.

Response: Such a requirement would place an impossible burden on Customs and it would not be an efficient use of our limited personnel, facilities and resources.

Comment: Two commenters stated that the requirement in § 192.2 that original or certified copies of Certificates of Title must be presented cannot be followed in Florida as the state requires surrender of title by the owner prior to exportation of the vehicle.

Response: According to the Department of Motor Vehicles in Florida, while the original title is not now required to be surrendered prior to export, new regulations are expected to be issued soon that would require the exporter to surrender the title. Accordingly, Customs is changing the the language in § 192.2(b), Customs Regulations, to reflect such situations as anticipated in Florida. The new language will provide that an original or certified Certificate of Title need not be presented if a Certificate of Title is not available as a result of state statutory requirements.

Comment: One commenter stated that it is unnecessary to utilize the new ownership verification procedures at the time of export for vehicles previously entered under in-bond procedures, carnets or TIB's.

Response: Because Customs verifies ownership when vehicles are entered temporarily and because in-bond procedures, carnets and TIB's require continuous Customs custody, Customs agrees that the new ownership verification procedures are not necessary when vehicles are exported under these circumstances. § 192.2(a) is amended accordingly.

Comment: One commenter stated that the regulations should state that Customs will provide the reported VIN or product identification number to the National Auto Theft Bureau for each exportation.

Response: Customs plans to do this, but does not beleive it is necessasry for the regulations to contain specific information regarding what Customs will do with the information it obtains.

Conclusion

After careful consideration of all the comments received and further review of the matter, it has been determined that the amendments, with the modifications discussed above, should be adopted. In addition, § 192.3 now sets forth the penalty provided for in 19 U.S.C. 1627a for knowingly importing, exporting or attempting to import or export: (1) Any stolen self-propelled vehicle, vessel or aircraft or part of a self-propelled vehicle, vessel or aircraft or (2) and self-propelled vehicle or part of a self-propelled vehicle from which the identification number has been removed, obliterated, tampered with or altered.

Executive Order

This document does not meet the criteria for a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the 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. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1515–0157. The estimated average annual burden per respondent/recordkeeper is 2½ hours depending on individual circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229, or the Office of Management and Budget, Paperwork Reduction Project (1515–AA65) Washington, DC 20503.

Drafting Information

The principle author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

19 CFR Part 192

Customs duties and inspection, Exports, Imports, Vehicles.

Amendments to the Regulations

Chapter I of Title 19, Code of Federal Regulations (19 CFR Chapter I) is amended by adding a new Part 192 as set forth below. Further, Part 178, Customs Regulations (19 CFR Part 178) is amended as set forth below:

PART 192—EXPORT CONTROL

Sec.
192.0 Scope.

Subpart A—Exportation of Used Self-Propelled Vehicles, Vessels, and Aircraft

192.1 Definitions.
192.2 Requirements for exportations.
192.3 Penalties.
192.4 Liability of carriers.

Authority: 19 U.S.C. 66, 1624, 1627a, 1646a.

§ 192.0 Scope.

This part sets forth regulations pertaining to procedures for the lawful exportation of used self-propelled vehicles, vessels and aircraft, and the penalties and liabilities incurred for failure to comply with any of the procedures. This part also sets forth regulations concerning controls exercised by Customs with respect to the exportation of certain merchandise.

Subpart A—Exportation of Used Self-Propelled Vehicles, Vessels, and Aircraft

§ 192.1 Definitions.

The following are general definitions for the purposes of this subpart A.

Export. "Export" refers to the transportation of merchandise out of the U.S. for the purpose of being entered into the commerce of a foreign country.

Self-propelled vehicle. "Self-propelled vehicle" includes any automobile, truck, tractor, bus, motorcycle, motor home, self-propelled agricultural machinery, self-propelled construction equipment, self-propelled special use equipment, and any other self-propelled vehicle used or designed for running on land but not on rail.

Ultimate purchaser. "Ultimate purchaser" means the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases a self-propelled vehicle for purposes other than resale.

Used. "Used" refers to any self-propelled vehicle the equitable or legal title to which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

§ 192.2 Requirements for exportation.

(a) *Basic requirements.* A person attempting to export a used self-propelled vehicle shall present to Customs, at the port of exportation, both the vehicle and a document describing the vehicle, which includes the Vehicle Identification Number or, if the vehicle does not have a Vehicle Identification Number, the product identification number. Exportation of a vehicle will be permitted only upon compliance with these requirements, unless the vehicle was entered into the United States under an in-bond procedure, or under a carnet or Temporary Importation Bond; a vehicle entered under an in-bond procedure, or under a carnet or Temporary Importation Bond is exempt from these requirements. The person attempting to export the vehicle may employ an agent for the exportation of the vehicle.

(b) *Documentation required.* In the case of automobiles, trucks, motorcycles and buses, original or certified copies of Certificate of Title (or other document if a Certificate of Title is not available as a result of state statutory requirements), and 2 facsimiles of the original or certified copy, shall be presented, In other cases, a certificate of title, memorandum of ownership, or right of possession, or any other document sufficient to prove lawful ownership, such as a bill of sale or a sales invoice, or a certified copy of any of these documents, as well as 2 facsimiles of the original or certified copy, shall be presented.

(c) *When presented.* If the vehicle is to be transported by vessel or aircraft, the documentation and vehicle must be presented at least 3 days prior to lading. If the vehicle is to be transported by rail, highway, or under its own power, the documentation and vehicle must be presented 3 days prior to exportation of the vehicle.

(d) *Authentication of documentation.* Customs shall authenticate both facsimile documents, one of which shall remain in the possession of the exporter and one of which shall be collected by Customs. Authentication will include the stamping of the facsimile documents with the date of presentation of the documents. The authenticated facsimile document will be the only acceptable evidence from the exporter of compliance with the requirements of this section.

§ 192.3 Penalties.

(a) A $500 penalty shall be assessed against an exporter attempting to export a vehicle without complying with the requirements set forth in this Part of the regulations.

(b) A $500 penalty shall be assessed against an exporter who has exported a vehicle without complying with the requirements set forth in this Part of the regulations.

(c) A penalty not to exceed $10,000 may be assessed against an importer or exporter who knowingly imports, exports or attempts to import or export:

(1) Any stolen self-propelled vehicle, vessel, aircraft or part of a self-propelled vehicle, vessel or aircraft; or

(2) Any self-propelled vehicle or part of a self-propelled vehicle from which the identification number has been removed, obliterated, tampered with, or altered.

(d) Any stolen self-propelled vehicle, vessel or aircraft or part thereof or any self-propelled vehicle or part of a self-propelled vehicle from which the identification number has been removed, obliterated, tampered with or altered may be subject to seizure and foreiture pursuant to 19 U.S.C. 1627a.

§ 192.4 Liability of carriers.

Under the provisions of 46 U.S.C. App. 91, the vessel master is charged with the responsibility for presenting a true manifest. If used vehicles are not included on the manifest or are inaccurately described thereon, a liability of not more than $1,000 nor less than $500 will be incurred.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 would continue 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 the following in the appropriate numerical sequence according to the section number under the column indicated:

§ 178.2 Listing of OMB Control Numbers.

19 CFR Section	Description	OMB Control No.
Part 192	Exportation of Used Self-Propelled Vehicles, Vessels and Aircraft.	1515-0157
* *	* *	*

William von Raab,
Commissioner of Customs.

Approved: April 11, 1989.

Salvatore R. Martoche,
Assistant Secretary of the Treasury.

[FR Doc. 89-9217 Filed 4-17-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 639

Worker Adjustment and Retraining Notification

AGENCY: Employment and Training Administration, Labor.

ACTION: Interim interpretative rule; delay of expiration date.

SUMMARY: The Employment and Training Administration of the Department of Labor is delaying the expiration date on an interim interpretative rule interpreting the provisions of the Worker Adjustment and Retraining Notification Act (WARN). WARN provides that, with certain exceptions, employers of 100 or

more workers must give at least 60 days' advance notice of a plant closing or mass layoff to affected workers or their representatives, to the State dislocated worker unit, and to the appropriate local government.

DATE: *Effective date:* This interim interpretative rule is effective on April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo; Telephone: (202) 535-0577.

SUPPLEMENTARY INFORMATION: The Worker Adjustment and Retraining Notification Act (WARN, the statute, or the Act), Pub. L. 100-379, 102 Stat. 890, was enacted on August 4, 1988. 29 U.S.C. 2101 *et seq.* Section 11 of the Act provides that WARN goes into effect on February 4, 1989. WARN provides that, with certain exceptions, employers of 100 or more workers must give at least 60 days' advance notice of a plant closing or mass layoff to affected workers or their representatives, to the State dislocated worker unit (see 29 U.S.C. 1661(b)(2)), and to the appropriate local government. 29 U.S.C. 2902 and 2903. Section 8(a) of the Act requires that the Secretary of Labor "prescribe such regulations as may be necessary to carry out this Act. Such regulations shall, at a minimum, include interpretative regulations describing the method by which employers may provide for appropriate service of notice as required by this Act." 29 U.S.C. 2107(a). Under section 11 of the Act, the authority to issue regulations for WARN became effective on August 4, 1988.

The Employment and Training Administration (ETA) of the Department of Labor (DOL or Department), on December 2, 1988, published an interim interpretative rule for WARN. 20 CFR Part 639, 53 FR 48884. The interim interpretative rule was to expire on April 1, 1989. 20 CFR 639.11, 53 FR at 48894. Comments on the interim interpretative rule were requested through January 31, 1989.

On December 5, 1988, ETA published a proposed rule to revise 20 CFR Part 639, which was expected to be effective by April 1, 1989. 53 FR 49076. The comment period on the proposed rule was to end on February 3, 1989.

Substantial commentary was received from the business community, unions, members of Congress, trade associations, and other groups. Publication of the final rule was postponed to respond to the interests and concerns of commenters concerning various aspects of WARN. On March 31, 1989, an interim interpretative rule announcing the postponement and delaying the expiration date of the interim interpretative rule was published 54 FR 13166. The final rule will be published in a separate document within a few days.

The expiration date on the interim interpretative rule is being extended until May 26, 1989 to allow time for publication and to permit those employers, workers, and their representatives affected by the regulations adequate time to study the provisions of the final rule before it takes effect.

Regulatory Impact

The interim interpretative rule interprets the provisions of the Worker Adjustment and Retraining Notification Act. It imposes no burdens on employers or others; implementation flows from the Act itself. As it would not have the financial or other impact to make it a major rule, preparation of a regulatory impact analysis is unnecessary. See Executive Order No. 12291, 5 U.S.C. 601 note.

Insofar as is possible, however, DOL intends to perform an analysis of the impact of the Act, this interim interpretative rule, and the final rule, to aid the General Accounting Office in its function of reporting to Congress on the Act.

The interim interpretative rule was not preceded by a general notice of proposed rulemaking. Therefore, it is not a "rule" as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2).

List of Subjects in 20 CFR Part 639

Employment, Labor, Labor management relations, Labor unions, Penalties.

Interim Interpretative Rule

Accordingly, Part 639 of Chapter V of Title 20, Code of Federal Regulations, is amended as follows:

PART 639—[AMENDED]

1. The Authority citation continues to read:

Authority: 29 U.S.C. 2107(a).

§ 639.11 [Amended]

2. Section 639.11 is amended by removing the term "April 18, 1989" and inserting in lieu thereof the term "May 26, 1989".

Signed at Washington, DC, this 13th day of April 1989.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 89-9375 Filed 4-17-89; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-409]

Crane or Derrick Suspended Personnel Platforms

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Redesignation.

SUMMARY: On August 2, 1988, the Occupational Safety Health Administration (OSHA) published a final rule [53 FR 29116] prohibiting the use of cranes or derricks to hoist personnel, except where no safe alternative is present and where employers comply with the provisions of § 1926.550(g). Since that time, the Agency has become aware of confusion among some employers regarding the regulatory intent of the requirement (§ 1926.550(g)(3)(i)(D)) for controlled load lowering and the prohibition of free fall. The pertinent regulatory language clearly requires that cranes or derricks used to hoist personnel "have a system or device on the power train" to ensure that employees receive the necessary protection. However, that language appears with the "Operational criteria" (paragraph (g)(3)(i)) rather than with the "Instruments and components" provisions (paragraph (g)(3)(ii)). As a result, some employers have apparently concluded mistakenly that cautious operation alone would be an acceptable substitute for the installation of "instruments and components." Therefore, in order to correct the perceived misunderstanding, OSHA hereby redesignates § 1926.550(g)(3)(i)(D) to § 1926.550(g)(3)(ii)(D). By this redesignation, the Agency will indicate clearly that the intended degree of employee protection is achieved through the cautious operation of a properly equipped crane or derrick, and not by the cautious operation of a crane or derrick lacking the required safety devices.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, Room N-3637, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Telephone: (202) 523-8148.

SUPPLEMENTARY INFORMATION:

List of Subjects in 29 CFR Part 1926

Construction safety, Construction industry, Cranes, Derricks, Hoisting, Personnel platform, Rigging.

Accordingly, Title 29, Part 1926 is amended as set forth below.

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

1. The authority citation for Subpart N of Part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 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), or 9–83 (49 FR 35736), as applicable. Section 1926.550 also issued under 29 CFR Part 1911.

§ 1926.550 [Amended]

2. In § 1926.550(g)(3)(i), paragraph (g)(3)(i)(D) is redesignated as paragraph (g)(3)(ii)(D) and paragraphs (g)(3)(i)(E) through (g)(3)(i)(G) are redesignated as paragraphs (g)(3)(i)(D) through (g)(3)(i)(F), respectively.

Signed at Washington, DC, this 13th day of April 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

[FR Doc. 89–9179 Filed 4–17–89; 8:45 am]

BILLING CODE 4510–26–M

POSTAL SERVICE

39 CFR Part 111

Use of Sampling Process for Indemnity Claims

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Domestic Mail Manual (DMM) to provide for an optional sampling procedure for mailers who file large numbers of COD claims annually. The use of sampling procedures reduces administrative costs both for the Postal Service and for most mailers filing large numbers of claims. Adjudication will be handled by the St. Louis Postal Data Center instead of Postal Service Headquarters.

EFFECTIVE DATE: June 18, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce Steele, (202) 268–5312.

SUPPLEMENTARY INFORMATION: On June 19, 1987, the Postal Service published a notice in the **Federal Register** (52 FR 23308) soliciting comments on a proposal that would have made mandatory the sampling procedures that are now optional for mailers who submit 2,000 or more COD claims annually. The Postal Service reconsidered the proposal, revised it in various respects, and republished the revised version for comment on May 26, 1988, in the **Federal Register** (53 FR 19001). Under the revised proposal, the sampling process is not mandatory, but remains optional.

No comments were received on the revised proposal. Accordingly, this final rule adopts that proposal, with minor changes in 149.622, concerning the officials within the Postal Service assigned to handle particular aspects of the procedure for computing the number of claims to be sampled. As noted in the Summary, the revised proposal provides benefits both for mailers who use it and the Postal Service. Those benefits were fully described in the revised proposal as published on May 26, 1988, and are not repeated here.

In view of the consideration discussed above, the Postal Service hereby adopts the following amendments of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1).

List of Subjects in 39 CFR Part 111

Postal Service

PART 111—[AMENDED]

1. The authority citation of 39 CFR Part 111 continues to read as follows:

Authority: 15 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Renumber 149.6 through 149.8 as 149.7 through 149.9, respectively. Add new 149.6 reading as follows:

PART 149—INDEMNITY CLAIMS

149.6 Sample Claims

149.61 Who may file

.611 Any COD mailer may request permission from the Manager, Claims and Inquiry Branch, Postal Data Center (PDC), P.O. Box 80143, St. Louis, MO 63180–9143, to file under these alternative procedures. The manager will approve the request when it is the most cost-efficient method of processing the mailer's claims, according to the standards set forth in 149.612. Mailers are encouraged to participate in this program, because of the following benefits:

a. Fewer individual claims need to be presented by the mailer. Since claims filed by most large mailers are computer-generated, the savings to mailers may be significant.

b. No inquiries or follow-up claims have to be filed by the mailer. This saves the mailer time, and also reduces overall costs incurred in filing claims.

c. The use of sampling procedures in lieu of processing individual claims minimizes the costs to the Postal Service.

.612 If the Manager, Claims and Inquiry Branch, determines that use of the sampling procedure is not the most effective and efficient method of processing the mailer's claims, the manager will notify the mailer, and instruct the post office to process the claims individually. Consider the following general criteria in making the decision:

a. Expense to the mailer;

b. Expense to the U.S. Postal Service;

c. Expedition of the claims process;

d. Availability of labor and resources to process the claims at the accepting post office;

e. Whether use of the sampling procedure will result in an accurate determination of the Postal Service's responsibility for indemnification of the claimant;

f. Other interests of the Postal Service.

Claimants have the right to appeal the manager's determination in accordance with 149.81.

.613 Mailers who file claims under the provisions of this section are deemed to have consented to adjudication of those claims as prescribed in 149.64.

149.62 Procedures for Filing Claims Under a Sampling Agreement

.621 List of Claims and Number of Articles Mailed. The claimant must present a list of all COD items eligible for adjudication to the Claims and Inquiry Section of any post office, or the employee in a post office who has been designated to handle indemnity claims. The list must conform with the following conditions:

a. For each claimed item, the list must contain the COD number followed by the name and address of the addressee, date of mailing, postage, fee, and amount due sender. All items must be listed by COD number, in ascending numerical order.

b. The list must contain all claims for the period covered by the list. No additional claims for articles mailed during that time frame may be submitted. No additional claims may be filed under these procedures until any previous claims under these procedures have been completed. A mailer may not submit more than three groups of claims under these procedures annually.

c. The list must contain a summary sheet showing the total number of claims and total amount due to the sender.

d. The claimant must submit a statement showing the total number of COD articles mailed during the time period represented by the sample.

.622 Computing the Number of Claims to be Sampled. The postmaster will send a memorandum requesting the number of claims to be sampled to: Manager, Claims & Inquiry Branch, Postal Data Center, P.O. Box 14677, St. Louis, MO 63180-9000.

This memorandum will contain the name and address of the mailer, the total number of claims on the listing, and the name(s) and phone number(s) of the employee(s) primarily responsible for processing the sample. In addition, the postmaster will include in the memorandum submitted to the St. Louis PDC a copy of the mailer's statement showing the total number of COD articles mailed during the time period represented by the sample.

Upon receipt of the memorandum, the St. Louis PDC will apply the sampling method commonly referred to as "Sampling For Estimation of Proportions" to determine the number of claims to be sampled, the first claim to be sampled and the sampling interval to identify the subsequent claims to be sampled.

Note: Under the procedure, "Sampling for Estimation of Proportions," an assumed approximate proportion, confidence level (95 percent), and target precision level allow a computation of a required sample size from a finite universe of specific size. A systematic random sampling procedure is effected, with the sampling interval being the largest integer not exceeding the ratio of universe to sample size.

The Manager, Claims and Inquiry Branch, at the St. Louis Postal Data Center (PDC), will issue a memorandum to the postmaster showing the total number of claims to be sampled, the first claim on the list to be sampled, and the interval for sampling the remaining claims. Upon receipt, the postmaster will provide a copy of the memorandum to the claimant. The Manager, Claims and Inquiry Branch, will coordinate the sample, and will provide additional instructions to the post office.

.623 Marking the List of Claims. The claims and inquiry employee will mark the list showing all claims that will be sampled, starting with the first claim specified by the memorandum. The marked list will be returned to the mailer.

.624 Completion of Claim Forms. Using the marked list, the mailer must complete the portions of the claim form (PS Form 3812, *Request for Payment of Domestic Postal Insurance*) normally completed by customers who file individual claims (see 149.313), for each claim to be sampled. Information on the claim form must be identical to the entries on Form 3877, *Firm Mailing Book for Registered, Insured, C.O.D., Certified and Express Mail*, or its facsimile. The actual date of mailing must be used. In addition, the claimant will be required to complete other portions of the form (for example, inserting the claim number and special identification marking by computer).

Note: The name and address of the mailer shown on the Form 3877 and Form 3812 must be the same as the name and address of the mailer shown on the COD tags.

.625 Submission of Claim Forms. Mailers should return the marked list and completed claim forms (along with proof of mailing) within two weeks of receipt of the marked list. Mailers must submit claim forms in the same order as they appear on the list. At the same time, mailers must also provide a separate listing of the claims to be sampled. In addition, mailers are encouraged to provide the post office with a set of address labels showing the complete names and addresses of the addressees. This will expedite sending the inquiry portion of the claim form to the addressee.

.63 Partial Payment. A partial payment, based on those COD claims that can be verified by the addressee post office, generally will be made 45 to 60 days after the claims have been sent to the addressee post office for verification.

.631 In determining partial payment, the PDC will follow the guidelines for adjudication outlined in 149.641 and 149.642.

.64 Adjudication

.641 Computation of Payable Claims. The St. Louis PDC is responsible for determining the number of payable and non-payable COD claims under the sampling procedures, after receipt of the verification process completed by the local post office.

a. The PDC will determine the payment due claimant by multiplying the precentage of claims found to be payable by the number of claims submitted, and then multiplying the result by the average value of payable claims sampled. For the partial payment, the PDC will determine the partial payment due claimant by multiplying the percentage of claims found to be payable at that time by the number of claims submitted, and then multiplying the result by the value of the smallest payable claim sampled.

b. Before determining payment due claimant, the PDC will adjust the total number of claims by: (1) Subtracting any articles or contents returned to sender without a COD tag; (2) subtracting from the total due any sender checks made out to the mailer which are discovered. These checks will count as payable claims and will be given to the mailer.

.642 Notification of results. The St. Louis PDC will prepare a report to the mailer showing the following:

a. Number of claims submitted by the mailer;

b. Number of claims deducted from the total number submitted by the mailer and the reason for the deduction;

c. Number of payable claims in the sample;

d. Number of nonpayable claims in the sample;

e. Percent of payable claims;

f. Number of payable claims from the total number of claims submitted by the mailer;

g. Average value of claims in the sample less the COD fee;

h. Number and dollar value of any checks and money orders submitted by COD recipients;

i. Total amount due the mailer;

j. Partial payment already made;

k. Balance due mailer.

.643. Mailer Review. The Postal Data Center (PDC) will issue a check for the balance due to the mailer along with the report provided in 149.642. Upon review of the report, the mailer has the option of reviewing the results of the addressee post office's search of delivery records shown on disallowed completed claim forms. The mailer must exercise this option within two weeks of receipt of the report and check from the PDC. Failure to do so will constitute the mailer's concurrence with the report provided by the PDC.

Photocopies of completed claim forms or delivery records cannot be provided to mailers. This review of the nonpayable claims must take place with postal personnel at the post office where the claims were filed prior to the issuance of a check. If a discrepancy is noted, the check should be returned to the Postal Data Center showing the reason for the discrepancy. The Postal Data Center will reissue a check after the discrepancy is resolved. The cashing of the check for the balance due by the mailer constitutes the mailer's

concurrence with the report provided by the PDC.

.644 Appeal. If any discrepancies cannot be resolved, the mailer may appeal the decision in accordance with 149.81.

.65 Exhibit 149.6 contains a sample schedule for completion of this process. Any individual claim may take more or less time to complete each stage of the process.

EXHIBIT 149.6.—TIME LIMITS FOR COMPLETING CLAIMS SAMPLE

Action	Time limit
1. Mailer submits list of claims.	Within 1 yr. of date of mailing.
2. Post office sends memorandum to Headquarters and St. Louis PDC.	Within 3 days of receipt of list of claims from mailer.
3. Headquarters responds.	Within 1 week of receipt of notification.
4. Post office provides copy of response to mailer.	Immediately upon receipt.
5. Post office marks list of claims and returns to mailer.	Within 1 week of receipt of response.
6. Mailer completes claim forms and returns claims and list to post office.	Within 2 weeks from receipt of marked list.
7. Verification of claim forms.	Immediately upon receipt.
8. Initial processing of claims by accepting post office.	Within 2 weeks of receipt from mailer.
9. Duplicate claims completed and processed by accepting post office.	30 days after last claim is processed, complete and process immediately.
10. Partial payment issued.	Within 45 to 60 days from beginning of sampling.
11. Final claims action	2 weeks after last duplicate claim is processed, begin telephone inquiries.
12. Adjudication and preparation of report and check by St. Louis PDC.	2 weeks.
13. Mailer review of report.	Immediately upon receipt.
14. Mailer review of claim forms (optional).	Within 2 weeks of notification to St. Louis PDC.
15. Issuance of check	Immediately.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and transmitted to subscribers automatically. Notice of these changes will be published in the Federal Register as provided in 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89-9161 Filed 4-17-89; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6954]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

§ 65.4 [Amended]

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama	Montgomery, Elmore, Autauga, Lowndes.	City of Montgomery	Apr. 7, 1989, Apr. 14, 1989, *Alabama Journal.*	The Honorable Emory Folmar, Mayor, City of Montgomery, P.O. Box 1111, Montgomery, Alabama 36192.	Mar. 27, 1989	010174
*	*	*	*	*	*	*
Florida	Dade	Unincorporated areas.	Apr. 6, 1989, Apr. 13, 1989, *Miami Review.*	The Honorable Joaquin Avino, County Manager, Dade County, Metro Dade Center, 111 N.W. 1st Street, Suite 2910, Miami, Florida 33128-1971.	Mar. 27, 1989	125098
*	*	*	*	*	*	*
Hawaii	Maui	Unincorporated areas.	Apr. 7, 1989, Apr. 14, 1989, *Honolulu Advertiser, Maui News.*	The Honorable Hannibal Tavares, Mayor, Maui County, 200 South High Street, Wailuku, Maui, Hawaii 96793.	Apr. 3, 1989	150003 B
*	*	*	*	*	*	*
Michigan	Wayne	Township of Canton	Apr. 12, 1989, Apr. 19, 1989, *Community Crier.*	The Honorable Thomas Yack, Township Supervisor, 1150 S. Canton Center Road, Canton, Michigan 48188.	Apr. 3, 1989	260219
*	*	*	*	*	*	*
Texas	Nueces and Kleberg	City of Corpus Christi	Apr. 5, 1989, Apr. 12, 1989, *The Corpus Christi Caller-Times.*	The Honorable Betty Turner, Mayor of the City of Corpus Christi, Nueces and Kleberg Counties, P.O. Box 9277, Corpus Christi, Texas 78469.	Mar. 22, 1989	485464 C
*	*	*	*	*	*	*

Issued: April 10, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-9206 Filed 4-17-89; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determination, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

PART 67—[AMENDED]

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

PROPOSED BASE (100 YEAR) FLOOD ELEVATIONS

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
ARKANSAS	
Fayetteville (city), Washington County (FEMA Docket No. 6943)	
Hamestring Creek:	
At confluence of North Fork Hamestring Creek	*1,209

PROPOSED BASE (100 YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD), Modified
Approximately 0.3 mile upstream of Wedington Drive	*1,255
South Fork Hamestring Creek:	
At confluence with Hamestring Creek	*1,235
At downstream side of Giles Road	*1,251
Maps available for inspection at the City Inspection Office, 113 West Mountain, Fayetteville, Arkansas.	
MARYLAND	
Allegany County (unincorporated areas) (FEMA Docket No. 6939)	
Wills Creek:	
Approximately 60 feet downstream of Locust Grove Road	*658
Approximately 80 feet downstream of State boundary	*730
Jennings Run:	
Confluence with Wills Creek	*715
Approximately 360 feet upstream of confluence with Wills Creek	*715
Braddock Run:	
Confluence with Wills Creek	*667
Approximately 550 feet upstream of confluence with Wills Creek	*667
Maps available for inspection at the Allegancy County Planning and Zoning Commission, County Office Building, Cumberland, Maryland.	
NEW JERSEY	
Bridgewater (township), Somerset County (FEMA Docket No. 6939)	
Raritan River:	
Area south of Main Street and west of Interstate 287 at American Cyanamid Plant	*38
Area east of Cuckels Brook and south of Maine Street at American Cyanamid Plant	*43
Maps available for inspection at the Municipal Building, 700 Garreston Road, Bridgewater, New Jersey.	
OKLAHOMA	
Tulsa County (unincorporated areas) (FEMA Docket No. 6943)	
Haikey Creek:	
Approximately 300 feet upstream of 129th East Avenue (Olive Avenue)	*597
Upstream side of Garnett Road	*603
Maps available for inspection at the Tulsa County Administration Building, 500 South Denver, Tulsa, Oklahoma.	
PENNSYLVANIA	
West Whiteland (township), Chester County (FEMA Docket No. 6943)	
Colebrook Run:	
Upstream of CONRAIL bridge	*279
Approximately 0.42 mile upstream of CONRAIL bridge	*281
Maps available for inspection at the Township Building, 222 N. Pottstown Pike, Exton, Pennsylvania.	

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-9207 Filed 4-17-89; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF DEFENSE

Department of the Army

48 CFR Ch. 51; Part 5119

Federal Acquisition Regulation Supplement; Small Business Competitiveness Demonstration Program—Dredging

AGENCY: Department of the Army (DA), DOD.

ACTION: Interim rule and request for comments.

SUMMARY: The Department of the Army is establishing Chapter 51 Federal Acquisition Regulation Supplement to add Part 5119, Subpart 5119.10 to further implement FAR Subpart 19.10 and the December 22, 1988 joint Office of Federal Procurement Policy (OFPP) and Small Business Administration (SBA) interim policy directive and test plan implementing Title VII of the "Business Opportunity Development Reform Act of 1988," Pub. L. 100-656 (53 FR 52889).

DATES: *Effective:* April 18, 1989. This rule is effective for all affected solicitations issued after the above effective date.

Comments: Comments on the interim rule should be submitted to the address shown below not later than May 18, 1989, to be considered in the fromulation of the final rule.

ADDRESS: Interested parties should submit written comments to: U.S. Army Corps of Engineers, Office Chief of Engineers, ATTN: CEPR-P/Mr. Gagliardi, Room 4108, 20 Massachusetts Avenue NW., Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mary M. Pearson, Department of the Army, SFRD-KP, telephone (202) 697-1004.

SUPPLEMENTARY INFORMATION:

A. Background

Title VII of the "Business Opportunity Development Reform Act of 1988" seeks to test the effectiveness of emphasis on increased participation of small businesses under certain targeted industry categories and the ESB emphasis identified for the designated industry groups through a new program, entitled the "Small Business Competitiveness Demonstration Program." Section 722 of Pub. Law 100-656, requires the Secretary of the Army to establish a program to expand small business participation in dredging, hereafter referred to as the "Dredging Program." The Dredging Program has two primary objectives: (1) To expand participation of small business firms, and a newly defined subcategory of emerging small business (ESB) concerns, in contracting opportunities for dredging, through restricted competition; and (2) To demonstrate whether there exists in the marketplace a sufficient number of small business concerns and ESB concerns which meet the current size standard assigned for SIC Code 1629 (Dredging and Surface Cleanup Activities), as an indicator of the adequacy of the current size standard.

B. Regulatory Flexibility Act

As stated in the joint policy directive (53 FR 52889), the Office of Federal Procurement Policy and the Small Business Administration will prepare the appropriate regulatory flexibility analysis upon completion of the first quarterly review under the Program.

C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of the Army to issue this coverage as an interim rule. This action is necessary in order to implement Pub. L. 100-656, section 722, and the Small Business Competitiveness Demonstration Program.

List of Subjects in 48 CFR Part 5119

Government procurement, Small business procurement.

Therefore, Title 48 of the Code of Federal Regulations is amended by establishing Chapter 51 and Part 5119 as set forth below.

CHAPTER 51—DEPARTMENT OF THE ARMY ACQUISITION REGULATIONS

PART 5119—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 5119.10—Small Business Competitiveness Demonstration Program

Sec.
5119.1001 General.
5119.1002 Definitions.
5119.1003 Purpose.
5119.1004 Participating Agencies.
5119.1005 Applicability.
5119.1070 Procedures.
5119.1070-2 Emerging small business set-asides.
5119.1070-3 Identification and reporting.
5119.1071 Solicitation provisions and contract clauses.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, FAR 1.301 and DOD FAR Supplement 201.301.

Subpart 5119.10—Small Business Competitiveness Demonstration Program

5119.1001 General.

This subpart implements Pub. L. 100-656, section 722, "Expanding Small Business Participation in Dredging" (the Dredging Program). The Program will be conducted through 30 September 1992.

5119.1002 Definitions.

(S-90) "Emerging Small Business Reserve Amount" (ESBRA) means the dollar threshold for contracting opportunities in dredging, below which competition shall be conducted exclusively among emerging small business concerns. This amount is set forth in 5119.1070-2(a)(S-90).

5119.1003 Purpose.

(c)(S-90) The purpose of the Dredging Program is to—

(i) Expand small business and emerging small businesses (ESB) participation in contracting opportunities for dredging through restricted competition.

(ii) Demonstrate the existence of a sufficient number of small businesses and ESBs which meet the current size standard for Standard Industrial Code (SIC) Code 1629 (Dredging and Surface Cleanup Activities) as an indicator of the adequacy of the current size standard.

5119.1004 Participating agencies.

Participation in this Dredging Program is limited to the Department of the Army, Corps of Engineers.

5119.1005 Applicability.

(S-90) The program shall apply to solicitations issued by the Department of the Army Corps of Engineers buying activities for the procurement of dredging under SIC 1629 (Dredging and Surface Cleanup Activities), limited to Federal Procurement Data Systems (FPDS) codes Y216 and Z216. This includes both maintenance dredging and new start (new work) construction dredging. Dredging to be performed by Government forces utilizing the Federally owned fleet pursuant to 33 U.S.C. 622 is not subject to the program.

5119.1070 Procedures.

5119.1070-2 Emerging small business set-aside.

(a)(S-90) Solicitations for dredging shall be set-aside for exclusive competition among ESBs when the estimated award value is equal to or less than the emerging small business reserve amount (ESBRA) of $600,000. (Except that dredging acquisitions shall continue to be considered for placement under the 8(a) program (see FAR Subpart 19.8) and for small disadvantaged business set-asides (see DFARS 219.502-72)). The ESBRA applies only to new awards. Modifications or follow-on awards to contracts having an initial award value in excess of the ESBRA are not subject to this requirement. The set-aside requirements in DFARS 219.1070-2 (a) and (b) for designated industry groups acquisitions valued at $25,000 or less shall be complied with for all dredging program set-asides.

(S-90) The contracting office shall include the applicable SIC Code and dollar size standard in the synopsis of proposed procurement as published in the Commerce Business Daily (CBD), in the presolicitation notice (construction contract) SF 1417 when issued, and in the solicitation documents.

(S-91) The contracting officer shall consider use of the following initiatives to increase participation by small businesses and emerging small businesses:

(1) Specifying of contract requirements and contractual terms and conditions which are conducive to competition among small business and emerging small business concerns, consistent with the mission or program requirements of the Department of the Army, Corp of Engineers.

(2) Encouraging joint ventures, teaming agreements, and similar arrangements consistent with the Small Business Act (15 U.S.C. 637(d)) for the purpose of including small business concerns in contracting opportunities. However, no such joint venture shall exceed the applicable size standard.

(3) Making maximum use of subcontracting through plans negotiated and enforced pursuant to section 8(d) of the small business act. Goals may be specified in solicitations stating minimum percentages of subcontracting.

5119.1070-3 Identification and reporting.

(b) Reporting shall be done in accordance with DFARS 204.6 designated industry group requirements. Block B12A, DD Form 350, shall contain either the FPDS Code Y216 or Z216, as applicable, per 5119.1005 (S-90).

5119.1071 Solicitation provisions and contract clauses.

(a) DFARS provision 252.219-7012 shall be inserted in all solicitations issued under the Small Business Dredging Program (SIC 1629, limited to FPDS Service Codes Y216/Z216).

(b) DFARS clause 252.219-7013 shall be inserted in all solicitations and contracts set-aside for emerging small businesses in accordance with 5119.1070-2(a)-(S-90).

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 89-9149 Filed 4-17-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 81132-9033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the portion of the total allowable catch (TAC) of sablefish allocated to trawl gear in the West Yakutat District of the Gulf of Alaska has been reached. The Secretary of Commerce is prohibiting further retention of sablefish by trawl vessels fishing in this district from 12:00 noon, Alaska Daylight Time (ADT), on April 12, 1989 through December 31, 1989.

EFFECTIVE DATE: 12:00 noon, a.d.t., on April 12, until midnight, Alaska Standard Time (a.s.t.), December 31, 1989.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR Part 672. Section 672.20(a) of the regulations establishes an optimum yield range of 116,000-800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. The TACs for target species and species groups are specified annually and apportioned among the regulatory areas and districts.

Section 672.24(b)(1) restricts the trawl catch of sablefish in the Eastern Regulatory Area to five percent of the TAC. The Eastern Regulatory Area is divided into two districts, one of which is the West Yakutat District. The 1989 TAC specified for sablefish in the West Yakutat District is 4,500 mt (54 FR 6524, February 13, 1989); five percent of the TAC in this district is 230 mt. Under § 672.24(b)(3)(ii), if the share of the sablefish TAC assigned to any type of gear for any area or district is reached, further catches of sablefish must be treated as prohibited species by persons using that type of gear for the remainder of the year.

Sablefish are caught incidentally by vessels using trawl gear while fishing for other groundfish species. The Regional Director reports that 182 mt of sablefish have been harvested by catcher/processor vessels through April 8, 1989. Current daily catch rates by these vessels is as high as 17 mt per day. At this catch rate, the balance of the 230 mt allocated to trawl vessels will be harvested by 12:00 noon, a.d.t., April 12, 1989.

Therefore, pursuant to § 672.24(b)(3)(ii), the Secretary is prohibiting further retention of sablefish caught with trawl gear in the West Yakutat District effective 12:00 noon, A.D.T., April 12, 1989. Any sablefish caught with trawl gear after that date must be treated as prohibited species and discarded at sea.

Allocation of the sablefish resource between hook-and-line and trawl gear in the West Yakutat District and the continued health of all components of the sablefish fishery will be jeopardized unless this notice takes effect promptly. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on the necessity for this action are invited for a period of 15 days after the effective date of this notice. Public comments on this notice of closure may be submitted to the Regional Director at the address above until April 27, 1989. If written comments are received which oppose or protest this action, the Secretary will reconsider the necessity of this action, and, as soon as practicable after that reconsideration, will publish in the **Federal Register** a notice either of continued effectiveness of the adjustment, responding to comments received, or that modifies or rescinds the adjustment.

Classification

This action is taken under §§ 672.22 and 672.24, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: April 12, 1989.

Alan Dean Parsons,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-9163 Filed 4-12-89; 4:41 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 73
Tuesday, April 18, 1989

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[DA-89-009]

Milk in the Chicago Regional Marketing Area; Proposed Termination of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed termination of rule.

SUMMARY: This notice invites comments on a United States Department of Agriculture recommendation that Crawford and Grant Counties in Wisconsin be removed from the Chicago Regional milk order marketing area through a termination action. The hearing that led to the recommendation pertained to proposed amendments to the Iowa order which would add these two counties to the Iowa marketing area. In order to implement the proposed amendment to the Iowa order, the Department is proposing that the two counties be terminated from the provision defining the Chicago order marketing area.

DATE: Comments are due on or before May 9, 1989.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 447-4829.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. This action would not affect the regulatory status of milk handlers nor would it have an adverse impact upon dairy farmers who have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the termination of the following provisions of the order regulating the handling of milk in the Chicago Regional marketing area is being considered:

1. In § 1030.2(b)(1), the words "Crawford", and "Grant".

All persons who want to send written data, views, or arguments about the proposed termination should send two copies of them to the United States Department of Agriculture, Dairy Division, Agricultural Marketing Service, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, not later than 21 days after the publication of this notice in the **Federal Register**.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed termination would delete from the Chicago Regional marketing area the counties of Crawford and Grant in the State of Wisconsin. Those counties would be added to the marketing area of the Iowa order if a recommended decision to expand the Iowa marketing area is adopted. Accordingly, the U.S. Department of Agriculture is proposing to remove the counties from the Chicago Regional order marketing area by terminating the names of the two counties from the provision defining the marketing area.

This proposed termination is based upon the evidence obtained at a public hearing held in Davenport, Iowa, beginning August 9, 1988, to consider, among other proposals, a proposal by Swiss Valley Farms, Co., to expand the Iowa marketing area by adding several unregulated counties in Illinois, Iowa, and Missouri, and Crawford and Grant Counties in Wisconsin. The two Wisconsin counties now are part of the marketing area for the Chicago Regional marketing area. The Administrator of the Agricultural Marketing Service, United States Department of Agriculture has found that Crawford and Grant Counties should be part of the Iowa marketing area and proposes, therefore, that continuation of such counties as part of the Chicago Regional marketing area would not tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended. A recommended decision on the issues considered at the hearing is being released concurrently with this proposed termination. Therefore, comments are sought to determine whether the aforementioned provisions should be terminated.

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1030 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-675.

Signed at Washington, DC, on: April 12, 1989.

J. Patrick Boyle,
Administrator.

[FR Doc. 89-9154 Filed 4-17-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1036

[Docket No. A0-179-A52; DA 88-113]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends certain changes in the classification provisions of the Eastern Ohio-Western Pennsylvania milk order based on industry proposals considered at a public hearing held November 1, 1988.

The classification of milk used to make buttermilk biscuit and pancake mixes would be changed from Class I to Class III, eliminating raw product cost differences for milk so used between the Eastern Ohio-Western Pennsylvania order and surrounding Federal order markets. The decision also recommends that milk dumped by handlers be classified as Class III without prior notification to the market administrator.

Proposals to change the classification of lowfat eggnog from Class I to Class II and of buttermilk used by a retail business to make biscuits from Class I to Class III are denied.

DATE: Comments are due on or before May 3, 1989.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

Prior document in this proceeding:

Notice of Hearing: Issued October 13, 1988; published October 18, 1988 (53 FR 40733).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC, 20250, by the 15th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Middleburg Heights, Ohio, on November 1, 1988, pursuant to a notice of hearing issued October 13, 1988 (53 FR 40733).

The material issues on the record of hearing relate to:

1. Classification of buttermilk products for use in biscuit and pancake mixes.
2. Classification of milk dumped by handlers.
3. Classification of lowfat eggnog.
4. Temporary increase of pool supply plant delivery requirement to pool distributing plants.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Classification of buttermilk biscuit and pancake mixes.* Under the Eastern Ohio-Western Pennsylvania milk order, a Class III classification should apply to skim milk and butterfat used to produce buttermilk biscuit and pancake mixes. At the present time, these products are not designated in the classification provisions of the order, and milk used in the products is therefore considered Class I. However, a product identified as buttermilk that is packaged and sold to restaurants for use in making biscuits should retain its Class I classification.

Sani-Dairy and Oberlin Farms Dairy, Inc., proposed that buttermilk biscuit mix be given a Class III classification. The witness testifying in support of the proposal also recommended that the classification of milk used in buttermilk pancake mix also be changed to Class III, as that product is similar to buttermilk biscuit mix. The witness for the two handlers testified that buttermilk biscuit mix is not a retail product, but is sold to fast food restaurants, bakeries, and other restaurants for use in baking biscuits. He stated that the product is labeled "Buttermilk biscuit mix (for further manufacturing)", and contains added stabilizer, salt and biscuit flour. The witness stated that the added salt changes the taste of buttermilk and the flour changes the color, making the buttermilk biscuit mix unpalatable for drinking.

The witness testified that Sani-Dairy is located in Pennsylvania outside the Order 36 marketing area with more than 15 percent of its receipts sold as route disposition inside the marketing area as is required for pool status. Because of the dairy's location in western Pennsylvania, it competes with other Pennsylvania handlers for sales of the buttermilk biscuit mix item to fast food restaurants. Many of these Pennsylvania handlers are regulated by the Pennsylvania Milk Marketing Board (PMMB), which classifies milk used in buttermilk biscuit mix as Class II. Because PMMB milk regulation has only two classes, the Class II price under the PMMB is equivalent to the Order 36 Class III price. Sani-Dairy, then, finds itself at a competitive disadvantage because of the order's Class I classification of milk used in buttermilk biscuit mix.

Changing the classification of milk used to make buttermilk biscuit mix to Class III was opposed by Milk Marketing, Inc. (MMI), a cooperative association representing a large number of producers pooled under the order. An MMI witness testified that while the product is not designed to be consumed as a beverage in fluid form as Class I products are, it is not storable, market-clearing or national in distribution as Class III products should be. The MMI witness recommended that buttermilk biscuit mix be classified in Class II, and supported the recommendation by citing the "Uniform Classification Decision" which established uniform classification throughout the majority of Federal milk order markets. The witness also observed, however, that the product is currently classified in Class III in the adjoining Ohio Valley order.

Since buttermilk biscuit mix, as formulated and packaged by proponents, is not intended to be distributed for use as a beverage and because the record shows that its basic composition is that of a nonfluid milk product, it is appropriate to classify the product in a lower-priced class. Likewise, buttermilk pancake mix should be treated similarly, as it appears to be a closely-related product. Changing the classification of buttermilk biscuit mix will place Order 36 handlers on a comparable basis with handlers regulated by the nearby Federal orders 33 and 40, and with handlers regulated by PMMB. Including buttermilk pancake mix as a Class III use will place Order

36 handlers on a comparable basis with Order 40 and PMMB-regulated handlers. In Order 33, pancake mix is classified as Class II. Due to the small difference between the Class II and Class III prices and the minor volume of milk used in pancake mixes, it is not expected that the product's differing classification in Orders 33 and 36 will cause handlers to gain any material competitive advantage.

Taylor Milk Company proposed that the classification of buttermilk biscuit mixes, buttermilk and buttermilk blends sold for use in on-premises baking at a retail business should be changed from Class I to Class II. A representative of Taylor Milk Company testified that during the past five years, the buttermilk market has broadened from sales for fluid consumption only to sales to a number of fast food restaurants which use the buttermilk solely for making biscuits. The witness stated that the buttermilk product sold by Taylor Milk Company to a fast food restaurant chain contains no modified food starch, but instead contains 1 percent nonfat dry milk to add body and texture to the product. According to the witness, Taylor Milk Company's principal competitor for this account is an Order 1 (New England)-regulated handler that adds modified food starch to its buttermilk. The witness expressed concern that the fast food restaurant might buy all of its buttermilk for biscuits from the Order 1 handler, and shift its purchases of other milk products to that handler as well. He stated that the effect of such a result would be to shift sales of producer milk out of the marketing area, causing a surplus of milk that would be classified as Class III, and thereby reducing prices paid to producers.

The Taylor Milk Company representative described three categories of buttermilk that should be classified as Class II. He defined buttermilk biscuit mixes as including flour and other ingredients that would be sold in a form that could be poured in a pan and baked. Class II Buttermilk would be buttermilk that is sold to a restaurant for use in making biscuits, and buttermilk blend was described as containing added nonmilk solids.

Taylor Milk Company's proposal to include buttermilk sold to a retail business for use in baking was opposed by witnesses representing Dean Foods and MMI. The Dean Foods representative stated that the proposed change would result in differences in classification between Order 36 and Orders 33 and 40, and thereby cause competitive disruptions between the marketing areas. The witness also maintained that buttermilk not adulterated with nonmilk ingredients is not distinguishable from a fluid milk beverage. The MMI witness testified that buttermilk is a consumable fluid beverage and should be classified as Class I.

There is no indication in the hearing record that the buttermilk biscuit mix described by the Taylor Milk Company witness is produced by any milk handler in the Order 36 marketing area, or indeed by any milk handler anywhere. The product described by the witness as "buttermilk blend" is the buttermilk biscuit mix discussed earlier in this decision that is to be included in Class III. Buttermilk sold to a restaurant for use in biscuits is not changed solely by virtue of its intended end use, and should retain Class I classification. The addition of nonfat milk solids, rather than nonmilk solids, serves only to make the product a fortified buttermilk. The order should not differentiate between customer uses of fluid milk products. Buttermilk and other fluid milk products are often used in home baking as well as restaurant baking. It would be difficult administratively to attempt to establish price differences between similar products used differently by customers.

As noted earlier, prices to producers are not expected to be affected materially by changing the classification of buttermilk biscuit and pancake mixes to Class III rather than to Class II. The price difference between the two classes averages only about 10 cents per hundredweight, or less than 1 percent of the order's uniform price to producers, and the volume of milk involved is not substantial.

2. *Classification of milk dumped by handlers.* Milk dumped or disposed of as livestock feed should be allowed to be classified as Class III use without prior approval by the market administrator when adequate records are available to support such use. Handlers must notify the market administrator on the next business day after such disposition.

Three proprietary handlers proposed that milk dumped, spilled or disposed of as livestock feed be classified as Class III without prior notification of, and approval by, the market administrator. The proponent's witness explained that under the current provisions of the order, a vat of milk intended for use in cottage cheese or cultured buttermilk that does not "set up" or culture may be dumped as Class III milk only after the market administrator has been notified of such a necessity, and approved it. According to the witness, the manufacturing process is delayed and its costs are increased when handlers must retain the milk in vats until approval is obtained. Also, he stated that such occurrences do not always occur during the market administrator's normal business hours when market administrator personnel are readily available to grant such approval. The witness testified that manufacturing records maintained by handlers are an adequate basis for substantiating such use, which could be verified at a later time during normal auditing procedures. There was no opposition to adoption of the proposal from industry representatives attending the hearing.

Under cross examination about inclusion of the word "spilled" in proponents' proposal, proponents' witness stated that the language of the proposed provision was identical to that contained on Order 33. However, if the need for conformity of order provisions between milk orders were a constraint, Order 33 would have to be amended to require prior approval of Class III use of dumped milk since all other orders currently require such prior notification and approval. Other orders do not require prior approval for the disposition of milk as animal feed and none allow spilled milk to be reported as a Class III use. Since Order 36 does not now require the market administrator's prior approval of milk disposed of as livestock feed as a Class III use, that current provision of the order requires no change. Also, milk spilled through carelessness or sloppiness should continue to be included in a handler's shrinkage, as it is under the present order provisions. If an excessive percentage of receipts is spilled or lost in the plant's operations, any amount exceeding the order's Class III shrinkage allowance is classified as Class I use. This provision is designed to assure that handlers have an incentive to make careful use of the milk they receive, so that producers do not have to bear the cost of handler carelessness through reduced uniform prices. Therefore, the word "spilled" should be omitted from the amended order language.

According to the hearing record, allowing milk dumped by a handler without prior notification of the market administrator to be classified as a Class III use would enhance the efficiency and reduce the cost of handlers' manufacturing operations. Furthermore, adequate records of such use would assure that a handler's latitude in dumping milk found to be unfit for its intended purpose would not be abused. In order to have dumped milk classified as a Class III use, handlers should be required to notify the market

administrator of such use at their earliest opportunity during normal business hours.

3. *Classification of lowfat eggnog.* A proposal by Superior Dairy, a proprietary distributing plant operator, to change the classification of lowfat eggnog from Class I to Class II should not be adopted. Although the proposal as included in the hearing notice would have changed the product's classification to Class III, the Superior Dairy witness modified the proposed classification to Class II at the hearing. According to the witness, Superior Dairy currently produces a product called "holiday nog" from non-dairy ingredients, but would like to sell a lowfat eggnog made from fresh milk if the raw product cost of the beverage could be reduced. The witness estimated the difference in price of such a product between Class I and Class II classification to be 3–4 cents per quart. He stated that as a result of the proposed re-classification, producers would benefit from the expanded outlet for dairy ingredients; dairy processors would be able to manufacture a better-tasting and more wholesome product than those now made of imitation ingredients; and consumers would benefit from the availability of a lower-fat product at a competitive price. The witness testified that lowfat eggnog should be any eggnog product containing less than 3.5 percent butterfat. He characterized lowfat eggnog as differing from chocolate drink by the type of flavoring used and the seasonal nature of the product.

Adoption of the proposal was opposed by MMI and a representative of Dean Foods. The MMI witness testified that fluid milk products are those consumed in fluid form as beverages, and stated that lowfat eggnog falls within that definition. He pointed out that the product has about the same shelf life as other fluid milk products, and that the season of greatest demand for the product is the months of October through December when the milk supply is at its lowest level. The witness further testified that reclassifying lowfat eggnog to a lower class would create competitive disadvantages for handlers in neighboring orders who produce the product.

The Dean Foods representative also opposed changing the classification of lowfat eggnog on the basis of inter-market competition, testifying that Dean Foods bottles and distributes such a product as a Class I product in several surrounding milk order marketing areas. The witness also noted that Dean Foods' and its competitors' lowfat eggnog product is not made from imitation ingredients, but from fresh milk.

Lowfat eggnog is clearly a fluid milk product intended for consumption as a beverage. Proponent advanced no persuasive basis for reducing returns to producers for milk disposed of in the form of a flavored fluid milk product. Furthermore, classification of all flavored fluid milk products should be the same regardless of the type of flavoring used. Dean Foods' ability to market lowfat eggnog classified in Class I in neighboring marketing areas indicates that Superior Dairy should also be able to market such a product successfully. Producers then would benefit from the expanded outlet for fluid milk classified, as it should be, as Class I rather than in a lower class that would reduce producer returns. Further, dairy processors regulated under other orders apparently are able to process a lowfat eggnog which consumers will buy without a reduction in the classification of the product. Consumers would have available a lower-fat eggnog at a price competitive with similar fluid milk products. Consequently, the classification of lowfat eggnog should not be reduced to Class II.

4. *Temporary increase of pool supply plant delivery requirement to pool distributing plants.* As noted in the hearing notice, a proposal by MMI and Superior Dairy would have increased temporarily the percentage of milk required to be shipped by pool supply plants to pool distributing plants. At the hearing, MMI withdraw its proposal on the basis that the hearing has not been held in a timely manner, and that the temporary revision would no longer be appropriate. A witness for Superior Dairy did not support the proposal. There was no further testimony regarding the proposal. Accordingly, no further consideration is given to the proposal in this proceeding.

Two additional proposals proposed at the hearing by the Superior Dairy representative could not be considered because they were not included in the hearing notice.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Eastern Ohio-Western Pennsylvania order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1036

Milk marketing orders, Milk, Dairy products.

PART 1036—[AMENDED]

1. The authority citation for 7 CFR Part 1036 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 1036.40 is amended by revising paragraphs (c) (1) and (3) to read as follows:

§ 1036.40 Classes of utilization.

* * * * *

(c) * * *

(1) Skim milk and butterfat used to produce butter, cheese (excluding cottage cheese and cottage cheese curd), evaporate or condensed milk or skim milk (plain or sweetened) in a consumer-type package, any concentrated milk product in bulk, fluid form used to produce Class III products, nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, buttermilk biscuit and pancake mixes, any product containig six percent or more nonmilk fat (or oil) and sterilized products (except fluid cream products and those products listed in paragraph (b)(3) of this section) in hermetically sealed glass or metal containers;

(2) * * *

(3) Skim milk and butterfat in fluid milk products, fluid cream products and products listed in paragraph (b)(3) of this section that are dumped by a handler who maintains adequate records of such use and notifies the market administrator of such use on the next business day following such use.

* * * * *

Signed at Washington, DC, on: April 13, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89–9198 Filed 4–17–89; 8:45 am]

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7 CFR Part 1079

[Docket No. AO–295–A38; DA–88–111]

Milk in the Iowa Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends a limited expansion of the Iowa marketing area to include certain unregulated areas in Iowa, Illinois and Missouri, and two Wisconsin counties now included in the marketing area for the Chicago Regional order.

Also recommended is a lock-in provision that would continue to fully regulate under the Iowa order a distributing plant that meets the pooling requirements of another Federal order as well, and that has a larger route sales volume in the other order's marketing area, until the third consecutive month of greater sales in the other marketing area. However, if the other order did not recognize the lock-in, the plant would shift to regulation under the other order in the first month of such greater sales. A proposal to permanently pool under the Iowa order a distributing plant located in the Iowa marketing area is denied.

The actions recommended in this decision are based on evidence received at a public hearing held in August 1988 to consider proposals by Swiss Valley Farms, Co., a dairy farmer cooperative. The changes in the order proposed in this recommended decision are necessary to reflect current sales distribution patterns of handlers regulated under the Iowa order and to maintain stable and orderly marketing conditions in the market.

DATE: Comments are due on or before May 9, 1989.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

Under actions recommended herein, one currently unregulated handler that is a small business may become partially regulated under the Iowa order. The order provides partially regulated plants with options that could tend to minimize the impact of such regulation. In any event, any impact of adopting the proposed changes is expected to be minimal for this plant.

Prior documents in this proceeding:

Notice of Hearing: Issued July 11, 1988; published July 13, 1988 (53 FR 26446).

Notice of Rescheduled Hearing: Issued July 21, 1988; published July 25, 1988 (53 FR 27863).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Iowa marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, Room 1079, South Building, U.S. Department of Agriculture, Washington, DC, 20250, by the 21st day after publication of this decision in the **Federal Register.** Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Bettendorf, Iowa, on August 9–11, 1988, pursuant to a notice of hearing issued July 21, 1988 (53 FR 27863).

The material issues on the record of hearing relate to:

1. Regulation of a distributing plant with greater Class I route sales in the marketing area of another order.
2. Expansion of the Iowa marketing area.
3. Location adjustment revision.
4. Whether emergency conditions warrant the omission of a recommended decision and the opportunity to file written exceptions thereto with respect to issue No. 1.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Background Statement

Swiss Valley Farms, Co. (SVF), is a dairy farmer cooperative that operates a distributing plant located in Dubuque, Iowa, which is a pool plant regulated by the Iowa order. The plant has route dispositions in both the Iowa and

Chicago Regional marketing areas. Class I route disposition from the Dubuque plant in the Chicago Regional (Order 30) marketing area exceeds that in the Iowa (Order 79) marketing area. However, both orders recognize sales to pool plants qualified on the basis of route disposition in the marketing area in determining which order will regulate the plant as a pool plant. In order to maintain the Dubuque plant's regulation under the Iowa order, SVF handles milk that is moved as Class I milk to another pool plant under the Iowa order. It is through this mechanism that the SVF plant has been pooled on the Iowa order. SVF testified that this procedure is costly and that there is no guarantee that the arrangement with other handlers for shipping milk to another plant or plants will continue. The cost was reported to be about $16,000 to $20,000 per month. If it were not for these bulk sales to other plants, the Dubuque plant would shift from regulation under the Iowa order to regulation under the Chicago order. SVF maintains that such a switch would be "devastating" to its producers because regulation under the Chicago order would jeopardize SVF's ability to remain competitive in attracting milk to the Dubuque plant.

The record indicates that SVF procures milk in competition with about 40 other handlers and has producers in four states. The handlers and the orders that they are regulated under are not identified, although there can be little doubt that other handlers regulated under the Iowa order are included. There also can be little doubt that many of the Dubuque plant's producers are in Iowa. However, the record does not provide enough data to determine the origin of SVF's receipts of farm milk at the Dubuque plant, although the proponent's principal witness did express a belief that "* * * more than two-thirds of their producers * * *" are in Iowa. Thus, it is not possible from data in the record to substantiate the impact that regulation under the Chicago order would have on SVF's ability to maintain supplies for its Dubuque plant. SVF maintained that it could cost in excess of $1 million per year if the Dubuque plant were regulated under the Chicago order.

The blend, or "uniform" price, is higher under the Iowa order, than it is under the Chicago order. The location adjustment under the Chicago order further reduces the blend price at Dubuque. Thus, the monies available to SVF to pay producers in the procurement area (wherever it is) for the Dubuque plant would be less under the Chicago order than under the Iowa order. It is because of this that SVF wants to have the Dubuque plant continue its pool status under the Iowa order.

The main issue at this proceeding involves defining the marketing area to appropriately reflect that territory within which Iowa handlers are the principal distributors of milk. The resolution of this issue is totally independent from the issue of a lock-in provision. The marketing area issue cannot be decided on the basis of a handlers ability to attract milk to its plant.

1. Regulation of a Distributing Plant With Greater Class I Route Sales in the Marketing Area of Another Order

A modified version of the two-month lock-in provision originally proposed by SVF should be adopted. However, it must be recognized that such provision would have no effect unless the other order involved has a complementary provision that recognizes the lock-in. Thus, even though adopted, the provision would not prevent an Iowa pool distributing plant from shifting to the Chicago order until such time that the Chicago order may be changed to recognize the Iowa provision.

The witness for SVF testified that their proposal number 2 would establish a lock-in for Order 79 so that a handler regulated under that order would continue to be pooled there until the third consecutive month of greater Class I route sales by the handler in another marketing area.

The witness said that since monthly reports are due promptly after the end of the month it is difficult to make an accurate determination in time to file the report as to within which area a plant has the greater volume of sales. He said that the retroactive impact of a plant changing orders is irreparable to the plant's customers and its producers. Producers, he said, may not want to deliver to the plant anymore, but that they may not be aware of the plant's change in regulation until six to seven weeks later.

The witness for the proponent stated that their lock-in proposal should be modified to provide that the market administrator announce the names of distributing plants that qualify pursuant to this provision.

The representative for SVF testified that some lead time is needed to serve the interests of handlers, producers and customers. He said that in the case of their Dubuque plant, a change in regulation would not be just a simple one-plant switch in regulation. This, he said, is because it would effect supply plants, milk diverted to nonpool plants and pumpover stations. Furthermore, he said, different qualifying and pooling provisions would have to be applied.

Proponent's witness testified that SVF was modifying its lock-in proposal to make the lock-in permanent. The modified proposal, he said, would apply so long as the Order 79 Class I price that applies at a plant location is not less than the other order's Class I price that would apply to that same location. He said that this modified proposal would avoid the shifting of an Order 79 plant to another order having a lower Class I price with the consequent impairment of the plant's ability to maintain its producer milk supply.

The witness for SVF said that if its Dubuque plant became regulated under Order 30, it would have to increase the over order premium so as to bring the producer pay price up to what would be payable if the plant had been regulated by Order 79 for the same period. He said that if the Dubuque plant became regulated by Order 30, its Class I price would decrease 21 cents and the producer blend price would decrease even more.

The witness for the proponent said that SVF cannot expect their dairy farmers in the Corydon, Iowa area to accept a 13-to-15-cent lower blend price and a minus 36-cent location adjustment for a total reduction of 50 cents. He said that the same would be true for producers in the Cedar Rapids area.

Proponent's witness said that SVF has a cheese plant in Clayton County and the milk diverted to this plant receives the Iowa blend price less a 24-cent location adjustment. He said that if milk diverted to this plant became regulated by Order 30, the blend price would be 13 to 15 cents lower than the Iowa blend, and a minus location adjustment of 36 cents would apply. Thus, returns to producers would be 26 cents per hundredweight lower than the Iowa blend price at that location.

The witness for SVF said they must now pay more than the Iowa blend price to procure milk. He said that if the Dubuque plant were to become regulated under Order 30 with its lower blend price and applicable location adjustments, it would be unable to compete for the procurement of milk from the farms now serving it. Regulation under Order 30, he said, would cost SVF approximately one million dollars per year because of the additional payments that would be necessary to maintain their current producers.

The proponent's witness stated that although the Department, in the past,

has generally pooled a distributing plant in the order in which it has the largest volume of sales, it recently has departed from that policy because of changes in the marketplace. He said that recently the Department has locked-in several distributing plants in markets where they were located even though they had a larger volume of sales in other markets. He noted recent such decisions involving the Louisville–Lexington–Evansville and Ohio Valley orders and also the Nashville, Tennessee order.

A dairy farmer who is a member of SVF testified that regulation under Order 30 would cost him about $4,900 a year, therefore, he would have to find another market.

A witness for Central Milk Producers Cooperative (CMPC) testified that he was appearing on behalf of AMPI-Morning Glory Farms Region, Golden Guernsey Cooperative, Independent Milk Producers Cooperative, Lake-to-Lake Division of Land O'Lakes Dairy Cooperative, Manitowoc Milk Producers Cooperative, Midwest Dairymens Company, Milwaukee Cooperative Milk Producers, Outagamie Milk Producers Cooperative, Southern Milk Sales, Wisconsin Dairies Cooperative and Woodstock Progressive Milk Producers Association. The CMPC witness indicated that CMPC is a federation of cooperatives whose members pool about 93 percent of the producer milk on Order 30 and that in addition about 94 percent of the Class I milk is priced through CMPC's premium pool.

The CMPC witness testified that the lock-in proposal should be modified to make it clear that SVF does not intend to lock-in a pool supply plant. Furthermore, he said, there must be a corollary lock-out provision in Order 30 in order to accommodate this proposal. He said without the lock-out provision, both orders would be required to regulate the plant. The CMPC witness proposed a modification to the proposed lock-in provision that was intended to insure that the Order 30 language not be superseded by the Order 79 language.

National Farmers Organization stated at the hearing that there may be some justification for a one-month lock-in.

The order currently provides that the term "pool plant" shall not apply to a plant that qualifies as a pool plant but which has a greater quantity of Class I dispositions in the marketing area of another order than in the Iowa marketing area. However, the dispositions included in making this comparison include route dispositions plus dispositions to other plants that qualify as pool plants under the respective orders. So long as a plant's route dispositions in the Iowa marketing area plus dispositions to other plants that are pool plants based on in-area route dispositions are greater than similar dispositions to another order, the plant will be pooled under the Iowa order. The Chicago order has essentially the same provision. Thus, SVF's Dubuque plant has been able to remain fully regulated under the Iowa order.

As originally proposed, the lock-in would potentially create an impasse where a distributing plant meets the pooling requirements of two orders. The impasse would exist because each order would claim the plant as a pool plant and neither order would yield to the other one. At the hearing, a modification was proposed such that the Iowa order lock-in would not take effect unless the other order had a provision that recognized the lock-in.

At this time the only prospective application of a lock-in is in conjunction with the Chicago order. Some opponents expressed the view that a lock-in should not be adopted since it could not function anyway.

The basic purpose for a two-month lock-in is to prevent a plant from flip-flopping regulatory status between two orders and to allow some time for sales adjustments to be made in the event a plant has an unexpected change in its distribution pattern that would cause a shift in regulation from one order to another. Thus such a provision may be helpful in preserving market stability at unforeseen times and circumstances that may develop in the future, since some other nearby orders would recognize a two-month lock-in.

A lock-in provision should be applicable only to a distributing plant. This point was raised by CMPC, and is consistent with the intent of the provision as revealed in the testimony of the proponent's witness. There was no indication that proponent intended any application to plants other than distributing plants.

A suggestion by proponent that the market administrator publicly announce the name of each handler qualifying a plant as a pool plant under the lock-in provision should not be adopted. The purpose of this suggestion was so that producers, handlers and customers would have advance notice of a possible switch in regulatory status of such a plant.

The evidence on the need for such a provision is sparse. It may be, as proponent contends, that producers need to know that a plant has switched from one order to another. On the other hand, it does not necessarily follow that a plant pooled under the two-month lock-in will necessarily be regulated under another order in the next succeeding month. It may be that the lock-in provision has been applicable in a situation where the handler has made adjustments in operations that will result in the plant continuing to be pooled under the Iowa order. Given the possible range of conditions that application of the lock-in may reflect, it does not appear that an announcement by the market administrator would be particularly useful. The lock-in provision recommended in this decision does not contain such a requirement.

As adopted, a plant that had been a pool distributing plant under the Iowa order for the preceding month, but which in the current month has greater Class I dispositions (route sales and/or transfers to plants) in another marketing area, would continue to be a pool plant until the third consecutive month of such greater dispositions in the other area, unless the other order nevertheless regulates the plant.

A further proposed modification by the proponent should not be adopted. SVF proposed an additional provision to permanently lock a distributing plant located in the Iowa marketing area into the Iowa order so long as the Iowa order's Class I price at that plant's location is not less than the price at that location under the order in which the plant had the greater route disposition. Such a provision was adopted recently in the Louisville-Lexington-Evansville order, with a corollary change in the Ohio Valley order, and in the Nashville order, with a corollary change in the Georgia order. SVF maintains that the market situations that led to such amendments to these orders are similar to SVF's procurement problem involved in this proceeding. This latter proposed modification also was widely opposed.

The two recent proceedings involving other orders that were cited by both proponents and opponents have no bearing on this proceeding. Whether or not there are certain similarities in the situation that concerns SVF and those that existed in the other orders cannot be decisive in this proceeding. Moreover, without regard to the merit of any evidence submitted by SVF or opponents, further consideration at this time is unwarranted because a corollary amendment to the Chicago order clearly would be required. However, such an amendment to the Chicago order is not an issue in this proceeding. Therefore, adoption of a permanent lock-in provision would serve no purpose.

At the hearing, the witness for the proponents expressed his view that absent a corollary amendment of the Chicago Regional order to recognize a lock-in provision in the Iowa order, the

lock-in nevertheless could be implemented by terminating certain provisions of the Chicago order.

If this were done, it would change the Chicago order's present application where the order does not recognize any lock-in provision, to potentially having to recognize lock-in provisions in any order having such provisions. The merits of such an action have not been explored on the record of this proceeding. There simply is no record evidence supporting such a change, nor any other evidence that would lead to a conclusion that such action was necessary because the provision to be terminated obstructs or does not tend to effectuate the declared policy of the Act.

2. Expansion of the Iowa Marketing Area

The Iowa marketing area should be expanded to incorporate additional territories where it is clear that a majority of the milk distributed therein was distributed by plants fully regulated under the Iowa order. The specific territories that should be added are identified on a state-by-state basis later in the discussion of this issue.

Swiss Valley Farms, Co. (SVF), proposed that the Iowa marketing area be expanded to include the following counties:

1. In Iowa, the counties of Des Moines, Henry, Lee and Van Buren.
2. In Illinois the counties of Hancock and Henderson, and the townships of Fulton, Ustick, Clyde, Genesee, Mount Pleasant, Union Grove, Garden Plain, Lynden, Fenton, Newton, Prophetstown, Portland and Erie in Whiteside County.
3. In Missouri, the counties of Clark, Grundy, Harrison, Lewis, Mercer, Putnam, Schuyler and Scotland.
4. In Wisconsin, the counties of Crawford and Grant.

At the hearing, SVF modified the proposal by deleting Hancock County in Illinois and Lewis and Clark Counties in Missouri.

The witness for the proponents testified that SVF markets milk of approximately 2300 dairy farmer members and that most of the milk is pooled under the Iowa marketing order (Order 79) through their fluid milk plant in Dubuque and their supply plants that assemble milk for transfer to the Dubuque distributing plant.

The proponent's witness said that SVF distributes a substantial amount of packaged fluid milk products into the Chicago Regional marketing area (Order 30) and that any further expansion into Order 30 will regulate their Dubuque plant under Order 30. He said that the impact of that change in regulation would be devastating because of the location adjustment provisions and the unit qualification for supply plant provisions of Order 30. He stated that the price that SVF would be able to return to its members under Order 30 would not allow it to be competitive in the supply area for their Dubuque plant.

SVF witness stated that their proposals would allow it to continue pooling their Dubuque plant under Order 79 and avoid jeopardizing its supply of milk.

The proponent's witness said that SVF is not attempting to secure a lower price on the Class I milk distributed from its Dubuque plant. He said that the Class I price fixed by the Iowa order at the Dubuque location is 21.9 cents higher than the Class I price fixed by Order 30 at this same location. The witness stated that the plants that SVF compete with in the Order 30 marketing area are not placed at a competitive price disadvantage with the Dubuque plant being pooled under Order 79 rather than Order 30.

The witness for the proponent said that the location adjustment under Order 30 fixes the minimum Order 30 Class I price and blend price at Dubuque below the prices set by Order 79. Order 79, he said, like most orders, establishes a lower price to the north and higher price to the west and south whereas Order 30 establishes a lower price west and south.

The proponent's witness said that the Agricultural Marketing Agreement Act of 1937 requires the Secretary to fix the price at locations that will insure an adequate supply of milk at that location. He said that this standard is not met under both orders by having a lower price at Waterloo, Iowa, under Order 30, than the price at this same location under Order 79. The net effect of this misalignment, he said, is to create an artificial trade barrier.

The witness stated that proponent's exhibit shows that as the distance from Chicago increases in a westerly direction through Davenport, Iowa, the price difference increased from 29.2 cents at Davenport to 52.3 cents in Jasper County (Iowa) and points west. He said that these price differences have stopped Iowa producers from supplying plants regulated by Order 30. There is no Iowa producer milk moving to Order 30 regulated plants, he said, except from the extreme northeast counties of Iowa.

Proponent's witness indicated that in order for a distributing plant to compete for sales, it must have a raw product price reasonably in line with others selling in the area. He said that raw product costs are a combination of the order's class prices and the additional payment that it takes to attract milk to the plant. He stated that the additional payment must be made to all producers supplying the plant; otherwise there would be instability (disorderly marketing) in the procurement area. Thus, a plant located in Iowa cannot pay the Order 30 price reduced by location adjustments and procure milk in competition with plants paying the Order 79 price, he said.

The witness for the proponent indicated that the Department in the past has recognized this inconsistency in other markets and has resolved the problem by snubbing the price in a marketing area to the price fixed by the order for that area. He said that would require a major overhaul of the Order 30 pricing system and the support of the majority of the Order 30 producers and that a more expedient way in dealing with the problem is to revise the Order 79 marketing area to fit the distribution patten of plants subject to regulation by the order. In his opinion, the SVF proposals do not completely resolve this inconsistency in prices and that this problem eventually must be resolved by an appropriate amendment to Order 30. In the meantime, proponents are looking for other ways to keep the plant pooled under the Iowa order.

The proponent's witness testified that the distribution pattern of fluid milk plants have changed substantially since the marketing orders in Iowa and neighboring states were established. He said that distributing plants, such as the SVF Dubuque plant, distribute fluid milk products over a much greater geographical area and that this benefits the milk suppliers, plant operators and consumers by way of a lower per unit processing cost.

The witness for SVF testified that a survey conducted by SVF indicated that Iowa handlers have approximately 92 percent of the sales in that portion of Whiteside County that is proposed being added to the marketing area. In Henderson County, he said, Iowa handlers have about 53 percent of the sales. In Hancock County, he said Order 32 handlers (Southern Illinois) have the majority of sales. Hancock County, he said, is included in the proposal for the convenience of Iowa handlers because of the requirement for reporting in-area and out-of-area sales.

Iowa handlers, he said, have about 95 percent of the sales in Henry County; about 72 percent in Des Moines County; about 64 percent in Lee County and about 94 percent of the sales in Van Buren County. He said in total, Iowa handlers have about 74 percent of the sales in the Iowa counties proposed to be added.

In the Missouri counties of Harrison, Mercer, Putnam, and Schuyler, Iowa handlers, he said, have 100 percent of the sales. In Grundy, he said, Iowa handlers have 55 percent of the sales. He said that in Scotland County sales are divided equally between Iowa and Illinois plants. Order 32 plants, he said, have the majority of sales in Lewis and Clark Counties. The inclusion of these two countries, he said, also is for the convenience of the Iowa handlers who have to report separately in-area and out-of-area sales. In total, he said, Iowa handlers have 61 percent of the sales in the Missouri counties proposed being added to the Order 79 marketing area.

The witness for SVF said that for Grant and Crawford Counties, Iowa handlers have 61 percent of the sales, Upper Midwest handlers have 20 percent and Chicago handlers have 14 percent. He said that adding these two counties to the Order 79 marketing area will not change the current status of any plant under either order or the classification of milk or the blend price in either order.

The proponent's witness stated that SVF wished to modify its expansion proposal by deleting Hancock, Lewis, and Clark Counties because the survey showed that Order 79 handlers do not have the majority of sales in these counties.

Anderson Erickson Dairy Co., although it did not present testimony at the hearing, filed a brief in support of the SVF proposals.

The first of many witnesses to testify in opposition to the proposals was a representative for Prairie Farms Dairy (PFD). The PFD witness said that their organization, although it has a joint venture interest in an Order 30 pool plant as well as a joint venture interest in two plants regulated under Order 79, was testifying on behalf of their solely owned plants pooled on the Southern Illinois market (Order 32).

The opponent's witness stated that PFD has over 500 producers located in the Order 32 marketing area and that it also acquires milk from cooperatives whose members are located in Iowa, Minnesota, Wisconsin and Illinois. He said that the SVF proposal could adversely impact on these cooperatives and their ability to provide milk to their Order 32 plants.

The PFD witness said that their immediate concern was their distributing plant located at Quincy, Illinois (Adams County). He said that the Quincy plant receives about 8 million pounds of milk per month and utilizes about 70 percent of this milk in Class I. The Quincy plant, he said, is in an unregulated county with large unregulated areas around Quincy.

The witness for PFD testified that for the past 12 months the Quincy plant sales averaged about five percent in Central Illinois (Order 50), about 19 percent in Order 32 and about 76 percent in non-regulated areas. He said that SVF proposal for the expansion of the marketing area, prior to its modification deleting several counties, would have made it very difficult for it to remain pooled under Order 32. He maintained that the expansion proposal would not solve SVF problem but would shift the problem from one cooperative to another.

The witness for PFD testified that although they did not do their own survey of the proposed expansion, it did compare its sales in the various counties with SVF estimated PFD sales. He said that there is no economic, historical, practical, or beneficial justification for including any of the Missouri, Illinois or Iowa counties in the expansion except for the Iowa counties of Henry, Des Moines, and the Illinois county of Henderson.

The opponent's witness testified that their exhibit shows that for Henderson and Hancock counties in Illinois in total, SVF had 15.1 percent of the sales in these two counties and that SVF estimated that PFD had 62 percent of the sales in the two counties while PFD's exhibit shows actual sales as 25.7 percent.

The representative for PFD said that their exhibit shows for the eight Missouri counties in total, SVF has 7.9 percent of the sales in those counties and that SVF estimated PFD had 29.6 percent of the total county sales. PFD's exhibit shows actual sales as 25.5 percent.

The witness said that the PFD exhibit shows that for the four Iowa counties in total, that SVF had 21.4 percent and that SVF estimated that PFD had 8.9 percent of those sales compared to PFD actual sales of 19.1 percent.

The witness for the opponent testified that for March 1988, the Quincy plant had 19.8 percent of its sales in Order 32 and if all of the counties originally proposed by SVF would become part of the Order 79 marketing area, their Quincy plant would have had 15.6 percent of their sales in Order 79. He said that the 4.2 percent difference, which equates to about 200,000 pounds of milk, is unacceptable to PFD.

The opponent's witness proposed that only Henderson County (Illinois) and Henry and Des Moines Counties (Iowa) be included in the expanded marketing area. These three counties, he said, would give SVF about 53 percent of their sales in all of the 14 proposed counties. He said that allowing the 11 other counties to remain as unregulated would allows PFD a reasonable sales cushion between orders 32 and 79. Of the 11 counties, he said, the Quincy plant would have had about 34 percent of the total sales compared to 13 percent for SVF. He said that for the three counties that PFD suggests be added to the marketing area, SVF would have about 23 percent of the total and the Quincy plant less than one percent. He also indicated that PFD could support adding the townships named in Whiteside County, Illinois, to the marketing area. Land O'Lakes, Inc., although not presenting testimony at the hearing, filed a bried in support of PFD's modified proposal.

The witness for PFD testified that the 120 Quincy producers are located in southeast Iowa, northeast Missouri, and western Illinois. He said that the central locations in the proposed two Illinois counties are on the average only 68 miles from Quincy while they are 154 miles from Dubuque. Central locations in the proposed Iowa counties, he said, are on the average 74 miles from Quincy compared to an average of 154 miles from Dubuque. He said that central locations in the proposed Missouri counties show that on average they are 99 miles from Quincy while being 236 miles from Dubuque. Efficiency of distribution alone, he said, should support the concept that this area is best served by the Quincy plant compared to the Dubuque plant.

The witness for the opponent testified that regulation of their Quincy plant by Order 79 would be devastating to PFD and their dairy farmers. For example, he said that the blend price to dairy farmers associated with the Quincy plant would have averaged 45 cents less if the plant had been regulated by the Iowa order. A 45-cent reduction in blend prices would amount to over $560,000 for one year, according to the witness. Land-O-Lakes and Associated Milk Producers, Inc., he said, have told PFD that they could not deliver milk to Quincy at these prices.

The representative for PFD said that since May 1987 PFD has been receiving milk from SVF into its joint venture pool distributing plants located in Iowa City and Des Moines, Iowa, for the purpose of helping SVF continue to qualify the Dubuque plant on Order 79.

The expansion proposal, he said would encourage SVF to increase their sales into this newly expanded area, so as to be able to increase their sales into Order 30. He said that PFD would be discouraged from expanding into the

area that has been home country for the Quincy plant for over 50 years.

Numerous interested parties that are either dairy farmer cooperatives or proprietary handlers regulated under the Chicago order presented testimony in opposition to the SVF proposals. In general, such opposition expressed views that: (1) SVF should be regulated under the Chicago order because it has greater Class I route dispositions in the Chicago marketing area than in the Iowa marketing area; (2) SVF, due to the higher Iowa blend prices, has a competitive advantage over Order 30 regulated handlers in obtaining raw milk supplies in some areas of Wisconsin and Illinois; (3) because SVF has a milk procurement advantage, it also has an advantage in selling packaged milk (lower sales price). Chicago handlers have lost sales accounts to SVF. (4) SVF's problems are its own doing since SVF actively has expanded sales outlets in the Chicago market; (5) expansion of the Iowa marketing area now will lead to further expansion in the future; (6) the Chicago and Iowa marketing areas should be merged; (7) SVF actively seeks (and obtains) contracts to supply milk to schools and colleges in the Chicago marketing area; (8) adding Crawford and Grant Counties in Wisconsin to the Iowa marketing area would increase the Iowa blend price and decrease the Chicago order blend price, and thus take away about $1.6 million per year from Order 30 producers; and (9) the evidence shows an overlap in the milk procurement areas of the Chicago and Iowa orders such that the Chicago marketing area should be expanded. Therefore, the record should be kept open so that additional proposals on this issue could be submitted.

In addition, CMPC witnesses specifically opposed all the SVF proposals for the following reasons:

(1) Failure of the Department of Agriculture (USDA) to notify all interested persons that a hearing request had been made and to invite comments on additional proposals;

(2) USDA's refusal to consider that because a marketing area proposal would be heard, then all other provisions of the order would be open for proposed amendment;

(3) Removing two counties from the Chicago marketing area and adding them to the Iowa marketing area would, in effect, amend the Chicago order without providing Order 30 interested parties an opportunity to submit additional proposals; and

(4) The proposals attempt to circumvent the pool plant provisions of the Chicago order without a proper notice to amend the order's pool plant definition.

Most of the testimony by interested parties regulated under the Chicago order concerned opposition to continued pool status under the Iowa order for DVF's Dubuque plant. However, most of that testimony more nearly relates to the issue of a lock-in-provision. That issue has been dealt with earlier in this document. Therefore, only a brief summary of the Chicago parties' positions has been noted here.

A witness for Deters All Star Dairy, Inc. (Deters), said that they operate an unregulated distributing plant in Quincy, Illinois, with about 15 percent of their sales in the Iowa Counties of Lee, Des Moines, Henry and Van Buren; the Missouri Counties of Scotland, Putnam, Schuyler, and the Illinois Counties of Hancock and Henderson. He said that Deters is opposed to all of the proposals except for adding the Wisconsin Counties of Crawford and Grant, the Illinois County of Whiteside or the Missouri Counties of Grundy, Harrison or Mercer. The expansion proposal, he said, would cause Deters to become regulated, resulting in an increase in their reporting and bookkeeping costs.

Specific Territories to be Added to the Marketing Area

(a) *Illinois territory:* The unregulated townships in Whiteside County and Henderson County should be added to the Iowa marketing area. In Whiteside County, the 13 townships are predominantly served by Iowa handlers, whose Class I sales in the area are estimated at over 90 percent of the total.

In Henderson County, SVF reported its own sales and estimated sales for one other Order 79 handler to comprise 53 percent of total Class I sales. SVF's survey resulted in an estimate that Prairies Farms (Quincy) had about 28 percent of the sales and that another Order 32 plant had 19 percent. The only other data submitted at the hearing was by the Prairie Farms Dairy representative. His data showed that the Quincy plant's sales amounted to only one percent of the estimated total in Henderson County. This is a large discrepancy (28 percent versus one percent). However, the SVF estimates of the Quincy plant's sales were larger than actual. Since it is clear the survey did not over-estimate, it is probable that the 53 percent of total estimate may be too low. Henderson County's Class I sales appear to come mostly (more than half, at least) from Iowa handlers' plants. Accordingly, Henderson County should be identified as part of the marketing area for the Iowa order.

(b) *Iowa territory*: Henry, Des Moines, and Van Buren Counties, which now are unregulated, should be included in the Iowa marketing area. Iowa handlers are estimated to have about 90 percent of the Class I sales in Henry and Van Buren Counties, and about 70 percent in Des Moines County. The Prairie Farms representatives presented data on its sales in Henry and Van Buren Counties, which showed less sales than estimated by SVF. A witness for Deters Dairy, Quincy, Illinois, indicated that any sales from its plant in these counties would be very small. Therefore, there is no reason to question whether Iowa handlers predominate in service to these counties. No one offered any data other than SVF's estimate of sales in Des Moines County.

Lee County also was proposed to be in the marketing area. SVF's estimated total distribution in this county was 804,358 pounds, of which SVF distributed 173,339 pounds and estimated another 43 percent of the total to have been distributed by two other Iowa handlers. SVF estimated that Prairie Farms Dairy, Qunicy, Illinois, had another 20 percent, which left 16 percent divided almost equally among three other non-Iowa order handlers. However, the Prairie Farms witness testified that actual sales in Lee County from its Quincy plant amounted to 396,352 pounds, or 49.3 percent of estimated total consumption, rather than the 20 percent figure noted above. This discrepancy cannot be explained from information available in the record. Thus, assuming that the estimated total consumption figure for Lee County is reasonable, it cannot be concluded that Iowa handlers have a majority of Class I distribution in the County. Accordingly, Lee County should not be identified as part of the marketing area for the Iowa order.

(c) *Missouri territory*: Five of the eight proposed unregulated Missouri counties should be added to the marketing area. They are: Grundy, Harrison, Mercer, Putnam, and Schuyler Counties. The other three (Clark, Lewis, and Scotland) should remain unregulated.

Class I consumption in Grundy County was estimated by SVF to be about 223,000 pounds per month. SVF's sales in Grundy County are small, at about 6,000 pounds, while sales by other Iowa handlers were projected by SVF to be more than 50 percent of the total. However, SVF overestimated the amount of milk distributed in Grundy County by Priarie Farms of Quincy. At the hearing, Deters dairy indicated that they had no problem with Grundy County being added to the marketing

area of the Iowa order. Thus it appears that Iowa handlers have at least 55 percent of the Class I disposition in Grundy County. Harrison and Mercer Counties also should be included in the marketing area. SVF's survey indicated virtually all of the Class I milk in both counties was distributed by plants regulated under the Iowa order. There was no contrary evidence concerning these counties.

SVF's survey of Putnam County indicated that virtually all the Class I milk was distributed in the County by Iowa order handlers. The witness for Deters Dairy indicated that any milk distributed from the Quincy plant would be small, and was not sure whether it would include any Class I milk at all. Thus, there is a sound basis in the record to include Putnam County.

The preceding paragraph could apply to Schuyler County as well, since the SVF survey found only products distributed by Iowa handlers. However, the representative for Deters Dairy indicated that here, too, there might be a very small amount of Class I milk dispositions by a distributor, but not any direct distribution by Deters. So, in Shuyler County, the evidence leads to a conclusion that Iowa handlers have nearly all, if not all, of the Class I sales.

Clark, Lewis, and Scotland Counties, should not be added to the Iowa marketing area. The first two were dropped from the proposal by the proponents. Moreover, the sales data would not support the proposal. The latter, Scotland County, should not be included because there is at least a 50 percent discrepancy in sales survey results. SVF's survey indicated 100 percent of the sales in Scotland County came from Iowa order plants. Prairie Farms, on the other hand, indicated that it's Quincy plant had route sales equal to 58 percent of the estimated consumption. This discrepancy remains unresolved. The available data do not permit a conclusion that Scotland County is served primarily by Iowa plants. Therefore, the inclusion of Scotland County must be denied.

In several of these counties, the sales by SVF are a small proportion of the total. However, what is most important in this case is whether the predominant distributors of Class I milk are handlers regulated by the Iowa order.

Deters, in its testimony and in its brief, took the view that several of the proposed counties should not be added to the marketing area because no evidence can be found that disorderly marketing conditions exist.

It is not necessary that disorderly marketing conditions exist before a county or other parcel of territory may be annexed to a marketing area. While other factors may be involved, the principal basis for defining marketing areas under the Federal milk marketing order program long has been that a marketing area defines a common sales area served primarily by competing handlers. If that condition exists, and it does in most of the counties discussed thus far, then the absence of market disorder of no consequence. A major purpose of the Agricultural Marketing Agreement Act of 1937 is to promote orderly marketing. It is not a prerequisite that disorderly marketing must exist before this goal of the Act may be achieved.

The territory in Illinois, Iowa, and Missouri that should be added to the Iowa marketing area should have no impact on the regulatory status of the Prairie Farms plant at Quincy, and only minimal impact upon Deters Dairy, which is unregulated.

The representative of Prairie Farms introduced an exhibit showing its Quincy plant's route sales in the counties proposed to be part of the Iowa marketing order. The total shown for March 1988 was 871,842 pounds. The witness expressed concern that this amount was large enough that any increase in sales in the Iowa order could cause the plant to flip over to regulation under the Iowa order. However, the plant's sales in the nine counties adopted in this decision amounted to only 115,273 pounds, or only 13 percent of the total sales in the counties originally proposed by SVF. This should minimize any concern of Prairie Farms that expanding the Iowa order could cause its Quincy plant to shift to the Iowa order.

With regard to Deters Dairy, it is not possible to state exactly what portion of its Class I distribution will be partially regulated under the expanded Iowa order. However, in the nine counties in Illinois, Iowa, and Missouri, Deter's witness indicated only very small, or perhaps no sales at all. Therefore, it is expected that any impact upon Deters due to this action would be minimal, in that the plant would be only partially regulated.

As the operator of a partially regulated distributing plant, Deters would be required to pay an administrative assessment on the total hundredweights of route dispositions in the marketing area, less any receipts of milk priced as Class I milk under a Federal order. The maximum assessment rate for this purpose is four cents per hundredweight.

Additionally, Deters would have the option to have any further obligation computed under one of the following:

1. Compute the handler's total value of milk at the order's class prices just as if the plant were a fully regulated pool plant. Subtract payments made for milk that would have been producer milk if the plant had been fully regulated. Any positive difference would be paid to the producer-settlement fund.

2. An amount computed by multiplying the total hundredweights of route dispositions in the marketing area, less any receipts at the plant of milk priced as Class I milk under a Federal order, by the difference between the applicable Class I and uniform prices. This amount would be paid to the producer-settlement fund. If the plant received milk priced as Class I milk under a Federal order in an amount at least equal to the in-area route dispositions, there would be no obligation.

In order to determine the payment obligations referred to above, Deters would be subject to certain reporting requirements of the order.

Deters undoubtedly operates a small business. Although the options just described are available to any handler that operates a partially regulated distributing plant, they do provide a small business with choices that can help minimize the impact of even partial regulation.

(d) *Wisconsin territory:* The marketing area of the Iowa order should be expanded to include Crawford and Grant Counties in Wisconsin. Both of these counties are currently included in the marketing area for the Chicago Regional order.

The data submitted by SVF in their sales survey included estimates for these two counties. These data show that Chicago order handlers account for an estimated 8 percent of the route dispositions in Crawford County, and 16 percent in Grant County. The actual sales by SVF in these counties represent 54 and 70 percent of estimated consumption in Crawford and Grant Counties, respectively. The remainder was estimated to be distributed by a handler regulated under the Upper Midwest milk order.

At the hearing, a representative for Dean Foods indicated through cross-examination that his firm's route disposition amounted to some 13.6 percent of the total in Crawford County, rather than 8 percent as shown on the SVF exhibit. It must be noted that the exhibit does not list Dean Foods as a distributor in Crawford County, but does for Grant County at an estimated level of 8 percent. This raises a question as to whether the SVF survey erred in not picking up Dean as a distributor in

Crawford County, or whether the Dean representative misspoke in his question to a AMPI witness. It probably makes little difference because the sales figures quoted for SVF are based on actual sales figure, whereas the percentages indicated for other distributors are estimates. Thus, if the estimated total consumption figures are about right, an error in estimates for other distributors would not change the conclusion that an Iowa handler, SVF, is the largest distributor with more than half of the Class I milk in both counties. This being the case, both counties should be identified as part of the Iowa order marketing area, rather than the Chicago Regional order marketing area, based on current marketing conditions as revealed in the record of this proceeding.

It is noted that there were no distributing plants under either order in either county in May 1988. However, there were four reserve supply plants under the Chicago order that were located in these counties, and two supply plants pooled under the Iowa order located therein.

Crawford and Grant Counties clearly are areas where there is overlapping of supplies for both the Chicago and Iowa Orders. The evidence in the record indicates also that there is keen competition for those supplies. In December 1987 the producers located in the two counties were about evenly divided between the two orders, with a few more producers and a little bit more milk that participated in the Iowa market than in the Chicago market.

The facts just noted do not weigh heavily in favor of inclusion in either marketing area. Therefore, the question of which order's handlers distribute more milk in the two counties takes on added importance as a determining factor concerning which marketing area should include the two counties. In this regard, this record clearly supports a conclusion that, Crawford and Grant Counties in Wisconsin have a stronger association with the Iowa market than with any other market for which data were provided at the hearing.

At the hearing, and in certain briefs filed, the validity of the sales survey conducted by or for SVF was questioned. Briefly stated, the estimates were made as follows:

(1) Estimated consumption of fluid milk products for each county.

—Used a national average annual per capita consumption figure (source—Milk Industry Foundation, Washington, DC) divided by 365 to get a per capita consumption figure of .622 pounds per day.

—Used population data based on the 1980 U.S. Census, adjusted to 1985 (source—Rand McNally Atlas).

—Multiplied the population for a given county by the daily per capita consumption figure, and multiplied the result by 30 to get an estimate of total monthly fluid milk products consumption.

(2) The sales figures for SVF are annual sales divided by 12 to produce a monthly figure.

(3) The estimated percentages of total sales in each county by handlers other than SVF were arrived at through discussions with customers and by on-site observations in "Practically every store of any consequence."

There is no doubt that the methodology employed by SVF did not produce perfectly accurate results. The testimony by Prairie Farms' witness indicated actual sales figures different from those estimated by SVF clearly shows this. Nevertheless, such differences generally did not change the critical question of whether Iowa handlers were the dominant distributors in a given county. If such differences appeared to raise a serious question in that regard, the county was not included in the marketing area expansion. It also must be noted that except for Prairie Farms, no one else produced specific sales data. By and large, SVF's estimates remained unchallenged and uncontradicted. Accordingly, they must be regarded in this record as reasonable estimates, except as otherwise noted in the discussions of the individual counties.

The current issue of whether Crawford and Grant Counties in Wisconsin should be in the Iowa marketing area is quite similar to an earlier question involving eight counties in northwestern Indiana. The eight counties, formerly known as the Northwestern Indiana marketing area were involved in the Chicago Regional marketing area when that order was promulgated on July 1, 1968. However, only a few months later it was found that the inclusion of those counties in the Chicago Regional marketing area had caused major competitive problems for 12 small local handlers because they were not regulated in a way that insured a milk cost comparable with their main competition. This occurred because the blend price under the Chicago order would be lower than the uniform prices as computed under the former Northwestern Indiana order. For example, the decision notes that under the Chicago order the blend price at Northwestern Indiana plants "* * * is expected to average more than 30 cents below the prices received by Indiana producers shipping to Fort Wayne or Indianapolis." Accordingly, the eight counties were removed from the Chicago order and were included in the new Indiana marketing area.[1]

The record in this proceeding clearly demonstrates that SVF's Dubuque plant would be competitively disadvantaged in competing with other plants regulated by the Iowa order for local supplies of milk if it became regulated under the Chicago order. Thus, this decision parallels in many ways the 1968 decision to remove the eight northwestern Indiana counties from the Chicago Regional marketing area.

Including Crawford and Grant Counties in the Iowa marketing area, based on the fact that Iowa regulated handlers have the majority of Class I dispositions in those counties, will lessen the likelihood that the Dubuque plant will switch to regulation under the Chicago order. However, if SVF continues to expand its sales in the remainder of the Chicago marketing area, such action nevertheless could bring about such a shift.

The principal opposition to expanding the marketing area came from cooperatives and handlers subject to the Chicago Regional order. In their view, if SVF had greater route dispositions in the Chicago marketing area than in the Iowa area, then the Dubuque plant should be regulated under the Chicago order. Otherwise, SVF should reduce distribution in the Chicago marketing area. The Chicago interested parties also held that SVF has an advantage over Chicago cooperatives and handlers in competing for producer milk supplies in Wisconsin so long as SVF is regulated under the Iowa order, which has a higher uniform price than the Chicago order. They also urged that other avenues should be pursued, such as revising the location adjustment provisions of the Chicago order, merging orders, and expanding the Chicago marketing area to include the territory previously regulated by the Quad Cities-Dubuque milk order, which is part of the marketing area of the current Iowa order.

Accordingly, Counsel for CMPC moved that this proceeding should be terminated without issuing a recommended or final decision. The basis for the motion was that SVF failed to provide the data necessary to permit the Secretary to reach a decision on the

[1] Official Notice is taken of the Assistant Secretary's decision, issued December 5, 1968, published on December 10, 1068 (33 FR 18282) on Milk in Indianapolis, Ind. (Renamed "Indiana"), Fort Wayne, Ind., and Chicago Regional Marketing Areas.

merits of the proposals considered at the hearing. Alternatively, he urged that the record be kept open so that other proposals not heard could be considered at a continuation of the hearing.

The issuance of this document constitutes a denial of the motion to terminate the proceeding or to keep the record open. As noted earlier, the limited lock-in provision that is adopted cannot be made effective with respect to the Chicago order for the reason stated. Also, the proposal raised at the hearing for a permanent lock-in is denied for the reasons stated. The remaining issue, marketing area expansion, can be, and has been, appropriately decided based on the information obtained at the hearing. Therefore, it is concluded that it would serve no useful purpose to reopen the hearing to consider additional proposals at this time. Such action would only serve to delay the timely issuance of appropriate action based on the hearing record.

It must be recognized that the limited marketing area expansion adopted herein may not provide a permanent solution to the issues raised at this proceeding. Rather, it may serve as a stop-gap approach to SVF's problem of regulatory status while the dairy industry in the areas involved searches for a broader based longer-term solution. Some of the information introduced in this proceeding suggests that the industry needs to study the question of order mergers or other possible actions. However, there is no indication at this point that such studies are underway or that any consensus exists about what type of action to pursue in the future. Therefore, this proceeding should be completed in a timely fashion. If and when the industry is ready to pursue some other action, a new proceeding can be requested.

The Chicago interested parties also objected vigorously to the fact that the Chicago order was not open for amendment in this proceeding, especially with regard to the two Wisconsin counties considered for addition to the Iowa marketing area. In the Chicago parties' views, the Secretary could not delete those counties from the definition of the Chicago order marketing area without a proceeding to amend the Chicago order.

In response we note that all cooperatives and handlers that supply milk to or are fully regulated under the Chicago order were sent a copy of the Hearing Notice. That notice advised such parties of the nature of the proposal and invited any interested parties to participate in the hearing and to address specifically the question of whether the counties should be part of the Iowa marketing area. Even though the provisions of the Chicago order were not open for consideration, those who may be directly affected by this proceeding were so notified and provided an opportunity to testify or otherwise submit evidence. No one was denied an opportunity to be heard on this issue.

At issue is the question of which mechanism to employ to implement findings based on a public hearing. This decision finds that Crawford and Grant Counties in Wisconsin should be included in the Iowa marketing area rather than in the Chicago marketing area. In order to implement these findings, two steps are necessary. One is to add the territory to the Iowa marketing area by amendment of the Iowa order. The other step involves removing the territory from the provision defining the Chicago order marketing area. This may be done either of two ways. One way is to amend the Chicago order. However, that cannot be done in this instance because the Chicago order was not open in this proceeding. However, the Secretary has authority in § 608c(16)(A)(i) to terminate any provision of an order that does not tend to effectuate the declared policy of the Act. Having found on the basis of a properly noticed public hearing that the two Wisconsin counties should be included in the marketing area defined by the Iowa order, the Secretary must conclude that they should no longer be defined as part of the Chicago marketing area. An entirely appropriate means for carrying out this conclusion is by terminating that part of the Chicago order which provides that the two counties in question are included under the order. Such method has an advantage in terms of timeliness and of economy in implementing a decision.

3. Location adjustment revision. The order should be amended to specify that the territory in Whiteside County, Illinois, which is being added to the marketing area, should be included in Zone 2 for location adjustment pricing purposes. The other Illinois counties in the marketing area are in Zone 2 now.

Aside from proponent's brief statement, no one else addressed this proposal. Currently there are no Iowa order pool plants in the 13 townships of Whiteside County. Thus, addition of these townships to Zone 2 (minus 7 cents) will not change the Class I or uniform price of any handler fully regulated under the Iowa order.

This change is necessary to assure proper price alignment should there ever be a pool plant, or a nonpool plant that handles surplus milk pooled under the Iowa order, located in the portion of Whiteside County that will be in the marketing area. The townships are adjacent to other territory in Illinois and Iowa that are in Zone 2. For these reasons, the proposal should be adopted.

4. Whether an emergency exists to warrant the omission of a recommended decision and the opportunity to file written exceptions with respect to issue number 1. The notice of hearing stated that evidence will be taken to determine whether emergency marketing conditions exist that would warrant the omission of a recommended decision under the rules of practice and procedure with respect to Proposal No. 2 (plant lock-in). Although this decision provides for the two month lock-in as modified, the provision would have no application until such time as the Chicago order may be amended to provide for an accommodating lock-out provision. Several parties objected to the request by SVF for the omission of a recommended decision. We conclude that omitting a recommended decision would serve no useful purpose. There can be no justification for adopting and implementing on an emergency basis a provision that cannot be utilized in the foreseeable future. Accordingly, a recommended decision has been issued.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Iowa order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and

conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended regulating the handling of milk in the Iowa marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

PART 1079—[AMENDED]

1. The authority citation for 7 CFR Part 1079 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Amend § 1079.2 by revising paragraphs (a) and (b), and adding paragraphs (c) and (d) to read as follows:

§ 1079.2 Iowa marketing area.

* * * * *

(a) The Iowa counties of: Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Back Hawk, Boone, Bremer, Buchanan, Butler, Calhoun, Carroll, Cedar, Cerro Gordo, Chickasaw, Clarke, Clayton, Clinton, Dallas, Davis, Decatur, Delaware, Des Moines, Dubuque, Fayette, Floyd, Franklin, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Henry, Humboldt, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Linn, Louisa, Lucas, Madison, Mahaska, Marion, Marshall, Monroe, Muscatine, Pocahontas, Polk, Poweshiek, Ringgold, Scott, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, Wright, and the city of Osage in Mitchell County.

(b) The Illinois counties of: Henderson, Henry, Mercer, Rock Island. and the city of East Dubuque in Jo Daviess County, and the townships of Fulton, Ustick, Clyde, Genesee, Mount Pleasant, Union Grove, Garden Plain, Lyndon, Fenton, Newton, Prophetstown, Portland and Erie in Whiteside County.

(c) The Missouri counties of: Grundy, Harrison, Mercer, Putnam, Schuyler.

(d) The Wisconsin counties of: Crawford and Grant.

3. In § 1079.7, revise paragraph (d) to read as follows:

§ 1079.7 Pool plant.

* * * * *

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant qualified as a pool plant pursuant to paragraph (a) in this section which also meets the pooling requirements of another Federal order and from which during the month a greater quantity of fluid milk products, except filled milk, was disposed of as route disposition, in such other marketing area and to pool plants qualifed on the basis of route disposition in such other marketing area than was so disposed of from such plant in the Iowa marketing area as route dispositon, or to pool plants qualified on the basis of route disposition, except that if such plant was subject to all the provisions of this part in the Iowa marketing area as route disposition, or to pool plants qualified on the basis of route dispostion, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its fluid milk products disposition, except filled milk, is made in the above described manner in such other marketing area, unless, notwithstanding the provisions of this paragraph, it is regulated by such other order;

(4) A plant qualified as a pool plant pursuant to this section which also meets the pooling requirements of another Federal order and from which during the month a greater quantity of fluid milk products, except filled milk, was disposed of as route disposition in this marketing area, and to pool plants qualified on the basis of route dispositon in this marketing area than was so disposed of in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(5) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

4. In § 1079.52, revise paragraph (a)(2)(ii) to read as follows:

§ 1079.52 Plant location adjustments for handlers.

(a) * * *

(2) * * *

(ii) The Illinois counties of Henry, Mercer, Rock Island, and the townships of Fulton, Ustick, Clyde, Genesee, Mount Pleasant, Union Grove, Garden Plain, Lyndon, Fenton, Newton, Prophetstown, Portland and Erie in Whiteside County.

* * * * *

Signed at Washington, DC, on April 12, 1969.

J. Patrick Boyle,

Administrator Agricultural Marketing Service.

[FR Doc. 89–9155 Filed 4–17–89; 8:45 am]

BILLING CODE 3410–02

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 89–1318]

Equity-Risk Investments

Date: April 12, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Reproposed rule.

SUMMARY: The Federal Home Loan Bank Board (the "Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is reproposing amendments to 12 CFR 563.9–8, its regulation governing investments by institutions the deposits of which are insured by the FSLIC ("insured institutions") in equity securities, real estate, service corporations, operating subsidiaries, certain land loans, and nonresidential construction loans ("equity-risk investments").

The reproposal follows the Board's proposal to eliminate the exclusion from the definition of "equity security" in 12 CFR 563.9–8(b)(2) for stock issued by the Federal National Mortgage Association

("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") purchased by insured institutions after December 14, 1988. *See* Board Res. No. 88-1393 (Dec. 22, 1988), 54 FR 155 (Jan. 4, 1989). While today's reproposal is identical to the original proposal for stock purchased after December 14, 1988, the reproposal differs from the original with respect to investments in Fannie Mae and Freddie Mac stock made on or before December 14, 1988. The reproposal would grandfather such investments in a manner consistent with the savings clause of the current equity-risk investment regulation, *see* 12 CFR 563.9-8(f) (1988).

DATE: Comments must be received on or before May 18, 1989.

ADDRESS: Send comments to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at Information Services, Federal Home Loan Bank Board, 801 17th Street NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Richard M. Schwartz, Attorney, (202) 906-6897; Deborah Dakin, Regulatory Counsel, (202) 906-6445; Karen Solomon, Associate General Counsel, (202) 906-7240, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; Robert Fishman, Senior Policy Analyst, (202) 331-4592, Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: On December 23, 1988, the Board proposed to amend its equity-risk investment rule. 54 FR at 155. That proposal had two main components. First, the Board proposed to extend the current equity-risk investment rule beyond its sunset date of April 16, 1989. *See* 12 CFR 563.9-8(h) (1988). That portion of the proposal is covered in a final rule published elsewhere in today's **Federal Register**, which extends the equity-risk investment regulation until October 13, 1989.

Second, the Board proposed to remove the exclusion from the definition of "equity security" in 12 CFR 563.9-8(b)(2) for stock issued by Fannie Mae and Freddie Mac, purchased by insured institutions on or after December 14, 1988. Furthermore, under the proposal, stock issued by those instrumentalities, as well as by other, similar, United States government-sponsored corporations would be expressly authorized as investments for purposes of the equity-risk investment rule, pursuant to 12 CFR 563.9-8(d)(1). Such express authorization would allow an insured institution to invest in those securities without having to acquire the approval of its Principal Supervisory Agent ("PSA"), assuming independent authorization to make such an unapproved purchase.

The Board received six comments in response to its proposal. Three of the comments were from insured institutions, two were from trade associations, and one was from a U.S. government-sponsored corporation.

On the issue of whether the Board should remove the exclusion from Fannie Mae and Freddie Mac stock from the definition of "equity security," two comment letters supported the proposal as drafted. Each stated that the publicly traded stock at issue would properly be classified as equity securities. One of those commenters stated that there was no basic distinction between the risk inherent in publicly traded Fannie Mae and Freddie Mac stock and "the stock of other reputable companies traded on public exchanges."

The remaining four comment letters opposed this aspect of the Board proposal. Each suggested that the Board should continue its exclusion because of the housing-oriented mission of Fannie Mae and Freddie Mac. One commenter suggested that the Board's proposal to make the stock of these entities equity-risk investments would run contrary to the Board's "Qualified Thrift Lender" ("QTL") test. Two other commenters stated that the inclusion of the stock as equity-risk investments would require insured institutions to carry a relatively high percentage of capital against their investment in the stock, pursuant to the Board's recent regulatory capital proposal,[1] and would, therefore, unwisely discourage institutions from investing in the stock.

Two comments addressed the continued exclusion of all purchases of Fannie Mae and Freddie Mac stock made on or before December 14, 1988, from the definition of "equity security" and, thus, the scope of the equity-risk investment regulation. Both commenters supported the basic plan to include some sort of savings clause; one commenter supported the Board's December 14, 1988, date, and the other commenter suggested that the applicable date be moved until the effective date of the Board's final regulation. The Board received no comments on the portion of the proposal that would expressly authorize investment, for equity-risk purposes, in equity securities of all United States government sponsored corporations.

For the reasons set forth below, the Board maintains its support for its proposal to remove the exclusion from the definition of "equity security" for investments in Fannie Mae common and Freddie Mac preferred stock. It believes that the publicly traded securities at issue represent similar risks as that found in investments in equity securities of other U.S. government-sponsored corporations, such as the Student Loan Marketing Association ("Sallie Mae"). As the Board stated in the preamble to its last amendment to the equity-risk investment regulation, "The Board has a statutory responsibility to protect the FSLIC insurance fund from undue risk. This is a particularly heavy burden today because the fund is laboring under the severest pressures in its history." 52 FR 23787, 23788 (June 25, 1987). Those words are even more true today, as is the Board's statutory responsibility to promote safe and sound operations in the thrift industry as a whole.

Furthermore, upon reconsideration, the Board is today proposing to treat investments in Fannie Mae and Freddie Mac stock made on or before December 14, 1988, in a manner consistent with the savings clause of the current equity-risk investment regulation. *See* 12 CFR 563.9-8(f). Under this treatment, described more fully below, all investments in Fannie Mae and Freddie Mac stock—regardless of when purchased—would be considered equity-risk investments, but the Board would "grandfather"—rather than exclude—those investments in Fannie Mae and Freddie Mac stock made on or before December 14, 1988. The Board is of the view that this grandfathering treatment is necessary because it believes that the risks inherent in investment in such stock are equally concrete for stock purchased on or before December 14, 1988, as for stock purchased afterward.

In its original proposal, the Board discussed in detail the reasons supporting the proposed inclusion of Fannie Mae and Freddie Mac stock within the definition of "equity security" and the scope of the equity-risk investment regulation. *See* 54 FR at 156-57. The board continues to believe such treatment is warranted by the risks presented by these stocks, risks equivalent to those inherent in any equity security.

As stated above, several commenters opposed the Board's proposal to remove the exclusion for Fannie Mae and Feddie Mac stock on the ground that the "low-risk" nature of the underlying

[1] Board Res. No. 88-1342 (Dec. 15, 1988), 53 FR 51800 (Dec. 23, 1988).

residential mortgages in which the entities deal would somehow insulate those entities' stock from market fluctuations. Market realities provide no support for such assertions. In fact, for the 52 week period ending March 7, 1989, Fannie Mae common stock has traded in a fairly wide range, trading as high as $65.375 a share and as low as $31.875 a share. The newly issued Freddie Mac preferred stock, publicly traded since January 2, 1989, has traded as high as $55.875 a share and as low as $45.50 a share.

Another commenter stated that the Board's proposal to make Fannie Mae and Freddie Mac stock equity-risk investments was inconsistent with the Board's previous ruling that such investments satisfied an insured institution's Qualified Thrift Lender ("QTL") requirements. The key component of the QTL test, enacted in the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100-86, 101 Stat. at 571-73, § 104(c)(1) (1987), was that insured institutions were required to hold at least 60 percent of their tangible assets in certain "qualified thrift investments" in order to qualify for favorable QTL treatment. *See* 53 FR 312 (Jan. 6, 1988). Generally, these investments are related to domestic real estate or manufactured housing, as well as other assets that are incidental to the thrift's housing-related investments. *Id.* Stock issued by Fannie Mae and Freddie Mac were among the investments approved by the Board as QTL investments. *Id.* at 313, 322 (codifid at 12 CFR 563.27(c)(6) (1988)).

By stating that an approved QTL investment may not be limited by the equity-risk investment regulation, the commenter misconstrues the correlation between the QTL test and the equity-risk rule. Quite simply, the two rules serve different purposes and are not mutually exclusive. In devising the QTL test, Congress' objective was one of "committing insured institutions to the unique, congressionally defined role of providing housing-related finance." H.R. Rep. No. 261, 100th Cong., 1st Sess. 137 (1987). There was no mention, however, that the Board should refrain from placing other regulatory constraints or limitations on any of the investments that qualify as QTL investments, regardless of the risk involved in that investment.[2] Merely because an investment is "housing-related" does not make it risk-free.

In fact, supervisory and regulatory constraints already exist on an insured institution's investment in several approved QTL assets; these constraints are either from Board regulation or from supervisory memoranda published by the Board's Office of Regulatory Activities ("ORA"). For example, the ability of insured institutions to invest in derivative secondary housing products, such as residuals or stripped securities, is currently limited by ORA Thrift Bullentin TB 12 (issued on Dec. 13, 1988). Furthermore, under the Board's final QTL rule, certain acquisition, development and construction loans ("ADC loans"), could qualify both as equity-risk and QTL investments, assuming that the investing institution could properly document the residential nature of the loan, but financing for the residential housing had not yet been obtained. 53 FR at 315;[3] *see also* ORA Memorandum T-87 (Jan. 13, 1988).

The Board is reproposing that investments in Fannie Mae and Freddie Mac stock be pre-authorized investments for equity-risk purposes, pursuant to 12 CFR 563.9-8(d)(1).[4] The Board notes that such investments are expressly authorized investments for Federal associations pursuant to section 5(c)(1)(F) of the Home Owner's Loan Act of 1933 ("HOLA"), 12 U.S.C. 1464(c)(1)(F) (1982), and that investment in such securities appears no more or less risky than the other investments currently authorized as equity-risk investments in 12 CFR 563.9-8(d). Moreover, the Board is reporposing the express authorization, for equity-risk purposes, of investments in equity securities issued by all United States government-sponsored corporations, including Class A common stock recently issued by the Federal Agricultural Mortgage Corporation ("Farmer Mac").

Issues Pertinent to Reproposal

Upon reexamination of the inherent riskiness of Fannie Mae and Freddie Mac stock and for the reasons stated above and in the original proposal, the Board now believes that because all current investments in Freddie Mac Preferred stock and Fannie Mae common stock—whether originally made before or after December 14, 1988—carry equal amounts of risk, all such investments should be counted toward the equity-risk thresholds. Such treatment appears to be required in order to satisfy the safety and soundness purposes of the equity-risk investment regulation. Nevertheless, the Board recognizes that a number of thrift institutions may have invested in Fannie Mae and Freddie Mac stock in reliance on the existing provision exempting that stock from the equity-risk investment thresholds.

To that end, today's reproposal provides that an institution whose aggregate equity-risk investments on December 14, 1988, including that institution's investment in Fannie Mae and Freddie Mac stock, exceeds the applicable equity-risk threshold would not be required solely for that reason to divest itself of such Fannie Mae or Freddie Mac stock purchased as of December 14, 1988.[5] The institution could not, however, make additional unsupervised equity-risk investments until it was in compliance with the applicable threshold. This treatment would be the same "grandfathering" afforded pevious additions to the list of direct or equity-risk investments. *Cf.* 52 FR at 23802; 49 FR at 48754.

As stated in the Board's December proposal and in the accompanying final rule issued today, the Board anticipates publishing an additional notice of proposed rulemaking to address broader equity-risk investment issues within the next few months.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objections and legal basis underlying the proposed rule.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION** regarding the reproposal.

2. *Small entities to which the proposed rule would apply.* The reproposal would apply to all insured institutions.

3. *Impact of the proposed rule on small entities.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). The reproposal treats all

[2] It is important to remember that the equity-risk regulation is only a limitation on investment, without prior PSA approval, not a prohibition. 49 FR 48743, 48746 (Dec. 14, 1984).

[3] *Cf.* 52 FR at 23800 (preamble to equity-risk amendment).

[4] By expressly listing such investments in subparagraph (d)(1), the Board would be signifying that an insured institution could invest in Fannie Mae and Freddie Mac stock up to otherwise authorized thresholds, without having to acquire the approval of the institution's Principal Supervisory Agent.

[5] Shares of the "when-issued" class of Freddie Mac preferred stock held by an institution on December 14, 1988, would be considered "held" on that date for purposes of this reproposal, even though those shares were not issued until January 2, 1989.

institutions identically regardless of their size for the reasons discussed in the **SUPPLEMENTARY INFORMATION** set forth above.

4. *Overlapping or conflicting Federal rules.* There are no known rules that duplicate, overlap or conflict with this reproposal.

5. *Alternative to the rule.* There are no alternatives that would be less burdensome than the reproposal in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above.

List of Subjects in 12 CFR Part 563

Bank depsoit insurance, Currency, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board amends Part 563, Subchapter D, Chapter V, Title 12, *Code of Federal Regulations,* as set forth below.

Subchapter D—Federal Savings and Loan Insurance Corporation

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132,. as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–1948 Comp., p. 1071.

2. Amend § 563.9–8 by revising paragraphs (b)(2)(i) and (d)(1)(iv) and by adding a new paragraph (f)(4) to read as follows:

§ 563.9–8. Regulation of equity risk investment in equity securities, real estate, service corporations, operating subsidiaries, certain land loans, and nonresidential construction loans.

* * * * *

(b) *Definitions.* When used in this section:

* * * * *

(2) * * * (i) stock issued by a Federal Home Loan Bank or a corporation authorized to be created pursuant to Title IX of the Housing and Urban Development Act of 1968; * * *.

* * * * *

(d) *Equity-security investments*—(1) *Permissible investments.* * * * (iv) equity securities issued by any United States government-sponsored corporation, including the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association, and the Federal Agricultural Mortgage Corporation; * * *.

* * * * *

(f) *Savings clause.* * * *

(4) An institution whose aggregate actual or prospective equity-risk investments on December 14, 1988 were in compliance with its applicable thresholds on that date, including compliance as a result of applying the savings clauses of paragraphs (f) (1) through (3) of this section or of securing PSA approval of otherwise nonconforming levels of investment, but would exceed those thresholds because of the inclusion of investments in stock issued by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association, shall not be prohibited solely for that reason from maintaining its full investment in such stock made as of December 14, 1988; nor shall an institution be required to divest any investments solely because of a subsequent change in its assets or its regulatory capital: *Provided,* That additional equity-risk investments may be made only in compliance with the provisions of this section. Nothing in this paragraph (f), however, shall limit the authority otherwise granted to Principal Supervisory Agents to prohibit equity-risk investments or to require the reduction of aggregate equity-risk investment or the divestiture of specific equity-risk investments.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–9196 Filed 4–17–89; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–26708; File No. S7–13–89]

Proprietary Trading Systems

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission solicits comment on a proposed rule under the Securities Exchange Act of 1934 ("Act") that would govern the operation of securities trading systems that are not operated as facilities of national securities exchanges or associations and a conforming amendment to Rule 3a12–7 under the Act. The proposed rule is designed to provide for Commission review of proprietary trading systems that are not operated as facilities of a registered national securities exchange or association and are not subject to Commission regulation as national securities exchanges or associations pursuant to section 6 or 15A of the Act.

DATE: Comments must be received on or before June 19, 1989.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. All comments should refer to File No. S7–13–89, and will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW, Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Gordon K. Fuller, Esq., Special Counsel Division of Market Regulation, Securities and Exchange Commission, Room 5205 (Mail Stop 5–1), 450 Fifth Street NW., Washington, DC 20549, 202/272–2414.

SUPPLEMENTARY INFORMATION:

I. Summary

The Securities and Exchange Commission ("Commission") solicits comment on proposed Rule 15c2–10 [1] under the Securities Exchange Act of 1934 ("Act"),[2] that would govern certain securities trading and information systems that are not operated as facilities of a registered national securities exchange or association ("proprietary trading systems") and are not subject to Commission regulation as exchanges or associations. Certain aspects of such systems currently are not governed by any formal regulatory structure. If adopted, the new rule would provide regulatory requirements for such systems, which currently are in large part subject to the provisions contained in no-action positions provided to system operators by the Commission staff.

Previously, the Commission's Division of Market Regulation ("Division") has informed several operators of proprietary trading systems, that, subject to certain conditions, the staff will not recommend enforcement action if the system is not registered as an

[1] 17 CFR 240.15c2–10.

[2] 15 U.S.C. 73a *et seq.*, as amended by the Securities Acts Amendments of 1975 ("1975 Amendments"), Pub. L. No. 94–29 (June 4, 1975), 89 Stat. 97, 1975 U.S. Code Cong. & Admin. News 97.

exchange under the Act.[3] The staff also has issued to three entities no-action letters regarding their non-registration as clearing agencies under section 17A of the Act.[4] Finally, it has issued to one of those three entities a no-action letter regarding its non-registration as a national securities association under section 15A of the Act.[5]

The Commission continues to believe that the no-action approach is consistent with its objective of maintaining an appropriate level of review of proprietary trading systems. Nevertheless, in view of the Commission's experience in overseeing these systems, the Commission believes that it is appropriate to reassess some of the assumptions underlying its approach in this area.

Several commentators have criticized the Commission's current policy of addressing these matters through staff no-action letters.[6] Specifically, these commentators have suggested that such an approach could provide an unfair competitive advantage for systems operating pursuant to a staff no-action position in relation to registered securities exchanges or associations offering competing products and services.[7] In addition, several of the same commentators raised concerns that the use of such relief did not provide them with the notice and comment procedures required in Commission rulemaking.[8]

The Commission believes that the competitive issues raised by the commentators deserve consideration. Moreover, the Commission recognizes that many proprietary trading systems are becoming increasingly complex. The Commission is concerned that the imposition of regulatory conditions in a no-action approach to systems linked to foreign markets may be inadequate to ensure the viability and quality of intergovernment and intermarket surveillance and enforcement enhancements, such as international information sharing arrangements. Moreover, there have been instances in which operators of certain trading systems have failed to request no-action positions.

In light of the commentators' concerns and the Commission's experience in administering the current no-action approach, the Commission has determined to reexamine its procedures. The Commission, therefore, is proposing Rule 15c2–10, which would provide a direct regulatory scheme for proprietary trading systems.

II. Background

Over the past twenty years, the Commission has explored ways to respond to the activities of proprietary trading systems. In 1969, Instinet began operating a computer/communications network to be used by professional investors to effect large block trades.[9] In response, at that time, the Commission proposed Rule 15c2–10 to require such an automated trading and information system to file with the Commission a plan describing the system, setting forth its rules, and providing for adequate recordkeeping.[10]

Instead of adopting the proposed rule, however, the Commission determined that Instinet could be appropriately regulated as a broker-dealer. The Commission determined that: (1) Instinet, unlike registered exchanges, operated on a for-profit basis with no members; (2) Instinet had no "exchange-type" market participants, such as market makers or floor brokers; (3) customers furnished all quotes and orders themselves, through the Instinet facilities; and (4) Instinet did not seem to fit within the statutory scheme contemplated for exchanges.

Rule 15c2–10 was withdrawn in 1975, when the Commission adopted Rule 11Ab2–1, providing for the registration of securities information processors ("SIPs"). The Commission believed that Rule 15c2–10 was no longer necessary in light of the regulatory scheme provided by the 1975 Amendments.[11]

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[3] *See* letters from: Brandon Becker, Associate Director, Division, to Robert A. McTamaney, Carter, Ledyard, & Milburn, counsel for RMJ Securities Corporation, dated January 12, 1989 ("RMJ no-action letter"); Kathryn V. Natale, Assistant Director, Division, to Christopher R. Petruzzi, ECON Investment Software, dated October 11, 1988 ("Petruzzi no-action letter"); Brandon Becker to Lloyd H. Feller, Morgan, Lewis & Bockius, counsel for Jefferies & Company, Inc., dated July 28, 1987 ("POSIT no-action letter"); Richard Ketchum, Director, Division, to Daniel T. Brooks, Cadwalader, Wickersham & Taft, counsel for Instinet Corporation, dated August 8, 1986 ("Instinet no-action letter"); Richard T. Chase, Associate Director, Division, to James M. Anderson, Taft Stettinius & Hollister, counsel for Robert L. Adler & Co., dated August 7, 1985 ("Adler no-action letter"); Michael J. Simon, Assistant Director, to D. Roger Glenn, Schifino & Fleischer, counsel for National Partnership Exchange, Inc. ("NAPEX"), dated August 2, 1985, and July 14, 1986 ("NAPEX no-action letters"); Richard T. Chase and Richard Ketchum to Eric D. Roiter, Debevoise & Plimpton, counsel for Security Pacific National Bank ("Security Pacific"), dated July 19, 1985, and August 8, 1986, respectively ("Security Pacific no-action letters"); Michael J. Simon to Carl J. Hewitt, Assistant General Counsel, Troster Singer Corporation, dated May 23, 1985, and September 3, 1985 ("Troster Singer no-action letters"); Michael J. Simon to Patteson Branch, President, Exchange Services, Inc., dated May 22, 1985, and September 5, 1985 ("Exchange Services no-action letters"); Michael J. Simon to Michael J. Tario, Co-Chief Executive Officer, Transaction Services, Inc., dated May 15, 1985, and September 5, 1985 ("Transaction Services no-action letters"); and Michael J. Simon to Bruce C. Klein, Secretary-Treasurer, B&K Securities, Inc., dated March 18, 1985, and September 5, 1985 ("B&K no-action letters"). *See also* letter from Division to Schwartz, Kobb, Scheinert, Hamerman & Johnson, 1979 CCH Fed. Sec. L. Rptr. ¶ 82,037 (February 15, 1979) (automated trading information system facilitating trading in mortgages; no automatic execution or clearing capacities).

[4] *See* Instinet, Adler, and NAPEX no-action letters, *supra* note 3.

[5] *See* Instinet no-action letter, *supra* note 3.

[6] *See* letters from: Walter E. Auch, Chairman and Chief Executive Officer, Chicago Board Options Exchange ("CBOE"), to John S.R. Shad, Chairman, SEC, dated May 2, 1986; John D. Dingell, Chairman, Committee on Energy and Commerce, United States House of Representatives, to John S.R. Shad, Chairman, SEC, dated April 24, 1986, March 14, 1986, November 7, 1985, and July 30, 1985 ("Dingell letters"); Burton R. Rissman, Andrew M. Klein, and Carl A. Royal, Schiff Hardin & Waite, counsel for CBOE and The Options Clearing Corporation ("OCC"), to John P. Wheeler, III, Secretary, SEC, dated March 24, 1986 and September 26, 1985 ("CBOE and OCC letter"); Fred M. Stone, Senior Vice President and General Counsel, American Stock Exchange, Inc. ("Amex"), dated January 9, 1986 ("Amex letter"); Robert J. Birnbaum, President and Chief Operating Officer, New York Stock Exchange, Inc ("NYSE"), to John S.R. Shad, Chairman, dated October 30, 1985 ("NYSE letter"); Howard M. Brenner, Chairman, Options and Derivative Products Committee, Securities Industry Association ("SIA"), to John S.R. Shad, dated October 11, 1985 ("SIA letter"); and William J. Brodsky, President, Chicago Mercantile Exchange ("CME"), to John S.R. Shad, dated September 11, 1985 ("CME letter"). *See also, infra* note 25.

[7] *See* CBOE and OCC letter, *supra* note 6, dated September 26, 1985, at 11; Amex letter at 2.

[8] *See* CBOE and OCC letter, *supra* note 6, dated September 26, 1985, at 7, 12–13; SIA letter; NYSE letter; CME letter at 4; Dingell letter, dated November 7, 1985, at 2–3; Amex letter at 3.

[9] Instinet currently is a subsidiary of Reuters Holdings PLC, a London-based news and financial data company. As originally operated, the Instinet system allowed subscribers to enter offers to buy and sell securities, as well as acceptances of such offers and counteroffers. All information was entered into the system anonymously through code numbers. Although the Instinet customer base primarily was institutional, Instinet made its services available to anyone who was "financially responsible", including broker-dealers. Any security could be traded through the system, and there were no market makers, floor brokers, or other traditional "exchange-type" participants. Instinet continues to allow its participants to accept "live" orders, and, in addition, has expanded its system to initiate a "crossing network" in which buy and sell orders for portfolios of securities are matched with one another. *See infra* n. 15.

[10] *See* Securities Exchange Act Release No. 8661 (August 4, 1969), 34 FR 12952, regarding Proposed Rule 15c2–10.

[11] *See* Securities Exchange Act Release No. 11673 (September 23, 1975), 40 FR 45422. After Instinet's registration as a broker-dealer, the Commission determined to regulate certain automated trading and information systems as facilities of either an exchange or an association. For example, in 1978, the Commission examined the status of the Cincinnati Stock Exchange's ("CSE") National Securities Trading System ("NSTS"). The CSE argued that NSTS should be treated as a facility of an exchange, in part, so that it could trade listed securities without concerns regarding off-board trading restrictions. The Commission approved operation of the NSTS, and determined that exchange off-board trading restrictions would not prohibit users of the NSTS from trading multiple-

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In the early 1980s the Commission responded to the expanding number of automated trading systems operating in the over-the-counter ("OTC") market by reviewing its actions with respect to such systems. On October 4, 1984, the Commission concurred in the staff's recommendation that the Division inform the sponsors of automated OTC execution systems that the Division would consider granting no-action positions with regard to the Act's definition of the term "exchange".[12]

Subsequently, on August 8, 1986, the Commission discussed the staff's no-action positions regarding the non-registration as exchanges of certain proprietary trading systems, including the planned Security Pacific system for the trading of options on government securities. While it determined not to object to the Division's advising Security Pacific of its determination to grant a no-action position with respect to Security Pacific's operation of the system, the Commission also recognized the limitations of the no-action approach and directed the Division to prepare for Commission consideration a release proposing for comment a rule to regulate proprietary trading systems.

III. Current Systems

The staff has granted no-action positions to eleven proprietary trading systems.[13] The systems include several automated execution systems for trading common stocks, and trading and information systems for common stocks, limited partnership interests, and municipal bonds.

Three of the trading systems for common stocks that have received no-action treatment from the Commission facilitate the trading of both exchange-listed and OTC stocks. For example, the Instinet system provides market information and order routing and execution services to foreign and domestic institutions, broker-dealers, specialists, and market makers.[14] The system also permits institutional and broker-dealer negotiation, as well as execution of large blocks and smaller trades.[15]

Another system, POSIT (Portfolio System for Institutional Trading), sponsored by Jefferies and Company, Inc. ("Jefco"), a registered broker-dealer, permits the trading of portfolios of exchange-listed and OTC securities by institutional customers with substantial securities portfolios, *e.g.*, mutual funds, insurance companies, commercial banks and pension funds.[16] The system permits its subscribers to post an indication of interest to be matched on a confidential basis against other orders in the system. After reviewing the matched order to determine whether the order should be executed as matched, Jefco either executes the order or contacts the subscribers to seek a modification of the order.

Finally, the staff issued a non-action letter to Exchange Services, a broker-dealer that sponsored a system to facilitate trading in NYSE-listed and NASDAQ issues.[17] The proposed system would have permitted its retail customers to obtain quotes when the primary markets were closed, *e.g.*, evenings and weekends, and to enter agency orders into the system. The system then would have matched the order with others in the system and executed it, if a match was found, or stored the order until the markets reopened, if the customer had so chosen. The system never operated.

An additional three systems that have received no-action treatmeant facilities the trading of OTC secutities listed on NASDAQ.[18] With some variations distinguishing them, INside, sponsored by Troster Singer Corp., Tran, sponsored by Transaction Services, a subsidiary of Gruntal, Inc., and the Customer Order Protection System ("COPS") sponsored by B&K Securities, Inc., permit subscribing broker-dealers to obtain automated execution at the inside NASDAQ price for orders up to specified size limits.[19] Of the three, only INside and Tran remain in operation.[20]

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listed stocks, and, thus determined to treat the system as a facility of an exchange. Similarly, in 1981, the Commission treated the Computer Assisted Execution System ("CAES") of the National Association of Securities Dealers, Inc. ("NASD") as an NASD facility, therefore obviating the need for duplicative registration.

[12] Section 3(a)(1) of the Act defines the term "exchange" as:

Any organization, association or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

For a discussion of the intended scope of this definition as sketched in the legislative history of the Act, *see* the April 17, 1934 Report of the Senate Committee on Banking and Currency ("1934 Report"), S. Rep. No. 792, 73d Cong., 2d Sess. 14, *infra* note 29.

[13] Ten of the eleven systems are sponsored by either: (1) broker-dealers registered pursuant to section 15(b) of the Act ("registered broker-dealers") or section 15C of the Act ("government securities broker-dealers"); (2) entities affiliated with registered broker-dealers; or (3) entities in the process of registering as broker-dealers under section 15(b). The eleventh system was proposed to be operated by Security Pacific, a national bank subject to supervision by the Comptroller of the Currency. As noted *infra*, Security Pacific sold its system to RMJ Securities (a registered government securities broker) in December 1987; a subsidiary of Security Pacific now serves as the facilities manager of the registered clearing agent of the RMJ system. As a consequence, investors and intermediaries using the services of these systems benefit from the panoply of protections that accrue from broker-dealer and government securities dealer registration under the Act or from oversight by the Comptroller of the Currency.

[14] Prior to October 19, 1987, the Instinet system has the capacity, through a network of exchange specialists and OTC market makers, automatically to execute market orders of up to 1,000 shares of exchange-listed and OTC equity securities. On October 19, 1987, Instinent discontinued the automatic execution feature because of complaints from market makers about the increased exposure to loss precipitated by automatic executions during the market break.

[15] *See* Instinet no-action letter, *supra* note 3. Since this no-action letter was granted, Instinet has begun to open as early as 3:00 a.m. est (*see* letter from Murray L. Finebaum, President, Instinet, to Richard G. Ketchum, dated May 29 1987), instituted a "Crossing Network" allowing the execution of orders for groups of stocks, and included a small group of American Depository Receipts not authorized for quotation on the NASD Authomated Quotations system ("non-NASDAQ stocks") in its system.

[16] *See* POSIT no-action letter, *supra* note 3.

[17] *See* Exchange Services no-action letter, *supra* note 3.

[18] In a development related to the operation of automated execution systems for OTC securities, NASD Market Services, Inc. ("MSI") commenced operation of its Advanced Computerized Execution System ("ACES,). ACES, acting through MSI as its facilities manager, allows individual market markers to automate their internal execution functions and to manage their inventory. ACES provides a variety of capabilities to subscribers, including automated execution, maintenance of a limit order file, intraday trade corrections and maintenance and control of traders' positions in individual securities. With MSI maintaining the necessary computer switches and transmission lines, each subscriber markets its unique version of ACES to order entry firms. *See* letter from Frank Wilson, Executive Vice President and General Counsel, NASD, to Richard G. Ketchum, dated May 12, 1988.

[19] *See* no-action letter issued to: (1) Troster, Singer; (2) Transaction Services; and (3) B&K Securities, Inc., *Supra* note 3. Primarily, the distinctions are based on the size of the orders accepted for automatic execution. For example, Inside accepts for automatic execution orders of varying sizes, depending upon the liquidity of a particular issue; Inside also limits orders to those issues in which its sponsor and any other invited market maker makes a market. Tran's order size depends upon the selling price of the issue, *i.e.*, order sizes of up to 1,000 shares are permitted for issues selling above one dollar while orders up to 2,000 shares are permitted for issues selling at less than one dollar. COPS would have accepted either principal or agency orders of up to 1,099 shares; retail agency orders took precedence over principal or market maker orders. COPS also included an open limit order book available to all participants; however, participants were not able to identify another subscriber's order.

[20] The Division also recently isued a no-action letter to Petruzzi and Associates ("PA"), a partnership operating as a broker-dealer, which proposes to trade NYSE-listed stocks, bonds and warrants. Although it will not disseminate quotatons for securities, PA will permit its

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Four organizations receiving no-action letters sponsor or sponsored proprietary trading systems for non-equity securities.[21] Of particular note, the staff extended no-action positions to the proposed Security Pacific system for trading options on government securities, and to its successor as owner and operator of the system, RMJ Securities Corporation ("RMJ Securities").[22] Security Pacific developed a quotation and settlement system for put and call options on U.S. Treasury securities. Security Pacific, however, never began operating the system; although Security Pacific received the necessary approval to operate the system from the Federal Reserve Board, banking legislation [23] imposed a moratorium until March 1, 1988, on expansion by commercial banks into securities, real estate, and insurance activities. The moratorium applied to the Security Pacific system.

On December 1, 1987, Security Pacific sold the system to RMJ Securities. The sale conveyed to RMJ Securities ownership of the computer software, other proprietary rights associated with the system, and the right to act as the exclusive operator of the system.[24]

The system as operated by RMJ Securities is made up of: (1) a newly-formed Delaware corporation [Delta Government Options Corp. ("Delta")], which issues the options contracts and provides clearing services to participants;[25] and (2) a brokerage subsidiary of RMJ Securities Corp. [RMJ Options Trading Corp. ("RMJ Options")]. The RMJ system is designed, through the interaction of these components, to permit broker-dealers, banks, and other institutions to trade non-standardized options on U.S. Treasury bills, notes, and bonds with one another, on either an anonymous or fully-disclosed basis.

In addition to its function as clearing agent for the system, Delta also issues the options traded through the system and establishes margin requirements and trading and position limits for participants. RMJ Options disseminates bid and ask quotations on the options through a computerized communications network; at the discretion of the participants, RMJ Options either: (1) Executes the trade at the quoted price on an anonymous basis, or (2) permits the participants to negotiate the trade directly with one another, on a fully disclosed basis. Further, RMJ Options generates trade reports for transactions executed through the system, calculates margin and premiums due from participants in light of the positions they have taken, and instructs Delta's facilities manager, Security Pacific National Trust Co. ("SPNTCO") as to whether, and in what amounts, funds are due to be paid. Finally, Delta (acting through its agent SPNTCO) and RMJ Options arrest any transaction that fails to match, breaches a trading or position limit, or has been entered by a defaulted participant.[26]

IV. The Need for Regulation

The Commission long has recognized that there must be some practical limitations on entities encompassed within the broad definition of the term "exchange".[27] Nonetheless, the definition of the term "exchange" in section 3(a)(1) of the Act presents interpretative questions because of the phrase "facilities [28] for bringing together purchasers and sellers of securities." Read broadly, this phrase would incorporate many of the activities of OTC market makers [29] and brokers' brokers for government and municipal securities.

Brokers' brokers for government and municipal securities traditionally have brought buyers and sellers together by disseminating, through video display systems installed in dealers' offices, the prices and sizes of orders at which primary dealers are willing to trade and the prices and order sizes of the most recently completed transactions. A primary dealer, having decided to effect a trade at a particular price and order

customers, who are intended to be small, individual investors, to place orders with PA for NYSE-listed securities; those orders will be filled from the inventory of a fund managed by PA or with which PA has a contractual relationship. The price for the securities will be the NYSE closing price for the applicable security on the day that the order is placed. The system has not yet commenced operations.

[21] *See* no-action letters issued to: (1) Adler; (2) NAPEX; (3) Security Pacific; and (4) RMJ, *supra* note 3.

[22] *See* Security Pacific and RMJ no-action letters, *supra* note 3. The Commission received substantial critical comment on the staff's no-action positions with respect to the Security Pacific system. *See supra* notes 6–8 and accompanying text, and letters from Thomas R. Donovan, President and Chief Executive Officer, Board of Trade of the City of Chicago ("CBT"), Charles J. Henry, President, CBOE, and William Brodsky, President and Chief Executive Officer, CME, to David S. Ruder, Chairman, SEC, dated June 10, 1988, February 19, 1988, and November 6, 1987.

[23] *See* Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 100th Cong., 1st Sess. Section 201(b)(2)(C), 101 Stat. 581–82, 584 (Aug. 10, 1987).

[24] *See* letter from Robert A. McTamaney, Carter, Ledyard & Milburn, counsel for RMJ Securities, to Brandon Becker, dated February 4, 1988 (request for staff no-action position) ("RMJ no-action request").

[25] On July 29, 1988, Delta filed with the Commission an application for registration as a clearing agency pursuant to Section 17A of the Act, and an accompanying request for exemption from several of the substantive requirements of that Section. Securities Exchange Act Release No. 25956 (July 29, 1988), 53 FR 29536. That application was subsequently amended by Delta on October 7, 1988. Securities Exchange Act Release No. 26172 (October 12, 1988), 53 FR 40816. The Commission on January 12, 1989, granted Delta temporary registration as a clearing agency for a period of three years. Securities Exchange Act Release No. 26450 (January 12, 1989), 53 FR 2010. (For a further discussion of the clearing services provided by Delta, *see* that release).

[26] By letters, dated February 4, 1988 and June 17, 1988, RMJ Securities requested that the staff issue a no-action letter similar to the ones issued to Security Pacific in 1985 and 1986, regarding non-registration of the RMJ system as a national securities exchange pursuant to Section 3(a)(1) and 6 of the Act. Pursuant to the Commission's determination not to objection to the staff's issuance of such a letter, the staff issued the requested no-action letter to RMJ Securities on January 12, 1989. *Supra* notes 3, 24.

[27] *Supra* note 14. In a general analysis of the bill, the 1934 Report stated that most of the definitions (including that for "exchange") are "self-explanatory." S. Rep. No. 792, 73d Cong., 2d Sess. 14. On the other hand, the many actual references to stock exchanges in the legislative history of the Act are to those specific entities that existed at the time and Congress did not appear to anticipate any type of new, yet unrecognizable form of an exchange. Instead, Congress referred to exchanges "as that term is generally understood."

[28] There is little background for the definition of the term "facility." Section 3(a)(2) of the Act states:

The term "facility" when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or services.

The definition of the term has not changed since it was originally adopted and is very similar to the originally-proposed version. No testimony refers to the definition of the term "facility' and as in the case of the "exchange" definition, the Committee felt that the definition was "self-explanatory." 1934 Report at 14.

[29] *See, e.g., Stock Exchange Practices: Hearings on S. Rep. 56 and S. Rep. 97 Before the Senate Committee on Banking and Currency ("Stock Exchange Practices Hearings")*, 73d Cong., 1st Sess. 6625 (1934) (statement of Richard Whitney, President, New York Stock Exchange, in regard to H.R. 7852):

Section 3 of the bill contains definitions of the terms used in the bill. These definitions are unusually broad and sweeping. I call your attention particularly to the first definition which defines the word "exchange' to include not only the instutition itself, but also all of its members.

Cf., Stock Exchange Practices Hearings (testimony of Oliver J. Troster) at 7072:

Under section 3 exchanges are defined to include:

Any board or market place, whether organized or unorganized, however managed or conducted, and whether incorporated or unincorporated, where or by means of any facility of which, contracts or offers for the purchase or sale of securities or other transactions in such securities are made.

It appears to me as a layman that these words may be broad enough to cover every place of business of an over-the-counter dealer. Purchases and sales are certainly made there and by the use of its facilities. In a broad sense it is itself a board or market place. Yet we feel certain that the Congress cannot intend the absurd result that every little over-the-counter dealer's place of business is itself to be an "exchange" for all purposes of the act.

size, instructs the blind broker to execute the trade with the contra party. Trades are executed by the blind broker on an anonymous basis—*i.e.*, without the disclosure to either dealer of the identity of the contra party at the time of the trade. Although such systems are designed to facilitate the execution of orders, Congress gave no indication in enacting the Government Securities Act of 1986 [30] that it intended to subject brokers' brokers to exchange registration requirements.

The Commission believes that the proprietary systems that have developed to-date are distinguishable in function from exchange markets. These proprietary systems offer to participants the capacity to execute automatically transactions based on derivative pricing and also offer the opportunity to advertise purchasing and selling interest. These systems have not, however, evolved into interdealer quotation or transaction mechanisms in which participants enter two-sided quotations on a regular or continuous basis, thus ensuring a liquid marketplace.

The Commission also notes that an overly expansive interpretation of exchange registration would impose substantial burdens on existing proprietary trading systems. Specifically, application of the statutory fair representation standard set forth in section 6(b)(3) of the Act to proprietary systems could act as a barrier to entry for those systems.

Moreover, exchange registration would raise substantial questions regarding the ability of institutions to participate in existing proprietary systems.[31] In light of the functional differences between existing proprietary systems and exchange marketplaces and the potential burdens on competition which might arise, the Commission believes at this time that the existing proprietary systems are not required to register as exchanges.

The Commission believes that subjecting proprietary trading systems to exchange registration pursuant to Section 6 would substantially deter development of innovative trading systems.[32] The Commission believes that it is desirable for certain trading and quotation systems to be operated as proprietary businesses, rather than as self-regulatory organizations ("SROs")[33] so long as each system is subject to an appropriate level of Commission oversight.[34]

The Commission believes, however, that some form of oversight of these proprietary trading systems is necessary. In particular, the Commission is concerned with surveillance of these systems as trading volume has increased, [35] and as the systems have become more sophisticated and have begun to operate on an international basis.[36] It is appropriate for the Commission to ascertain that foreign entities participating in the systems are financially responsible and that surveillance information can be obtained regarding trading in such systems.[37] Regulation could also ensure that these systems have sufficient capacity so that they do not cease to function in periods of unusual volume. Further, given the potential for expansion of these proprietary trading systems, it may be important that the Commission have an opportunity to review and approve or disapprove the rules that govern the operation of these systems. Finally, particularly as proprietary trading systems grow in size and importance, the question of access to those systems on terms that are fair and non-discriminatory becomes increasingly significant.[38]

Proprietary trading systems increasingly are assuming new functions (such as Instinet's and POSIT's crossing features) and providing new trading and quotation mechanisms. The systems also are expanding to include a growing universe of securities, such as the options to be traded on the RMJ system and the foreign securities traded on Instinet. In light of these developments, the Commission believes that it is important for sponsors of these systems to accept clear responsibility for enforcing compliance by their participants with the securities laws.

The regulatory conditions imposed in the no-action approach rely on the episodic reporting of trading and product innovations and limit the availability to the Commission of the information it needs to monitor these systems. In its no-action letters, the Division informed operators of automated systems that it would not recommend Commission enforcement action if they did not register their systems as exchanges.[39]

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[30] Pub L. No. 99-571 (September 3, 1986).

[31] An argument can be made that section 6(f)(1) of the Act permits such institutional participation in existing proprietary trading systems. It is not clear, however, whether interpreting section 6(f)(1) as permitting institutional participation comports with Congress' intent, set forth in section 3(a)(3)(A) of the Act, to limit membership in an exchange to registered broker-dealers. In any event, it is clear that the Commission, under section 6(f)(1), could not compel compliance with the systems' regulations by non-registered institutions that execute transactions solely through brokerage services offered by those systems.

[32] Moreover, several of the systems that will be subject to the Rule, *e.g.*, the RMJ, Instinet, and POSIT systems, are designed to serve large institutional investors rather than small retail customers. Because these large institutions have far greater capacity to assess and avoid trading risk than do small retail investors, the Commission is satisfied that the purpose of the Act in applying the incremental protections afforded by exchange registration would not be served by their application to these systems.

[33] The Commission emphasizes that this view is based on the present configuration and trading volumes of those systems.

[34] The Commission notes that SRO registration might provide registered entities certain advantages over nonregistered trading systems. For example, only SROs are participants in the Intermarket Trading System and the Consolidated Tape Association ("CTA"). While Instinet has a contract allowing it to report trades through CTA, it has no share in revenues or votes on CTA matters. The options SROs are able to use registration and disclosure materials tailored specifically for standardized options, while non-registered entities must utilize conventional registration forms. Moreover, the antitrust protection accorded exchanges also may be considered a benefit of registration, although this immunity brings with it, and indeed is premised upon, Commission regulation and oversight. Of course, any entity that felt its operation was unduly hampered for these reasons could avail itself of those advantages by seeking exchange registration rather than operating as a proprietary system.

[35] For example, in 1987, the average monthly trading volume in Instinet (aggregated for all its systems) was approximately 120 million shares. The average monthly trading volume in Troster Singer's Inside systems was approximately 184 million shares.

[36] In this connection, the Commission has required, as a prerequisite to international linkages established by the SROs, comprehensive surveillance information sharing agreements or undertakings. Although the proprietary systems have not as yet established linkages with foreign markets, such linkages could occur in the near future, and the Commission has no arrangements for their oversight.

[37] Domestically, activity occurring through these trading systems does not go unscrutinized. The NASD examines a member's activities in various trading systems just as it does any member's other OTC trading activities. The exchanges also conduct surveillance of their specialists' trading activity occurring through Instinet.

[38] Although the activities of most of these systems would constitute broker or dealer activities under sections 3(a)(4) and 3(a)(5) of the Act and would require registration as a broker-dealer under section 15(b) of the Act, as a municipal securities broker or a government securities dealer under section 15C, and thus would trigger the incremental protections afforded by those provisions, proposed Rule 15c2-10 could ensure that systems capacity is adequate, and that access is not unfairly denied. Registration as a broker-dealer subjects the registrant to requirements to maintain adequate net capital (Rule 15c3-1 under the Act) and to provide for the protection of customers' securities and funds (Rule 15c3-3 under the Act). Broker-dealer registration, however, may limit the Commission's oversight of the actual organizational nature of the systems, including regulation of such burdens on competition as entry criteria for order-entry firms and market makers. The broker-dealer regulatory framework also would not apply to essential areas such as terms of execution, the routing of indications of interest and the handling of system errors or failures.

[39] The Division also advised the operators of several systems that the Division's no-action

Continued

The no-action posture was conditioned on the Division's being promptly informed of any material operational changes. In addition, so that the Commission could be kept advised of changing market conditions, the system operators also were required to provide certain quarterly data.[40] The purpose of this data was to permit the staff to monitor activity in the trading and information systems, as well as the rules these systems developed regarding executions in the systems and quotation dissemination; however, the staff does not believe it has enough regular information to do so effectively.

Finally, the Commission believes that, given the potentially significant impact of these systems on the OTC trading of securities, it is appropriate for public investors to have notice and an opportunity to comment on the trading systems themselves and on significant changes to those systems proposed by the sponsors of the systems. Such opportunity for comment, which is not available under the no-action approach but which would be provided under the proposed Rule,[41] will assist the Commission in ensuring that the systems operate in a manner consistent with the purposes of the Act.

V. Description of the Proposed Rule

For the reasons discussed above, the Commission is proposing Rule 15c2-10 ("Rule") to require identification of trading and information facilities. The Rule is inteded to permit proprietary trading systems to operate effectively while at the same time subjecting those systems to Commission scrutiny in order to assess whether the systems operate in a manner consistent with the fundamental purposes of the Act—the protection of investors and the maintenance of fair and orderly markets.

The proposed Rule would require each operator of a trading and information system [42] to submit to the Commission a plan covering the system. The Commission would publish and review the plan, and, if the Commission determined that it met the requirements of the Rule, it would declare the plan effective. Under the Commission's proposal, a broker or dealer or municipal securities dealer or government securities dealer would be prohibited form sponsoring or entering an indication of interest, quotation, or order to purchase or sell a security in the trading system unless the plan had been declared effective.[43]

A. Systems Covered by the Rule

The Rule would encompass any system that provides for the dissemination outside the sponsor [44] and its affiliates of indications of interest, quotations, or orders to purchase of sell securities and that provides procedures for executing or settling transactions in such securities.[45] The proposed Rule, however, excludes the following three types of trading and information facilities.

First, the Rule would not apply to a system in which the sponsor is a broker or dealer that limits use of the system to its own retail customers. The Commission believes that a system in which all transactions are executed by the broker or dealer for itself or its customers does no more than automate the internal execution functions traditionally engaged in by an integrated broker-dealer.[46] For example, many firms operate proprietary automatic execution systems for NASDAQ securities. These internal systems route orders from the branch office of a retail firm to the firm's traders. The system then executes the order automatically at the NASDAQ inside quotation (*i.e.*, the highest bid price or the lowest asked price) and reports the execution to the trader, the branch office, back office clearing, and for National Market System ("NMS") securities, to the NASD.[47]

Second, the Rule also would not apply to certain systems currently operating solely as brokers' brokers [48] for non-equity securities. A brokers' broker trading system would be defined as any system that, with respect to non-equity securities including, but not limited to, government and municipal securities, only collects and disseminates without any identification of the responsible firm, quotations or indications of interest to brokers and dealers and provides: (1) The means for executing transactions based on such indications of interest or quotations, or (2) the means for executing, as principal, the contemporaneous purchase and offsetting sale or sale and offsetting purchase from or to other brokers, dealers, and municipal and government securities dealers.[49]

Finally, the Rule would not cover a trading and information facility operated by a registered national securities exchange or association, such as the New York Stock Exchange's "Designated Order Turnaround" system or the NASD's Small Order Execution

position applies to nonregistration of their systems as clearing agencies. *See* Instinet, NAPEX, and Adler no-action letters, *supra* note 3. Moreover, the staff extended a no-action position to Instinet regarding its nonregistration as a national securities association. Instinet no-action letter, *supra* note 3.

[40] As a general matter, the staff requested that each applicant provide on a quarterly basis data on: (1) The number and identity of subscribers in the system; (2) the applicants or subscribers who have been denied participation or have withdrawn, and the reasons why; (3) the number of money defaults or failures to deliver; (4) the system's response, if any; (5) the cost to the company of satisfying such defaults; and (6) the estimated cost to subscribers of any defaults not satisfied by the system. The Division also requested trading volume data and information concerning the kinds of securities (*e.g.*, common stock) traded through the system and current copies of any rules, regulations or similar documents and any contracts that participants are required to sign. Finally, the system operator was to provide the staff with thirty days' notice of any contemplated material changes in the operation of its system.

[41] *See* sections c(2)(i) and d (3) and (4) of the proposed Rule, *infra* at 52–53, 55–56.

[42] The rule would define specifically the term "trading system."

[43] Should the Commission adopt the Rule, the Division would continue to provide no-action relief with respect to registration as an exchange for proprietary trading systems in appropriate circumstances, and prior no-action positions would not be withdrawn. The Rule would, of course, apply to operators of all trading systems that receive or have received no-action treatment form the staff.

[44] The Rule specifically would define a "sponsor" as a person who organizes, operates, administers or otherwise controls, directly or indirectly, a trading system.

[45] Thus, a system that only disseminates information and does not provide any execution or settlement procedures would not be subject to the Rule. Procedures for executing or settling transactions would include any rules, guidelines or facilities for either order entry and execution or the clearing and settling of trades.

[46] The Commission requests comment on the appropriate breadth of this exemption; specifically, whether the exemption should be rewritten to apply to systems that automate the internal order routing and execution capacities of the sponsoring broker-dealer, and that provide their customers with access to those services.

[47] In the case of a proprietary trading system that links the facilities of an introducing broker-dealer to those of a clearing broker-dealer, and that permits orders entered by customers of the introducing firm to be executed through the system and cleared through the facilities of the clearing firm, both the introducing firm and the clearing firm would be deemed one broker-dealer for purposes of this exemption. Accordingly, the proprietary trading system linking the two firms would fall within the exception to the Rule.

[48] A brokers' broker, which operates chiefly in the government and municipal securities markets, collects and disseminates buy and sell interests from and to its customers by receiving indications of interest from dealers and communicating them by telephone or rebroadcasting such interest over its proprietary system. In effect, a system operated by a brokers' broker permits dealers to advertise anonymously their trading interests.

[49] A system, such as the system proposed to be operated by RMJ Securities, that provides clearing and settling as well as blind brokerage services to participants, would not fall within this exclusion. Similarly, systems such as the RMJ system, which permits participants to submit quotations and trade directly with one another on a fully disclosed basis, and the POSIT system, in which customers may specify how much information about their orders may be revealed to other participants in POSIT, would fall outside this exclusion.

System. Such a facility already is regulated through the Commission's review of the rules of each registered national securities exchange or association.[50]

B. Contents of the Plan and Initial Submission

The Rule would require system sponsors to submit as part of the plan the following information regarding the system:

(1) The name and address of the plan sponsor and a description of the sponsor's organization, including any subsidiary or other affiliate involved with the operation of the system.

(2) The securities, or types of securities,[51] that may be traded on or through the system.

(3) A description of the method of the operation of the system, including the procedures governing the execution and, if applicable, clearance and settlement of transactions and the entry of indications of interest, quotations and orders. The operator should include in this description the types of transactions that can be executed and the specific parameters for each type of transaction.

(4) The terms and conditions under which persons will be granted or denied access to the system as participants or subscribers. The sponsor should include the specific procedures and standards to govern such grant or denial of access.[52]

(5) A description of the system's requirements regarding the financial soundness and integrity of participants and subscribers.

(6) A description of the staffing, systems, and procedures in place to supervise the system for compliance by participants and subscribers with the terms and conditions of the plan and the federal securities laws and rules and regulations thereunder.

(7) A description of procedures that will be followed in the event of an operational failure.

(8) An agreement to keep, preserve, and make available to the Commission on request, all records made or received by it in the course of its business, including financial statements and data regarding indications of interest, quotations, orders, and trades in the system. The plan shall provide that the system operator shall keep all such documents for at least five years, the first two years in an easily accessible place.

(9) An agreement to submit to the Commission annually, and to furnish promptly at any time upon request, data regarding indications of interests, quotations, orders, and trades in the system, and copies of the above-enumerated records.

(10) An agreement to report to the Commission any information received by the sponsor providing the sponsor reasonable grounds to suspect that a participant or subscriber may have violated the federal securities laws.

(11) An agreement to supervise the system to ensure compliance with the plan and the federal securities laws.[53]

(12) An agreement to notify the Commission in writing immediately should the system cease its operations.

(13) If any entity would hold or safeguard subscriber funds on a regular basis, a description of the procedures and controls that will be implemented to ensure the safety of those funds, and an agreement to submit to the Commission annual audited financial statements as a condition to the effectiveness of the plan.[54]

(14) An agreement to permit examinations, by representatives of the Commission, of the sponsor and of the trading system operated by the sponsor.

(15) A description of all other material aspects of the system, its facilities, operations, and financial condition.

Should a sponsor fail to comply with any of the provisions or agreements contained in the plan, the Commission, after appropriate notice and hearing, may rescind the effectiveness of the trading system plan if it finds that the sponsor's failure to comply is inconsistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets, or the removal of impediments to, and perfection of the mechanisms of, a national market system for securities and a national system for the clearance and settlement of securities transactions. In this connection, the Rule authorizes the Commission to conduct examinations of the sponsor and of the trading system operated by the sponsor, including an examination of all books and records maintained pursuant to the Rule.

Under the Rule, with respect to approval of a trading system plan, the Commission would use the procedures provided in paragraphs (c) (1) and (2) of Rule 11Aa3–2 under the Act,[55] which generally apply to national market system plans. These procedures require the Commission to publish notice of the filing of a trading system plan and the terms of the substance of the plan and provide interested persons an opportunity to submit written comments. Within 120 days of the publication of notice of the filing of the plan, or within 180 days of such date should the Commission find a longer period to be appropriate and publish its reasons for so finding, the Commission would approve the plan if it determined that: (1) The sponsor and system are organized and have the capacity to comply and to enforce compliance by participants and subscribers with the terms and conditions of the plan; [56] (2) the plan is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets and to remove impediments to and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions; (3) the plan does not impose a burden on competition not necessary or appropriate in furtherance of the Act and rules thereunder. Under the Rule, the Commission also could impose such terms and conditions as it deemed necessary and appropriate, in accordance with the above approval standards.

C. Plan Amendments

Requirements analogous to those of section 19 of the Act and Rule 19b–4

[50] Self-regulatory organizations are generally required to file with the Commission, pursuant to Rule 19b–4 under the Act, changes to "any material aspect of the facilities" of the self-regulatory organizations.

[51] For example, a system operator could specify in its filing that the system is available for trading in such categories as listed stocks, or NASDAQ stocks, or both. The operator would not need to name each security and would be required to amend the filing only if a new type of security were included in the system.

[52] Denial of access here would encompass a refusal by the sponsor to enter into the contractual relationship with a person necessary to allow that person to use the system. Such denials of access would be reviewable by the Commission under paragraph (e) of the proposed Rule, which incorporates the procedural provisions set forth in Rule 11Aa3–2 under the Act.

[53] Where, as in the case of five of the six systems currently in operation, the sponsor of the system plan is a registered broker-dealer, that sponsor is subject to the oversight of the appropriate self-regulatory organization, as defined under section 3(a)(26) of the Act. The existence of Commission supervision pursuant to the proposed Rule in no way replaces the oversight responsibilities of those self-regulatory organizations.

[54] Such an entity may be required to register as a broker-dealer and clearing agency under sections 15 and 17A, respectively, of the Act.

[55] 17 CFR 240.11Aa3–2 (1988).

[56] This generally will require a showing of the capacity to monitor trading and quotation dissemination in the system, and to ensure at a minimum compliance with the requirements of the sponsor's contract. In addition, this may require information-sharing agreements with U.S. SROs as well as any foreign SROs or governments where the system may be operating. Furthermore, the Commission would have the authority pursuant to the proposed Rule to inspect any system to ensure its continuing ability to ensure compliance with this requirement.

thereunder would apply to plan amendments. A system sponsor would submit to the Commission any amendment to an effective plan, accompanied by a concise general statement of the basis and purpose of a plan amendment.[57] The amendment would ordinarily take effect thirty days after filing with the Commission,[58] unless the Commission approves the plan amendment before the expiration of the thirty-day period upon a good cause finding.[59] Moreover, a plan amendment may take effect immediately upon filing with the Commission if the amendment meets the standard for immediate effectiveness of proposed rule changes filed by SROs as set forth in section 19(b)(3)(A) of the Act.[60] Within thirty days of the submission, the Commission by order may defer the effectiveness of any amendment (whether pending or effective on filing) upon a Commission finding of good cause, if the Commission determines that such deferral of effectiveness is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission defers effectiveness, it must publish notice of the plan amendment. In addition, if the Commission determines not to defer effectiveness, but determines that public comment on a plan amendment would be appropriate, the Commission may publish notice of the plan amendment. Within thirty days of the publication of notice of the filing of the plan amendment (and notice where applicable, of a determination to defer effectiveness of the rule filing), or a longer period as to which the system sponsor consented or as the Commission designated up to 120 days if it found such longer period to be appropriate and published its reasons for so finding, the Commission would by order; (1) Approve the plan amendment if it appears to the Commission that the plan amendment is consistent with the requiremets of the Act and the rules applicable to the trading system plan or (2) permanently disapprove (or abrogate in the case of an amendment that was either effective on filing or had taken effect prior to thirty days after filing) the plan amendment if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or othwrwise in furtherance of the purposes of the Act. Unless the Commmission orders otherwise, Commission action abrogating an amendment would not affect the validity or force of the amendment during the period it was in effect.

Finally, the Commission itself also could promulgate by rule an amendment to an effective trading system plan should it determine that the amendment were necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets and to remove impediments to and perfect the mechanisms of a national market system for securities and national system for the clearance and settlement of securities transactions.[61]

D. Appeals

The Commission would have the discretion, pursuant to section (e) of the Rule, to entertain appeals concerning the implementation or operation of an effective plan, including appeals concerning prohibitions or limitations, in the same manner and subject to the same standards as described in Rule 11Aa3-2(e) under the Act.

E. Exemptions

The Commission would be able to exempt from the requirements of the Rule any person, either unconditionally or on specified terms and conditions, if the Commission determines that the exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to and perfection of the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions.

F. Rescission

After appropriate notice and hearing, pursuant to subsection (g) of the proposed rule, the Commission could rescind the effectiveness of a trading system plan if it determined that: (1) the sponsor of a plan, without reasonable justification or excuse, had failed to comply or to enforce compliance by participants, subscribers, or customers with the terms, conditions, and agreements of its effective trading system plan; and

(2) Such failure was inconsistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the removal of impediments to and perfection of the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions.

G. Rule 3a12-7

The Commission also proposes amendments to Rule 3a12-7 under the Act [62] to state that put and call options on U.S. government securities would not be exempt from the provisions of sections 15(c)(2), 11A, and 17A of the Act and the rules thereunder. Therefore the words "except for sections 15(c)(2), 11A, and 17A" would be added after "shall be exempt from all provisions of the Act." The intended effect of this amendment would be to require that government securities options systems, such as the system planned by RMJ, comply with the proposed rule if it is adopted, and to clarify that entities that meet the definition of "clearing agency" set forth in the Act and that clear transactions in options on government

[57] Unlike procedures under section 19(b)(1), the Commission would, upon the filing of the plan amendment, "publish notice thereof together with the terms of substance of the [plan amendment] or a description of the subjects and issues involved," and provide interested persons an opportunity to submit written data, views, and arguments concerning such [plan amendment]" only where it finds that public comment is necessary or appropriate.

[58] The proposal that an amendment take effect thirty days after filing varies from the standard procedures of section 19 of the Act, but the Commission believes that such variance would be desirable to accomodate the needs of proprietary trading systems to remain flexible in developing additional capabilities. Should certain trading systems in the future grow to a size and importance equivalent to existing trading markets, the Commission would review the appropriateness of this provision.

[59] The "good cause" standard for accelerated effectiveness is based on section 19(b)(2)(B) of the Act, which governs the accelerated effectivenes of proposed rule changes by SROs.

[60] Under section 19(b)(3)(A), a proposed rule change is effective upon filing with the Commission if it is designated by the SRO as: (1) constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the SRO; (2) establishing or changing a fee or other charge imposed by the SRO; or (3) concerning solely the administration of the SRO.

[61] *See* Section 19(c) of the Act, which provides that the Commission may abrogate, add to, or delete from the rules of SROs upon notice to the appropriate SRO, publication of the proposed change to the SROs rules, and the provision of an opportunity for oral presentation of views regarding the proposed change.

[62] Rule 3a12-7 states:

Any put, call, straddle, option, or privilege traded exclusively otherwise than on a national securities exchange and for which quotations are not disseminated through an automated quotation system of a registered securities association, which relates to any securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States or securities issued or guaranteed by a corporation in which the United States has a direct or indirect interest as shall be designated for exemption by the Secretary of the Treasury pursuant to section 3(a)(12) of the Act, shall be exempt from all provisions of the Act which by their terms do not apply to any "exempt security" or "exempt securities," provided that the securities underlying such put, call, straddle, option or privilege represent an obligation equal to or exceeding $250,000 principal amount.

securities executed through proprietary trading systems, may be subject to the clearing agency registration requirements of section 17A of the Act.

H. Statutory Authority

The Rule would be promulgated under sections 2, 3, 11A, 15(c), 17, 17A and 23(a) of the Act. The Rule is designed to prohibit and prevent fraudulent and deceptive practices, including fictitious quotations, that could occur in the systems subject to the rule absent Commission oversight.[63] In addition, the Rule is designed to create greater equality of regulatory treatment as between exchange systems and proprietary trading systems.[64]

VI. Request for Comments

The Commission requests comment on the costs and benefits of the proposed rule, as well as the consistency of the rule's approach with the policies underlying the Act. In that regard, commentators are invited to address the issue whether proprietary trading systems might be more appropriately regulated by imposing on system sponsors, pursuant to the Commission's rulemaking authority over broker-dealers, enhanced recordkeeping and reporting requirements and ensuring Commission access to records.[65] Such an approach could require that system sponsors adhere to financial responsibility criteria applicable to registered broker-dealers generally, or could add criteria relating specifically to broker-dealers maintaing a proprietary trading system. The rules also could require that sponsors conduct surveillance of trading in the system and otherwise supervise system participants. Comment is specifically invited on (1) whether this approach would be more appropriate in light of the policies of the Act than would a regulatory scheme comparable to statutory oversight of self-regulatory organizations, including Commission plan approval and rule supplementation powers; and (2) whether this approach would reduce regulatory burdens on the systems and increase market efficiency. Commentators also are invited to address the appropriateness of adopting a "standards" approach, in which the proposed Rule would set forth standards under which plans and plan amendments will be approved, rather than delineate general categories of information those plans and plan amendments should contain.[66]

Finally, the Commission requests comment on whether it should set forth standards for exempting, pursuant to Section 5 of the Act, certain trading systems from the requirements of exchange registration. In that regard, the Commission recognizes that, over time, there may evolve trading systems that, because of the display of regular or continuous two-sided quotations or because they exhibit other traditional characteristics of an exchange, may fall within the definition of the term "exchange" under the Act. Nevertheless, the application of each requirement set forth in section 6 of the Act to these systems arguably may continue to be inappropriate. Accordingly, the Commission requests comment on whether it should articulate standards for the granting of exemptions from exchange registration requirements.

Section 5 of the Act requires that all United States exchanges either register with the Commission as national securities exchanges or obtain a Commission exemption from that registration. An exemption may be granted if the Commission determines that, "by reason of the limited volume of transactions effected on such exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors" to require such registration. The legislative history of the Act does not discuss the factors the Commission should consider in determining whether registration is not practicable and not necessary or appropriate by reason of "limited volume."[67] Further, in the seven instances in which the Commission has granted section 5 exemptions to stock exchanges on other than a temporary basis, the Commission's exemptive orders have not delineated the factors considered in reaching the determination that the "limited volume" criterion has been satisfied. Rather, tracking the language of section 5, those orders recite the Commission's conclusion that registration was "not practicable and not necessary or appropriate in the public interest or for the protection of investors" in light of the limited volume of transactions effected on the exempted exchanges.[68] [Prior to enactment of the Act, five of the exchanges that received exemptions in 1935 and 1936 submitted the following information to the Senate:

Exchanges	Volume in Shares (1932)	Market Value of Shares Listed (1933)
Colorado Springs Stock Exchange	52,519	$5.6 million.
Milwaukee Grain & Stock Exchange	143,305	$113.6 million.
Minneapolis-St. Paul Stock Exchange	323,062	$84 million.
Richmond Stock Exchange	14,014	not available.
Seattle Stock Exchange	15,393	$29.3 million.

[63] *See* sections 15(c)(1) and (2).

[64] *See* section 11A(a)(1)(C)(ii), in which Congress stated, "It is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure . . . fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets." *See also* section 11A(c)(1)(F), in which Congress directed the Commission to prescribe such rules and regulations to "assure equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities."

[65] As noted *supra* n. 13, each of the trading systems currently in operation is sponsored by either: (1) a broker-dealer registered pursuant to section 15(b) of the Act (a "registered broker-dealer") or section 15C of the Act (a "government securities broker-dealer"); (2) an entity affiliated with a registered broker-dealer; or (3) an entity in the process of registering as a broker-dealer under section 15(b). Thus, all current sponsors (or their affiliates) will be subject to the requirements, encompassed in Rules 17a-3, 17a-4, and 17a-5 under the Act (or, with respect to government securities broker-dealers, §§ 404.2, 404.3 and 405.2 of the Treasury Regulations, 17 CFR Ch. IV), to keep and preserve records reflecting data on transactions effected and accounts held by the broker-dealer, and to submit monthly and quarterly reports to the Commission. "Enhanced" recordkeeping requirements could include a requirement, similar to the one found in the Rule as currently proposed, that system sponsors make available to the Commission, on request, every document made or received by the sponsor in the course of its operation of the system [*see* Proposed Rule, section c(viii)].

[66] The Commission could perhaps use, as a model for such a standards-based approach, Release No. 16900, published in 1980 to assist clearing agencies in modifying their rules to comply with the specific requirements of the Act. Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standards Released"). For example, the Standards Release provides that, in order to ensure that clearing agencies adequately safeguard securities and funds and provide prompt and accurate clearance and settlement of securities transactions pursuant to Section 17A(b)(3)(A) of the Act, those clearing agencies should, *inter alia*, perform periodic risk assessments, establish audited committees of their boards of directors, set up internal audit departments, and furnish audit financial statements annually to participants. *See also*, Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 5167.

[67] S. Rep. No. 792, to accompany S. 3426, at 6 (April 17, 1934) ("[t]he Commission * * * is empowered to exempt from registration small exchanges where the volume of transactions is not sufficient to invite the abuses prevalent on the large markets").

[68] *See* Securities Exchange Act Release Nos. 416, November 14, 1935 (exempting the Honolulu and Minneapolis-St. Paul Stock Exchanges and the Milwaukee Grain and Stock Exchange); 432, December 2, 1935 (exempting the Richmond and Wheeling Stock Exchanges); 472, February 3, 1936 (exempting the Colorado Springs Stock Exchange); and 589, April 10, 1976 (exempting the Seattle Stock Exchange).

Exchanges	Volume in Shares (1932)	Market Value of Shares Listed (1933)
New York Stock Exchange	425,234,294	$22.2 billion

(Figures extracted from *Hearings on Stock Exchange Practices Before the Subcommittee on Banking and Currency, Senate Banking Committee* 73d Cong., 2d Sess., pt. 17 at 7952–56 (1934))

Specifically, the Commission requests comment on whether it should interpret the term "limited volume" in Section 5 of the Act to take into account all, or a combination of, the following characteristics, among others that might be suggested by the commentators:

(1) The dollar volume and/or number of transactions done through the system, expressed as a percentage of all trading done in the market of which that particular system is a part;

(2) The number and characteristics of participants or subscribers permitted to trade in the system; and

(3) The characteristics of the instruments traded, or transactions allowed, in the system.

Of course, the Commission could, as it has in the past, impose conditions on such exemptions if they are granted. For example, in prior exemptive orders the Commission has imposed on exempted exchanges recordkeeping and reporting requirements, and requirements to comply and to enforce compliance with the Act.[69] Similarly, future exemptions could be conditioned on the exempted exchanges being required to file plans and plan amendments with the Commission, and to submit to: (1) Commission review of action taken by the exchanges denying access to the system to current or prospective members, and (2) Commission jurisdiction to amend the rules of the exchange if the public interest so requires. In view of the range of alternatives open to the Commission, the Commission solicits comment on the proper regulation of exchanges exempted pursuant to section 5 of the Act. As a related matter, the Commission requests suggestions and comments on any other possible method of regulation or oversight of the trading and information systems.

VII. Summary of the Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") pursuant to the Regulatory Flexibility Act[70] regarding proposed Rule 15c2–10. The IRFA states that although a minimal number of broker-dealers operating trading systems would be covered by the Rule (and an even smaller number would be deemed small entities), the Commission determined to prepare the IRFA because the exact number of small entities that could be affected by the Rule is unknown. The IRFA states that the proposed Rule would ensure that proprietary trading systems operate effectively and in a manner consistent with the fundamental purposes of the Act. The IRFA also sets forth the concerns with the current regulatory approach, and discusses possible alternatives to the proposed Rule for the regulation of small entities. The IRFA solicits comments on any possible costs the proposed Rule might have on small entities, and on possible alternatives with regard to small entities.

A copy of the IRFA may be obtained from Gordon K. Fuller, Esq., Special Council, Division of Market Regulation, Securities and Exchange Commission, (Mail Stop 5–1), 450 Fifth Street, NW., Washington, DC 20549, 202/272–2414.

List of Subjects in 17 CFR 240

Reporting and recordkeeping requirements, securities.

VIII. Statutory Basis and Text of the Amendments

Pursuant to the Securities Exchange Act of 1934 and particularly sections 2, 3, 11A, 15(c), 17, 17A and 23(a) thereof, 15 U.S.C. 78b, 78c, 78k–1, 78*o*(c), 78q, 78q-1 and 78w(a), the Commission proposes to amend § 240.3a12–7 and to add § 240.15c2–10 in Chapter II of Title 17 of the Code of Federal Regulations.

Note.—Arrows indicate text proposed to be added.

Text of Proposed Amendment to Rule 3a12–7 and Proposed Rule 15c2–10

Chapter II, Title 17 of The Code of Federal Regulations is Amended as Follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w), unless otherwise noted. * * * § 240.15c2–10, also issued under secs. 2, 3, 6, 9, 10, 15, 17 and 23, 48 Stat. 881, 882, 885, 889, 891, 895, 897, and 901; sec. 15A, as added by sec. 1, Pub. L. 75–719, 52 Stat. 1070; sec. 11A as added by sec. 7, Pub. L. 94–29, 89 Stat. 111 (15 U.S.C. 78k-1); 15 U.S.C. 78a *et seq.*, and particularly secs. 2, 3, 10(a), 10(b), 15(c), and 23(a), 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(a), 78j(b), 78o(c), and 78w(a).

2. Section 240.3a12–7 is revised as follows:

§ 240.3a12–7 Exemption for certain derivative securities traded otherwise than on a national securities exchange.

Any put, call, straddle, option, or privilege traded exclusively otherwise than on a national securities exchange and for which quotations are not disseminated through an automated quotation system of a registered securities association, which relates to any securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States or securities issued or guaranteed by a corporation in which the United States has a direct or indirect interest as shall be designated for exemption by the Secretary of the Treasury pursuant to section 3(a)(12) of the Act, shall be exempt from all provisions of the Act ►except for sections 15(c)(2), 11A, and 17A◄ which by their terms do not apply to any "exempt security" or "exempted securities," provided that the securities underlying such put, call, straddle, option or privilege represent an obligation equal to or exceeding $250,000 principal amount.

3. Section 240.15c2–10 is added as follows:

§ 240.15c2–10 Trading and information facilities.

(a) No broker, dealer, municipal securities dealer, government securities broker, or government securities dealer shall act as a sponsor of a trading system, or enter an indication of interest, quotation, or order to purchase or sell a security into such a trading system except in accordance with the terms of a plan covering such system that has been filed by the sponsor and declared effective by the Commission pursuant to paragraph (c) of this section.

(b) *Definitions.* For purposes of this section, (1) The term "trading system" shall mean any system providing for the dissemination outside the sponsor and its affiliates of indications of interest, quotations, or orders to purchase or sell securities, and providing procedures for executing or settling transactions in such securities; provided, however, the term does not include:

(i) A system in which all transactions are executed by either the broker or dealer operating or controlling the system or the customers of such broker or dealer; or

[69] *See, e.g.*, Securities Exchange Act Release No. 416, November 14, 1935, at 1–2 (exempting the Honolulu and Minneapolis-St. Paul Stock Exchanges and the Milwaukee Grain and Stock Exchange).

[70] 5 U.S.C. 603.

(ii) A brokers' brokers trading system; or

(iii) A facility of a registered national securities exchange or association.

(2) The term "sponsor" shall mean any person who organizes, operates, administers or otherwise controls, directly or indirectly, a trading system.

(3) The term "facility of a national securities association" shall mean that association's premises, tangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction (including, among other things, any system of communication to or from the association, by ticker or otherwise, maintained by or with its consent), and any right of the association to the use of any property or service.

(4) The term "brokers' brokers trading system" shall mean any system that, with respect to securities other than equity securities as defined under section 3(a)(11) of the act, including, but not limited to, government and municipal securities, only collects and disseminates, without any identification of the responsible firm, indications of interest or quotations from and to brokers, dealers, municipal securities dealers, government securities brokers or government securities dealers, and provides:

(i) Means for executing transactions based on such indications of interest or quotations; or

(ii) Means for, as principal, executing the contemporaneous purchase and offsetting sale or sale and offsetting purchase as principal from or to other brokers, dealers, municipal securities dealers, government securities brokers and government securities dealers.

(c)(1) A sponsor of a trading system filing a plan pursuant to this section shall submit to the Commission the text of the plan, together with a statement of the purpose of the plan. Any such plan shall contain, at a minimum:

(i) The name and address of the plan sponsor and a brief description of the sponsor's organization, including any other person involved with the operation of the system.

(ii) The securities or types of securities traded on or through the facilities of the system.

(iii) A description of the manner of operation of the system, including the procedures governing the execution and, if applicable, clearance and settlement of transactions and the entry of indications of interest, quotations, and orders.

(iv) The terms and conditions under which persons will be provided or denied access to the system as participants and subscribers (including specific procedures and standards governing such grants or denials of access).

(v) A description of the system's requirements regarding the financial soundness and integrity of participants, subscribers, and customers.

(vi) A description of the staffing, systems and procedures in place to supervise the system for compliance by participants and subscribers with the terms and conditions of the plan and the Federal securities laws and the rules and regulations thereunder.

(vii) A description of the procedures that will be followed in the event of an operational failure.

(viii) An agreement to keep, preserve, and make available to the Commission on request, at least one copy of each document including all correspondence, memoranda, papers, books, notices, accounts, and other such records, as shall be made or received by the sponsor in the course of the operation of its trading system, including, but not limited to, (A) financial statements and (B) data regarding indications of interest, quotations, orders, and trades in the system. The system operator shall agree to keep all such documents for a period of not less than five years, the first two years in an easily accessible place, subject to the destruction and disposition provisions described in § 240.17a–6.

(ix) An agreement to submit to the Commission annually, and to furnish promptly at any time upon request of a representative of the Commission, data regarding indications of interest, quotations, orders, and trades in the system, and copies of documents required to be kept and preserved pursuant to paragraph (c)(1)(viii) of this section.

(x) An agreement to report to the Commission any information the sponsor receives that provides it reasonable grounds to suspect that a participant or subscriber may have violated the federal securities laws or the rules and regulations thereunder;

(xi) An agreement to supervise the system to ensure compliance by participants and subscribers with the terms and conditions of the plan and the federal securities laws and the rules and regulations thereunder;

(xii) An agreement to notify the Commission in writing immediately should the system cease its operations;

(xiii) If an entity would hold or safeguard subscriber funds on a regular basis, a description of the procedures and controls that will be implemented to ensure the safety of those funds, and an agreement to submit to the Commission annual audited financial statements as a condition to the effectiveness of the plan.

(xiv) An agreement to permit examinations, by representatives of the Commission, of the sponsor and of the trading system operated by the sponsor; and

(xv) A description of all other material aspects of the system, its facilities, operation, and financial condition.

(2)(i) A trading system plan filed pursuant to this section shall not become effective until it is approved by the Commission in accordance with the procedures set forth in paragraphs (c)(1) and (2) of § 240.11Aa3–2 governing national market system plans. A plan shall be declared effective by the Commission if the Commission determines that:

(A) The sponsor and system are organized and have the capacity to comply, and to enforce compliance by participants and subscribers, with the terms and conditions of the plan;

(B) The plan is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions; and

(C) The plan does not impose a burden on competition not necessary or appropriate in furtherance of the Act and rules thereunder.

(ii) The Commission may impose such terms and conditions upon such approval as it deems necessary and appropriate in furtherance of the requirements of paragraphs (c)(2)(i)(A)–(C) of this section.

(d)(1) Each system sponsor shall submit to the Commission any amendment to an effective plan, accompanied by a concise general statement of the basis and purpose of a plan amendment. An amendment to an effective plan shall take effect thirty days after filing with the Commission provided, however:

(i) An amendment may take effect upon filing with the Commission if designated by the sponsor as: (A) Constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existng rule regarding the trading system; (B) Establishing or changing a fee or other charge imposed by the sponsor; or (C) Concerning solely the administration of the trading system; or

(ii) An amendment may take effect prior to thirty days after filing with the Commission if the Commission finds there is good cause for such early effectiveness.

(2) Notwithstanding the provisions of paragraph (d)(1) of this section, within thirty days of the date of filing with the Commission of a plan amendment, the Commission may, by order, defer the effectiveness of any amendment prior to thirty days after filing, if it appears to the Commission that such deferral of effectiveness is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title. The Commission shall publish notice of the order of deferred effectiveness with the terms of the substance of the plan amendment and provide interested persons an opportunity to submit written data, views and arguments concerning such plan amendment. The order of deferred effectiveness shall remain in effect until the Commission:

(i) Takes action in accordance with the provisions of paragraph (d)(4)(i) or (ii) of this section, or

(ii) Otherwide orders as is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

(3) Within thirty days of the date of filing with the Commission of a plan amendment, if the Commission determines not to defer effectiveness but finds that public comment on a plan amendment is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, the Commission shall publish notice of the plan amendment together with the terms of the substance of the plan amendment or a description of the subjects and issues involved, and provide interested persons an opportunity to submit written data, views and arguments concerning such plan amendment.

(4) Within thirty days of the date of the publication of a notice published pursuant to either paragraph (d)(2) or (3) of this section or within such longer period as to which the plan sponsor consents or as the Commission may designate, up to 120 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, the Commission may:

(i) By order approve the plan amendment if it appears to the Commission that the plan amendment is consistent with the requirements of the Act and the rules thereunder applicable to the trading system plan; or

(ii) By order disapprove or, abrogate in the case of an amendment that previously had taken effect pursuant to paragraph (d)(1) of this section, the plan amendment if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

(5) Unless the Commission orders otherwise, Commission action abrogating an amendment pursuant to paragraph (d)(4)(ii) of this section shall not affect the validity or force of the amendment during the period it was in effect.

(6) The Commission may promulgate by rule an amendment to an effective trading system plan if it determines that such amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of a national market or national clearance and settlement system.

(e) The Commission may, in its discretion, entertain appeals concerning any action taken or failure to act by any person in connection with an effective trading system plan, including prohibitions or limitations of access, in the same manner and subject to the same standards as described in paragraph (e) of § 240.11Aa3–2 under the Act.

(f) The Commission may exempt any person from the provisions of this section, either unconditionally or on specified terms and conditions if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system for securities and a national system for the clearance and settlement of securities transactions.

(g) The Commission may conduct examinations of the sponsor and of the trading system operated by the sponsor, including an examination of all books and records maintained pursuant to paragraph (c)(1)(viii) of this section.

(h) If the Commission, after appropriate notice and hearing, finds that the sponsor of any plan, absent reasonable justification or excuse, has failed to comply, or to enforce compliance by participants or subscribers, with the terms, conditions, and undertakings of its effective trading system plan, and, if it appears to the Commission that such failure is inconsistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets, or the removal of impediments to, and perfection of the mechanisms of, a national market system for securities and a national system for the clearance and settlement of securities transactions, the Commission shall rescind the effectiveness of the trading system plan.

(i) *Effective dates:* The effective date of this section shall be [six months after date of adoption of rule].

By the Commission.

Dated: April 11, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–9234 Filed 4–17–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

Receipt of Domestic Interested Party Petition Regarding Classification of Scroll-Cut, Tin Free Steel Sheet

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: Customs has received a petition submitted on behalf of a domestic interested party to support classification of certain scroll-cut, tin free steel sheet, cut to length. Petitioner maintains that the most specific tariff description for and, therefore, the proper classification of the merchandise is the provision for plates, sheets, and strip, of iron or steel, whether or not cut, pressed, or stamped to nonrectangular shape, if electrolytically coated or plated with base metal other than tin, lead, or zinc, in item 609.17, Tariff Schedules of the United States (TSUS). This document invites comments with regard to the correctness of this proposed classification.

DATE: Comments must be received on or before June 19, 1989.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Regulations and Disclosure Law Branch, Room 2119, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division, (202) 566–8181.

SUPPLEMENTARY INFORMATION:

Background

A petition has been filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), on behalf of Bethlehem Steel Corporation, concerning the proper classification of tin free steel sheet which is scroll-cut. The petition also concerns scroll-cut, tin free steel sheet which is lacquered, painted or varnished (but not decorated, designed or finished). Tin free steel is sometimes referred to as electrolytic chromium coated steel.

Customs replied to petitioner's request for information by letter dated October 19, 1987 (080789), in which we cited previous rulings holding scroll-cut, tin free steel sheet which has been treated with an epoxy phenolic lacquer, to be classifiable under the provision for other articles of iron or steel, not coated or plated with precious metal, in item 657.25, TSUS. We stated that while the issue of painting or varnishing did not arise in our previous rulings, neither of these processes would affect the classification. Customs indicated that both tin free steel sheet which is scroll-cut, and tin free steel sheet which is scroll-cut and also lacquered, painted or varnished, have been processed beyond the condition of a basic sheet of steel of the type provided for in Schedule 6, Part 2, Subpart B, TSUS.

The petition, dated January 22, 1988, described tin free steel sheet as black plate (*i.e.*, cold-rolled steel sheets, not coated, in thicknesses ranging from 0.0055 inches to 0.0149 inches), which has been electrolytically coated with metallic chromium and chromium oxide, and cut to a nonrectangular shape by scroll cutting. Petitioner describes scroll cutting as the shearing of each end of a sheet to form a pattern of interlocking notches which fit into one another. The sheet may then be lacquered, painted, or varnished. The product is then suitable for use in making cans and can ends for beverages and other food products.

Petitioner maintains that the most specific tariff description for and, therefore, the proper classification of the merchandise is the provision for plates, sheets, and strip, of iron or steel, whether or not cut, pressed, or stamped to nonrectangular shape, if electrolytically coated or plated with base metal other than tin, lead, or zinc, in item 609.17, TSUS.

Petitioner states that the instant merchandise is flat rolled and conforms to the dimensional requirements for sheet, as that term is defined in Schedule 6, Part 2, Subpart B, TSUS. In addition, it has been cut to nonrectangular shape and coated or plated with base metal other than tin, lead, or zinc. Petitioner asserts that no step in the creation of a product that is a basic shape or form classifiable in Schedule 6, Part 2, Subpart B can at the same time be an advancement of that product beyond the status of a basic shape. Therefore, petitioner maintains, the provision in item 609.17, TSUS, is relatively more specific than the provision in item 657.25, TSUS.

Arrangements Concerning Trade in Certain Steel Products, commonly known as Voluntary Restraint Agreements or VRAs, between the United States and various of the major steel producing countries, limit the amount of steel which may enter the United States during a given period. Current VRAs will continue in effect through September of 1989. A product's coverage under a particular Arrangement depends on how it is classified under the TSUS. Effective January 1, 1989, however, the Harmonized Tariff Schedule of the United States (HTSUS) replaced the TSUS as the tariff code of the United States. Nevertheless, for purposes of the VRAs, it is necessary to resolve the instant classification issue under the TSUS.

Comments

Pursuant to 19 CFR 175.21(a), before making a determination in the matter, Customs invites written comments from interested parties on the proper classification of tin free steel sheet which has been scroll-cut, and tin free steel sheet which has been scroll-cut and also lacquered, painted, or varnished.

The domestic interested party petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552 and 19 CFR 103.11(b)) between the hours of 9:00 a.m. and 4:30 p.m. on regular business days at the Regulations and Disclosure Law Branch, Room 2119, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

Authority

This notice is published in accordance with 19 CFR 175.21(a).

Drafting Information

The principal author of this document was James A. Seal, Commercial Rulings Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,
Commissioner of Customs.

Approved: March 28, 1989.

Salvatore R. Martoche,
Assistant Secretary of the Treasury.

[FR Doc. 89-9219 Filed 4-17-89; 8:45 am]
BILING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 130, 182, and 184

[Docket Nos. 81N-0314 and 84N-0103]

Sulfiting Agents—Proposed Affirmation of GRAS Status; Sulfiting Agents in Standardized Foods—Proposed Labeling Requirements; Extension of Comment Periods; Correction

AGENCY: Food and Drug Administration.

ACTION: Proposed rules; extension of comment periods; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the document that extended for 120 days the period for submitting comments on the agency's proposal to affirm, with specific limitations, that certain uses of sulfur dioxide, sodium sulfite, sodium and potassium bisulfite, and sodium and potassium metabisulfite (collectively known as "sulfiting agents" or "sulfites") are generally recognized as safe (GRAS) (54 FR 7783; February 23, 1989). In the extension notice, the agency inadvertently omitted sodium bisulfite and potassium bisulfite from the list of substances collectively referred to as "sulfiting agents" or "sulfites." This document corrects that error by adding those two substances to the list. In addition, the substance name "high fructose corn syrup" was inadvertently used. This document also corrects that error by removing that name and adding the substance name "sulfiting agents".

Furthermore, the agency has intended to also extend for 120 days the period for submitting comments on a related agency proposal that would require the presence of sulfiting agents in standardized foods to be declared on the label when they have a functional effect in such foods of when they are present in such foods at a detectable level. This document corrects that oversight by exending the comment period for that proposal.

FOR FURTHER INFORMATION CONTACT:

Regarding Docket No. 81N-0314, Affirmation of GRAS Status, Robert L. Martin (HFF-334), 202-426-9463;

or

Regarding Docket No. 84N-0103, Labeling of Standardized Foods, Elizabeth J. Campbell (HFF-312), 202-485-0232, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street SW., Washington, DC 20204.

SUPPLEMENTARY INFORMATION: In FR Doc. 89-4105, appearing at page 7783 in the Federal Register of Thursday, February 23, 1989, the following corrections are made:

1. On page 7783, in the second column, the document heading is corrected to read "Sulfiting Agents—Proposed Affirmation of GRAS Status; Sulfiting Agents in Standarized Foods—Proposed Labeling Requirements; Extension of Comment Periods".

2. On the same page, in the second column, under "SUMMARY," in the seventh line, after "sulfite," add "sodium and potassium bisulfite,".

3. On the same page, in the second column, under "SUMMARY," add a second sentence to read "* * * FDA is also extending for 120 days the period for submitting comments on the agency's proposal to require that the presence of sulfiting agents in standardized foods be declared on the label when sulfiting agents have a functional effect in a standardized food, or when they are present in a standardized food at a detectable level."

4. On the same page, in the second column, under "SUPPLEMENTARY INFORMATION," the first paragraph is corrected to read "SUPPLEMENTARY INFORMATION: In the Federal Register of December 19, 1988 (53 FR 51065 and 51062), FDA issued separate proposed rules that would affirm, with specific limitations, that certain uses of sulfiting agents are GRAS and that would require that the presence of sulfiting agents in standardized foods be declared on the label when they have a functional effect in the food or are present at a detectable level. FDA gave interested persons until February 17, 1989, to submit comments to both proposals."

5. On the same page, in the second column, under "SUPPLEMENTARY INFORMATION," the first two sentences of the second paragraph are corrected to read "The agency has received numerous comments requesting an extension of time to comment on these proposals. These comments have come from trade associations (both proposals) and a foreign government (GRAS proposal). * * *"

6. On the same page, in the third column, in the second line of the first full paragraph, "this proposal has" should read "these proposals have".

7. On the same page, in the third column, in the ninth line of the first full paragraph, the word "proposal" should read "proposals".

8. On the same page, in the third column, in the first full paragraph, in the 20th line after the word "ingredients", remove the period and add the following: "and the proposed labeling requirement for standardized foods that contain sulfiting agents."

9. On the same page, in the third column, in the second full paragraph, in lines four through seven, the phrase "regarding the agency's proposal to affirm as GRAS the use of high fructose corn syrup as a direct human food ingredient" should read "on the agency's December 19, 1988, proposals regardng certain uses of sulfiting agents".

10. On the same page, in the third column, in the second full paragraph, in the 11th line, add the word "respective" before the word "docket".

Dated: April 11, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-9184 Filed 4-17-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 169a

[DoD Instruction 4100.33]

RIN: 0790-AA48

Commercial Activities Program Procedures

AGENCY: DoD, WHS.

ACTION: Proposed rule.

SUMMARY: The Department of Defense is proposing to revise this part to incorporate substantive changes to Part 169a required by Pub. L. 100-180, "National Defense Authorization Act for Fiscal Years 1988 and 1989: December 4, 1987, Section 1111, Executive Order 12615, "Performance of Commercial Activities," November 19, 1987, OMB transmittal letters and DoD guidance. This part establishes procedures and criteria for use by DoD to determine whether DoD commercial activities should be performed by DoD personnel in-house or by contract with commercial sources.

DATE: Comments must be received on or before July 17, 1989.

ADDRESS: Office of the Assistant Secretary of Defense (Production & Logistics), Installations, Installations Support Division, The Pentagon, Room 3E787, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Mr. Dom Miglionico, telephone 202-325-0537.

SUPPLEMENTARY INFORMATION: Part 169a was published in the Federal Register on October 7, 1985, (50 FR 40804) establishing the procedures for DoD commercial activities. Comments will be available for public inspection by request. Because of the anticipated number of comments, DoD does not plan to acknowledge or respond to individual comments. However, DoD will respond to the comments in the preamble of the final rule.

List of Subject in 32 CFR Part 169a

Armed forces; Government procurement.

Accordingly, 32 CFR Part 169a is proposed to be revised as follows:

PART 169a—COMMERCIAL ACTIVITIES PROGRAM PROCEDURES

Sec.
169a.1 Purpose.
169a.2 Applicability and Scope.
169a.3 Definitions.
169a.4 Policy.
169a.5 Procedures.
169a.6 Reporting Requirements.

Appendix A—Codes and Definitions of Functional Areas

Appendix B—Commercial Activities Inventory Report and Five-Year Review Schedule

Appendix C—Simplified Cost Comparison for Direct Conversion of Commercial Activities

Appendix D—Commercial Activities Management Information System (CAMIS)

Authority: 5 U.S.C. 301; E.O. 12615; Pub. L. 93-400.

§ 169a.1 Purpose.

This document updates policy, procedures, and responsibilities required by 32 CFR Part 169 and OMB Circular A-76 for use by the Department of Defense (DoD) to determine whether needed commercial activities (CAs) should be accomplished by Federal Government personnel or by contract with a commercial source.

§ 169a.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) Its provisions contain DoD procedures for CAs in the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) Its provisions are not mandatory for CAs staffed solely with DoD civilian personnel paid by nonappropriated funds, such as military exchanges. However, this part is mandatory for CAs when they are staffed partially with DoD civilian personnel paid by or reimbursed from appropriated funds, such as libraries, open messes, and other morale, welfare, and recreation (MWR) activities. When related installation support functions are being cost-compared under a single solicitation, a DoD Component may decide that it is practical to include activities staffed solely with DoD civilian personnel paid by nonappropriated funds.

(d) Does not apply to DoD governmental functions as defined in § 169a.3.

(e) Does not apply when contrary to law, Executive orders, or any treaty or international agreement.

(f) Does not apply in times of a declared war or military mobilization.

(g) Does not provide authority to enter into contracts.

(h) Does not apply to the conduct of research and development, except for severable in-house CAs that support research and development, such as those listed in Appendix A.

(i) Does not justify conversion to contract solely to avoid personnel ceilings or salary limitations.

(j) Does not authorize contracts that establish an employer-employee relationship between the Department of Defense and contractor employees, as described in FAR 37.104.

§ 169a.3 Definitions.

Commercial activity review. The process of evaluating CAs for determining whether or not a cost comparison shall be conducted.

Commercial source. A business and/or other non-Federal activity located in the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico that provides a commercial product or service.

Conversion to contract. The changeover of a CA from performance of DoD personnel to performance under contract by a commercial source.

Conversion to in-house. The changeover of a CA from performance under contract by a commercial source to performance by DoD personnel.

Core logistics. Those functions identified as Core logistics activities pursuant to section 307 of Pub. L. 98-525 and section 1231 of Pub. L. 99-145, codified at section 2464, Title 10 that are necessary to maintain a logistics capability (including personnel, equipment, and facilities) to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situation, and other emergency requirements.

Cost comparison. The process of developing an estimate of the cost of performance of a CA by DoD employees and comparing it to the cost of performance by contract.

Direct conversion. Conversions to contract performance of an in-house commercial activity involving 45 or fewer DoD civilian employees or the conversion of an in-house commercial activity performed exclusively by military personnel or the conversion of 10 or fewer DoD civilian employees without a cost comparison.

Directly affected parties. DoD employees and their representative organizations and offerors to the solicitation.

Displaced DoD employee. Any DoD employee affected by conversion to contract operation (including such actions as job elimination or grade reduction). It includes both employees in the function converted to contract and to employees outside the function who are affected adversely by conversion through reassignment or the exercise of bumping or retreat rights.

DoD commercial activity (CA). An activity that provides a product or service obtainable (or obtained) from a commercial source. A DoD CA may be the mission of an organization or a function within the organization. It must be a type of work that is separable from other functions or activities so that it is suitable for performance by contract. A representative list of the functions performed by such activities is provided in Appendix A. A DoD CA falls into one of two categories:

(a) *Contract CA.* A DoD CA managed by a DoD Component, but operated with contractor personnel.

(b) *In-house CA.* A DoD CA operated by a DoD Component with DoD personnel.

DoD employee. Civilian personnel, both permanent and temporary, of the Department of Defense.

DoD governmental function. A function that is related so intimately to the public interest as to mandate performance by DoD personnel. These functions include those that require either the exercise of discretion in applying Government authority or the use of value judgment in making decisions for the Department of Defense. Services or products in support of governmental functions, such as those listed in Appendix A, are CAs and are subject to 32 CFR Part 169 and this implementing part. Governmental functions normally fall into two categories:

(a) *Act of governing.* The discretionary exercise of government authority. Examples include criminal investigations, prosecutions, and other judicial functions; management of Government programs requiring value judgments, as in direction of the national defense; management and direction of the Armed Services; activities performed exclusively by military personnel who are subject to deployment in a combat, combat support, or combat service support role; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers, and other natural resources; management of natural resources on Federal property; direction of intelligence and counterintelligence operations; and regulation of industry and commerce, including food and drugs.

(b) *Monetary transactions and entitlements.* Refers to such actions as tax collection and revenue disbursements, control of treasury accounts and the money supply, and the administration of public trusts.

DoD personnel. Military and civilian personnel of the Department of Defense.

Expansion. The modernization, replacement, upgrading, or enlargement of a DoD CA involving a cost increase exceeding either 30 percent of the total capital investment or 30 percent of the annual personnel and material costs. A consolidation of two or more CAs is not an expansion, unless the proposed total capital investment or annual personnel and material costs of the consolidation exceeds the total of the individual CAs by 30 percent or more.

Installation. An installation is the grouping of facilities, collocated in the same vicinity, that supports particular functions. Activities collocated and supported by an installation are considered to be tenants.

Installation commander. The commanding officer or head of an installation or tenent activity, who has budget and supervisory control over resources and personnel.

Mission-essential materiel. All materiel that is authorized and available to combat support, combat service support, and combat readiness training

forces to accomplish their assigned mission.

New requirement. A recently established need for a commercial product or service. A new requirement does not include interim in-house operation of essential services pending reacquisition of the services prompted by such action as the termination of an existing contract operation.

Preferential procurement programs. Preferential procurement programs include mandatory source programs such as Federal Prison Industries (FPI) and the workshops administered by the Committee for Purchase from the Blind and Other Severely Handicapped under Pub. L. 92–98. Small, minority and disadvantaged businesses; and labor surplus area set-asides and awards made under Pub. L. 85–536, section 8(a); and Pub. L. 95–507 are included under preferential procurement programs.

Right of first refusal of employment. Contractors provide Government employees, displaced as a result of the conversion to contract performance, the right of first refusal for employment openings under the contract in positions for which they are qualified, if the employment is consistent with post-Government employment conflict of interest standards.

§ 169a.4 Policy.

(a) *Ensure DoD mission accomplishment.* When complying with this part and its policy Directive, DoD Components shall consider the overall DoD mission and the defense objective of maintaining readiness and sustainability to ensure a capability for mobilizing the defense and support structure.

(b) *Achieve economy and quality through competition.* Encourage competition with the objective of enhancing quality, economy, and performance. When performance by a commercial source is permissible, a comparison of the cost of contracting and the cost of in-house performance shall be performed to determine who shall provide the best value for the Government, considering price and other factors included in the solicitation. The restriction of a solicitation to a preferential procurement program does not negate the requirement to perform a cost comparison. Performance history will be considered in the source selection process and high quality performance should be rewarded.

(c) *Retain governmental functions in-house.* Certain functions that are inherently governmental in nature, and intimately related to the public interest, mandate performance by DoD personnel only. These functions are not in competition with commercial sources; therefore, these functions shall be performed by DoD personnel.

(d) *Rely on the commercial sector.* DoD Components shall rely on commercially available sources to provide commercial products and services except when required for national defense, when no satisfactory commercial source is available, or when in the best interest of direct patient care. DoD Components shall not consider an in-house new requirement, an expansion of an in-house requirement, conversion to in-house, or otherwise carry on any CAs to provide commercial products or services if the products or services can be procured more economically from commercial sources.

(e) *Delegate decision authority and responsibility.* DoD Components shall delegate decision authority and responsibility to lower organization levels, giving more authority to the doers, and linking responsibility with that authority. This shall facilitate the work that installation commanders must perform without limiting their freedom to do their jobs. When possible, the installation commanders should have the freedom to make intelligent use of their resources, while preserving the essential wartime capabilities of U.S. support organizations in accordance with DoD Directive 4001.1.[1]

(f) *Share resources saved.* When possible, make available to the installation commander a share of any resources saved or earned so that the commander can improve operations or working and living conditions on the installation.

(g) *Provide placement assistance.* Provide a variety of placement assistance to employees whose Federal jobs are eliminated through CA competitions.

§ 169a.5 Procedures.

(a) *Inventory and five year review schedule (Report Control Symbol DO-P&L(A)1540).* (1) Each installation commander shall have the authority and responsibility to carry out the following:

(i) Prepare an inventory each fiscal year of commercial activities carried out by government personnel.

(ii) Decide which commercial activities shall be reviewed under the procedures and requirements of OMB Circular No. A–76 or any successor administrative regulation or policy.

(2) Each installation commander will exercise the above authority and responsibilities in accordance with the policies and procedures set forth in 32 CFR Part 169, this part, and the DoD Component's implementing directives.

(3) DoD Components shall annually compile the installation's inventory and their review schedules. The inventory shall be updated at least annually to reflect changes to review schedules, the results of reviews, cost comparisons, and direct conversions.

(4) Updated inventories for all DoD Components except National Security Agency/Central Security Service (NSA/CSS) and the Defense Intelligence Agency (DIA) shall be submitted to the Office of the Assistant Secretary of Defense (Production and Logistics) (OASD (P&L)) within 90 days after the end of each fiscal year. Inventory data pertaining to NSA/CSS and DIA shall be held at the specific Agency concerned for subsequent review by properly cleared personnel. Appendix A provides the codes and explanations for functional areas and Appendix B provides procedures for submitting the inventory.

(5) Commerical activities approved for retention in-house, for any reason, shall be reviewed at least once every 5 years.

(6) Review schedules should be coordinated with the DoD Component's Efficiency Review Program and the Defense Regional Interservice Support (DRIS) Program to preclude duplication of efforts and to make use of information already available.

(7) Reviews of CAs that provide interservice support shall be scheduled by the supplying organization. Subsequent cost comparisons, when appropriate, shall be executed by the same organization. All affected DoD Components shall be notified of the intent to perform a review.

(8) Information in the inventory may be used to assess DoD Components implementation of OMB Circular A–76 and for other purposes.

(b) *Reviews—(1) Existing in-house CAs.* Reviews shall be conducted in accordance with established review schedules. Existing in-house CAs, once reviewed, shall be retained in-house without a cost comparison only when certain conditions are satisfied. (Detailed documentation will be maintained to support the decision to continue in-house performance. OASD (P&L) shall be notified within 30 days of any such decision.) These conditions are as follows:

(i) *National defense.* In most cases, application of this criterion shall be made considering the wartime and peacetime duties of the specific

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.

positions involved rather than in terms of broad functions.

(A) *Military staffing.* A CA, staffed with military personnel who are assigned to the activity, may be retained in-house for national defense reasons when the following apply:

(*1*) The CA is essential for training or experience in required military skills; or

(*2*) The CA is needed to provide appropriate work assignments for a rotation base for overseas or sea-to-shore assignments; or

(*3*) The CA is necessary to provide career progression to needed military skill levels.

(B) *Core logistics activities.* Section 2464 of Title 10, United States Code currently identifies as core logistics those functions performing depot-level maintenance of mission-essential material at the activities listed in section 1231 of Pub. L. 99–145. These functions will not be considered for conversion to contract unless the Secretary of Defense grants a waiver.

(*1*) The Secretary of Defense will consider a waiver using the following criteria:

(*i*) Private sector performance will not result in adverse impact upon mobilization requirements or other readiness considerations;

(*ii*) The private sector is capable of providing the technical competence and resources necessary to perform the activity;

(*iii*) The private sector is capable of performing if surges occur;

(*iv*) The activity is separable from those core logistics activities that do require performance by DoD civilian employees;

(*v*) Essential management responsibility is retained by DoD civilian employees; and

(*vi*) Essential government facilities and equipment are retained by the government.

(*2*) If an activity meets the criteria in paragraph (b)(1)(i)(B)(1) of this section, the DoD Component may submit a request for a waiver to the Director. Maintenance Policy, Office of the Deputy Assistant Secretary of Defense (Logistics). The waiver request must include a written certification that in-house performance of the activity is no longer required for national defense reasons. Waiver requests should contain quantitative information as well as a brief narrative keyed to each of the above criteria.

(*3*) A waiver under paragraph (b)(1)(B)(*2*) of this section may not take effect until:

(*i*) The DoD Component has submitted a report on the waiver to the Committees on Armed Services of the Senate and House of Representatives.

(*ii*) A period of 20 days of continuous session of Congress or 40 calendar days has passed after the receipt of the report by those committees.

(*4*) DoD Components may propose additional logistics capability for inclusions in the list of core logistics activities to the Director, Maintenance Policy OASD (P&L)L/MD with a copy to the Chief, Installations Support Division, Office of the Deputy Assistant Secretary of Defense (Installations).

(C) *Consolidation of essential military personnel.* If the DoD Component has a large number of similar CAs with a small number of essential military personnel in each CA, action shall be taken, when appropriate, to consolidate the military positions consistent with military requirements so that economical performance by either DoD civilian employees or by contract can be explored for accomplishing a portion of the work.

(D) *New criteria.* The DoD Components may propose to the OASD (P&L) other criteria for exempting CAs for national defense reasons.

(ii) *No satisfactory commercial source available.* A DoD CA may be performed by DoD personnel when it can be demonstrated that:

(A) There is no satisfactory commercial source capable of providing the product or service that is needed. Before concluding that there is no satisfactory commercial source available, all reasonable efforts, shall be made to identify available sources.

(*1*) Efforts to find satisfactory commercial sources shall be carried out in accordance with the FAR and DFARS and include review of bidders lists and inventories of contractors, consideration of preferential procurement programs, and requests for help from government agencies such as the Small Business Administration.

(*2*) Where the availability of commercial sources is uncertain, at least three notices of the requirement will be placed in the CBD over a 90 calendar-day period. (Notices shall be in the format specified in the FAR, Chapter 1, Part 5. When a bona fide urgent requirement occurs, the publication period in the CBD may be reduced to two notices over a 30 calendarday period. Specifications and requirements in the notice shall not be unduly restrictive and shall not exceed those required of Government personnel or operations.

(B) Use of a commercial source would cause an unacceptable delay or disruption of an essential program. In-house operation of a CA on the basis that use of a commercial source would cause an unacceptable delay or disrupt an essential DoD program requires documentation.

(*1*) The delay or disruption must be specific as to cost, time, and performance measures.

(*2*) The disruption must be shown to be of a lasting or unacceptable nature. Temporary disruption caused by conversion to contract is not sufficient support for the use of this criterion.

(*3*) The fact that a DoD CA involves a classified program, or is part of a DoD Component's basic mission, or that there is the possibility of a strike by contract employees is not adequate reason for Government performance of that activity. Further, urgency alone is not an adequate reason to continue Government operation of a CA. It must be shown that commercial sources are not able, and the Government is able, to provide the product or service when needed.

(*4*) Use of an exemption due to an unacceptable delay or disruption of an essential program shall be approved by the DoD Component.

(iii) *Patient care.* Commercial activities at DoD hospitals may be performed by DoD civilian personnel when it is determined by the head of the DoD Component or a designee, in consultation with the DoD Component's chief medical director, that performance by DoD personnel would be in the best interest of direct patient care.

(iv) *Public laws.* Commercial activities may continue to be performed by DoD Civilian personnel when higher authority exempts contracting out DoD in-house performance such as, fire fighter, guard service and specified installations.

(v) *Military construction.* An economic analyses required by Pub. L. 97–214 eliminates the need for a cost comparison of a CA.

(2) *Contracts.* (i) When contract costs become unreasonable, performance becomes unsatisfactory, or a contractor defaults, a cost comparison of the contracted CA shall be performed in accordance with Parts II, III, and IV of the Supplement to OMB Circular A–76 [2] if the following apply:

(A) Interim in-house operation may he established on a temporary basis should a contractor default;

(B) Re-competition with other satisfactory commercial sources does not result in reasonable prices; and

[2] Copies may be obtained from the Executive Office of the President, Publications Services, New Executive Office Building, Room 2200, 725 17th Street NW., Washington, DC 20503.

(C) In-house performance is feasible.

(ii) Contracted CAs that are justified for conversion to in-house performance based on cost comparisons, national defense, or in the best interest of direct patient care will be allowed to expire (options will not be exercised) once in-house capability is established. If the required resources cannot be accommodated within the DoD Component's budget, a request for adjustment shall be submitted to OSD.

(3) *Expansions.* In cases where expansion of an in-house CA is anticipated, a review of the entire CA, including the proposed expansion, shall be conducted to determine if performance by DoD personnel is authorized for national defense reasons, because no commercial source is available, or because it is in the best interest of direct patient care. If performance by DoD personnel is not justified under these criteria, a cost comparison of the entire activity shall be performed. Government facilities and equipment normally will not be expanded to accommodate expansions if adequate and cost effective contractor facilities are available.

(4) *New Requirements* (i) In cases where a new requirement for a commercial product or service is anticipated, a review shall be conducted to determine if performance by DoD personnel is authorized for national defense reasons, because no commercial source is available, or because it is in the best interest of direct patient care. If performance by DoD personnel is not justified under these criteria, then the new requirement normally shall be performed by contract.

(ii) If there is reason to believe that commercial prices may be unreasonable, an informal preliminary cost analysis shall be conducted to determine whether it is likely that the work can be performed in-house at a cost that is less than anticipated for contract performance. If in-house performance appears to be more economical, a cost comparison shall be scheduled. The appropriate conversion differentials will be added to the preliminary in-house cost before it is determined that in-house performance is likely to be more economical.

(iii) Government facilities and equipment normally will not be expanded to accommodate new requirements if adequate and cost-effective contractor facilities are available. The requirement for Government ownership of facilities does not obviate the possibility of contract operation. If justification for in-house operation is dependent on relative cost, the cost comparison may be delayed to accommodate the lead time necessary for acquiring the facilities.

(iv) Approval to budget for a major capital investment associated with a new requirement will not constitute OSD approval to perform the new requirement with DoD personnel. Government performance shall be determined as stated in this Instruction.

(5) *CAs involving 45 or fewer DoD civilian employees.* (i) When adequately justified under the criteria required in Appendix C, CAs involving 45 or fewer DoD civilian employees may be converteddirectly to contract based on simplified cost comparison procedures. Such conversions shall be approved by the DoD Component CA central point of contact office. This approval authority may be redelegated. Part IV of the Supplement to OMR Circular A-76 shall be used to define the specific elements of cost to be estimated in the simplified cost comparison.

(ii) A full cost comparison shall be performed when a simplified cost comparison fails to clearly support direct conversion to contract.

(iii) If the activity involves 11 to 45 DoD civilian employees, the simplified cost comparison shall indicate that an analysis of the most efficient and cost-effective organization has been completed and that the in-house cost estimate is based on this analysis.

(iv) In no case shall any CA involving more than 45 DoD civilian employees be modified, reorganized, divided, or in any way changed for the purpose of circumventing the requirement to perform a full cost comparison.

(v) Upon approval of a direct conversion, approval notification and (for conversions involving 11 to 45 DoD civilian employees) a copy of the simplified cost comparison fact sheet, with back-up data, shall be provided to the Committee on Appropriations, U.S. House of Representatives, H-218, The Capital, Washington, D.C. 20515. Also the same shall be provided to the Committee on Armed Services, U.S. House of Representatives, Washington, D.C. 20515 and to the Office of the Assistant Secretary of Defense (Production and Logistics) Installations OASD (P&L)I, Room 3E787, The Pentagon, Washington, D.C. 20301.

(vi) The decision to directly convert a CA involving military personnel reflects a management decision that the work need not be performed by military personnel. Therefore, all direct personnel costs will be estimated in the simplified cost comparison on the basis of civilian performance.

(vii) Those activities involving more than 45 DoD civilian employees shall undergo full cost comparisons and be reported to Congress as required by this part before conversion to contract performance.

(6) *CAs Involving 10 or Fewer DoD Civilian Employees.* Commercial activities performed by 10 or fewer civilian employees may be converted to contract without a simplified cost comparison provided that:

(i) Before any such conversion takes place, the installation commander must certify that all affected civilian employees will be offered jobs at that installation or within the local area, commensurate (equal pay scales and grade levels) with their current skills and pay grades. If no such vacancies exist, the employees will be offered retraining opportunities for existing or projected vacancies at that installation or within the local area. The employees potential right-of-first-refusal with civilian contractors does not satisfy this requirement.

(ii) This provision, subject to the previously mentioned conditions, will be an option available to each DoD Component. This authority may be delegated down to the installation commander.

(7) *Military Personnel CAs.* Commercial activities performed exclusively by military personnel may be converted to contract without a cost comparison, when adequate competition is available and reasonable prices can be obtained from qualified commercial sources.

(8) *Special Considerations*—(i) *Signals Intelligence and Telecommunications and Automated Information Systems Security.* Before making a determination that an activity involving Signals Intelligence (SIGINT), as prescribed by E.0. 12333 and Telecommunications and Automated Information Systems Security, as prescribed by National Security Decision Directive (NSDD) 145, should be subjected to a cost comparison, the DoD Component must specifically identify the risk to national security by using commercial sources. The DoD Component shall provide its assessment of the risk to national security by using commercial sources to the Director, National Security Agency (NSA), who shall determine if the risk to national security is unacceptable. NSA shall notify the OASD (P&L) within 30 days of action taken by the Director, NSA, to grant or deny a request for a waiver of the provisions to this part.

(ii) *National intelligence.* Before making a determination that an activity involving the collections, processings, productions, or dissemination of national intelligence as prescribed in

E.O. 12333 should be subjected to a cost comparison, the DoD Component must specifically identify the risk to national intelligence by using commercial sources. Except as noted in paragraph (b)(8)(i) of this section, the DoD Component shall provide its assessment of the risk to national intelligence by using commercial sources to the Director, Defense Intelligence Agency (DIA), who shall make the determination if the risk to national intelligence is unacceptable. DIA shall consult with other organizations as deemed necessary and shall provide the decision to the DoD Component. DIA shall notify OASD (P&L.) within 30 days of action taken by the Director, DIA, to grant or deny a request for a waiver to this part.

(iii) *Accountable officer.* (A) The functions and responsibilities of the Accountable Officer are defined by DoD 7200.10–M. Those functions of the Accountable Officer that involve the exercise of substantive discretionary authority in determining the Government's requirements and controlling Government assets cannot be performed by a contractor and must be retained in-house. The responsibilities of the Accountable Officer as an individual and the position of the Accountable Officer are not contractible.

(B) Contractors can perform functions to support the Accountable Officer and functions where they are performing in accordance with criteria defined by the Government. For instance, contractors can process requisitions, maintain stock control records, perform storage and warehousing, and make local procurements of items specified as deliverables in the contract.

(C) The responsibility for administrative fund control must be retained in-house. The contractor can process all required paperwork up to funds obligation that must be done by the Goverment employee designated as responsible for funds control. The contractor can also process such documents as reports of survey and adjustments to stockage levels, but approval must rest with the Accountable Officer. In all cases the administrative control of funds must be retained by the Government since a contractor or contractor employees cannot be held responsible for violations of former section 3679 of the revised statutes (now codified at sections 1341, 1342, and 1517 of Title 31, United States Code).

(c) *Cost comparison process.* If performance of a CA by DoD personnel cannot be justified under national defense, nonavailability of commercial source, or patient care criteria, then a full cost comparison shall be conducted in accordance with Parts II, III, and IV of the Supplement to OMB Circular A–76, to determine if performance by DoD employees is justified on the basis of lower cost (unless the criteria of paragraphs (b) (5), (6) and (7) of this section are met). The conclusion that a CA does not require in-house performance reflects a management decision that the work need not be accomplished by military personnel. Therefore, all direct personnel costs shall be estimated on the basis of civilian performance. Funds shall be budgeted to cover either the cost of the appropriate in-house operation required to accomplish the work or the estimated cost of the contract.

(1) *Notification* (i) *Congressional notification.* DoD Components shall notify Congress of the intention to do a full cost comparison for each CA, only when Congress is in session and in sufficient time to allow review, as required by section 502(a)(2)(A). DoD Components shall annotate the notification when a cost comparison is planned at an activity listed in the report to Congress on core logistics (see paragraph (b)(1)(i)(B) of this section). DoD Components who do not have Legislative Affairs (LA) and Public Affairs (PA) offices shall notify the OASD (P&L) of any such intent at least 5 working days before the Congressional notification. DoD Components that clear their Congressional notifications with their LA and PA offices shall provide a copy of the CA decision on the day of announcement to: OASD (LA) Room 3D918 Pentagon; OASD (PA) Room 2E757 Pentagon, Office of Economic Adjustment, Room 4C767 Pentagon and DASD (i) Room 3E787 Pentagon. The cost comparison process begins on the date of Congressional notification.

(ii) *Commerce Business Daily (CBD)/* **Federal Register** *(FR) notification.* Schedules for cost comparisons not requiring Congressional notification and decisions to convert CAs directly to contract also shall be published in the CBD/FR as soon as practicable after the decision. The cost comparison decision schedule shall include for each activity, the name, location, and date the cost comparison began or the estimated date the direct conversion will occur.

(iii) *Local notification.* (A) It is suggested that upon Congressional notification the installation make an announcement of the cost comparison, including a brief explanation of the cost comparison process to the employees of the activity and the community.

(B) DoD Components shall, in accordance with Pub. L. 100–456, at least monthly during the development and preparation of the performance work statement (PWS) and management study, consult with DoD civilian employees who will be affected by the cost comparison and consider the views of such employees on the development and preparation of the PWS and management study. DoD Components may consult with such employees on other matters relating to the cost comparison. In the case of DoD employees represented by a labor organization accorded exclusive recognition under section 7111 of Title 5, United States Code, consultation with representatives of that labor organization satisfies the consultation requirement. Consultation with non-union DoD civilian employees may be through such means as group meetings. Alternatively, DoD civilian employees may be invited to designate one or more representatives to speak for them. Other methods may be implemented, as long as adequate notice is provided to the non-union DoD civilian employees and the right to be represented during the consultations is ensured.

(C) Local Interservice Support Coordinators (ISCs) and the Chair of the appropriate Joint Interservice Resources Study Group (JIRSG) also should be notified of a pending cost comparison.

(2) *Performance work statement (PWS).* (i) The PWS and its Quality Assurance Plan shall be prepared in accordance with Part ii of the Supplement to OMB Circular A–76 for full cost comparisons, simplified cost comparisons, and direct conversions. The PWS shall include reasonable performance standards, allowing for continuous quality improvement, that can be used to ensure a comparable level of performance for both Government and contractor and a common basis for evaluation. Employees and/or their bargaining unit representatives should be encouraged to participate in preparing or reviewing the PWS.

(ii) Each DoD Component shall:

(A) Prepare PWSs where needed.

(B) Monitor the development and use of prototype PWSs.

There are over 300 prototype PWSs and 500 CA studies available through the Defense Logistics Studies Information Exchange (DLSIE). Inquiries are encouraged from all DoD Components. Call Autovon 687–4255 or Commercial (804) 734–4255 or write to: USA Logistics Management College, ATTN: DLSIE, Bldg. T–12112, Fort Lee, VA. 23801–6048.

(C) Review and initiate action to correct disagreements on PWS discrepancies.

(D) Approve prototype PWSs for Component-wide use.

(E) Coordinate these efforts with the other DoD Components to avoid duplication and to provide mutual assistance.

(iii) Guidance on Government Property:

(A) For the purposes of this Instruction, Government property is defined in accordance with the FAR, Part 45.

(B) The decision to offer or not to offer Government property to a contractor shall be determined by an informal cost analysis. This decision must be supported by current, accurate, complete information and be readily available for the independent reviewing activity. The design of this analysis shall not give a decided advantage/disadvantage to either in-house or contract competitors. The management of Government property offered to the contractor shall also be in compliance with the FAR, Part 45.

(iv) If a CA provides critical or sensitive services, the PWS shall include sufficient data for the in-house organization and commercial sources to prepare a plan for expansion in emergency situations.

(v) DoD Components that provide interservice support to other DoD Components or Federal agencies through interservice support agreements or other arrangements, shall ensure that the PWS includes this workload and is coordinated with all affected components and agencies.

(vi) If there is a requirement for the commercial source to have access to classified information in order to provide the product or service, the commercial source shall be processed for a facility security clearance under the Defense Industrial Security Program in accordance with DoD Directive 5220.223 [3] and DoD 5220.22-R. However, if no *bona fide* requirement for access to classified information exists, no action shall be taken to obtain security clearance for the commercial source.

(vii) Employees of commercial sources who do not require access to classified information for work performance, but require entry into restricted areas of the installation, may be authorized unescorted entry only when the provisions of 32 CFR Part 154 apply.

(3) *Management study.* A management study shall be performed to completely analyze the method of operation necessary to establish the most efficient and cost-effective in-house organization (MEO) needed to accomplish the requirements in the PWS. The MEO must reflect only those resources which have been authorized for the CA. As a part of the management study, installations should determine if specific requirements can be met through an Inter/Intraservice Support Agreement (ISA) with other activities or Government Agencies which have excess capacity or capability.

(i) The CA management study is mandatory. Part III of the supplement to OMB Circular A-76 provides guidance on how to conduct the management study. The study shall identify essential functions to be performed, determine performance factors, organization structure, staffing, and operating procedures for the most efficient and cost effective in-house performance of the CA. The MEO becomes the basis of the Government estimate for the cost comparison with potential contractors. In this context, "efficient" (or cost-effective) means that the required level of workload (output, as described in the performance work statement) is accomplished with as little resource consumption (input) as possible without degradation in the required quality level of products or services.

(ii) DoD Components have formal programs and training for the performance of management studies, and those programs are appropriate for teaching how to conduct CA management studies. Part III of the Supplement to OMB Circular A-76 does not purport to replace the DoD Component's own management techniques, but merely to establish the basic criteria and the interrelationship between the management study and the PWS.

(iii) If a CA provides critical or sensitive services, the management study shall include a plan for expansion in emergency situations.

(iv) Early in the management study, management will solicit the views of the employees in the CA under review, and/or their representatives for their recommendations as to the MEO or ways to improve the method of operation.

(v) The management study will be the basis on which the DoD Component certifies that the in-house cost estimate is based on the most efficient and cost effective organization practicable.

(vi) Implementation of the MEO shall be initiated no later than 1 month after cancellation of the solicitation and completed within 6 months. DoD Components shall take action, within 1 month, to schedule and conduct a subsequent cost comparison when the MEO is not initiated and completed as previously prescribed. Subsequent cost comparisons may be delayed by the DoD Component's central point of contact office, when situations outside the control of the DoD Component may prevent timely or full implementation of the MEO. This authority may not be redelegated.

(vii) DoD Components shall establish procedures to ensure that the in-house operation, as specified in the MEO, is capable of performing in accordance with the requirements of the PWS. The procedures also shall ensure that the resources (facilities, equipment, and personnel) specified in the MEO are available to the in-house operation and that in-house performance remains within the requirements and resources specified in the PWS and MEO for the period of the cost comparison, unless documentation to support changes in workload/scope is available.

(viii) A management study is not required for CAs involving 10 or fewer DoD civilian employees or direct conversions of military personnel.

(4) *Cost Comparisons.* Cost comparisons shall include all significant costs of both Government and contract performance. Common costs; that is, costs that would be the same for either in-house or contract operation, need not be computed, but the basis of those common costs must be identified and included in the cost comparison documentation. Part IV of the Supplement to OMB Circular A-76 provides the basic guidance for conducting full cost comparisons. Appendix C provides guidance for conducting simplified cost comparisons. The supplemental guidance contained below is intended to establish uniformity and to ensure all factors are considered when making cost comparisons. Deviation from the guidance contained in Part IV of the supplement to OMB Circular A-76 will not be allowed, except as provided in the following paragraphs.

(i) *In-house cost estimate.* (A) The in-house cost estimate shall be based on the most efficient and cost-effective in-house organization needed to accomplish the requirements in the PWS.

(B) Heads of DoD Components or their designees shall certify that the in-house cost estimate is based on the most efficient and cost-effective operation practicable. Such certification shall be made prior to the date for receipt of offers.

(C) The Comptroller of the Department of Defense (C, DoD) shall provide annual inflation factors for adjusting costs for the first and subsequent performance periods.

[3] See footnote 1 to § 169a.4(e)

Alternative economic assumptions may also be used if they are separately identified and the effect of the C, DoD rates are also shown for comparison. Inflation factors for outyear (second and subsequent) performance periods will not be applied to portions of the in-house estimate that are comparable with those portions of the contract estimate subject to economic price adjustment clauses. These factors apply to all cost comparisons where bid opening or receipt of best and final offer has not occurred. If the in-house cost estimate has been sealed, adjustment should be made at the time adjustments are made to the contractor portion of the cost comparison form. The new factor(s) should be applied to the cost element at the largest aggregate level.

(D) Military positions in the organization under cost comparison shall be converted to civilian positions for costing purposes. Civilian grades and series shall be based on the work described in the PWS and reflected in the MEO that is determined by the management study rather than on the current organization structure.

(E) All DoD Components shall use the Wholesale Stock Fund Rate of 19.1 percent and the Direct Delivery Rate of 13.6 percent for supplies and materials acquired from the DoD Component supply systems.

(F) DoD Components shall assume for the purpose of depreciation computations that residual value is equal to the disposal values listed in Appendix C of Part IV of the Supplement to OMB Circular A-76, if more precise figures are not available from the property disposal officer or other knowledgeable authority. Therefore, the basis for depreciation shall be the original cost plus the cost of capital improvements (if any) less the residual value. The original cost plus the cost of capital improvements less the residual value shall be divided by the useful life (as projected for the CA cost comparison) to determine the annual depreciation.

(G) Purchased services which ugment the current in-house work effort and that are included in the PWS should be included in line 3 (other specifically attributable costs). The purchased service price used must reflect an actual contract price; not an estimated price based in past experience. When these purchased services are long-term and contain labor costs subject to economic price adjustment clauses, then the applicable labor portion will not be escalated by outyear inflation factors. In addition, purchased services shall be offset for potential Federal income tax revenue by applying the appropriate rate in Appendix D of Part IV of the Supplement to OMB Circular A-76 to the total cost of purchased services.

(H) Overhead costs shall be computed only when such costs will not continue in the event of contract performance. This includes the cost of any position (full time, part time, or intermittent) that is dedicated to providing support to the activity(ies) under cost comparison regardless of the support organization's location. Military positions providing overhead support shall be costed using current military composite standard rates. These rates are issued on a fiscal year basis by each Military Service.

(I) The following guidance pertains to the Davis-Bacon Act and Service Contract Act:

(*1*) Normally, construction and major repair projects will be contracted for separately. However, requirements in a contract (subject to the Service Contract Act) calling for construction, alteration, renovation, painting, and repair work performed in response to a service call or work order in excess of $2,000 shall be subject to the Davis-Bacon Act.

(*2*) Maintenance work and other installation support work, such as plant operations and installation services (custodial, snow removal, entomology, etc.), shall be subject to the Service Contract Act.

(*3*) All requirements not subject to the Davis-Bacon Act, as previously described, shall be subject to the Service Contract Act.

(*4*) Under no circumstances will an attempt be made to evade the coverage of the Davis-Bacon Act by breaking tasks in excess of $2,000 into smaller tasks to accomplish requirements in the contract for repair, construction, alteration, renovation, or painting.

(*5*) Service call or work order estimates to be used in determining the applicability of the Davis-Bacon Act shall be based on the least cost alternative.

(J) Medicare factors will be used in the calculation of civilian personnel costs using the computation shown. Medicare factors are only applied up to the current annual salary limitation.

[(Basic pay x fringe benefit factor) + (Other Pay x Medicare Factor)] = Personnel Cost.

Note: The fringe benefit factor includes cost factors for standard retirement, employee insurance benefits (life and health), medicare, and miscellaneous fringe benefits.

(K) The C, DoD shall provide guidance to DoD Components on procedures and systems for obtaining cost data for use in preparing cost estimates, when requested.

(ii) *Cost of Contract Performance.* (A) The contract cost estimate shall be based on offers competitively obtained and solicited in accordance with the FAR and the DFARS for full cost comparisons. Existing contract prices (such as those from GSA Supply Schedules) will not be used in a cost comparison. For simplified cost comparisons, the guidance in Appendix C applies.

(B) Standby costs are costs incurred for the upkeep of property in standby status. Such costs neither add to the value of the property nor prolong its life, but keep it in efficient operating condition or available for use. When an in-house activity is converted to contract performance and an agency elects to hold Government equipment and facilities on standby solely to maintain performance capability, this is a management decision, and such standby costs will not be charged to the cost of contracting.

(C) A specific waiver is required to use contract administration factors that exceed the limits established in table 3-1 of Part IV of the Supplement to OMB Circular A-76. The reason for the deviation from the limits, the supporting alternative computation, and documentation supporting the alternative method, shall be provided to the DoD Component's central point of contact office for advance approval on a case-by-case basis. This authority may not be redelegated. OASD (P&L) shall be notified within 30 days of any such decisions.

(D) The following guidance pertains to one-time conversion costs:

(*1*) *Material Related Costs.* The cost factors below shall be used, if more precise costs are not known, to estimate the cost associated with disposal/transfer of excess government material which result from a conversion to contract performance:

Percentage of Current Replacement Cost

Packing, Crating, & Handling (PCH)—3.5 percent.

Transportation—3.75 percent.

(*2*) *Labor-Related Costs.* If unique circumstances prevail when a strict application of the 2 percent factor for computation of severance pay results in a substantial overstatement or understatement of this cost, an alternative methodology may be employed. The reason for the deviation from this standard, the alternative computation, and documentation supporting the alternative method shall be provided to the appropriate DoD Component's central point of contact office for advance approval on a case-

by-case basis. This authority may not be redelegated. OASD (P&L) shall he notified within 30 days of any such decision.

(3) *Other Transition Costs.* Normally, Government personnel assistance after the contract start date (to assist in transition from in-house performance to contract performance) should not be necessary. When transition assistance will not be made available, this condition should be stated clearly in the solicitation so that contractors will be informed that they will be expected to meet full performance requirements from the first date of the contract. Also, when circumstances require full performance on the contract start date, the solicitation shall state that time will be made available for contractor indoctrination prior to the start date of the contract. The inclusion of personnel transition costs in a cost comparison requires advance approval of the DoD Component's central point of contact office. This authority may not be redelegated. OASD (P&L) shall be notified within 30 days of any such decision.

(E) *Gain or Loss on Disposal/Transfer of Assets.* If more precise costs are not available from the Defense Reutilization Marketing Office or appropriate authority, then:

(1) The same factors for PCH and transportation costs as prescribed in paragraph (c)(4)(ii)(D) of this section for the costs associated with disposal/transfer of materials may be used. (2) The estimated disposal value may be calculated from the net book value as derived from the table in Appendix C of Part IV of the Supplement to OMB Circular A-76 minus the disposal/transfer costs. This figure shall be entered as a gain or loss on line 11 or line 13 of the cost comparison form as appropriate.

Note: If a cost-benefit analysis, as prescribed in paragraph (c)(2)(iii) of this section indicates that the retention of Government-owned facilities, equipment, or real property for use elsewhere in the Government is cost advantageous to the Government, then the cost comparison form shall reflect a gain to the Government and therefore a decrease to the cost of contracting on line 11 or line 13 of the cost comparison form as appropriate

(5) *Independent review.* (i) The estimates of in-house and contract costs that can be computed before the cost comparison shall be reviewed by a qualified activity, independent of the Task Group preparing the cost comparison. This review shall be completed far enough in advance of the initial proposal opening date to allow correction of any discrepancies found prior to submitting the in-house proposal to the contracting officer.

(ii) The independent review shall substantiate the currency, reasonableness, accuracy, and completeness of the cost comparison. The review shall ensure that the in-house cost estimate is based on the same required services, performance standards, and workload contained in the solicitation. The reviewer shall scrutinize and attest to the adequacy and authenticity of the supporting documentation. Supporting documentation shall be sufficient to require no additional interpretation.

(iii) The purpose of the independent review is to ensure costs have been estimated and supported in accordance with provisions of this part. If no (or only minor) discrepancies are noted during this review, the reviewer indicates the minor discrepancies, signs, dates, and returns the CCF to the preparer. If significant discrepancies are noted during the review, the discrepancies shall be reported to the preparer for recommended correction and resubmission.

(iv) An independent review is not required for CAs involving 45 or fewer DoD civilian employees.

(v) Independent review evaluations and certification shall be affixed to the CCF.

(6) *Solicitation Considerations.* (i) Installation commanders have the authority and responsibility to solicit contracts for those activities selected for possible conversion to contract in accordance with the FAR and the DFARS. The solicitation will not be canceled even if there are significant changes, omissions, or defects in the Government's in-house cost estimate. Such corrections shall be made before the expiration and/or extension of offers from contractors.

(ii) Offerors shall be informed that an in-house cost estimate is being developed and that a contract may or may not result.

(iii) Offers from contractors shall be on at least a 3-year multi-year basis (where appropriate) or shall include prepriced renewal options to cover 2 years after the initial period. Offers longer then 3 years are encouraged in order to receive cost efficient offers from quality contractors. Currently, there are no statutory limitations on option provisions, since they are unilateral in nature, unfunded and not contractually binding, however a deviation from the FAR, section 17.204, paragraph e is required for basic and option periods exceeding 5 years.

(iv) All contracts awarded as a result of a conversion (whether or not a cost comparison was performed) shall:

(A) Comply with all requirements of the FAR.

(B) When determined to be necessary in accordance with FAR 22.101-1(e), include the clause at FAR 52.222-1, Notice to the Government of Labor Disputes, requiring the contractor to provide notice of actual and impending labor disputes.

(C) Include in contracts for critical or sensitive services a requirement for the contractor to develop a contingency plan explaining how the contractor will expand operations in emergency situations and ensure there will be no significant interruption of routine contract services due to labor disputes.

(D) Include all applicable clauses and provisions related to the right of first refusal for employment by displaced DoD employees, equal employment opportunities, veterans preference, and minimum wages and fringe benefits. Installation commanders have the authority and responsibility to assist, to the maximum extent practicable, in finding suitable employment for any employee of the Department of Defense who is displaced because of a contract entered into with a contractor for performance of a commercial activity.

(E) As a general rule, requirements (for other than construction related services) above the levels established for bonds and insurance in the FAR and DFARS should not be included in acquisitions.

(v) Solicitations shall be restricted for preferential procurement when the requirements applicable to such programs (such as Small Business Set-Asides or other required sources of supplies and services) are met, in accordance with the FAR. Solicitations will not be restricted for preferential procurement unless the contracting officer determines that there is not a reasonable expectation that the commercial prices will be fair and reasonable.

(vi) Contract defaults may result in temporary performance by Government personnel or other suitable means; such as, an interim contract source. Personnel detailed to such a temporary assignment should be clearly informed that they will return to their permanent assignment when a new contract is awarded. If the default occurs within the first year of contract performance, the following procedures apply:

(A) If, after consultation with the Department of Labor, (DoL) it is determined that the contract wage rates are still valid, the contracting officer will review the availability among the next lowest responsible and responsive offerors for a successor contract in

accordance with established contracting practice. If the next low offeror is willing to accept the balance of the contract work at the price offered, adjusted on an appropriate pro rata basis for the remainder of the contract term, the contracting officer may award to that offeror. If the Government is the next lowest offeror, the function may be returned to in-house performance, as offered, if still feasible. If performance by DoD employees is no longer feasible, the contracting officer may elect either to award to the next lowest responsive and responsible commercial offeror, if that firm is willing to perform at its offered price and adjust appropriately for the remainder of the term, or to resolicit as specified in the next paragraph. A return to in-house performance under the previously mentioned criteria shall be approved by the DoD Component's central point of contact office. This authority may not be redelegated. OASD (P&L) shall be notified within 30 days of any such decision.

(B) If the contract wage rates are no longer valid or if the contracting officer, after a review of the availability of the next lowest responsible and responsive offerors, determines that resolicitation is appropriate, the Government may submit a cost estimate for comparison with other offers from the private sector. Submission of a Government cost estimate requires a determination by the DoD Component that performance by Government personnel is still feasible and that a likelihood exists that in-house performance may be more economical than performance by contract. In such cost comparisons, the conversion differentials will not be applied to the costs of either in-house or contract performance.

(vii) If contract default occurs during the second or subsequent year of contract performance, the procedures of paragraph (b)(2)(i) of this section apply.

(viii) Grouping of commercial activities (CAs): (A) The installation commander shall determine carefully which CAs should be grouped in a single solicitation. The installation commander should keep in mind that the grouping of CAs can influence the amount of competition (number of commercial firms that will submit offers) and the eventual cost to the Government.

(B) The installation commander shall consider the adverse impacts that the grouping of CAs into a single solicitation may have on small and small disadvantaged business concerns. CAs being performed wholly by small or small disadvantaged businesses will not be incorporated into a cost comparison unless consolidation is necessary to meet mission requirements. Also care must be taken to ensure that such contractors are not displaced merely to accomplish consolidation. Similarly, care must be taken so that nonincumbent small and small disadvantaged business contractors are not handicapped or prejudiced unduly from competing effectively at the prime contractor level.

(C) In developing solicitations for CAs, the installation commander's procurement plan should reflect an analysis of the advantages and disadvantages to the Government that might result from making more than one award. The installation commander's decision to group CAs should reflect an analysis of all relevant factors including the following:

(*1*) The effect on competition.

(*2*) The duplicative management functions and costs to be eliminated through grouping.

(*3*) The economies of administering multifunction versus single-function contracts, including cost risks associated with the pricing structure of each.

(*4*) The feasibility of separating unrelated functional tasks or groupings.

(*5*) The effect grouping will have on the performance of the functions.

(D) When the solicitation package includes totally independent functions which are clearly divisible, severable, limited in number, and not price interrelated, they shall be solicited on the basis of an "any or all" offer. Commercial offerors shall be permitted to submit offers on one or any combination of the functions being solicited. These offers shall be evaluated to determine the lowest aggregate contract cost to the Government. This lowest aggregate contract cost then will be compared to the in-house cost estimate based on the MEO for performance of the functions in the single solicitation. The procedures in Part IV of the Supplement to OMB Circular A-76 apply.

(E) There are instances when this approach to contracting for CAs may not apply; such as, situations when physical limitations of site (where the activities are to be performed) preclude allowing more than one contractor to perform, when the function cannot be divided for purposes of performance accountability, or for other national security considerations. However, if an "all or none" solicitation is issued, the decision to do so must include a cost analysis to reflect that the "all or none" solicitation is less costly to the Government or an analysis indicating it is otherwise in the best interest of the Government, all factors considered.

(F) It is recognized that in some cases, decisions will result in the elimination of prime contracting opportunities for small business. In such cases special measures shall be taken. At a minimum, small and small disadvantaged business concerns shall be given preferential consideration by all competing prime contractors in the award of subcontracts. For negotiated procurements the degree to which this is accomplished will be a weighted factor in the evaluation and source selection process leading to contract award.

(G) The contract files shall be documented fully to demonstrate compliance with these procedures.

(ix) If no offers, or no responsive or responsible offers are received in response to a solicitation, the in-house cost estimate shall remain unopened. The contracting officer shall examine the solicitation to ascertain why no responses were received. Depending on the results of this review, the contracting officer shall consider restructuring the requirement, if feasible, and reissue it under restricted or unrestricted solicitation procedures, as appropriate.

(x) Continuation of an in-house CA for lack of a satisfactory commercial source will not be based upon lack of response to a restricted solicitation.

(xi) 32 CFR Part 285 shall be considered in responding to requests for disclosure of contractor-supplied information obtained in the course of procurements.

(*7*) *Administrative appeal procedures*—(i) *Appeals of full cost comparison decisions.* (A) Each DoD Component shall establish an administrative appeals procedure to resolve questions from directly affected parties relating to determinations resulting from full cost comparisons (involving 46 or more DoD civilian employees) performed in compliance with this part. The appeal procedure shall not apply to questions concerning:

(*1*) Award to one contractor in preference to another.

(*2*) DoD management decisions.

(B) The appeals procedure is established to provide an administrative safeguard to ensure that DoD Component decisions are fair, equitable, and done according to the procedures in this part. The procedure does not authorize an appeal outside the DoD Component or a judicial review.

(C) The appeals procedure shall be independent, objective, and provide for a decision on the appeal within 30 calendar days of receipt of the appeal. The decision shall be made by an impartial official at a level organizationally higher than the official

who approved the cost comparison decision. The appeal decision shall be final, unless the DoD Component procedures provide for further discretionary review within the DoD Component.

(D) All detailed documentation supporting the initial cost comparison decision to directly affected parties shall be made available upon request when the initial decision is announced. The detailed documentation shall include, at a minimum: the in-house cost estimate with detailed supporting documentation (see paragraph (c)(5)(ii) of this part), completed CCF, name of the tentative winning contractor (if the decision is to contract), or price of the offeror whose offer would have been most advantageous to the Government (if the decision is to perform in-house). If the documentation is not available when the initial decision is announced, the time allotted for submission of appeals shall be extended the number of days equal to the delay.

(E) To be considered eligible for review under the DoD Component appeals procedures, appeals shall:

(*1*) Be received by the DoD Component in writing within 15 working days after the date the supporting documentation is made available to directly affected parties.

(*2*) Address specific line items on the CCF and the rationale for questioning those items.

(*3*) Demonstrate that the result of the appeal may change the decision.

(ii) *Appeals of direct conversions.* (A) Each DoD Component shall establish an administrative appeals procedure to resolve questions from directly affected parties regarding decisions to convert directly to contract. The appeal must address reasons why fair and reasonable prices will not be obtainable.

(B) Directly affected parties shall file appeals within 30 calendar days of the date of CBD and FR notification of a decision to convert a CA directly to contract. Paragraph (c)(1)(ii) of this section applies.

(C) The appeals procedure shall be independent and objective and provide for a decision on the appeal within 30 calendar days of receipt of the appeal. The decision shall be made by an impartial official at a level organizationally higher than the official who approved the direct conversion decision. The appeal decision shall be final, unless the DoD Component procedures provide for further discretionary review within the DoD Component.

(D) The installation commander shall make available, on request, all detailed documentation supporting the initial decision to directly convert to contract a CA being performed by 45 or fewer civilian personnel when announced. If the documentation is not available when the initial decision is announced, the time allotted for submission of appeals shall be extended the number of days equal to the delay.

(iii) Since the appeal procedure is intended to protect the rights of all directly affected parties, the DoD Component's procedures, as well as the decision upon appeal, will not be subject to negotiation, arbitration, or agreement.

(iv) DoD Components shall include administrative appeal procedures as part of their implementing guidance.

§ 169a.6 Reporting requirements.

(a) *Inventory and Review Schedule (Report Control Symbol DD–P&L(A) 1540).* See § 169a.5(a).

(b) *Commercial Activities Management Information System (CAMIS) (Report Control Symbol DD–P&L(Q) 1542).* (1) The purpose of CAMIS is to maintain an accurate DoD data base of CAs that undergo an OMB Circular No. A–76 cost comparison and CAs that are converted directly to contract The CAMIS is used to provide information to the Congress, OMB, General Accounting Office (GAO), DoD, and others. The CAMIS is divided into two parts. Part I contains data on CAs that undergo a full cost comparison. Part II contains data on CAs converted to contract without a full cost comparison. Each DoD Component shall submit an automated data report (tape or diskett) of all cost comparisons and direct conversions to DMDC no later than 30 days following the end of each fiscal quarter, DoD Components may opt to submit an annotated printout of records in lieu of the automated submission. DMDC than shall use this submission to update the CAMIS and provide a feed back report within 2 weeks.

(2) The CAMIS report shall be submitted in accordance with the procedures in Appendix D.

(3) All records, can be included in a printout provided to each DoD Component at the end of the fiscal year, and upon request.

(c) *Reports to Congress.* To ensure consistent application of the requirements stated in Pub. L. 99–342 as amended by Pub. L. 97–252, in Pub. L. 99–145, and Pub. L. 99–661, hereafter referred to as section 502 (Pub. L. 96–342), the following guidance is provided:

(1) The geographic scope of section 502 applies to the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) Section 502 applies to proposed conversions of DoD CAs that are being performed by more than 45 DoD civilian employees.

(3) DoD Components shall notify Congress of the intention to do a cost comparison for each CA, as required by section 502(a)(2)(A).

(4) DoD Components shall annotate announcements to Congress when a cost comparison is planned at an activity listed in the report to Congress on Core Logistics (see § 169a 5(b)(1)(i)(b)).

(5) The DoD Components shall send the detailed summary report required by section 502(a)(2)(B) to Congress. The detailed summary of the cost shall include: the amount of the offer accepted for the performance of the activity by the private contractor; the costs and expenditures that the Government will incur because of the contract; the estimated cost of performance of the activity by the most efficient Government organization; a statement indicating the life of the contract; and certifications that the entire cost comparison is available, and that the Government calculation for the cost of performance of such function by DoD employees is based on an estimate of the most efficient and cost-effective organization for performance of such function by DoD employees. DoD components who do not have Legislative Affairs (LA) and Public Affairs (PA) offices shall notify OASD (P&L) of any such intent to send the detailed summary at least five working days prior to the Congressional notification. DoD components that clear their Congressional notifications with their LA and PA offices shall provide a copy of the notification to OASD LA, PA, Office of Economic Adjustment, and DASD (I).

(6) The potential economic effect on the employees affected, the local community, and the Federal Government of contracting for performance of the function shall be included in the report to accompany the above certifications, if more than 75 total employees (including military and civilian, both permanent and temporary) are potentially affected. It is suggested that the Army Corps of Engineers' model (or equivalent) be used to generate this information. The potential impact on affected employees shall be included in the report, regardless of the number of employees involved. Also include in the report a statement that the decision was made to convert to contractor performance, the projected date of contract award, the projected contract start date, and the effect on the military mission of that function.

(7) By December 15th of each year, each DoD Component shall submit to the OASD (P&L) the data required by section 502(c). In describing the extent to which CA functions were performed by DoD contractors during the preceding fiscal year, include the estimated number of work years for the in-house operation as well as for contract operation (including percentages) by major DoD functional areas in Appendix A; such as, Social Services, Health Services, Installation Services, etc. For the estimate of the percentage of CA functions that will be performed in-house and those that will be performed by contract during the fiscal year for which the report is submitted, include the estimated work years for in-house CAs as well as for contracted CAs and the rationale for significant changes when compared to the previous year's data. Exclude functions with "A" or "C" reason codes.

(d) *Certification of MEO analysis.* Certification of the most efficient and cost-effective organization analysis shall be provided to the Committees on Appropriations of the House of Representatives and the Senate prior to conversion to contract performance of any activity involving more than 10 DoD civilian employees.

Appendix A—Codes and Definitions of Functional Areas

This list of functional codes and their definitions does not restrict the applicability or scope of the CA program within DoD. Section B. of DoD Directive 4100.15 defines the applicability and scope of the program. The CA program still applies to CAs not defined in this listing. These codes and definitions are a guide to assist reporting. As new functions are identified, codes will be added or existing definitions will be expanded.

Social Services

G001 Care of Remains of Deceased Personnel and/or Funeral Services. Includes CAs that provide mortuary services, including transportation from aerial port of embarkation (APOE) to mortuary of human remains received from overseas mortuaries, inspection, restoration, provision of uniform and insignia, dressing, flag, placement in casket, and preparation for onward shipment.

G008 Commissary Store Operation. Includes CAs that provide all ordering, receipt, storage, stockage, and retailing for commissaries. Excludes procurement of goods for issue or resale.

G008A: Shelf Stocking
G008B: Check Out
G008C: Meat Processing
G008D: Produce Processing
G008E: Storage and Issue
G008F: Other
G008G: Troop Subsistence Issue Point

G009 Clothing Sales Store Operation. Includes CAs that provide ordering, receipt, storage, stockage, and retailing of clothing. Stores operated by the Army and Air Force Exchange Services, Navy Exchange Services, and Marine Corps Exchange Services are excluded.

G010 Recreational Library Services. Includes operation of libraries maintained primarily for off-duty use by military personnel and their dependents.

G011 Other Morale, Welfare, and Recreation Services. Operation of CAs maintained primarily for the off-duty use of military personnel and their dependents, including both appropriated and partially nonappropriated fund activities. The operation of clubs and messes, and morale support activities are included in code G011. Examples of activities performing G011 functions are arts and crafts, entertainment, sports and athletics, swimming, bowling, marina and boating, stables, youth activities, centers, and golf. DoD Directive 1015.1 contains amplification of the categories reflected below. (NOTE: CA procedures are not mandatory for functions staffed solely by civilian personnel paid by nonappropriated funds.)

G011A: All Category II Nonappropriated Fund Instrumentalities (NAFIs), except Package Beverage Branch.
G011B: Package Beverage Branch
G011C: All Category IIIa NAFIs
G011D: All Category IIIb1, except Libraries
G011E: Category IIIb2 Arts and Crafts
G011F: Category IIIb2 Music & Theatre
G011G: Category IIIb2 Outdoor Recreation
G011H: Category IIIb2 Youth Activities
G011I: Category IIIb2 Child Development Service
G011J: Category IIIb2 Sports—Competitive
G011K: All Category IIIb3 except Armed Forces Recreation Center (AFRC) Golf, Bowling, and membership associations converted from Category VI
G011L: Category IIIb3 AFRC
G011M: Category IIIb3 Golf
G011N: Category IIIb3 Bowling
G011O: Category IIIb3 membership associations converted from Category VI
G011P: Category III Information Tour and Travel (ITT)
G011Q: All Category IV
G011R: All Category V
G011S: All Category VI, except those converted to Category IIIb3
G011T: All Category VII
G011U: All Category VIII, except Billeting and Hotels
G011V: Category VIII Billeting
G011W: Category VIII Hotels

G012 *Community Services.* DoD Directive 1015.1 contains further amplification of the categories.

G012A: Information and Referral
G012B: Relocation Assistance
G012C: Exceptional Family Member
G012D: Family Advocacy (Domestic Violence)
G012E: Foster Care
G012F: Family Member Employment
G012G: Installation Volunteer Coordination
G012H: Outreach
G012I: Volunteer Management
G012J: Office Management
G012K: Consumer Affairs/Financial Assistance
G012L: General and Emergency Family Assistance

G900 *Chaplain Activities and Support Services.* Includes CAs that provide non-military unique support services that supplement the command religious program such as non-pastoral counseling, organists, choir directors, and directors of religious education. The command religious program which includes chaplains and enlisted support personnel, is a Governmental function and is excluded from this category.

G901 *Berthing BOQ/BEQ.* Includes CAs that provide temporary or permanent accommodations for officer or enlisted personnel. Management of the facility, room service, and daily cleaning are included.

G904 *Family Services.* Includes CAs that perform various social services for families, such as family counseling, financial counseling and planning, the operation of an abuse center, child care center or family aid center.

G999 Other Social Services. This code will only be used for unusual circumstances and will not be used to report organizations or work that can be accommodated under a specifically defined code.

Health Services

H101 Hospital Care. Includes CAs that provide outpatient and inpatient care and consultative evaluation in the medical speciaties, including pediatrics and psychiatry; the coordination of health care delivery relative to the examination, diagnosis, treatment, and disposition of medical inpatients.

H102 Surgical Care. Includes CAs that provide outpatient and inpatient care and consultative evaluation in the surgical specialties, including obstetrics, gynecology, ophthamology and otorhinolaryngology the coordination of health care delivery relative to the examination, treatment, diagnosis, and disposition of surgical patients.

H105 Nutritional Care. Includes CAs that provide hospital food services for inpatients and outpatients, dietetic treatment, counseling of patients, and nutritional education.

H106 Pathology Services include CAs involved in the operation of laboratories providing comprehensive clinical and anatomical pathology services; DoD military blood program and blood bank activities; and area reference laboratories.

H107 Radiology Services include CAs that provide diagnostic and therapeutic radiologic service to inpatients and outpatients, including the processing, examining, interpreting, and storage and retrieval of radiographs, fluorographs, and radiotherapy.

H108 Pharmacy Services include CAs that produce, preserve, store, compound, manufacture, package, control, assay, dispense, and distribute medications (including intravenous solutions) for inpatients and outpatients.

H109 Physical Therapy includes CAs that provide care and treatment to patients whose ability to function is impaired or threatened by disease or injury; primarily serve patients whose actual impairment is related to

neuromusculoskeletal, pulmonary, and cardiovascular systems; evaluate the function and impairment of these systems, and select and apply therapeutic procedures to maintain, improve, or restore these functions.

H11O Materiel Services include CAs that provide or arrange for the supplies, equipment, and certain services necessary to support the mission of the medical facility; responsibilities include procurement, inventory control, receipt, storage, quality assurance, issue, turn-in, disposition, property accounting, and reporting actions for designated medical and nonmedical supplies and equipment.

H111 Orthopedic Services include CAs that construct orthopedic appliances such as braces, casts, splints, supports, and shoes from impressions, forms, molds, and other specifications.

H112 Ambulance Service includes CAs that provide transportation for personnel who are injured, sick, or otherwise require medical treatment, including standby duty in support of military activities and ambulance bus services.

H113 Dental Care includes CAs that provide oral examinations, patient education, diagnosis, treatment, and care including all phases of restorative dentistry, oral surgery, prosthodontics, oral pathology, periodontics, orthodontics, endodontics, oral hygiene, preventive dentistry, and radiodontics.

H114 Dental Laboratories include CAs that operate dental prosthetic laboratories required to support the provision of comprehensive dental care; services may include preparing casts and models, repairing dentures, fabricating transitional, temporary, or orthodontic appliances, and finishing dentures.

H115 Clinics and Dispensaries include CAs that operate freestanding clinics and dispensaries that provide health care services. Operations are relatively independent of a medical treatment facility and are separable for in-house or contract performance. Health clinics, occupational health clinics, and occupational health nursing offices.

H116 Veterinary Services include CAs that provide a complete wholesomeness and quality assurance food inspection program, including sanitation, inspection of food received, surveillance inspections, and laboratory examination and analysis; a complete zoonosis control program; complete medical care for Government-owned animals; veterinary medical support for biomedical research and development; support to other Federal agencies when requested and authorized; assistance in a comprehensive preventive medicine program and determination of fitness of all foods that may have been contaminated by chemical, bacteriological, or radioactive materials.

H117 Medical Records Transcription includes CAs that transcribe, file, and maintain medical records.

H118 Nursing Services include CAs that provide care and treatment for inpatients and outpatients not required to be performed by a doctor.

H119 Preventive Medicine includes CAs that operate wellness or holistic clinics (preventive medicine), information centers, and research laboratories.

H120 Occupational Health includes CAs that develop, monitor, and inspect installation safety conditions.

H121 Drug Rehabilitation includes CAs that operate alcohol treatment facilities, urine testing for drug content, and drug/alcohol counseling centers.

H999 Other Health Services This code will only be used for unusual circumstances and will not be used to report organizations or work that can be accommodated under a specifically defined code.

Intermediate, Direct, or General Repair and Maintenance of Equipment

Definition. Maintenance authorized and performed by designated maintenance CAs in support of using activities. Normally, it is limited to replacement and overhaul of unserviceable parts, subassemblies, or assemblies. It includes (a) intermediate/direct/general maintenance performed by fixed activities that are not designed for deployment to combat areas and that provide direct support of organizations performing or designed to perform combat missions from bases in the United States, and (b) any testing conducted to check the repair procedure. CAs engaged in intermediate/direct/general maintenance and/or repair of equipment are to be grouped according to the equipment predominantly handled, as follows:

J501 Aircraft. Aircraft and associated equipment. Includes armament, electronic and communications equipment, engines, and any other equipment that is an integral part of an aircraft.

J502 Aircraft Engines. Aircraft engines that are not repaired while an integral part of the aircraft.

J503 Missiles. Missile systems and associated equipment. Includes mechanical, ' electronics, and communication equipment that is an integral part of missile systems.

J504 Vessels. All vessels, including armament, electronics, communications and any other equipment that is an integral part of the vessel.

J505 Combat Vehicles. Tanks, armored personnel carriers, self-propelled artillery, and other combat vehicles. Includes armament, fire control, electronic, and communications equipment that is an integral part of a combat vehicle.

J506 Noncombat Vehicles. Automotive equipment, such as tactical, support, and administrative vehicles. Includes electronic and communications equipment that is an integral part of the noncombat vehicle.

J507 Electronic and Communications Equipment. Stationary, mobile, portable, and other electronic and communications equipment. Excludes electronic and communications equipment that is an integral part of another weapon/support system. Maintenance of Automatic Data Processing Equipment (ADPE) not an integral part of a communications system shall be reported under functional code W825; maintenance of tactical ADPE shall be reported under function code J999.

J510 Railway Equipment. Locomotives of any type or gauge, including steam, compressed air, straight electric, storage battery, diesel electric, gasoline, electric, diesel mechanical locomotives, railway cars, and cabooses. Includes electrical equipment for locomotives and cars, motors, generators, wiring supplies for railway tracks for both propulsion and signal circuits, and on-board communications and control equipment.

J511 Special Equipment. Construction equipment, weight lifting, power, and materiel handling equipment (MHE).

J512 Armament. Small arms, artillery and guns, nuclear munitions, chemical, biological, and radiological (CBR) items, conventional ammunition, and all other ordnance items. Excludes armament that is an integral part of another weapon or support system.

J513 Dining Facility Equipment. Dining facility kitchen appliances and equipment.

J514 Medical and Dental Equipment. Medical and dental equipment.

J515 Containers, Textiles, Tents, and Tarpaulins. Containers, tents, tarpaulins, other textiles, and organizational clothing.

J516 Metal Containers. Container Express (CONEX) containers, gasoline containers, and other metal containers.

J517 Training Devices and Visual Information Equipment. Training devices and visual information equipment. Excludes maintenancc of locally fabricated devices and functions reported under codes T807 and T900.

J519 Industrial Plant Equipment. That part of plant equipment with an acquisition cost of $5,000 or more, used to cut, abrade, grind, shape, form, join, test, measure, heat, or otherwise alter the physical, electrical, or chemical properties of materiels, components, or end items entailed in manufacturing, maintenance, supply processing, assembly, or research and development operations.

J520 Test, Measurement, and Diagnostic Equipment. Test, measurement, and diagnostic equipment (TMDE) that has a resident programmable computer. Included is equipment referred to as automated test equipment (ATE).

J521 Other Test, Measurement, and Diagnostic Equipment. Test, measurement, and diagnostic equipment not classified as ATE or that does not contain a resident programmable computer. Includes such items as electronic meters, armament circuit testers, and other specialized testers.

J522 Aeronautical Support Equipment. Aeronautical support equipment excluding (TMDE and ATE). Includes such items as ground electrical power carts, aircraft tow tractors, ground air conditioners, engine stands, and trailers. Excludes aeronautical equipment reported under J501.

J999 Other Intermediate, Direct, or General Repair and Maintenance of Equipment. This code will only be used for unusual circumstances and will not be used to report organizations or work that can be accommodated under a specifically defined code.

Depot Repair, Maintenance, Modification, Conversion, or Overhaul of Equipment Definition. The maintenance performed on materiel that requires major overhaul or a comsplete rebuild of parts, assemblies, subassemblies, and end items, including the manufacture of parts, modifications, testing, and reclamation, as required. Depot

maintenance serves to support lower categories of maintenance. Depot maintenance provides stocks of serviceable equipment by using more extensive facilities for repair than are available in lower level maintenance activities. (See DoD Instruction 4151.15 for further amplification of the category definitions reflected below.) Depot or indirect maintenance functions are identified by the type of equipment maintained or repaired.

K531 Aircraft. Aircraft and associated equipment. Includes armament, electronics and communications equipment, engines, and any other equipment that is an integral part of an aircraft. Aeronautical support equipment not reported separately under code K548.

K532 Aircraft Engines. Aircraft engines that are not repaired while an integral part of the aircraft.

K533 Missiles. Missile systems and associated equipment. Includes mechanical, electronic, and communications equipment that is an integral part of missile systems.

K534 Vessels. All vessels, including armament, electronics, and communications equipment, and any other equipment that is an integral part of a vessel.

K535 Combat Vehicles. Tanks, armored personnel carriers, self-propelled artillery, and other combat vehicles. Includes armament, fire control, electronics, and communications equipment that is an integral part of a combat vehicle.

K536 Noncombat Vehicles. Automotive equipment, such as tactical support and administrative vehicles. Includes electronic and communications equipment that is an integral part of the vehicle.

K537 Electronic and Communications Equipment. Stationary, mobile, portable, and other electronics and communications equipment. Excludes electronic and communications equipment that is an integral part of another weapon/support system. Maintenance of ADPE, not an integral part of a communications system, is reported under functional code W825.

K538 Railway Equipment. Locomotives of any type or gauge, including steam, compressed air, straight electric, storage battery, diesel electric, gasoline, electric, diesel mechanical locomotives, railway cars, and cabooses. Includes electrical equipment for locomotives and cars, motors, generators, wiring supplies for railway tracks for both propulsion and signal circuits, and on-board communication and control equipment.

K539 Special Equipment. Construction equipment, weight lifting, power, and materiel-handling equipment.

K540 Armament. Small arms; artillery and guns; nuclear munitions, CBR items; conventional ammunition; and all other ordnance items. Excludes armament that is an integral part of another weapon or support system.

K541 Industrial Plant Equipment. That part of plant equipment with an acquisition cost of $5,000 or more, used to cut, abrade, grind, shape, form, join, test, measure, heat, or otherwise alter the physical, electrical, or chemical properties of materials, components, or end items entailed in manufacturing, maintenance, supply, processing, assembly, or research and development operations.

K542 Dining Facility Equipment. Dining facility kitchen appliances and equipment. This includes field feeding equipment.

K543 Medical and Dental Equipment. Medical and dental equipment.

K544 Containers, Textiles, Tents and Tarpaulins. Containers, tents, tarpaulins, and other textiles.

K545 Metal Containers. CONEX containers, gasoline containers, and other metal containers.

K546 Test Measurement and Diagnostic Equipment. Test measurement and diagnostic equipment (TMDE) that has resident in it a programmable computer. Included is equipment referred to as automated test equipment (ATE).

K547 Other Test Measurement and Diagnostic Equipment. Test measurement and diagnostic equipment not classified as ATE or that does not contain a resident programmable computer. Includes such items as electronic meters, armament circuit testers, and other specialized testers.

K548 Aeronautical Support Equipment. Aeronautical support equipment excluding (TMDE and ATE). Includes such items as ground electrical power carts, aircraft tow tractors, ground air conditioners, engine stands, and trailers. Excludes aeronautical support equipment reported under code K531.

K999 Other Depot Repair, Maintenance, Modification, Conversion, or Overhaul of Equipment. This code will only be used for unusual circumstances and will not be used to report organizations or work that can be accommodated under a specifically defined code.

Base Maintenance/Multifunction Contracts

P100 Base Maintenance/Multifunction Contracts. Includes all umbrella-type contracts where the contractor performs more than one function at one or more installations. (Identify specific functions as nonadd entries.)

Research, Development, Test, and Evaluation (RDT&E) Support

R660 RDT&E Support. Includes all effort not reported elsewhere directed toward support of installation or operations required for research, development, test, and evaluation use. Included are maintenance support of laboratories, operation and maintenance of test ranges, and maintenance of test aircraft and ships.

Installation Services

S700 Natural Resources Support. Includes those CAs that support operations and activities implementing natural resources management plans. Examples are pesticides application, equipment operation, and road and pond construction and maintenance. Natural resources planning and management is a governmental function and will not be reported.

S701 Advertising and Public Relations Services. Includes CAs responsible for advertising and public relations in support of public affairs offices, installation newspapers and publications, and information offices.

S702 Financial and Payroll Services. Includes CAs that prepare payroll, print checks, escrow, or change payroll accounts for personnel. Includes other services normally associated with banking operations.

S703 Debt Collection. Includes CAs that monitor, record, and collect debts incurred by overdrafts, bad checks, or delinquent accounts.

S706 Installation Bus Services. Includes CAs that operate local, intrapost, and interpost scheduled bus services. Includes scheduled movement of personnel over regular routes by administrative motor vehicles to include taxi and dependent school bus services.

S706A: Scheduled Bus Services
S706B: Unscheduled Bus Services
S706C: Dependent School Bus Services
S706D: Other Bus Services

S708 Laundry and Dry Cleaning Services. Includes CAs that operate and maintain laundry and dry cleaning facilities.

S709 Custodial Services. Includes CAs that provide janitorial and housekeeping services to maintain safe and sanitary conditions and preserve property.

S710 Pest Management. Includes CAs that provide control measures directed against fungi, insects, rodents, and other pests.

S712 Refuse Collection and Disposal Services. Includes CAs that operate incinerators, sanitary fills, and regulated dumps, and perform all other approved refuse collection and disposal services.

S713 Food Services. Includes CAs engaged in the operation and administration of food preparation and serving facilities. Excludes operation of central bakeries, pastry kitchens, and central meat processing facilities that produce a product and are reported under functional area X934. Excludes hospital food service operations (under code H105).

S713A: Food Preparation and Administration.
S713B: Mess Attendants and Housekeeping Services.

S714 Furniture. Includes CAs that repair and refurbish furniture.

S715 Office Equipment. Includes CAs that maintain and repair typewriters, calculators, and adding machines.

S716 Motor Vehicle Operation. Includes CAs that operate local administrative motor transportation services. Excludes installation bus services reported in functional area S706.

S716A: Taxi Service
S716B: Bus Service (unless in S706)
S716C: Motor Pool Operation
S716D: Crane Operation (includes rigging, excludes those listed in T800G)
S716E: Heavy Truck Operation
S716F: Construction Equipment Operation
S716I: Driver/Operator Licensing & Test
S716J: Other Vehicle Operations (Light Truck/Auto)
S716K: Fuel Truck Operations
S716M: Tow Truck Operations

S717 Motor Vehicle Maintenance. Includes CAs that perform maintenance on automotive equipment, such as support and administrative vehicles. Includes electronic and communications equipment that are an integral part of the vehicle.

S717A: Upholstery Maintenance and Repair

S717B: Glass Replacement and Window Repair
S717C: Body Repair and Painting
S717D: Accessory Overhaul
S717E: General Repairs/Minor Maintenance
S717F: Battery Maintenance and Repair
S717G: Tire Maintenance and Repair
S717H: Major Component Overhaul
S717I: Material Handling Equipment Maintenance
S717J: Crane Maintenance
S717K: Construction Equipment Maintenance
S717L: Frame and Wheel Alignment
S717M: Other Motor Vehicle Maintenance

S718 Fire Prevention and Protection. Includes CAs that operate and maintain fire protection and preventive services. Includes routine mail tenance and repair of fire equipment and the installation of fire prevention equipment.

S718A: Fire Protection Engineering
S718B: Fire Station Administration
S718C: Fire Prevention
S718D: Fire Station Operations
S718E: Crash and Rescue
S718F: Structural Fire Suppression
S718G: Fire & Crash/Rescue Equipment Major Maintenance
S718H: Other Fire Prevention and Protection

S719 Military Clothing. Includes CAs that order, receive, store, issue, and alter military clothing and repair military shoes. Excludes repair of organizational clothing reported under code J515.

S724 Guard Service. Includes CAs engaged in physical security operations that provide for installation security and intransit protection of military property from loss or damage.

S724A: Ingress and egress control. Regulation of person, material, and vehicles entering or exiting a designated area to provide protection of the installation and Government property.

S724B: Physical security patrols and posts. Mobile and static physical security guard activities that provide protection of installation or Government property.

S724C: Conventional arms, ammunition, and explosives (CAAE) security. Dedicated security guards for CAAE.

S724D: Animal control. Patrolling for, capture of, and response to complaints about uncontrolled, dangerous, and disabled animals on military installations.

S724E: Visitor information services. Providing information to installation resident and visitors about street, agency, unit, and activity locations.

S724F: Vehicle impoundment. Removal, accountability, security, and processing of vehicles impounded on military installations.

S724G: Registration functions. Administration, filing, processing, and retrieval information about privately owned items that must be registered on military installations.

S724S: Other guard service.

S725 Electrical Plants and Systems. Includes CAs that operate, maintain, and repair Government-owned electrical plants and systems.

S726 Heating Plants and Systems. Includes CAs that operate, maintain, and repair Government-owned heating plants and systems over 750,000 British Thermal Unit (BTU) capacity. Codes Z991 or Z992 will be used for systems under 750,000 BTU capacity, as applicable.

S727 Water Plants and Systems. Includes CAs that operate, maintain, and repair Government-owned water plants and systems.

S728 Sewage and Waste Plants and Systems. Includes CAs that operate, maintain, and repair Government-owned sewage and waste plants and systems.

S729 Air Conditioning and Refrigeration Plants. Includes CAs that operate, maintain, and repair Government-owned air conditioning and refrigeration plants over 5-ton capacity. Codes Z991 or Z992 shall be used for plants under 5-ton capacity as applicable.

S730 Other Services or Utilities. Includes CAs that operate, maintain, and repair other Government-owned services or utilities.

S731 Base Supply Operations. Includes CAs that operate centralized installation supply functions providing supplies and equipment to all assigned or attached units. Performs all basic supply functions to determine requirements for all requisition, receipt, storage, issuance, and accountability for materiel.

S732 Warehousing and Distribution of Publications. Includes CAs that receive, store, and distribute publications and blank forms.

S740 Installation Transportation Office. Includes technical, clerical, and administrative CAs that support traffic management services related to the procurement of freight and passenger service from commercial "for hire" transportation companies. Excludes restricted functions that must be performed by Government employees such as the review, approval, and signing of documents related to the obligation of funds; selection of mode or carrier; evaluation of carrier performance; and carrier suspension. Excludes installation transportation functions described under codes S706, S716, S717, T810, T811, T812, and T814.

S740A: Installation Transportation Management and Administration
S740B: Materiel Movements
S740C: Personnel Movements
S740D: Personal Property Activities
S740E: Quality Control and Inspection
S740F: Unit Movements

S750 Museum Operations.

S760 Contractor-Operated Parts Stores and Contractor-Operated Civil Engineering Supply Stores.

S999 Other Installation Services. This code will only be used for unusual circumstances and will not be used to report organizations or work that can be accommodated under a specifically defined code.

OTHER NONMANUFACTURING OPERATIONS

T800 Ocean Terminal Operations. Includes CAs that operate terminals transferring cargo between overland and sealift transportation. Includes handling of Government cargo through commercial water terminals.

T800A: Pier Operations. Includes CAs that provide stevedore and shipwright carpentry operations supporting the loading, stowage, and discharge of cargo and containers on and off ships, and supervision of operations at commercial piers and military ocean terminals.

T800B: Cargo Handling Equipment. Includes CAs that operate and maintain barge derricks, gantries, cranes, forklifts, and other materiel handling equipment used to handle cargo within the terminal area.

T800C: Port Cargo Operations. Includes CAs that load and unload railcars and trucks, pack, repack, crate, warehouse, and store cargo moving through the terminal, and stuff and unstuff containers.

T800D: Vehicle Preparation. Includes CAs that prepare Government and privately owned vehicles (POVs) for ocean shipment, inspection, stowage in containers, transportation to pier, processing, and issue of import vehicles to owners.

T800E: Lumber Operations. Includes CAs that segregate reclaimable lumber from dunnage removed from ships, railcars, and trucks; remove nails; even lengths; inspect; and return the lumber to inventory for reuse. Includes receipt, storage, and issue of new lumber.

T800F: Materiel Handling Equipment (MHE) Operations. Includes CAs that deliver MHE to user agencies, perform onsite fueling, and operate special purpose and heavy capacity equipment.

T800G: Crane Operations. Includes CAs that operate and perform first-echelon maintenance of barge derricks, gantries, and truck-mounted cranes in support of vessels and terminal cargo activities.

T800H: Breakbulk Cargo Operations. Includes CAs that provide stevedoring, shipwright carpentry, stevedore transportation, and the loading and unloading of noncontainerized cargo.

T8001: Other Ocean Terminal Operations.

T801 Storage and Warehousing. Includes CAs that receive materiel into depots and other storage and warehousing facilities, provide care for supplies, and issue and ship materiel. Excludes installation supply in support of unit and tenent activities described in S731.

T801A: Receipt. Includes CAs that receive supplies, related documents and information. Includes materiel handling and related actions, such as materials segregation and checking, and tallying incident to receipt.

T801B: Packing and Crating of Household Goods. Includes CAs performing packing and crating operations described in T801H, incident to the movement or storage of household goods.

T801C: Shipping. Includes CAs that deliver stocks withdrawn from storage to shipping. Includes onloading and offloading of stocks from transportation carriers, blocking, bracing, dunnage, checking, tallying, and materiel handling in central shipping area and related documentation and information operations.

T801D: Care, Rewarehousing, and Support of Materiel. Includes CAs that provide for actions that must be taken to protect stocks in storage, including physical handling,

temperature control, assembly placement and preventive maintenance of storage aids, and realigning stock configuration; provide for movement of stocks from one storage location to another and related checking, tallying, and handling; and provide for any work being performed within general storage support that cannot be identified clearly as one of the subfunctions described above.

T801E: Preservation and Packaging. Includes CAs that preserve, represerve, and pack materiel to be placed in storage or to be shipped. Excludes application of final (exterior) shipping containers.

T801F: Unit and Set Assembly and Disassembly. Includes CAs that gather or bring together items of various nomenclature (parts, components, and basic issue items) and group, assemble, or restore them to or with an item of another nomenclature (such as parent end item or assemblage) to permit shipment under a single document. This also includes blocking, bracing, and packing preparations within the inner shipping container; physical handling and loading; and reverse operation of assembling such units.

T801G: Special Processing of Non Stock Fund-Owned Materiel. Includes CAs performing special processing actions described below that must be performed on inventory Control Point (ICP)-controlled, nonstock fund-owned materiel by technically qualified depot maintenance personnel, using regular or special maintenance tools or equipment. Includes disassembly or reassembly or reserviceable ICP-controlled materiel being readied for movement, in-house storage, or out-of-house location such as a port to a commercial or DoD-operated maintenance or storage facility, property disposal or demilitarization activity, including blocking, bracing, cushioning, and packing.

T801H: Packing and Crating. Includes CAs that place supplies in their final, exterior containers ready for shipment. Includes the nailing, strapping, sealing, stapling, masking, marking, and weighing of the exterior container. Also, includes all physical handling, unloading, and loading of materiel within the packing and shipping area; checking and tallying material in and out; all operations incident to packing, repacking, or recrating for shipment, including on-line fabrication of tailored boxes, crates, bit inserts, blocking, bracing and cushioning shrouding, overpacking, containerization, and the packing of materiel in transportation containers. Excludes packing of household goods and personal effects reported under code T801B.

T801I: Other Storage and Warehousing.

T802 Cataloging. Includes CAs that prepare supply catalogs and furnish cataloging data on all items of supply for distribution to all echelons worldwide. Include catalog files, preparation, and revision of all item identifications for all logistics functions; compilation of Federal catalog sections and allied publication; development of Federal item identification guides, and procurement identification descriptions. Includes printing and publication of Federal supply catalogs and related allied publications.

T803 Acceptance Testing. Includes CAs that inspect and test supplies and materiel to ensure that products meet minimum requirements of applicable specifications, standards, and similar technical criteria; laboratories and other facilities with inspection and test capabilities; and activities engaged in production acceptance testing of ammunition, aircraft armament, mobility material, and other military equipment.

T803A: Inspection and Testing of Oil and Fuel.

T803B: Other Acceptance Testing.

T804 Architect-Engineering Services. Includes CAs that provide Architect Engineer (A/E) services. Excludes Engineering Technical Services (ETS) reported in functional area T813 and those required under the Brooks Act.

T805 Operation of Bulk Liquid Storage. Includes CAs that operate bulk petroleum storage facilities. Includes operation of off vessel discharging and loading facilities, fixed and portable bulk storage facilities or extended to using agencies (excludes aircraft fueling services); handling of drums within bulk fuel activities. Excludes aircraft fueling services reported under code T814.

T806 Printing and Reproduction. Includes CAs that print, duplicate, and copy. Excludes user-operated office copying equipment.

T807 Visual Information Services. Includes CAs that provide visual information (VI) services, support and production.

T807A: VI Support. Includes CAs that provide VI support, products and services to all organizations on an installation or within a defined geographic area. Functions may include motion picture photography, still photography, video and audio recording for nonproduction documentary purposes, graphic arts, VI library services, VI presentation services, and VI equipment maintenance.

T807B: VI Production. Includes CAs that provide production and reproduction of VI productions. (including motion picture, video, multimedia, and audio production).

T807C: VI Records Centers. Includes CAs that provide central control, storage and disposition for VI records. Included also are VI records holding areas.

T807D: VI Technical Documentation. Includes CAs that provide VI documentation of actual events for research, development, test, or evaluation purposes. Included also are medical and intelligence VI documentation and armament recording.

T807E: Broadcasting. Includes CAs that provide closed circuit and other radio and television broadcast services.

T807F: Videoteleconferencing. Includes CAs that provide the operation of conference room electronic systems for audio and visual information between two or more locations.

T807G: VI Media Distribution. Includes CAs that provide central VI product stockage, maintenance, and distribution.

T808 Mapping and Charting. Includes CAs that design, compile, print, and disseminate cartographic and geodetic products.

T809 Administrative Telephone Service. Includes CAs that operate and maintain the common-user, administrative telephone systems at DoD installations and activities. Includes telephone operator service; range communications; emergency action consoles; and the cable distribution portion of a fire alarm, intrusion detection, emergency monitoring and control data, and similar systems that require use of a telephone system.

T810 Air Transportation Services. Includes CAs that operate and maintain nontactical aircraft that are assigned to commands and installations and used for administrative movement of personnel and supplies.

T811 Water Transportation Services. Includes CAs that operate and maintain nontactical watercraft that are assigned to commands and installations and are used for administrative movement of personnel and supplies.

T811A: Water Transportation Services (except tug operations).

T811B: Tug Operations.

T812 Rail Transportation Services. Includes CAs that operate and maintain nontactical rail equipment assigned to commands and installation and used for administrative movement of personnel and supplies.

T813 *Engineering and Technical Services.* Includes CAs that advise, instruct, and train DoD personnel in the installation, operation, and maintenance of DoD weapons, equipment, and systems. These services include transmitting the technical skill capability to DoD personnel in order for them to install, maintain, and operate such equipment and keep it in a high state of military readiness.

T813A: Contractor Plant Services. Includes commercial manufacturers of military equipment contracted to provide technical and engineering services to DoD personnel. Qualified employees of the manufacturer furnish these services in the manufacturer plants and facilities. Through this program, the special skills, knowledge, experience, and technical data of the manufacturer are provided for use in training, training aid programs, and other essential services directly related to the development of the technical capability required to install, operate, maintain, supply, and store such equipment.

T813B: Contract Field Services (CFS). Includes CAs that provide services of qualified contractor personnel who provide onsite technical and engineering services to DoD personnel.

T813C: In-house Engineering and Technical Services. Includes CAs that provide technical and engineering services described in codes T813A and T813B above that are provided by Government employees.

T813D: Other Engineering and Technical Services.

T814 Fueling Service (Aircraft). Includes CAs that distribute aviation petroleum/oil/lubricant products. Includes operation of trucks and hydrants.

T815 Scrap Metal Operation. Includes CAs that bale or shear metal scrap and melt or sweat aluminum scrap.

T816 Telecommunication Centers. Includes CAs that operate and maintain telecommunication centers, nontactical radios, automatic message distribution systems, technical control facilities, and other

systems integral to the communication center. Includes operations and maintenance of air traffic control equipment and facilities.

T817 Other Communications and Electronics Systems. Includes CAs that operate and maintain communications and electronics systems not included in T809 and T816.

T818 Systems Engineering and Installation of Communications Systems. Includes CAs that provide engineering and installation services, including design and drafting services associated with functions specified in T809, T816, and T817.

T819 Preparation and Disposal of Excess and Surplus Property. Includes CAs that accept, classify, and dispose of surplus Government property, including scrap metal.

T820 Administrative Support Services. Includes CAs that provide centralized administrative support services not included specifically in another functional category. These activities render services to multiple activities throughout an organization or to multiple organizations; such as, a steno or typing pool rather than a secretary assigned to an individual. Typical activities included are word processing centers, reference and technical libraries, microfilming, messenger service, translation services, publication distribution centers, etc.

T820A: Word Processing Centers.
T820B: Reference and Technical Libraries.
T820C: Microfilming.
T820D: Internal Mail and Messenger Services.
T820E: Translation Services.
T820F: Publication Distribution Centers.
T820G: Field Printing and Publication. Includes those activities that print or reproduce official publications, regulations, and orders. Includes management and operation of the printing facility.
T820H: Compliance Auditing.
T820I: Court Reporting.

T821 Special Studies and Analyses. Includes CAs that perform research, collect data, conduct time-motion studies, or pursue some other planned methodology in order to analyze a specific issue, system, device, boat, plane, or vehicle for management. Such activities may be temporary or permanent in nature.

T821A: Cost Benefit Analyses.
T821B: Statistical Analyses.
T821C: Scientific Data Studies.
T821D: Regulatory Studies.
T821E: Defense, Education, Energy Studies.
T821F: Legal/Litigation Studies.
T821G: Management Studies.

T900 Training Devices and Simulators. Includes CAs that provide training devices, simulator design, fabrication, issue operation, maintenance support and services.

T900A: Training Devices, and Simulator Support. Includes CAs that design, fabricate, stock, store, issue, receive, and account for and maintain training devices, and simulators (does not include visual information production and associated services or visual information support).

T900B: Training Device and Simulator Operation. Includes CAs that operate and maintain training device and simulator systems.

T999 Other Nonmanufacturing Operations. This code will only be used for unusual circumstances and will not be used to report organizations or work that can be accommodated under a specifically defined code.

Education and Training

Includes CAs that conduct courses of instruction attended by civilian or military personnel of the Department of Defense. Terminology of categories and subcategories primarily for military personnel (identified by footnote 1) follows the definitions of the statutory *Military Manpower Training Report* submitted annually to the Congress. This series includes only the conduct of courses of instruction; it does not include education and training support functions (that is, Base Operations Functions in the S series and Nonmanufacturing Operations in the T series). A course is any separately identified instructional entity or unit appearing in a formal school or course catalog.

U100 Recruit Training.[1] The instruction of recruits.

U200 Officer Acquisition Training.[1] Programs concerned with officer acquisition training.

U300 Specialized Skill Training.[1] Includes Army One-Station Unit Training, Naval Apprenticeship Training, and health care training.

U400 Flight Training.[1] Includes flight familiarization training.

U500 Professional Development Education.[1]

U510 Professional Military Education.[1] Generally, the conduct of instruction at basic, intermediate, and senior Military Service schools and colleges and enlisted leadership training does not satisfy the requirements of the definition of a DoD CA and is excluded from the provision of this part.

U520 Graduate Education, Fully Funded, Full-Time.[1]

U530 Other Full-Time Education Programs.[1]

U540 Off-Duty (Voluntary) and On-Duty Education Programs.[1] Includes the conduct of Basic Skills Education Program (BSEP), English as a Second Language (ESL), skill development courses, graduate, undergraduate, vocational/technical, and high school completion programs for personnel without a diploma.

U600 Civilian Education and Training. Includes the conduct of courses intended primarily for civilian personnel.

U700 Dependent Education. Includes the conduct of elementary and secondary school courses of instruction for the dependents of DoD overseas personnel.

U800 Training Development and Support. Training CAs not already reported.

U999 Other Training. This code will only be used for unusual circumstances and will not be used to report organizations or work that can be accommodated) under a specifically defined code.

Automatic Data Processing

W824 Data Processing Services. Includes CAs that provide ADP processing services by using Government-owned or leased ADP equipment; or participating in Government-wide ADP sharing program; or procuring of time-sharing processing services (machine time) from commercial sources. Includes all types of data processing services performed by general purpose ADP and peripheral equipment.

W824A: Operation of ADP Equipment
W824B: Production Control and Customer Service
W824C: ADP Magnetic Media Library
W824D: Data Transcription/Data Entry Services
W824E: Transmission and Teleprocessing Equipment Services
W824F: Acceptance Testing and Recovery Systems
W824G: Punch Card Processing Services
W824H: Other ADP Operations and Support

W825 Maintenance of ADP Equipment. Includes CAs that maintain and repair all Government-owned ADP equipment and peripheral equipment.

W826 Systems Design, Development, and Programing Services. Includes CAs that provide software services associated with nontactical ADP operation.

W826A: Development and Maintenance of Applications Software.
W826B: Development and Maintenance of Systems Software.

W827 Software Services for Tactical Computers and Automated Test Equipment. Includes CAs that provide software services associated with tactical computers and TMDE and ATE hardware.

W999 Other Automatic Data Processing. This code will only be used for unusual circumstances and will not be used to report organizations or work that can be accommodated under a specifically defined code.

Products Manufactured and Fabricated In-House

Commercial activities that manufacture and/or fabricate products in-house are grouped according to the products predominantly handled as follows:

X931 Ordnance Equipment. Ammunition and related products.

X932 Products Made from Fabric or Similar Materials. Including the assembly and manufacture of clothing, accessories, and canvas products.

X933 Container Products and Related Items. Including the design, engineering, and manufacture of wooden boxes, crates, and other containers; includes the fabrication of fiberboard boxes, and assembly of paperboard boxes with metal straps. Excludes on-line fabrication of boxes and crates reported in functional area T801.

X934 Food and Bakery Products. Including the operation of central meat processing plants, pastry kitchens, and bakery facilities. Excludes food services reported in functional areas S713 and H105.

X935 Liquid, Gaseous, and Chemical Products. Including the providing of liquid oxygen and liquid nitrogen.

X936 Rope, Cordage, and Twine Products; Chains and Metal Cable Products.

X937 Logging and Lumber Products. Logging and sawmill operations.

X938 Communications and Electronic Products.

X939 Construction Products. The operation of quarries and pits, including crushing, mixing, and concrete and asphalt batching plants.

X940 Rubber and Plastic Products.

X941 Optical and Related Products.

X942 Sheet Metal Products.

X943 Foundry Products.

X944 Machined Parts.

X999 Other Products Manufactured and Fabricated In-House. This code will only be used for unusual circumstances and will not be used to report organizations or work that can be accommodated under a specifically defined code.

Maintance, Repair, Alteration, and Minor Construction of Real Property

Z991 Buildings and Structures—Family Housing. Includes CAs that are engaged in exterior and interior painting and glazing; roofing; interior plumbing; interior electric; interior heating equipment, including heat sources under 750,000 BTU capacity; installed food service and related equipment; air conditioning and refrigeration under a 5-ton capacity; elevators; and other equipment affixed as part of the building and not included in other activities. Includes fencing, flagpoles, and other miscellaneous structures associated with family housing.

Z991A: Rehabilitation—Tenant Change.
Z991B: Roofing.
Z991C: Glazing.
Z991D: Tiling.
Z991E: Exterior Painting.
Z991F: Interior Painting.
Z991G: Flooring.
Z991H: Screens, Blinds, etc.
Z991I: Appliance Repair.
Z991J: Electrical Repair. Includes elevators, escalators, and moving walks.
Z991K: Plumbing.
Z991L: Heating Maintenance.
Z991M: Air Conditioning Maintenance.
Z991N: Emergency/Service Work.
Z991T: Other Work.

Z992 Buildings and Structures (Other Than Family Housing). Includes CAs that are engaged in exterior and interior painting and glazing; roofing, interior plumbing; interior electric; interior heating equipment, including heat sources under 750,000 BTU capacity; installed food service and related equipment; air conditioning and refrigeration under a 5-ton capacity; elevators; and other equipment affixed as part of the building and not reported under other functional codes. Includes fencing, flagpoles, guard and watchtowers, grease racks, unattached loading ramps, training facilities other than buildings, monuments, grandstands and bleachers, elevated garbage racks, and other miscellaneous structures.

Z992A: Rehabilitation—Tenant Change.
Z992B: Roofing.
Z992C: Glazing.
Z992D: Tiling.
Z992E: Exterior Painting.
Z992F: Interior Painting.
Z992G: Flooring.
Z992H: Screens, Blinds, etc.
Z992I: Appliance Repair.
Z992J: Electrical Repair. Includes elevators, escalators, and moving walkways.
Z992K: Plumbing.
Z992L: Heating Maintenance.
Z992M: Air Conditioning Maintenance.
Z992N: Emergency/Service Work.
Z992T: Other Work.

Z993 Grounds and Surfaced Areas. Commercial activities that maintain, repair, and alterations of grounds and surfaced areas defined in codes Z993A, B, and C, below.

Z993A: Grounds (Improved). Includes improved grounds, including lawns, drill fields, parade grounds, athletic and recreational facilities, cemeteries, other ground areas, landscape and windbreak plants, and accessory drainage systems.

Z993B: Grounds (Other than Improved). Small arms ranges, antenna fields, drop zones, and firebreaks. Also grounds such as wildlife conservation areas, maneuver areas, artillery ranges, safety and security zones, deserts, swamps, and similar areas.

Z993C: Surfaced Areas. Includes airfield pavement, roads, walks, parking and open storage areas, traffic signs and markings, storm sewers, culverts, ditches, and bridges. Includes sweeping and snow removal from streets and airfields.

Z997 Railroad Facilities. Includes CAs that maintain, repair, and alter narrow and standard gauge two-rail tracks including spurs, sidings, yard, turnouts, frogs, switches, ties, ballast, and roadbeds, with accessories and appurtenances, drainage facilities, and trestles.

Z998 Waterways and Waterfront Facilities. Includes CAs that maintain, repair, and alter approaches, turning basin, berth areas and maintenance dredging, wharves, piers, docks, ferry racks, transfer bridges, quays, bulkheads, marine railway dolphins, mooring, buoys, seawalls, breakwaters, causeways, jetties, revetments, etc. Excludes waterways maintained by the Army Corps of Engineers (COE) rivers and harbors programs. Also excludes buildings, grounds, railroads, and surfaced areas located on waterfront facilities.

Z999 Other Maintenance, Repair, Alteration, and Minor Construction of Real Property. This code will only be used for unusual circumstances and will not be used to report organizations or work that can be accommodated under a specifically defined code.

Appendix B—Commercial Activities Inventory Report and Five-Year Review Schedule

A. General Instructions

1. Submit reports to the Office of the Assistant Secretary of Defense (Production and Logistics) before January 1. Reports are assigned Reports Control Symbol DD-P&L(A) 1540 and may be transmitted using microcomputer diskette, magnetic tape, or terminals as a medium.

2. For tape medium use nine-track tape Extended Binary Coded Decimal Interchange Code (EBCDIC), 1600 or 6250 density, even parity. The data record must contain 132 characters, blocked 10 logical records to a block. Omit headers and trailers. Use a tape mark (end of file) to follow the data. An external label shall be used on the reel to identify the organization to which the reel is to be returned, the title of the report, the fiscal year covered, and the tape characteristics.

3. If a remote work station terminal is to be used as the transmittal medium, then concurrence and interface requirements shall be established between the Defense Manpower Data Center (DMDC) and sender before transmission of data.

4. *Data Format: In-house DOD Commerical Activities*

Data element	Positions	Field	Type [1] data
Designator	1	A	A
Installation		A1	
—State, Territory, or Possession.	2-3	A1a	N
—Place	4-9	A1a	A/N
Function [1]	10-14	A2	A/N
In-House Civilian Workload.	15-20	A3	N
Military Workload	21-26	A4	N
Reason for In-House Operation [1].	49	A8	A
Most Recent Year In-House Operation Approved [1].	50-51	A9	N
Year DoD CA Scheduled for Next Review [1].	52-53	A10	N
Installation Name	76-132	A11	A

A = Alpha; N = Numeric. A and A/N data shall be left justified and space filled. N data shall be right justified and zero filled.

General Note For Personnel Processing These Reports: Coding shall be as indicated in the instructions. When specific coding instructions are not provided, reference must be made to DoD 5000.12-M. Failure to comply with the coding instructions contained herein or those published in the Brooks Act, will make the noncomplier responsible for required concessions in data base communication. Items marked with a footnote 1 have been registered in the DoD Data Element Dictionary.

5. *Instruction for Preparing Data Entries*

Field	Instruction
A	Enter an A to designate that the data to follow on this record pertains to a particular DoD CA.
A1a	Enter the two-position numeric code for State or U.S. territory or possession as shown in attachment 1 of this Appendix.
A1b	Enter the unique alpha-numeric code established by the DoD Component for military installation, named populated place, or related entity where the CA workload was performed during the fiscal year covered by this submission. A separate look-up listing or file should be provided showing each unique place code and its corresponding place name or enter the name in field A11.
A2	Enter the function code from Appendix A that best describes the type of CA workload principally performed by the CA covered by this submission. Left justify.

Field	Instruction
A3	Enter total (full- and part-time) in-house civilian workyear equivalents applied to the performance of the function during the fiscal year. Round off to nearest whole workyear equivalent. (If amount is equal to or greater than .5, round up. If amount is less than .5, round down. Amounts between zero and 0.9 should be entered as one.) Right justify. Zero fill.
A4	Enter total military workyear equivalents applied to the performance of the function in the fiscal year. Round off to the nearest whole workyear equivalent. (Amounts between zero and one should be entered as one) Right justify. Zero fill.
A8	Enter the reason for in-house operation of the CA as shown in attachment 1 of this Appendix.
A9	Enter the last two digits of the most recent fiscal year corresponding to the reason for in-house operation of the CA as stated in field A8.
A10	Enter the last two digits of the fiscal year in which next review is scheduled to begin for the DoD CA. (Data element reference YE-NA.)
A11	Enter the named populated place, or related entity where the CA workload was performed.

Attachments:
1. Codes for Denoting States, Territories, and Possessions of the United States.
2. Codes for Denoting Compelling Reasons for In-House Operations of Planned Changes in Method of Performance.

Attachment 1 to Appendix B–Codes for Denoting States, Territories, and Processions of the United States

a. Numeric State Codes.

CODE

01	Alabama	30	Montana
02	Alaska	31	Nebraska
04	Arizona	32	Nevada
05	Arkansas	33	New Hampshire
06	California	34	New Jersey
08	Colorado	35	New Mexico
09	Connecticut	36	New York
10	Delaware	37	North Carolina
11	District of Columbia	38	North Dakota
12	Florida	39	Ohio
13	Georgia	40	Oklahoma
15	Hawaii	41	Oregon
16	Idaho	42	Pennsylvania
17	Illinois	44	Rhode Island
18	Indiana	45	South Carolina
19	Iowa	46	South Dakota
20	Kansas	47	Tennessee
21	Kentucky	48	Texas
22	Louisiana	49	Utah
23	Maine	50	Vermont
24	Maryland	51	Virginia
25	Massachusetts	53	Washington
26	Michigan	54	West Virginia
27	Minnesota	55	Wisconsin
28	Mississippi	56	Wyoming
29	Missouri		

Attachment 1 to Appendix B–Codes for Denoting States, Territories, and Processions of the United States—Continued

b. Numeric Territory and Possession Codes.

60	American Samoa	78	Virgin Islands
66	Guam	79	Wake Island
69	Northern Marianna Islands	81	Baker Island
71	Midway Islands	84	Howland Island
72	Puerto Rico	86	Jarvis Island
75	Trust Territory of the Pacific Island	89	Kingman Reef
76	Navassa Island	95	Palmyra Atoll

Attachment 2 to Appendix B

Codes for Denoting Compelling Reasons For In-House Operatious of Planned Changes in Method of Performance

1. *In-House Performance* (for entry in field A8)

Code	*Explanation*
A	Indicates that the DoD CA has been retained in-house for national defense reasons in accordance with § 169a.5(b)(1)(i), other than CAs reported under code "C" below.
C	Indicates that the DoD CA is retained in-house because the CA is essential for training or experience in required military skills, or the CA is needed to provide appropriate work assignments for a rotation base for overseas or sea-to-shore assignments, or the CA is necessary to provide career progression to a needed military skill level in accordance with § 169a.5(b)(1)(i).
D	Indicates procurement of a product or service from a commercial source would cause an unacceptable delay or disruption of an essential DoD program.
E	Indicates that there is no satisfactory commercial source capable of providing the product or service needed.
F	Indicates that a cost comparison has been conducted and that the Government is providing the prod.:ct or service at a lower total cost as a result of a ccst comparison.
G	Indicates that the CA is being performed by DoD personnel now, but decision to continue in-house or convert to contract is pending the results of a scheduled cost comparison.
H	Indicates that the CA is being performed by DoD employees now, but will be converted to contract because of cost comparison results.

Attachment 2 to Appendix B—Continued

Codes for Denoting Compelling Reasons For In-House Operatious of Planned Changes in Method of Performance

J	Indicates that the CA is performed at a DoD hospital and, in the best interests of direct patient care, is being retained in-house.
K	Indicates that the CA is being performed by DoD employees now, but a decision has been made to convert to contract for reasons other than cost.
Z	Indicates that a cost comparison study has been held in abeyance because of direction from higher authority (such as, Public Laws).
2	*Use of Other Codes:* Other codes may be assigned as designated by DASD (P&L)I.

Appendix C—Simplified Cost Comparison For Direct Conversion of Commercial Activities

A. This Appendix provides guidance regarding procedures to be followed in order to convert a commercial activity employing 45 or fewer DoD civilian employees directly to contract performance without a full cost comparison. DoD Components may directly convert functions with 10 or fewer civilian employees without conducting a simplified cost comparison. See § 169a.5(b)(6). Simplified cost comparisons are to be conducted on these smaller activities to ensure that cost data are fully considered in decisions on commercial activities.

B. The proposed direct conversion must meet the following criteria:

1. The activity is currently performed by 45 or fewer civilian employees.
2. The direct conversion makes sense from a management or performance standpoint.
3. The direct conversion is cost effective.
4. The affected civilian employees can be placed elsewhere within the Government or with the private contractor through a right of first refusal clause.
5. An MEO analysis has been completed if the activity contains 11 to 45 civilian employees.
6. Clearance for Congressional announcements of CA simplified cost comparison decisions are required for Agencies without their own Legislative and Public Affairs offices. These Agencies shall submit their draft decision brief to the Deputy Assistant Secretary of Defense (Installations) Room 3E787, the Pentagon, for approval and release to Congress.
7. Congressional announcements will contain a certification of the MEO analysis (when required), a copy of the approval to convert, a copy of the cost comparison fact sheet (Attachment 1 to this Appendix) and all back-up data and provide prior to conversion to;

a. Committee on appropriations of the House of Representatives and the Senate.

b. Copies to;

(1) Assistant Secretary of Defense (Legislative Affairs), Room 3D918, the Pentagon.

(2) Assistant Secretary of Defense (Public Affairs), Room 2E757, the Pentagon.

(3) Office of Economic Adjustment, Room 4C767, the Pentagon.

(4) Deputy Assistant Secretary of Defense, (Installations), Room 3E787, the Pentagon (exception—no copies required from agencies that do not have Legislative and Public Affairs offices)

Attachment 8-2-1 and 2 is a format for submitting direct conversion requests for approval. Each potential candidate for direct conversion shall be reviewed on a case-by-case basis to ensure that both the in-house and contractor cost estimates are as accurate as possible without performing full cost comparisons.

The following provides general guidance for completing a simplified cost comparison:

1. Estimated contractor costs should be based on either the past history of similar contracts at other installations or on the contracting officer's best estimate of what would constitute a fair and reasonable price.

2. For activities small in total size (10 or fewer civilian and military personnel):

a. Estimated in-house costs generally should not include overhead costs, as it is unlikely that they would be a factor for a small activity.

b. Similarly, estimated contractor costs generally should not include contract administration, one-time conversion costs, or other contract price add-ons associated with full cost comparisons.

3. For activities large in total size [(11 to 45 civilian employees or with a significant number of military personnel)] all cost elements should be considered for both in-house and contractor estimated costs.

4. In either case, large or small, the 10 percent conversion differential contained in Part IV of the Supplement to OMB Circular A-76 should be applied.

5. Part IV of the Supplement to OMB Circular A-76 shall be used to define the specified elements of cost to be estimated in the simplified cost comparison.

Attachment

Fact Sheet for Simplified Cost Comparisons

Fact Sheet for Simplified Cost Comparisons

Title: Direct Conversion Request for

(Activity/Function)

at

(Installation)

Description of activity:

Number of affected personnel:

CIV

Civilian (Authorizations)

MIL

Military (Authorizations)

Statusofaffectedcivilianemployees:

(Special considerations such as a number of employees classified as Section 3310 preference eligible veterans, minorities, handicapped. Also, include number of civilian authorizations currently vacant or filled by temporaries)

Placement plans for affected civilian employees:

Justification for direct conversion:

(Narrative justification other than cost)

Simplified Cost Comparison (details attached):

Estimated In-House Cost:

Fact Sheet for Simplified Cost Comparisons, Continued

—Personnel Cost (including fringe benefits)
—Material and Supply Cost
—Other In-House Cost (if appropriate)
—Total Estimated In-House Cost

Estimated Contractor Cost:

—Estimated Contract Price
—Contract Administration (if Appropriate)
—Other Estimated Contractor Cost (if appropriate)
—Total Estimated Contractor Cost
—Conversion Differential (10% of In-House Personnel Cost)
—Adjusted Contractor Cost

Certification: (For activities involving 11 to 45 DoD civilian employees) The Estimated In-House Cost for this simplified cost comparison is based on a completed most efficient and cost effective organization analysis. Certification of this MEO analysis, as required by Pub. L. 99-190 will be provided to the Committees on Appropriations of the House of Representatives and the Senate prior to conversion to contract performance.

Point of Contact:

Appendix D—Commercial Activities Management Information System (CAMIS)

Upon approval of a full cost comparison, a simplified cost comparison, or a direct conversion of an exclusively military personnel CA, the DoD Component shall create the initial entry using the format at attachment 1 of this Appendix for cost comparisons or the attachment 2 to this Appendix for direct conversions. Within 30 days of the end of each quarter the DoD Component shall submit automated data (tape or diskette) to DMDC. DMDC shall use the automated data to update the CAMIS. If the DoD Component is unable to provide data in an automated format, DMDC will provide quarterly print outs of cost comparison records (CCRs) and direct conversion records (DCRs) which may be annotated and returned within two weeks to DMDC. DMDC then shall use the annotated printouts to update the CAMIS.

Part I—Cost Comparison

The record for each cost comparison is divided into six sections. Each of these sections contains information provided by the DoD Components. The first five sections are arranged in a sequence of milestone events occurring during a cost comparison. Each section is completed immediately following the completion of the milestone event. These are as follows:

1. Cost comparison is approved by DoD Component.
2. Solicitation is issued.
3. In-house and contractor costs are compared.
4. Contract is awarded/solicitation is canceled.
5. Contract starts.

The events are used as milestones because upon their completion some elements of significant information concerning the cost comparison become known.

A sixth section is utilized for CCRs that result in award of a contract. This section contains data elements on contract cost and information on subsequent contract actions during the second and third year of contract operation.

The data elements that comprise these six sections are defined in this Appendix.

Part II—Direct Conversions

The record for each direct conversion is divided into five sections. Each of the first four sections is completed immediately following the completion of the following events:

1. Direct conversion is approved.
2. Solicitation is issued.
3. Contract is awarded.
4. Contract starts.

The fifth section is utilized to record contract cost and subsequent contract actions during the second and third year of contract operation.

The data elements that comprise these five sections are defined in this Appendix.

Camis Entry and Update Instructions

Part I—Cost Comparisons

The bracketed number preceding each definition in sections one through five is the DoD data element number. All date fields should be in the format MMDDYY (such as, June 30, 1983 = 063083).

Section One

Event: DoD Component Approves Conducting A Cost Comparison

All entries in this section of the CCR shall be submitted by DoD Components upon approving the start of a cost comparison.

These entries shall be used to establish the CCR and to identify the geographical, organizational, political, and functional attributes of the activity (or activities) undergoing cost comparison as well as to provide an initial estimate of the manpower associated with the activity (or activities). The initial estimate of the manpower in this section of the CCR will be in all cases those manpower figures identified in the correspondence approving the start of the cost comparison.

DoD Components shall enter the following data elements to establish a CCR:

[1] *Cost Comparison Number.* The number assigned by the DoD Component to uniquely identify a specific cost comparison. The first character of the cost comparison number must be a letter designating DoD Component as noted in data element [3],

below. The cost comparison number may vary in length from five to ten characters, of which the second and subsequent may be alpha or numeric and assigned under any system desired by the DoD Component.

[2] *Announcement/Approval Date.* The date of the congressional notification required by Section 502(a)(2)(A) or the date the DoD Component headquarters approves a cost comparison that does not require congressional notification.

[3] *DOD Component Code.* Use the following codes to identify the Military Service or Defense Agency conducting the cost comparison:

A—Department of the Army
B—Defense Mapping Agency
C—Strategic Defense Initiatives Organization
D—Office of the Secretary of Defense—OCHAMPUS
E—Defense Advanced Research projects Agency
F—Department of the Air Force
G—National Security Agency/Central Security Service
H—Defense Nuclear Agency
J—Joint Chiefs of Staff (including the Joint Staff, Unified and Specified Commands, and Joint Service Schools)
K—Defense Communications Agency
L—Defense Intelligence Agency
M—United States Marine Corps
N—United States Navy
R—Defense Contract Audit Agency
S—Defense Logistics Agency
T—Defense Security Assistance Agency
V—Defense Investigative Service
W—Uniformed Services University of the Health Sciences
X—Inspector General, Department of Defense
Y—Corps of Engineers Civil Works

[4] *Command Code.* The code established by the DoD Component headquarters to identify the command responsible for operating the CA undergoing cost comparison. A separate look-up listing or file shall be provided to DMDC showing each unique command code and its corresponding command name.

If the DoD Component chooses to submit this on diskette or tape, the format should be as follows:

Column	Entry
1-6 (left Justify)	Command code.
7	Blank.
8-80 (left justify)	Command name.

[5] *Installation Code.* The code established by the DoD Component headquarters to identify the installation where the CA(s) under cost comparison is/are located physically. Two or more codes (for cost comparison packages encompassing more than one installation) should be separated by commas. A separate look-up listing or file shall be provided to DMDC showing each unique installation code and its corresponding installation name. If the DoD Component chooses to submit this on diskette or tape, the format should be as follows:

Column	Entry
1-10 (left justify)	Installation code.
11	
12-80 (left justify)	Installation name.

DMDC shall generate the installation name corresponding to the installation code submitted by the DoD Component and display it with the code on the CAMIS.

[6] *State Code.* A two-position numeric code for the State or U.S. Territory as shown in paragraph C, Part III of this Appendix where element [5] is located. Two or more codes shall be separated by commas.

[7] *Congressional District (CD).* Number of the congressional district(s) where [5] is located. If representatives are elected "at large," enter "01" in this data element; for a delegate or resident commissioner (such as, District of Columbia or Puerto Rico) enter "98." If the installation is located in two or more CDs, all CDs should be entered and separated by commas.

[8] *JIRSG Area Code.* The JIRSG Area that [5] is assigned to for coordination of the DRIS Program DoD Directive 4001.1. This is a four-character alpha/numeric data element. For instance, "NO15" is the National Capitol Region (as published in the DRIS Point of Contact Directory).

Note: A DoD Component may, at its option, report corresponding multiple values for the following geographical data elements: state code, congressional district, and JIRSG area code. These values shall be grouped and punctuated as shown in the example below so that the proper relationship can be established between each installation code value and its corresponding set of geographical attribute values.

[5] Installation code	[6] State code	[7] Congressional district	[8] JIRSG area code.
AAAAA, BBBBB, CCCCC,	13, 06, 34	05, 06; 42; 15	S003, WE10,*

When multiple values within a data element are reported for a single installation code semicolons shall be used to separate each series of values and to indicate correspondence of each series to its respective installation value; commas shall be used to separate the values within a series. When only a single value (within a data element) is reported for each installation, the value shall be separated by commas. To denote an unknown or missing number of a series of values, the asterisk (*) symbol should be used. The cost comparison package above involves three installations: AAAAA, BBBBB, and CCCCC. The first is located in Georgia, the second in California, and the third in New Jersey. AAAAA is in the Georgia's 5th and 6th congressional districts BBBBB, is in California's 42nd district, and CCCCC is in New Jersey's 15th. The first two installations are in JIRSG areas SO03, and WE1O, respectively; CCCCC is not in a JIRSG area.

[9]. *Title Of Cost Comparison.* The title that describes the CA(s) under cost comparison (for instance, "Facilities Engineering Package," "Installation Bus Service," or "Motor Pool"). Use a clear title, not acronyms or function codes in this data element.

[10] *DOD Functional Area Code(s).* The four or five alpha/numeric character designators listed in Appendix A that describe the type of activity undergoing cost comparison. This would be one code for a single activity or possible several codes for a large cost comparison package. A series of codes shall be separated by commas. Include the Corps of Engineers civil works functional codes.

[11] *Prior Operation Code.* A single alpha character that identifies the mode of operation for the activity at the time the cost comparison is started. Despite the outcome of the cost comparison, this code does not change. The coding is as follows:

I—In-house
C—Contract
N—New requirement
E—Expansion

[12] *Cost Comparison Status Code.* A single alpha character that identifies the current status of the cost comparison. Enter one of the following codes:

P—In progress
C—Complete
X—Canceled. The CCR shall be excluded from future update listings.
Z—Consolidated. The cost comparison has been consolidated with one or more other cost comparisons into a single cost comparison package. The CCR for the cost comparison that has been consolidated shall be excluded from future update listings. (See data element [16])
B—Broken out. The cost comparison package has been broken into two or more separate cost comparisons. The previous CCR shall be excluded from future update listings. (See data element [16])

[13] *Reserved*

[14] *Approval Announcement—Manpower Estimate Civilian and [15] Approval Announcement—Manpower Estimate Military.* The number of civilian and military authorizations allocated to the CA(s) undergoing cost comparison at the time the start of the cost comparison is approved by the DoD Component headquarters or announced to Congress. This number in all

cases shall be those manpower figures identified in the correspondence approving the start of a cost comparison. This number is used to give a preliminary estimate of the size of the activity.

[16] *Revised/Original Cost Comparison Number.* The number of the cost comparison (revised cost comparison number). This cost comparison has been consolidated into or the number of the cost comparison (original cost comparison number) from which this cost comparison has been broken out.

When a consolidation occurs, create a new CCR containing the attributes of the consolidated cost comparison. In the CCR of each cost comparison being consolidated, enter the cost comparison number of the new CCR in data element [16] and code "Z" in data element [12]. In the new CCR, data element [16] should be blank and data element [12] should denote the current status of the cost comparison. Once the consolidation has occurred, only the new CCR requires future updates.

When a single cost comparison is being broken into multiple cost comparisons, create a new CCR for each cost comparison broken out from the original cost comparison. Each new CCR shall contain its own unique set of attributes; in data element [16] enter the cost comparison number of the original cost comparison from which each was derived, and in data element [12], enter the current status of each cost comparison. For the original cost comparison, data element [16] should be blank and data element [12] should have a code "B" entry. Only the derivative record entries require future updates.

When a consolidation or a breakout, an explanatory remark shall be entered in data element [57] (such as, "part of SW region cost comparison," or, "separated into three cost comparisons").

[16A] *PWS Scheduled Completion Date.* The date of the completion of PWS as anticipated at the start of a cost comparison.

[16B] *PWS Actual Completion Date.* The date of PWS completion is the date the approved PWS is provided to the contracting officer for solicitation preparation.

Section Two

Event: The Solicitation Is Issued

The entries in this section of the CCR provide information on the manpower authorized to perform the workload in the PWS, the number of workyears used to accomplish the workload in the PWS, and the type and kind of solicitation.

The DoD Component shall enter the following data elements at the first quarterly update subsequent to the issuance of the solicitation:

[17] *Scheduled Solictation Issue Date.* The date of solicitation as anticipated at the start of a cost comparison.

[17A] *Date Solicitation Issued.* The date the solicitation is issued by the contracting officer.

[18] *Solicitation-Type Code.* A one-character alpha designator that identifies the type of solicitation used to obtain contract bids or offers. Use either the CBD as the source document or information received from the contracting officer for this entry. Solicitations under Section 8(a) of the Small Business Act are negotiated. Enter one of the following codes:

S—Sealed Bid
N—Negotiated

[19] *Solicitation Kind Code.* A one-character (or two-character, if "W" suffix is used) alpha designator indicating whether the competition for the contract has been limited to a specific class of offerors. Use either the CBD as the source document or information. received from the contracting officer to enter one of the following codes:

A—Restrict to small business
B—Small Business Administration 8(a)
C—Javits-Wagner-O'Day Act (JWOD)
D—Other mandatory sources
U—Unrestricted
W—(Optional suffix) Unrestricted after initial restriction

[20] *Current Authorized Civilians and* [21] *Current Authorized Military.* The number of civilian and military authorizations allocated on the DoD Component's manpower documents to perform the work described in the PWS. This number refines the initial authorization estimate (section one, data elements [14] and [15]).

[22] *Baseline Workyears Civilian and* [23] *Baseline Workyears Military.* The number of annual workyears it has taken to perform the work described by the PWS before the DoD Component conducts the MEO study of the in-house organization; do not include contract monitor requirements. Military workyears include assigned, borrowed, diverted, and detailed personnel.

An annual workyear is the use of 2,087 hours (including authorized leave and paid time off for training). For example, when full-time employees whose work is completely within the PWS are concerned, "one workyear" normally is comparable to "one employee" or two part-time employees, each working 1,043 hours in a fiscal year. Also include in this total the workyears for full-time employees who do not work on a full-time basis on the work described by the PWS. For example, some portion of the workload is performed by persons from another work center who are used on an "as needed" basis. Their total hours performing this workload is 4,172 hours. This would be reflected as two workyears. Less than one-half year of effort should be rounded down, and one-half year or more should be rounded up.

These workyear figures shall be the baseline for determining the manpower savings identified by the management study.

Section Three

Event: The In-House and the Contractor Costs of Operation Are Compared

The entries in this section provide information on the date of the cost comparison (initial decision), the preliminary results, the number of bids or offers received, and the costing method used in the cost comparison.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the date of the comparison of in-house and contractor costs (date of initial decision):

[24] *Scheduled Initial Decision Date.* Date the initial decision is scheduled at the start of a cost comparison.

[24A] *Cost Comparison/Initial Decision Date.* Date the initial decision is announced. The initial decision is based on the apparent low bid or offer and is subject to preaward surveys and resolution of all appeals and protests. In a formal advertised procurement, the initial decision is announced at bid opening. In a negotiated procurement, the initial decision is announced when the cost comparison is made between the in-house estimate and the proposal of the selected offeror.

[25] *Cost Comparison Preliminary Results Code.* A one-character alpha designator indicating the results of the cost comparison as announced by the contracting officer at the time the bids or offers are compared. The entries are limited to two possibilities:

I—In-house
C—Contract

[26] *Cost Method Code.* A one-character numeric designator indicating the procedures under which the cost comparison was/is being conducted. Enter one of the following codes:

1—Cost comparison conducted under the incremental costing procedures in effect before 1980.

2—Cost comparison conducted using the full costing procedures in DoD 4100.33-H of April 1980 (Superseded by DoD Instruction 4100.33 dated September 9, 1985)

3—Cost comparison conducted under the alternative costing procedures implemented in Department of Defense in March 1982.

4—Cost comparison conducted under the new costing procedures in the OMB Circular A-76 published August 4, 1983 and implemented by Department of Defense in March 1984.

[27] *Number of Offers Received.* The number of commercial offers received by the contracting officer in response to the solicitation.

Section Four

Event: The Contracting Officer Either Awards the Contract or Cancels the Solicitation

The entries in this section identify the final result, information on the contract, the in-house bid, and costing information from the cost comparison form.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the date the contracting officer either awards a contract or cancels the solicitation:

[28] *Contract Award/Solicitation Cancellation Date.* For conversions to contract, this is the date a contract was awarded in a formal advertised solicitation or the date the contractor was authorized to proceed on a conditional award contract in a negotiated solicitation. For retentions in-house, this is the date the solicitation was canceled (when the contracting officer publishes an amendment to cancel the solicitation).

[29] *Cost Comparison Final Result Code.* A one-character alpha designator identifying the final result of the comparison between in-

house and contractor costs; the contracting officer either awards the contract or cancels the solicitation. Enter one of the following codes:

I—In-house
C—Contract

[30] *Decision Rationale Code.* A one-character alpha designator that identifies the rationale for awarding a contract or canceling the solicitation. The work shall either be performed in-house or by contractor, based on cost, or the work shall be performed in-house because no satisfactory commercial source was available (no bids or offers were received or the preaward survey resulted in the determination that no commercial sources were responsive or responsible). Enter one of the following codes:

C—Cost
N—No satisfactory commerical source

[31] *Contract-Type Code.* Enter one of the following alpha codes for the type of contract used in the cost comparison. This entry is required for all completed studies, regardless of their outcome.

FFP—Firm Fixed Price
FP-EPA—Fixed Price with Economic Price Adjustment
FPI—Fixed Price Incentive
CPIF—Cost Plus Incentive Fee
CPAF—Cost Plus Award Fee
CPFF—Cost Plus Fixed Fee

[31A] *Prime Contractor Size*

S—Small or small/disadvantaged business
L—Large business

[32] *MEO Workyears.* The number of annual workyears it takes to perform the work described in the PWS after the MEO study has been conducted. This entry will be equal to the number of annual workyears in the in-house bid.

For data elements [33] through [36], enter all data after all adjustments required by appeals board decisions. Do not include the minimum cost differential (line 31 old CCF or line 16 new CCF or line 18 new ENRC form) in the computation of any of these data elements. If a valid cost comparison was not conducted (that is, all bidders or offerors disqualified, no bids or offers received, etc.) do not complete data elements [33] through [36]. Explain lack of valid cost data in data element [57], DoD Component Comments.

[33] *First Performance Period.* Expressed in months, the length of time covered by the contract. Do not include any option periods.

[34] *Cost Comparison Period.* Expressed in months, the total period of operation covered by the cost comparison; this is the period used as the basis for data elements [35] and [36], below.

[35] *Total In-House Cost ($000).* Enter the total cost of in-house performance in thousands of dollars, rounded to the nearest thousand. This is the total of line 9 plus line 22 of the old CCF (line 6 of the new CCF or line 8 of the new ENRC CCF).

[36] *Total Contract Cost ($000).* Enter the total cost of contract performance in thousands of dollars, rounded to the nearest thousand. This is the total of line 17 plus line 30 of the old cost comparison form (line 14 of the new CCF or line 16 of the new ENRC CCF).

[37] *Notification Date.* The date Congress is notified, if required, that the DoD Component intends to convert a CA to contract performance. DoD Components shall enter a date only when data element [20] is greater than 45.

[37A] *Scheduled Contract/MEO Start Date.* Date the contract/MEO was scheduled to start at the beginning of a cost comparison.

Section Five

Event: The Contract Starts

The entries in this section identify the contract start date and the personnel actions taken as a result of the cost comparison.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the start of the contract:

[38] *Contract Start Date.* The actual date the contractor began full operation of the CAs, as reflected in the contracting documents.

[1] [39] *Permanent Employees Reassigned to Equivalent Positions.* The number of permanent employees who were reassigned to positions of equivalent grade as of the start date of the contract when data element 14 is greater than 45 workyear equivalents.

[1] [40] *Permanent Employees Changed to Lower Positions.* The number of permanent employees who were changed to lower grade positions as of the contract start date.

[1] [41] *Employees Taking Early Retirement.* The number of employees who took early retirement as of the contract start date.

[1] [42] *Employees Taking Normal Retirement.* The number of employees who took normal retirement as of the contract start date.

[1] [43] *Permanent Employees Separated.* The number of permanent employees who were separated from Federal employment as of the contract start date.

[1] [44] *Temporary Employees Separated.* The number of temporary employees who were separated from Federal employment as of the contract start date.

[1] [45] *Employees Entitled to Severance.* The estimated number of employees entitled to severance upon their separation from Federal employment as of the contract start date.

[1] [46] *Total Amount of Severance Entitlements ($000).* The total estimated amount of severance to be paid to all employees, in thousands of dollars as of the contract start date.

[1] [47] *Number of Employees Hired by the Contractor.* The number of estimated DoD civilian employees (full-time or otherwise) that will be hired by the contractors, or their subcontractors at the contract start date.

Administrative Appeal

[48] *Filed*—Were administrative appeals filed? Answer: Y or N.

[49] *Source*—Who filed the appeal? Answer: In-house (I), Contractor (C), or Both (B).

[50] *Result*—Were the appeals finally upheld? Answer: Y or N (if both appealed, explain result in data element [57]).

[1] Note: Data for data elements [39] through [47] shall be entered only when data element [20] is greater than 45

GAO Protest

[51] *Filed*—Was a protest filed with GAO? Answer: Y or N.

[52] *Source*—Who filed the protest? Answer: In-house (I), Contractor (C), or Both (B).

[53] *Result*—Was the protest finally upheld? Answer: Y or N (explain result in data element [57]). If GAO protest is still in progress as of the start date of the contract, enter P.

Arbitration

[54] *Requested*—Was there a request for arbitration Answer: Y or N.

[55] *Result*—Was the case found arbitrable? Answer: Y or N (explain result in data element[57]). If arbitration is still in progress as of the start date of the contract, enter P.

General Information

[56] *Reserved*

[57] *DoD Component Comments.* Enter comments, as required, to explain situations that affect the conduct of the cost comparison.

[58] *Effective Date.* "As of" date of the most current update for the cost comparison. Will be generated by DMDC.

[59] (Leave blank, for DoD Computer Program use).

Section Six

Event: Quarter Following Contract/Option Renewal

The entries in this section identify actual contrast costs and original contract bid and information or subsequent contract actions. This data shall be utilized to determine the accuracy of the cost comparison.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the receipt of actual annual contract cost data.

[60] *Contract Offer ($000). [60] ($000).* Enter the contractor offer reflected in column one (the first performance period) of the CCF in thousands of dollars, rounded to the nearest thousand. This is line 10, column 1, of the old CCF (line 7 of the new CCF or line 9 of the new ENRC CCF).

[60A] *Original Cost.* The estimated cost of the cost comparison generated by computer calculation. This entry is not to be completed by the DoD Components.

[60B] *Dollar savings.* The estimated savings of the cost comparison generated by computer calculation. This entry is not to be completed by the DoD Components.

[61] *Actual Contract Cost First Performance Period ($000).* Enter the actual contract cost for the first performance period, including all change orders, in thousands of dollars, rounded to the nearest thousand.

[62] *Actual Contract Costs Second Performance Period ($000).* Enter the actual contract cost for the second performance period, including all change orders, in thousands of dollars, rounded to the nearest thousand.

[63] *Actual Contract Cost Third Performance Period ($000).* Enter the actual contract cost for the third performance period, including all change orders, in

thousands of dollars, rounded to the nearest thousand.

[64] *Contractor Change.* Enter one of the following alpha codes to indicate whether the contract for the second or third performance period has changed from the orginal contractor.

Y—Yes, the contractor has changed.

N—No, the contractor has not changed.

Data elements [65] through [66] are not required if the answer to [64] is no (N).

[65] *Prime Contractor Size* (If data element [66] equal "I", no entry is required.)

S—New contractor is small/small disadvantaged business.

L—New contractor is large business.

[66] *Reason for Change.* DoD Components shall enter one of the codes listed below followed by the last two digits of the fiscal year in which the change occurred.

R—Returned in-house temporarily pending resolicitation due to contractor default, etc.

I—Returned in-house because of original contractor defaults, etc. within six months of start date and in-house bid is the next lowest.

D—New contractor takes over because original contractor defaults.

N—New contractor replaced original contractor because government opted not to renew contract in option years.

U—Contract workload consolidated into a larger (umbrella) cost comparison.

C—Contract workload consolidated with other existing contract workload.

[67] *Contract Administration Staffing.* The actual number of contract administration personnel hired to administer the contract.

Camis Entry and Update Instruction

Part II—Direct Conversions

The bracketed number preceding each definition in sections one through four is the DoD data element number. All date fields should be in the format MMDDYY (such as, June 30, 1987 = 063087).

Section One

Event: Approval of the Direct Conversion

All entries in this section of the DCR shall be submitted by DoD Components upon approval of a direct conversion. These entries shall be used to establish the DCR and to identify the geographical, organizational, political, and functional attributes of the CA(s) scheduled for conversion to contract without a cost comparison.

DoD Components shall enter the following data elements to establish a DCR:

[1] *Direct Conversion Number.* The number assigned by the DoD Component to uniquely identify a specific direct conversion. The first character of the direct conversion number must be a letter designating the DoD Component as noted in data element [3], below. The number may vary in length from five to ten characters, of which the second and subsequent may be alpha or numeric and assigned under any system desired by the DoD Component.

[2] *Approval Date.* The date the direct conversion was approved.

[3] *DOD Component Code.* Use the following codes to identify the Military Service or Defense Agency converting the CA(s) to contract:

A—Department of the Army
B—Defense Mapping Agency
C—Strategic Defense Initiatives Organization
D—Office of the Secretary of Defense—OCKAMPUS
E—Defense Advanced Research Projects Agency
F—Department of the Air Force
G—National Security Agency/Central Security Service
H—Defense Nuclear Agency
J—Joint Chiefs of Staff (including the Joint Staff, Unified and Specified Commands, and Joint Service Schools)
K—Defense Communications Agency
L—Defense Intelligence Agency
M—United States Marine Corps
N—United States Navy
R—Defense Contract Audit Agency
S—Defense Logistics Agency
T—Defense Security Assistance Agency
V—Defense Investigative Service
W—Uniformed Services University of the Health Sciences
X—Inspector General, Department of Defense
Y—Corps of Engineers Civil Works

[4] *Command Code.* The code established by the DoD Component's headquarters to identify the command responsible for operating the CA to be converted to contract. A separate look-up listing or file shall be provided to DMDC showing each unique command code and its corresponding command name.

If the DoD Component chooses to submit this on cards or tape, the format shall be as follows:

Column	Entry
1-6 (left justify)	Command code.
7	Blank.
8-80 (left justify)	Command name.

[5] *Installation Code.* The code established by the DoD Component headquarters to identify the installation where the CA to be converted to contract is located physically. Two or more codes (for packages encompassing more than one installation) shall be separated by commas. A separate look-up listing or file shall be provided to DMDC showing each unique installation code and its corresponding installation name. If the DoD Component chooses to submit this on cards or tape, the format shall be as follows:

Column	Entry
1-10 (left justify)	Installation code.
11	Blank.
12-80 (left justify)	Installation name.

DMDC shall generate the installation name corresponding to the installation code submitted by the DoD Component, and display it with the code on the quarterly printout that is provided to the DoD Component for update.

[6] *State Code.* A two-position numeric code for the State or U.S. Territory as shown in paragraph C., Part III of this Appendix, where element [5] is located. Two or more codes should be separated by commas.

[7] *Congressional District (CD).* Number of the CD(s) where [5] is located. If representatives are elected "at large," enter "01" in this data element; for a delegate or resident commissioner (such as, District of Columbia or Puerto Rico) enter "98". If the installation is located in two or more CDs, all CDs should be entered and separated by commas.

[8] *JIRSG Area Code.* The JIRSG area that [5] is assigned to for coordination of the DRIS Program. This is a four-character alpha/numeric data element. For instance, "N015" is the National Capitol Region (as published in the DRIS Point of Contact Directory).

Note: The DoD Component may, at its option, report corresponding multiple values for the following geographical data elements: State code, congressional district, JIRSG area code. These values shall be grouped and punctuated as shown in the example below so that the proper relationship can be established between each installation code value and its corresponding set of geographical attribute values.

[5] Installation code	[6] State code	[7] Congressional district	[8] JIRSG area code
AAAAA,BBBBB,CCCCC	13, 06, 34	05, 06, 42; 15	SO03,WE10*

When multiple values within a data element are reported for a single installation code, semicolons shall be used to separate each series of values and to indicate correspondence of each series to its respective installation code; commas shall be used to separate the values within a series. When only a single value (within a data element) is reported for each installation, the values should be separated by commas. To denote an unknown or missing member of a series of values the asterisk (*) symbol should be used.

The direct conversion above involves three installations: AAAAA, BBBBB, and CCCCC. The first is located in Georgia, the second in California, and the third in New Jersey.

AAAAA is in Georgia's 5th and 6th congressional districts (of Georgia), BBBBB is in California's 42nd district, and CCCCC is in New Jersey's 15th. The first two installations are in JIRSG areas SO03 and WE10, respectively; CCCCC is not in a JIRSG area.

[9] *DOD Functional Area Code(s).* The four or five alpha/numeric character designator listed in Appendix A that describes the type of CA to be converted to contract. This would be one code for a single CA or possibly several codes for a large package. A series of codes shall be separated by commas.

[10] *Status Code.* A single alpha character that identifies the current status of the conversion. Enter one of the following codes:

P—In progress
C—Complete
X—Canceled. The DCR shall be excluded from future update listings.
Z—Consolidated. The conversion has been consolidated with one or more other contracts into a single contract package. The DCR for the contract that has been consolidated shall be excluded from future update listings. (See data element [16])
B—Broken out. The conversion has been broken into two or more separate contracts. The previous DCR shall be excluded from future update listings. (See data element [16])

[11] *Manpower Estimate Civilian* and [11A] *Manpower Estimate Military.* The number of civilian and military authorizations allocated to the CA(s) to be converted. This number in all cases shall be those manpower figures identified in the correspondence requesting the direct conversion.

[11B] *Estimated In-House Cost.* The annualized in-house cost estimated in the simplified cost comparison prepared for request to directly convert a CA. This data element is not applicable to direct conversions of exclusively military personnel CAs.

[12] *Estimated Contract Cost.* The annualized contract cost estimated in the simplified cost comparison prepared for request to directly convert a CA. Do not include the 10 percent cost of conversion differential. This data element is not applicable to direct conversions of exclusively military personnel CAs.

Section Two

Event: The Solicitation Is Issued

The entries in this section of the DCR provide information on the manpower authorized to perform the workload in the PWS, the number of workyears used to accomplish the workload in the PWS, the type and kind of solicitation, and the number of bids or offers received.

The DoD Component shall enter the following data elements at the first quarterly update subsequent to the issuance of the solicitation:

[13] *Date Solicitation Issued.* The date the solicitation was issued by the contracting officer.

[14] *Solicitation-Type Code.* A one-character alpha designator that identifies the type of solicitation used to obtain contract bids or offers. Use either the CBD as the source document or information received from the contracting officer for this entry. Solicitations under Section 8(a) of the Small Business Act are negotiated. Enter one of the following codes:

S—Sealed Bid
N—Negotiated

[15] *Solicitation-Kind Code.* A one-character (or two-character, if "W" suffix is used) alpha designator indicating whether the solicitation for the contract has been limited to a specific class of offerors. Use either the CBD as the source document or information received from the contracting officer to enter one of the following codes:

A—Restricted to small business
B—Small Business Administration 8(a)
C—Javits-Wagner-O'Day Act (JWOD)
D—Other mandatory sources
U—Unrestricted
W—(Optional suffix) Unrestricted after initial restriction

[16] *Current Authorized Civilians* and [17] *Current Authorized Military.* The number of civilian and military authorizations allocated on the DoD Component's Manpower documents to perform the work described in the PWS. This number refines the initial authorization estimate (section one, data elements [11] and [12]).

[18] *Baseline Annual Workyears Civilian* and [19] *Baseline Annual Workyears Military.* The number of annual workyears it has taken to perform the work described by the PWS.

[20] *Number of Offers Received.* The number of commercial offers received by the contracting officer in response to the solicitation.

Section Three

Event: The Contracting Officer Either Awards The Contract or Cancels the Solicitation

The entries in this section provide information on the contract.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the date the contracting officer either awards a contract or cancels the solicitation:

[21] *Contract Award/Solicitation Cancellation Date.* This is the date a contract shall be awarded in a formal advertised solicitation or the date the contractor shall be authorized to proceed on a conditioned award contract in a negotiated solicitation. For retention in-house, this is the date the solicitation is canceled (when the contracting officer publishes an amendment canceling the solicitation).

[22] *Contract-Type Code.* Enter one of the following alpha codes for the type of contract used in the direct conversion.

FFP—Firm Fixed Price
FP-EPA—Fixed Price with Economic Price Adjustment
FPI—Fixed Price Incentive
CPIF—Cost Plus Incentive Fee
CPAF—Cost Plus Award Fee
CPFF—Cost Plus Fixed Fee

[23] *Prime Contractor Size*
S—Small/small disadvantaged business
L—Large business

[24] *Performance Period.* Expressed in months, the length of time covered by the contract. Do not include any option periods.

Section Four

Event: The Contract Starts

The entries in this section identify the contract start date and the personnel actions taken as a result of the direct conversion.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the start of the contract:

[25] *Contract Start Date.* The actual date the contractor began full operation of the CA(s) as reflected in the contracting documents.

[1] [26] *Permanent Employees Reassigned To Equivalent Positions.* The number of permanent employees who were reassigned to positions of equal grade as of the contract start date.

[1] [27] *Permanent Employees Changed To Lower Positions.* The number of permanent employees who were reassigned to lower grade positions as of the contract start date.

[1] [28] *Employees Taking Early Retirement.* The number of employees who took early retirement as of the contract start date.

[1] [29] *Employees Taking Normal Retirement.* The number of employees who took normal retirement as of the contract start date.

[1] [30] *Permanent Employees Separated.* The number of permanent employees who were separated from Federal employment as of the contract start date.

[1] [31] *Temporary Employees Separated.* The number of temporary employees who were separated from Federal employment as of the contract start date.

[1] [32] *Employees Entitled To Severance.* The estimated number of employees entitled to severance upon their separation from Federal employment.

[1] [33] *Total Amount Of Severance Entitlements ($000).* The total estimated amount of severance to be paid to all employees, in thousands of dollars, as of the contract start date.

[1] [34] *Number of Employees Hired by the Contractor.* The number of estimated DoD civilian employees (full-time or otherwise) that will be hired by the contractor, or their subcontractors at the contract start date.

[1] **Note:** Data for data elements [26] through [34] shall be entered only when data element [16] is greater than 45

Administrative Appeal

[35] *Filed*—Were administrative appeals filed? Answer: Y or No.

[36] *Source—Who filed the appeal? Answer: In-house (I), Contractor (C), or Both (B).*

[37] *Result*—Were the appeals finally upheld? Answer: Y or N (if both appealed, explain the result in data element [43]).

GAO Protest

[38] *Filed*—Was a protest filed with GAO? Answer: Y or N.

[39] *Source*—Who filed the protest? Answer: In-house (I), Contractor (C), or Both (B).

[40] *Result*—Was the protest finally upheld? Answer: Y or N (explain result in

data element [43]). If GAO protest is still in progress as of the start date of the contract, enter P.

Arbitration

[41] *Requested*—Was the FLRA asked to arbitrate? Answer: Y or N.

[42] *Result*—Was the case found arbitrable? Answer: Y or N (explain result in data element [43]). If arbitration is still in progress as of the start date of the contract, enter P.

General Information

[43] *Dod Component Comments.* Enter comments, as required, to explain situations that affect the direct conversion.

[44] *Effective Date.* "As of" date of the most current update for the direct conversion. Shall be generated by DMDC.

Section Five

Event: Quarter Following Contract/Option Renewal

The entries in section five identify actual contract costs, original contract offer, and information on subsequent contract actions. This data shall be utilized to determine the accuracy of the cost comparison.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the receipt of actual annual contract cost data.

[45] *Contract Offer ($000).* Enter the contractor offer.

[46] *Actual Contract Cost First Performance Period ($000).* Enter the actual contract cost for the first performance period, including all change orders, in thousands of dollars, rounded to the nearest thousand.

[47] *Actual Contract Cost Second Performance Period ($000).* Enter the actual contract cost for the second performance period, including all change orders, in thousands of dollars, rounded to the nearest thousand.

[48] *Actual Contract Cost Third Performance Period ($000).* Enter the actual contract cost for the third performance period, including all change orders, in thousands of dollars, rounded to the nearest thousand.

[49] *Contractor Change.* Enter one of the following alpha codes to indicate whether the contractor for the second or third performance period has changed from the original contractor.

Y—Yes, the contractor has changed

N—No, the contractor has not changed

Data elements [50] through [51] are not required if the answer to [49] is no (N).

[50] *Prime Contractor Size*

S—New contractor is small/small disadvantaged business

L—New contractor is large business

[51] *Reason For Change. DoD Components shall enter one of the codes listed below followed by the last two digits of the fiscal year in which the change occurred:*

R—Returned in-house temporarily pending resolicitation due to contractor default, etc.

D—New contractor takes over because original contractor defaults.

N—New contractor replaced original contractor because government opted not to renew contract in option years.

U—Contract workload consolidated into a larger (umbrella) cost comparison.

C—Contract workload consolidated with other existing contract workload.

Attachments

1. Cost Comparison Record (CCR)
2. Direct Conversion Record (DCR)

Attachment 1 to Appendix D—Cost Comparison Record (CCR)

SECTION ONE

(1) Cost Comparison Number: _____ (2) Announcement/Approval Date: _____ (3) DoD Component Code: _____ (4) Command Code: _____
(5) Installation Code: _____ (6) State Code: _____ (7) Congressional District: _____ (8) JIRSG Area Code: _____
(9) Title of Cost Comparison: _____
(10) DOD Function Area Code(s): _____
(11) Prior Operation Code: _____ (12) Cost Comparison Status Code: _____ (13) Reserved
(14) Approval Announcement—Manpower Estimate Civilian: _____ (15) Approval Announcement—Manpower Estimate Military: _____
(16) Revised/Original Cost Comparison Number: _____ (16A) PWS Scheduled Completion Date: _____ (16B) PWS Actual Completion Date: _____

SECTION TWO

(17) Scheduled Solicitation Issue Date: _____
(17A) Date Solicitation Issued: _____ (18) Solicitation-Type Code: _____ (19) Solicitation-Kind Code: _____
(20) Current Authorized Civilians: _____ (21) Current Authorized Military: _____
(22) Baseline Annual Workyears Civilian: _____ (23) Baseline Annual Workyears Military: _____

SECTION THREE

(24) Scheduled Initial Decision Date: _____
(24A) Cost Comparison/Initial Decision Date: _____ (25) Cost Comparison Preliminary Results Code: _____
(26) Cost Method Code: _____ (27) Number of Offers Received: _____

SECTION FOUR

(28) Contract Award/Solicitation Cancellation Date: _____ (29) Cost Comparison Final Result Code: _____
(30) Decision Rationale Code: (31) Contract-Type Code: _____ (31A) Prime Contractor Size: _____ (32) MEO Workyears: _____
(33) First Performance Period: _____ (34) Cost Comparison Period: _____
(35) Total In-House ($000): _____ (36) Total Contract Cost ($000): _____ (37) Notification Date: _____
(37A) Scheduled Contract/MEO Start Date:

SECTION FIVE

(38) Contract Start Date: _____ (39) Permanent Employees Reassigned to Equivalent Positions: _____
(40) Permanent Employees Changed to Lower Positions: _____ (41) Employees Taking Early Retirement: _____
(42) Employees Taking Normal Retirement: _____ (43) Permanent Employees Separated: _____
(44) Temporary Employees Separated: _____ (45) Employees Entitled to Severance: _____
(46) Total Amount of Severance Entitlements ($000): _____ (47) Number of Employees Hired by the Contractor: _____
Administrative Appeal
(48) Filed: _____ (49) Source: _____ (50) Result: _____
GAO Protest
(51) Filed: _____ (52) Source: _____ (53) Result: _____
Arbitration
(54) Requested: _____ (55) Result: _____
General Information
(56) Reserved
(57) DoD Component Comments: _____
(58) Effective Date: _____
(59) (Leave blank)

SECTION SIX

[(60) Contract Offer ($000): _____ (60A) Original Cost: _____ (60B) Dollar Savings: _____ (61) Actual Contract Cost First Performance Period ($000): _____
(62) Actual Contract Cost Second Performance Period ($000): _____ (63) Actual Contract Cost Third Performance Period ($000): _____
(64) Contractor Change: _____ (65) Prime Contractor Size: _____ (66) Reason for Change: _____
(67) Contract Administration Staffing: _____

Attachment 2 to Appendix D—Direct Conversion Record (DCR)

SECTION ONE

(1) Direct Conversion Number: _____ (2) Approval Date: _____ (3) DoD Component Code: _____ (4) Command Code: _____
(5) Installation Code: _____ (6) State Code: _____ (7) Congressional District: _____ (8) JIRSG Area Code: _____
(9) DoD Functional Area Code(s): _____
(10) Status Code: _____ (11) Manpower Estimate Civilian: _____ (11A) Manpower Estimate Military: _____ (11B) Estimated In-House Cost: _____ (12) Estimated Contract Cost: _____

Section Two

(13) Date Solicitation Issued: _____ (14) Solicitation-Type Code: _____ (15) Solicitation-Kind Code: _____
(16) Current Authorized Civilians: _____ (17) Current Authorized Military: _____
(18) Baseline Annual Workyears Civilian: _____ (19) Baseline Annual Workyears Military: _____
(20) Number of Offers Received: _____

Section Three

(21) Contract Award/Solicitation Cancellation Date: _____ (22) Contract-Type Code: _____
(23) Prime Contractor Size: _____ (24) First Performance Period: _____

Section Four

(25) Contract Start Date: _____ (26) Permanent Employees Reassigned to Equivalent Positions: _____
(27) Permanent Employees Changed to Lower Positions: _____ (28) Employees Taking Early Retirement: _____
(29) Employees Taking Normal Retirement: _____ (30) Permanent Employees Separated:
(31) Temporary Employees Separated: _____ (32) Employees Entitled to Severance: _____
(33) Total Amount of Severance Entitlements ($000): _____ (34) Number of Employees Hired by the Contractor: _____
Administrative Appeal
(35) Filed: _____ (36) Source: _____ (37) Result: _____
GAO Protest
(38) Filed: _____ (39) Source: _____ (40) Result: _____
Arbitration
(41) Requested: _____ (42) Result: _____
General Information
(43) DoD Component Comments: _____
(44) Effective Date: _____

Section Five

(45) Contract Offer ($000): _____ (46) Actual Contract Cost First Performance Period ($000): _____
(47) Actual Contract Cost Second Performance Period ($000): _____ (48) Actual Contract Cost Third Performance Period ($000): _____
(49) Contractor Change: _____ (50) Prime Contractor Size: _____ (51) Reasons for Change: _____

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
April 10, 1989.
[FR Doc. 89-9006 Filed 4-17-89; 8:45 am]
BILLING CODE 3818-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6955]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures requires by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground * Elevation in feet (NGVD) Existing	Modified
Colorado	City of Durango, La Plata County	Animas River	Approximately 3,050 feet downstream of U.S. Highway 160 (New Bridge).	*6,463	*6,463
			Approximately 1,320 feet downstream of U.S. Highway 160 (New Bridge).	*6,477	*6,473
			Approximately 690 feet downstream of U.S. Highway 160 (New Bridge).	*6,481	*6,482
			Just downstream of U.S. Highway 160 (New Bridge)	*6,484	*6,483
			Approximately 1,900 feet upstream of U.S. Highway 160 (New Bridge).	*6,490	*6,490
Maps are available for review at the Community Development Department, 949 Second Avenue, Durango, Colorado. Send comments to The Honorable Greg Bell, Mayor, City of Durango, 949 Second Avenue, Durango, Colorado 81302.					
Florida	Unincorporated Areas of Lee County.	Gulf of Mexico	About 500 feet west of the intersection of Bonita Beach Road and Hickory Boulevard.	*19	*17
			About 350 feet southeast of the intersection of Bonita Beach Road and Hickory Boulevard.	*12	*14
			About 4000 feet northwest of the intersection of Bonita Beach Road and Bay Point Lane.	*13	*11
Maps available for inspection at the Division of Code Enforcement, 1735 Henry Street, Fort Myers, Florida. Send comments to The Honorable Charles L. Bigelow, Chairman of Lee County Board of Commissioners, 2115 Second Street, Fort Myers, Florida 33901.					
Massachusetts	Newton, City, Middlesex County	South Meadow Brook	Approximately 130 feet downstream of Needham Street.	*110	*111
			Approximately 300 feet downstream of Winchester Street.	*112	*113
Maps available for inspection at the City Hall, Planning Department, 1000 Commonwealth Avenue, Newton, Massachusetts. Send comments to The Honorable Theodore D. Mann, Mayor of the City of Newton, Middlesex County, City Hall, 1000 Commonwealth Avenue, Newton, Massachusetts 02159.					
New Jersey	Bordentown Township, Burlington County.	Delaware River	At confluence of Crosswicks Creek	*14	*15
		At downstream corporate limits	*12	*13	
		Crosswicks Creek	At U.S. Route 130	*14	*16
			At confluence of Blacks Creek	*14	*15
		Blacks Creek	Approximately 600 feet downstream of U.S. Route 206	*14	*15
			At confluence of Crosswicks Creek	*14	*15
Maps available at the Township Building, Municipal Drive, Bordentown, New Jersey. Send comments to The Honorable Matthew Ernadez, Administrator of the Township of Bordentown, Burlington County, Municipal Drive, Bordentown, New Jersey 08505.					
New Jersey	Fieldsboro Borough, Burlington County.	Delaware River	Upstream corporate limits	*13	*14
			Downstream corporate limits	*13	*14
Maps available for inspection at the Borough Building, 18 Washington Street, Fieldsboro, New Jersey. Send comments to The Honorable Ed Tyler, Mayor of the Borough of Fieldsboro, Burlington County, 15 Second Avenue, Fieldsboro, New Jersey 08505.					
New Jersey	Florence Township, Burlington County.	Delaware River	Downstream corporate limits	*11	*12
			Approximately 0.9 mile downstream of the upstream corporate limits.	*12	*13
Maps available for inspection at the Florence Township Municipal Complex, 711 Broad Street, Florence, New Jersey. Send comments to The Honorable Bruce Benedetti, Mayor of the Township of Florence, Burlington County, 711 Broad Street, Florence, New Jersey 08518.					
New Jersey	Hamilton Township, Mercer County.	Delaware River	At upstream corporate limits	*16	*18
			At downstream corporate limits	*14	*15
Maps available for inspection at the Hamilton Township Municipal Building, 2090 Greenwood Avenue, Hamilton, New Jersey. Send comments to The Honorable John Rafferty, Mayor of the Township of Hamilton, Mercer County, Hamilton Township Municipal Building, 2090 Greenwood Avenue, CN 00150, Hamilton, New Jersey 08650.					
New Jersey	Trenton City, Mercer County	Delaware River	Approximately 400 feet downstream of CONRAIL Bridge.	*20	*21

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground * Elevation in feet (NGVD) Existing	Modif'ed
			Downstream corporate limits	*16	*18
Maps available for inspection at the City Hall, 319 East State Street, Trenton, New Jersey. Send comments to The Honorable Arthur Holland, Mayor of the City of Trenton, Mercer County, City Hall, Room 208, 319 East State Street, Trenton, New Jersey 08608.					
Oklahoma	Wewoka City, Seminole County	Tributary	Approximately 1,600 feet upstream of State Route 59	None	*790
			Approximately 2,700 feet upstream of State Route 59	None	*792
Maps available for inspection at the City Hall, 123 South Mekesukey Avenue, Wewoka, Oklahoma. Send comments to The Honorable Dennis Phillips, Mayor of the City of Wewoka, Seminole County, P.O. Box 1497, Wewoka, Oklahoma 74884.					
Tennessee	City of Nashville and Davidson County.	North Fork Ewing Creek	About 3000 feet upstream of Brick Church Pike	*515	*515
			About 1,450 feet downstream of Bellshire Drive	*520	*522
			Just downstream of Bellshire Drive	*529	*529
Maps available for inspection at the Metropolitan Government of Nashville and Davidson County Department of Public Works, Division of Engineering, 750 South 5th Street, Nashville, Tennessee. Send comments to The Honorable William H. Boner, Mayor, City of Nashville and Davidson County, Metro Courthouse, Room 106, Nashville, Tennessee 37201.					
Virginia	Albemarle County, Unincorporated Areas.	Mink Creek	Ponding area behind levee, from corporate limit of Town of Scottsville approximately 500 feet upstream.	None	*275
		James River	At County boundary with Fluvanna County	None	*285
			At County boundary with Nelson County, confluence of Rockfish River.	None	*322
Maps available for inspection at the Department of Planning and Community Development, 401 McIntire Road, Charlottesville, Virginia. Send comments to The Honorable Peter T. Way, Chairman of the Albemarle County Board of Supervisors, 401 McIntire Road, Charlottesville, Virginia 22901.					
Virginia	Scottsville, Town, Albemarle and Fluvanna Counties.	Mink Creek	At A. Raymon Thacker levee	*285	*275
			At upstream corporate limits	*286	*283
Maps available for inspection at the Municipal Building, Bird and Valley Streets, Scottsville, Virginia. Send comments to The Honorable A. Raymon Thacker, Mayor of the Town of Scottsville, Albermarle and Fluvanna Counties, P.O. Box 132, Scottsville, Virginia 24590.					

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: April 10, 1989.

[FR Doc. 89-9208 Filed 4-17-89; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF DEFENSE

Department of the Army

48 CFR Parts 5145 and 5152

Federal Acquisition Regulation Supplement; Government Furnished Property

AGENCY: Department of the Army (DA), DOD.

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council approved for a two-year test period, Department of the Army deviation to Defense Acquisition Regulation Supplement (DFARS) Subpart 245.3 and section 252.245. The deviation permits the Army to provide existing Government property under installation support services contracts without retaining the responsibility for replacement.

DATES: This rule will become effective upon publication of a final rule.

Comments: Interested parties should submit written comments to: U.S. Army Contracting Support Agency, HQ DA/SFRD-KP, ATTN: Mary M. Pearson, Room 1C616, The Pentagon, Washington, DC 20310-0103 not later than May 18, 1989, to be considered in the formulation of a final rule. Please cite Deviation Case 88-915 in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mary M. Pearson, Department of the Army, SFRD-KP, telephone (202) 697-1004.

SUPPLEMENTARY INFORMATION:

A. Background

It is the Departamentof Defense policy that contractors shall provide all facilities and materials required for performing Government contracts. In the case of support service contracts performed on installations (particularly those subject to OMB Circular No. A-76 (FAR Subpart 7.3), the installation has normally invested in existing facilities which, if not provided to contractors, could result in additional expenditures to the Government. The procedures implemented by this deviation permit the Government to obtain the maximum use of existing Government property. The deviation procedures will also permit the Government to reduce the amount of Government property furnished to contractors as directed by the Under Secretary of Defense (Acquisition). Contracts will be closely monitored to ensure that the invoices are in accordance with proposals. That is, for fixed-price contracts any replacement item cost is amortized in accordance with FAR Part 31 cost principles and the allocable portion included in the fixed price for each appropriate year. For cost-type contracts the cost must be amortized in accordance with FAR Part 31 cost principles and the allocable portion shown appropriately. These costs are not to be charged as direct line item costs.

At the end of the two-year test period, the Army will report to the DAR Council such results as: contractor reaction; problems with proposal evaluations or cost comparisons; impact on contract service support and problems with follow-on contracts.

B. Regulatory Flexibility Act

An initial Regulatory Flexibility Act Analysis has not been prepared because the proposed rule does not appear to have a significant impact on a substantial number of small entities.

Comments to the contrary will be considered.

C. Paperwork Reduction Act

This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Parts 5145 and 5152.

Government procurement, Government property.

Therefore, 48 CFR Chapter 51 is proposed to be amended as follows:

1. Part 5145 is added to read as follows:

PART 5145—GOVERNMENT PROPERTY

Subpart 245.3—Providing Government Property to Contractors

Sec.
5145.301 Definitions
5145.302–3 Other contracts.
5145.302–6 Required Government property clauses for facilities contracts.
5145.303 Providing material.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

Subpart 245.3—Providing Government Property to Contractors

5145.301 Definitions.

"Other Government Property" means all property, other than special Use property as defined below, which may be offered to a contractor for use in performance of installation support services contracts.

"Special Use Property" means property that is (a) "agency peculiar property", (b) necessary for mobilization requirements; or (c) property for which it has been determined that title should remain with the Government.

5145.302-3 Other contracts.

(S–90) (1) When it is determined that contractor use of existing Government facilities, other than special use property, in the performance of installation support services contracts, is in the best interest of the Government, the Government facilities will be offered to a contractor for use in the performance of the Government Contract. Facilities provided to a contractor under this authority will not be replaced by the Government when they can no longer be used by the contractor. Nevertheless, it will be the contractor's responsibility to continue performance in accordance with the terms of the contract.

(2) (i) New facilities shall not be purchased in order to provide them to contractors. Prior to offering existing facilities under this authority, a contracting officer shall make a written determination, based on the detailed justification provided by the approving officials and program/project manager, that such use is in the best interest of the Government. The written determination shall be kept in the contract file.

(ii) Existing facilities offered for contractor use will be offered to all bidders/offerors for their consideration in the preparation of the their bids and offers. Bidders/offerors may choose to use any or all of the facilities offered.

(3) When it is determined that contractor use of special use property in the performance of installation support services contracts is in the best interest of the the Government, such property will be provided. It will be accounted for and managed under the appropriate Government property clause.

For example, FAR 52.245–2 for fixed-price contracts or FAR 52.245–5 for cost-reimbursement contracts and any appropriate provision from FAR 52.245–11, Facilities Use Clause.

5145.302-6 Required Government property clauses for facilities contracts.

(S–90) In addition to the clauses at FAR 52.245–2 and 52–245–19, the Contracting Officer shall insert the clause at 5152.245–9000, Government Property for Installation Support Services (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated and Government property will be provided without being replaced by the Government.

(S–91) The Contracting Officer shall insert the clause at 5152.245–9001, Government Property for Installation Support Services (Cost-Reimbursement Contracts), in solicitations and contracts when a cost-reimbursement type contract is contemplated and the Government property will be provided without being replaced by the Government.

5145.303 Providing material.

(S–90) Existing Government material on hand or being used prior to conversion to contractor performance of commercial activities may be offered to contractors if it is determined to be in the best interest of the Government per FAR 45.303–1. If the material is to be provided without replacement by the Government, the solicitation must state that it will not be replaced. If it is determined that the Government will be responsible for replacement of any of the material, those items must be listed on a separate Technical Exhibit and the solicitation state that replacement will be by the Government. These items will be governed by the appropriate Government Property clause in the contract in accordance with FAR 52.245–2 for fixed-price and FAR 52.245–5 for cost-reimbursement type contracts.

2. Part 5152 is added to read as follows:

PART 5152—SOLICITATIONS PROVISIONS AND CONTRACT CLAUSES

Sec.
5152.245–9000 Government property for installation support services (fixed-price contracts).
5152.245–9001 Government property for installation support services (cost-reimbursement contracts).

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, and DOD FAR Supplement 201.301.

5152.245–9000 Government property for installation support services (fixed-price contracts).

As prescribed in 5145.302–6(S–90), insert the following:

Government Property for Installation Support Services (Fixed-Price Contracts) (XXX 1989) (DEV)

The Government property listed at Technical Exhibit _____ is provided "as is" to the contractor for use in the performance of this contract. This property may be used by the Contractor until the Contractor no longer desires to use it for contract performance or the Contracting Officer withdraws it from use under this contract in accordance with FAR 52.245–2(b). The Contractor will comply with instructions from the Contracting Officer relative to disposition of the property. No equitable adjustment or other claim will be payable to the Contractor based upon the condition or availability of the property, except as provided in FAR 52.245–19. The Contractor remains responsible for performance of the required services under this contract regardless of the length of time which the property provided hereunder remains operational. Property provided by or obtained by the Contractor under this contract remains Contractor property. Except as provided herein, the property listed at Technical Exhibit _____ will be governed by FAR 52.245–2, Government Property (Fixed-Price Contracts), and FAR 52.245–19, Government Property Furnished "as is".

5152.245-9001 Government property for installation support services (cost-reimbursement contracts).

As prescribed in 5145.302–6(S–91), insert the following clause:

Government Property for Installation Support Services (Cost-Reimbursement Contracts) (XXX 89) (DEV)

(a) *Government-furnished property.* The Government property listed at Technical Exhibit ———— is provided to the Contractor for use in the performance of this contract for installation support services. This property will be used, maintained and administered by the Contractor until it is no longer required by the Contractor. Cessation of such use of the property, and subsequent turn-in, must be approved by the Contracting Officer. The Contracting Officer will provide the Contractor with appropriate disposition instructions. The Contractor will continue to perform following such disposition with Contractor-owned property. No equitable adjustment or claim will be payable resulting from turn-in or unsuitability for intended use of this property. No change to this contract is indicated by approval of turn-in of the property. No delay claim or performance delay will be allowed based on unsuitability of property or turn-in. The Contractor's proposal includes an estimate of the costs for providing its own property for the period following turn-in of Government property.

(b) *Changes in Government-furnished property.* The Contracting Officer may, by written notice, decrease the Government-furnished property or substitute other property for the property being used by the Contractor. In the case of this withdrawal, of property by the Contracting Officer, an equitable adjustment may be appropriate. Nevertheless, even in the case of such withdrawal the Contractor is obligated to continue performance under this contract.

(c) *Title in Government property.* (1) Title to the property shall remain in the Government. Title to parts replaced by the Contractor in carrying out its normal maintenance obligations under paragraph (g) of this clause shall pass to and vest in the Government upon completion of their installation in the property.

(2) Title to the property shall not be affected by their incorporation into or attachment to any property not owned by the Government, nor shall any item of the property become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the property free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of any of the property.

(3) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government furnished premises, readily removable machinery, equipment and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by the Government, unless the Contracting Officer determines that it is so permanently attached that removal would cause substantial injury to Government property.

(4) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Government buildings or other real property without advance written approval of the Contracting Officer. Fixed improvement or structural alterations, as used herein, means any alteration or improvement in the nature of the building or other real property that, after completion, cannot be removed without substantial loss of value or damage to the premises. The term does not include foundations for production equipment.

(d) *Location of the property.* The Contractor may use the property only at the installation location(s) specified in the schedule. Written approval of the Contracting Officer is required prior to moving the property to any other location. In granting this approval, the Contracting Officer may prescribe such terms and conditions as may be deemed necessary for protecting the Government's interest in the property involved. Those terms and conditions shall take precedence over any conflicting provisions of this contract.

(e) *Notice of use of the property.* The Contractor shall notify the Contracting Officer in writing whenever any item of the property is no longer needed or usable for performing under this contract. The contract officer will then make a decision as to disposition if agreement is reached with the Contractor that the property is no longer usable or suitable for its intended use.

(f) *Property control.* The Contractor shall maintain property control procedures and records, and a system of identification of the property, in accordance with the provisions of FAR Subpart 45.5 in effect on the date of this contract.

(g) *Maintenance.* (1) Except as otherwise provided in the Schedule, the Contractor shall protect, preserve, maintain (including normal parts replacement), and repair the property in accordance with sound industrial practice.

(2) No later than 45 days after the execution of this contract, the Contractor shall submit to the Contracting Officer a written proposed maintanance program, including a maintenance records system, in sufficient detail to show the adequacy of the proposed program. If the Contracting Officer agrees to the proposed program, it shall become the normal maintenance obligation of the Contractor. The Contractor's performance according to the approved program shall satisfy the Contractor's obligations under subparagraphs (g) (1) and (45) of this clause.

(3) The Contracting Officer may at any time direct the Contractor in writing to reduce the work required by the normal maintenance program. If such order reduces the cost of performing the maintenance, an appropriate equitable adjustment may be made.

(4) The Contractor shall perform any maintenance work directed by the Contracting Officer in writing. Work in excess of the maintenance required under (g)(1) through (g)(3) of this clause shall be at Government expense. The Contractor shall notify the Contracting Officer in writing when sound industrial practice requires maintenance in excess of the normal maintenance program. The Contracting Officer shall then make a determination whether to repair the facilities or whether the Contractor should provide contractor property while continuing to perform.

(5) The Contractor shall keep records of all work done on the property and shall give the Government reasonable opportunity to inspect such records. When property is disposed of under this contract, the Contractor shall deliver the related records to the Government, or, if directed by the Contracting Officer, to third persons.

(6) The Contractor's obligation under this clause for each item of property shall continue until the item is removed, abandoned, or disposed of in accordance with Contracting Officer's instructions.

(h) *Access.* The Government and any persons designated by it shall, at all reasonable times have access to the premises where any of the property is located.

(i) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the property under this contract. Nevertheless, this provision applies only to injury arising out of use of property provided under this clause.

(j) *Representation and warranties.* (1) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any property. To the extent practical, the Contactor shall be allowed to inspect all the property to be furnished by the Government.

(2) If, however, the Contractor receives property in a condition not suitable for the intended use, the Contractor shall, within 30 days after receipt and installation thereof, so notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer, and at Government expense, either return such item or otherwise dispose of it or effect repairs or modifications. If the determination is made by the Contracting Officer to require turn-in rather than repair of the property, then the Contractor will continue to perform the contract by using its own property, for which reimbursement will be made in accordance with applicable cost principles.

(k) *Limited risk of loss.* (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (k) (2) and (3) of this clause.

(2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)—

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (f) of this clause.

(3) (i) If the Contractor fails to act as provided by subdivision (k)(2)(v) of this clause, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage—

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(5) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Office and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (k)(6). However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (k) when making any such equitable adjustment.

(7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.

(9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contactor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(l) *Disposition of the facilities.* (1) The provisions of this paragarph shall apply to facilities whose use has been terminated by either the Contracting Officer or the Contractor because the property is no longer suitable for intended use, no longer desired, or is withdrawn from use by the Government.

(2) The Contractor shall dispose of the property provided hereunder in accordance with guidance provided by the Contracting Officer.

(3) The Contracting Officer shall give disposition instructions within 60 days of agreement that the property should be returned to the Government.

(4) The Government may remove or otherwise dispose of any facilities for which the Contractor's authority to use has been terminated.

(5) When Government property is returned to the Government, upon termination of the contract relationship between Government and Contractor or when Government furnished property is replaced by Contractor property, the Contracting Officer may direct repair of Government property necessitated by the change from Government to Contractor property such as removal of fixtures. When Contractor property is removed from Government property at the end of contract performance, the Government property will be restored to its condition prior to installation of Contractor property in accordance with Contracting Officer direction.

(End of clause)

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 89-9151 Filed 4-17-89; 8:45 am]

BILLING CODE 3710-08-M

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48 CFR Parts 5108 and 5152

Acquisition Regulations: Solicitations, Provisions and Contract Clauses; Industrial Preparedness Planning

AGENCY: Department of the Army, DOD.

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council approved for a three year test period, Department of the Army deviation to Defense Acqusition Regulation Supplement (DFARS) sections 208.070(b), 208.070(g) and Part 252. The three changes are: (1) Change the definition to delete reference to the DD Form 1519 and to add reference to a Memorandum of Understanding and contractual commitments; (2) change procedure to permit differentiation between planned producers by the degree of commitment required. The differentiation is categorized into three groups. Group A entails the least commitment on both Contractor and Government. It is a Memorandum of Understanding with a DD Form 1519 (test) attached. The contractor agrees to maintain production capability for two years but is not contractually bound to do so. The signatory company is designated a "planned producer" and, as such, becomes eligible to compete in all buys over $25,000 of the planned item which are not restricted to the Mobilization Base in accordance with an approved Justification and Approval.

(That is, they must be solicited for full and open buys and for those restricted to U.S. and Canada, but do not participate in buys restricted to a group of named Mobilization Base Planned Producers.) Group B entails a greater degree of commitment on the part of both sides. The contractor agrees to maintain production capability for a negotiated period of time on a no-cost basis and is contractually bound to do so which then entitles the contractor to be solicited for all buys of the item over $25,000 including those acquisitions for which competition is restricted to Mobilization Base planned procedures. Group C involves the payment by the government for a contractor's commitment to maintain production capability; (3) permit the use of contract clause to accomplish the government's obligation under Group C.

DATES: *Comments:* Comments on the proposed rule should be submitted to the address shown below not later than June 2, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: Headquarters, U.S. Army Materiel Command, Attn: AMCPP-PP, 5001 Eisenhower Avenue, Alexandria, Virginia 22333-0001. Please cite Deviation Case 89-903 in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Ms. Dee Emmerich, Contract Policy Division, AMCPP-PP, telephone (202) 274-9619.

SUPPLEMENTARY INFORMATION:

A. Background

In 1985 the Under Secretary of the Army suspended the Army's use of the DD Form 1519 for Industrial Preparedness Production Planning (IPP). In 1987 the Under Secretary of the Army approved the development of a revised system for the conduct of IPP within the Army. The need for such revision was evidenced by poor accuracy in data collection using the DD Form 1519 and the lack of commitment involved with the voluntary only DD Form 1519 process. The new Army system, Production Planning Schedule (PPS), separates data collection from commitment. This allows greater flexibility for planning purposes in that the three aforementioned alternatives are available to enlist commitment, from the parties. The original DD Form 1519 was strictly a voluntary non-binding commitment on either party. Aside from the commitment the original DD Form 1519 has been updated for Army use and a DD Form 1519 (test) is currently undergoing OMB review. The test form will not involve commitment on the part of either party as it will serve only as a data collection instrument. The new form contains definitions and unlike the old form it is explicit in its request for varying data. Nonstandard and misinterpreted answers will be minimized thus improving data accuracy.

B. Regulatory Flexibility Act

An initial Regulatory Flexibility Analysis has not been prepared because the proposed rule does not appear to have a significant impact on a substantial number of small entities. Comments to the contrary will be considered.

C. Paperwork Reduction Act

This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq. Application for OMB review and approval has been made for the DD Form 1519 (Test). See FR (54 FR 6565)

List of Subjects in 48 CFR Parts 208 and 252

Government procurement, Industrial preparedness production planning.

Therefore Title 48 of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 5108 is added to read as follows:

PART 5108—REQUIRED SOURCES OF SUPPLIES AND SERVICES.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, and DOD FAR Supplement 201.301.

5108.070 Industrial preparedness production planning.

(b) *Definitions.*

"Mobilization Base Planned Producer" means an industrial firm which is contractually bound to maintain production capacity for a negotiated length of time, to conduct subcontractor planning, and to produce specified military items in the event of a declared national emergency or in the event of mobilization or contingencies short of a declared national emergency. "Planned Producer" means an industrial firm which has indicated its willingness to produce specified military items in a declared national emergency by completing a Memorandum of Understanding with an accompanying Industrial Preparedness Program Production Capacity Survey (DD Form 1519 (Test)).

(g)(1)(i) Solicitation of Mobilization Base Planned Producers in all acquisitions over $25,000 of items for which they have been designated as a Mobilization Base Planned Producer (use clause 252.208-9001.)

(ii) Solicitation of Planned Producers in all acquisitions of $25,000 which have not been restricted to Mobilization Base Planned Producers and which are for items for which they have been designated as a Planned Producer.

PART 5152—SOLICITATIONS PROVISIONS AND CONTRACT CLAUSES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, and DOD FAR Supplement 201.301.

2. Section 5152.208-9001 is added to read as follows:

5152.208-9001 Industrial preparedness planning.

As prescribed at 5108.070 (g)(1)(i) insert the following clause in full text in contracts where the contractor is designated a Mobilization Base Planned Producer.

Industrial Preparedness Planning (XXX1989) (DEV)

(a) The Government designates the contractor a Mobilization Base Planned Producer (MBPP) for the item(s) listed in subparagraph (e) below. As a MBPP for the listed items, the contractor will be solicited for all acquisitions of the items(s), including those for which competition is restricted to Mobilization Base Planned Producers pursuant to an approved Justification and Approval. The Government reserves the right to obtain the item(s) listed from sources other than the commercial marketplace, i.e., by assigning workload to a government-owned facility.

(b) The Contractor agrees to

(i) Update the Production Capacity Survey DD Form 1519 (test) for each item biennially;

(ii) Accomplish subcontractor planning as required in subparagraph (f) below;

(iii) Permit Government personnel access to records, manufacturing process data, plants and facilities in order to verify data on the Production Capacity Survey DD Form 1519 (test).

(iv) Maintain the surge/mobilization capacity set forth in the Production Planning Schedules during active production of the item and for a period of (negotiated number) years after physical completion of this production contract.

(c) The Contractor is aware of the Government's dependence upon the Production Planning Schedules as a basis to take appropriate measures to ensure the adequacy of the United States Industrial Base. The Contractor also recognizes the Government's intention to convert Production Planning Schedule to contracts on a selective basis, as may be required to minimize materiel shortages during mobilization or to meet contingencies short of a declared national emergency. The Contractor agrees to accept contracts for the item(s) in accordance with the Production Planning Schedules. In

the event mobilization or contingencies short of a declared national emergency occur after active production has ceased, and the allocated capacity is in use for the production of other item(s), the Contractor agrees to immediately discontinue production of such other item(s) if necessary to meet production schedules for the planned item(s). The Contractor further recognizes that it is the Government's intention to require that planned subcontractor support will be similarly converted to production subcontracts. Production delivery obligations under this clause are governed by Title I of the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, et seq.) (Defense Production Act) and as applicable are within the purview of the Defense Priorities and Allocation System.

(d) For the listed item(s), the Contractor certifies by signing this contract that the plant capacity required to support the mobilization quantity listed on the Production Capacity Survey DD Form 1519 (Test) will be dedicated exclusively for the production of that item at mobilization. Furthermore, the Contractor certifies that this capacity is not shared by any other mobilization production requirements.

(e) This clause covers the item(s) listed below:

Item Schedule No.	Item Nomenclature (Sample)	IPPL Priority
M11111	Fuze, Rocket, MK987	1
M22222	Machine Gun, MK35	2

(f) The Industrial Preparedness Planning List (IPPL) identifies and prioritizes end items and components requiring Industrial Preparedness Planning to maintain an industrial base capable of meeting surge/mobilization requirements. Mandatory vertical (subcontractor) planning will be accomplished by the Contractor for all IPPL priority 1 items (see paragraph (e) above), by using a Production Capacity Survey, DD Form 1519 (Test). The Contractor agrees to coordinate completion of the DD Form 1519 (Test) Production Capacity Survey and finalize prime and subcontractor planning with the Armed Service Production Planning Officer (ASPPO) having cognizance over the prime contractor's facility.

(g) Subcontractors, suppliers and vendors provide many of the components of military end items. The lack of critical components could be one of the major limitations of the United States' ability to support its Armed Forces warfighting capabilities. Therefore, the Government designated critical components and/or subassemblies in Block #27 of the attached Production Capacity Survey DD Form 1519 (Test) are those for which the Contractor will conduct vertical planning if not produced in-house.

(h) Additional critical components and/or subassemblies may be identified by the Contractor in block #21 of the attached Production Capacity Survey DD Form 1519 (Test).

(i) Foreign producers (other than Canada) will not be considered as a source of supply for critical components.

(j) After completion of active production for the item(s), the Government will annually, or as changes occur but not more than annually, furnish the Contractor updated technical data for the item. The Contractor agrees to review the technical data and to report to the Government within 60 days of receipt of the data, the impact of technical changes, if any, to the current Production Planning Schedules at no additional cost to the Government.

(k) Retention by the Contractor of the surge/mobilization capacity set forth in the Production Planning Schedules after completion of active production of the planned item(s) will not necessarily require that the Contractor maintain such capacity in idle status. Contractor utilization of capacity allocated for planned production for production of other non-planned items is consistent with the intent of any postproduction provisions of this contract, provided no degradation of surge/mobilization capacity occurs as a result, and provided that the approval of the Contracting Officer with property cognizance is obtained for the use of any Government-owned property.

(End of clause)

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 89-9150 Filed 4-17-89; 8:45 am]

BILLING CODE 3710-08-M

Notices

Federal Register
Vol. 54, No. 73
Tuesday, April 18, 1989

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

National Agricultural Statistics Service

Federal Crop Insurance Use Survey

Notice is hereby given that the National Agricultural Statistics Service will conduct a one-time survey effective May 1989.

The survey will collect information for the Economic Research Service to complete a study to evaluate and analyze the Federal Crop Insurance program. A preliminary report of the study will be presented to the Office of Management and Budget by June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence A. Gambrell, Agricultural Statistician, Program Support Staff, NASS, USDA, Room 4116-S, Washington, DC 20250-2000; telephone (202) 447-7737.

Dated: April 12, 1989.

Charles E. Caudill,

Administrator.

[FR Doc. 89-9262 Filed 4-17-89; 8:45 am]

BILLING CODE 3410-20-M

Forest Service

Amendment to the Regional Guide; Rocky Mountain Region; Intent To Prepare an Environmental Impact Statement and an Amendment to the Regional Guide Colorado, Kansas, Nebraska, South Dakota, Wyoming

The Department of Agriculture, Forest Service, will amend the Regional Guide for the Rocky Mountain Region. An environmental analysis is being started to update information in the current Guide which will benefit upcoming scheduled Forest Plan revisions. The 5-State Rocky Mountain Region includes Colorado, Kansas, Nebraska, South Dakota, and that portion of Wyoming east of the Continental Divide.

The Regional Guide amendment may modify existing decisions on: (1) Coordination of National Forest System, State and Private Forestry, and Research programs for the Rocky Mountain Region; and (2) goals and objectives, and standards and guidelines in the existing Guide.

The Regional Guide contains decisions relative to: (1) Regional programs, goals, and objectives; (2) tentative resource objectives for each National Forest administrative unit from the current Resources Planning Act (RPA) Program; (3) Regional management standards and guidelines developed to address major Regional issues and management concerns; (4) specific standards and guidelines, required by regulation for silvicultural practices, timber utilization standards, transportation corridors, and potential air pollution emissions; and (5) description of measures to achieve coordination of National Forest System, State and Private Forestry, and Research programs.

Decisions made in the Regional Guide amendment should not be confused with decisions from other planning levels. There are two levels of decisions below the Regional Guide for units of the National Forest System. These are; (1) Approval of the Forest Land and Resource Management Plans, which includes decisions on (a) Forest multiple-use goals and objective, (b) multiple use prescriptions and associated standards and guidelines, (c) land suited for timber production, (d) allowable sale quantity and associated timber sale schedule, (e) minitoring and evaluation requirements, and (f) project and activity decisions if they are specifically identified; and (2) approval of management practices, projects, and activities that implement Forest plans.

The Regional Guide amendment process will focus only on those aspects of the Regional Guide which reflect a need for change based on new information, changing issues, or results of monitoring. Sources of information to make this determination will include input from State governments, individuals, organizations, and other Federal entities; results of monitoring the Forest Land and Resource Management Plans and current Regional Guide; and the 1990 RPA Assessment and Program.

The Regional Guide amendment will include an assessment of resources and services produced in the Rocky Mountain Region by state or sub-region.

A range of alternatives will be developed to address any major issues identified. Analysis of alternatives will develop and display environmental consequences for public consideration associated with new or revised goals and objectives, standards and guidelines, and as appropriate planning guides. The "no action" alternative will be continued use of the existing Regional Guide without change.

Issues tentatively identified that will likely need to be addressed in scoping the amendment to the Regional Guide include:

—Changing recreation preferences
—Changing use of resources
—Providing economic growth, economic stability, and economic diversity in harmony with states' and counties' goals and objectives
—Addition and/or expansion of winter sports sites
—Increased demands for water and water storage projects
—Management of riparian areas
—Coordination of wildlife habitat management with the states' responsibilities to manage wildlife populations
—Fire protection at the urban wildlands interface
—Use of fire as a management tool
—Communities, business, and individuals dependant on resources from and uses of the National Forests
—Research to carry out the Rocky Mountain Region's research program
—Wild and scenic rivers
—Visual quality
—Coordination in the Greater Yellowstone area
—Forest health
—Roadless areas
—Biological diversity
—Utility corridors
—Public access
—Sections of the existing Regional Guide pertaining to goals and objectives and standards and guidelines.

Additional issues may be identified through public involvement. The Regional Guide will address and deal with issues which are regional or sub-regional in scope. Issues limited to management of individual National

Forests and Grasslands will not be addressed or dealt with in this Regional Guide.

Federal and state agencies, organizations, and other identifiable potentially affected interests will be invited by letter and publication of this notice to participate in the identification of issues. The scoping process will include: (1) Identification of potential issues, concerns, and opportunities to be analyzed; and (2) elimination of inappropriate issues, concerns, or opportunities or those which have been covered by previous environmental review. A variety of public involvement tools will be used. If public meetings are needed they will be held. Thirty days public notice will be given for any public participation activities.

The analysis is expected to take about 18 months. A draft Environmental Impact Statement will be available for public review by September 1990. A final Environmental Impact Statement is scheduled for completion in April 1991.

If the amendment is determined to be significant under the National Forest Management Act, the responsible official will be F. Dale Robertson, Chief, Forest Service, Washington DC. If the amendment is not significant under the National Forest Management Act, the responsible official will be Gary E. Cargill, Regional Forester, Rocky Mountain Region.

Written comments and suggestions concerning the analysis should be sent to the Regional Forester, ATTN: Dick Lindenmuth, Rocky Mountain Region, 11177 W. 8th Avenue, Box 25127, Lakewood, CO 80225-0127 by June 19, 1989. Individuals, organizations, etc., who are on the Regional Guide amendment mailing list will receive National level RPA Program documents.

Questions about the proposed action and analysis should be directed to Dick Lindenmuth, Planning Team Leader, Rocky Mountain Regional Office, phone 303-236-9656 or FTS 776-9656.

Date: April 12, 1989.

S.H. Hanks,

Deputy Regional Forester.

[FR Doc. 89-9180 Filed 4-17-89; 8:45 am]

BILLING CODE 3410-11-M

H D Mountains Coalbed Methane Gas Development; San Juan National Forest Archuleta and La Plata Counties, CO; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement (EIS) to describe alternatives and environmental consequences for the development of the H D Mountains Coalbed Methane Gas Project on the Pine Ranger District. A Record of Decision accompanying the EIS will determine the conditions of use for the developer.

The San Juan National Forest Land and Resource Management Plan was completed in September of 1983. The Plan's EIS contains a projection of expected drilling and production activities and describes the environmental effects of these anticipated activities. The coalbed methane gas project, proposed by AMOCO Production Company, is expected to result in environmental effects which may be greater than those evaluated by the EIS accompanying the Forest Plan. Environmental analysis and appropriate documentation is required for approval of levels of activities not evaluated in the Plan EIS.

A range of alternatives for the development will be considered. One of these will be no further development. Other alternatives will consider varying development rates, and varying degrees of development on the area up to a maximum development of 140 wells. Alternative locations for roads, pipelines and support facilities will be considered.

Scoping was begun in November 1988 by direct letter contact to known interested parties, newspaper announcements in the local newspapers and posting a scoping document at the Pine Range District Office. Forty responses were received. These, plus any other responses will be used for:

1. Identification of the potential issues and concerns associated with the proposed project.
2. Identification of the issues which will be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of cooperating agencies and assignment of responsibilities.

A public meeting for additional scoping is scheduled at the Lions Club Hall, 451 S. Church Street, Bayfield, Colorado, on May 4, 1989, at 7:00 p.m.

The Bureau of Land Management, Department of the Interior, has been invited to participate as a cooperating agency to evaluate the potential impacts on groundwater production by water from gas wells, subsurface disposal of produced water, and all other technical aspects of drilling and production.

Michael G. Johnson, District Ranger, Pine Ranger District, San Juan National Forest, Bayfield, Colorado is the responsible official.

The analysis is expected to take approximately eight months. The draft Environmental Impact Statement should be available for public review by August 1989. The final Environmental Impact Statement is scheduled to be completed by November 1989.

Written comments and suggestions concerning the analysis should be sent to Michael G. Johnson, District Ranger, Pine Ranger District, P.O. Box 439, Bayfield, Colorado 81122 by May 15, 1989.

Questions about the proposed action and Environmental Impact Statement should be directed to Dick Bell, Pine Ranger District, phone (303) 884-2512.

Date: April 10, 1989

Michael G. Johnson,

District Ranger, USDA Forest Service, R-2, San Juan National Forest.

[FR Doc. 89-9169 Filed 4-17-89; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Michigan Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m., on Friday, May 5, 1989, at the Westin Hotel, Renaissance Center, Detroit, Michigan. The purpose of the meeting, which will involve a community forum, is to receive information on the civil rights aspects of minority student dropouts.

Peresons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dennis L. Gibson, Jr., or William F. Muldrow, Acting Director of the Central Regional Division (816) 426-5243, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 7, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-9170 Filed 4-17-89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Advisory Committee; Availability of Report on Closed Meetings

AGENCY: Office of the Secretary; Department of Commerce.

ACTION: Announcing public availability of report on closed meetings of advisory committees.

SUMMARY: The Department of Commerce has prepared its report on the activities of closed or partially-closed meetings of advisory committees as required by the Federal Advisory Committee Act.

ADDRESSES: Copies of the reports have been filed and are available for public inspection at two locations:

Library of Congress, Newspaper and Current Periodicals Reading Room, Room LM133, Madison Building, 1st and Independence Avenues SE., Washington, DC 20540

Department of Commerce, Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th and Constitution Avenue NW., Washington, DC 20230 Telephone (202) 377-3271.

SUPPLEMENTARY INFORMATION: The reports cover the closed and partially-closed meetings held in 1988 of 37 committees and their subcommittees, the names of which are listed below:

Automated Manufacturing Equipment Technical Advisory Committee
Committee of Chairmen of Industry Advisory Committees for Trade Policy Matters (TPM)
Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee
Computer Systems Technical Advisory Committee
—Hardware Subcommittee
—Software Subcommittee
—Licensing Procedures and Regulations Subcommittee
Electronic Instrumentation Technical Advisory Committee
ISAC on Aerospace Equipment for TPM
—Government Supports Subcommittee
—Military Trade Subcommittee
—Purchase/Finance Subcommittee
—Space Equipment Subcommittee
ISAC on Capital Goods for TPM
ISAC on Chemicals and Allied Products for TPM
ISAC on Consumer Goods for TPM
ISAC on Electronics and Instrumentation for TPM
ISAC on Energy for TPM
ISAC on Ferrous Ores and Metals for TPM
ISAC on Footwear, Leather, and Leather Products for TPM
ISAC on Industrial and Construction Material and Supplies for TPM
ISAC on Lumber and Wood Products for TPM
ISAC on Nonferrous Ores and Metals for TPM
ISAC on Paper and Paper Products for TPM
ISAC on Services for TPM
ISAC on Small and Minority Business for TPM
ISAC on Textiles and Apparel for TMP
ISAC on Transportation, Construction, and Agricultural Equipment for TPM
ISAC on Wholesaling and Retailing for TMP
Importers and Retailers' Textile Advisory Committee
Industry Functional Advisory Committee on Customs Matters for TPM
Industry Functional Advisory Committee on Intellectual Property Rights for TPM
Industry Functional Advisory Committee on Standards for TPM
Judges Panel of the Malcolm Baldrige National Quality Award
Management-Labor Textile Advisory Committee
Marine Fisheries Advisory Committee
Materials Technical Advisory Committee
Militarily Critical Technologies List Technical Advisory Committee
President's Export Council
—Subcommittee on Export Administration
Sea Grant Review Panel
Semiconductor Technical Advisory Committee
Telecommunications Equipment Technical Advisory Committee
—Fiber Optics Subcommittee
—Switching Subcommittee
Transportation and Related Equipment Technical Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Jan Jivatode, Management Analyst, Office of the Secretary, Department of Commerce, Washington, DC 20230, Telephone (202) 377-3271.

Date: April 11, 1989

Jan Jivatode,

Management Support Division, Office of Management and Organization.

[FR Doc. 89-9171 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket No. 3-89]

Foreign-Trade Zone 50, Long Beach, CA; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Harbor Commissioners of the Port of Long Beach (BHC), grantee of Foreign-Trade Zone 50, requesting authority to expand the zone to include additional acreage at the California Commerce Center site located in Ontario, California, adjacent to the Los Angeles-Long Beach Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 27, 1989.

The Long Beach zone was approved on September 14, 1979 (Board Order 147, 44 FR 55919, 9/28/79). It was expanded to include a site in Ontario on April 2, 1985 (Board Order 298, 50 FR 15205, 4/17/85). The Ontario site encompasses 1,350 acres in the California Commerce Center (CCC) industrial park. In November 1988, a temporary boundary modification was approved which shifted 505 acres from the northern section of CCC to the southern section. The area involved is bounded by Mission Boulevard, Haven Avenue, the Pomona Freeway and the Cucamonga Channel.

The grantee is now requesting an expansion of the CCC park site to make the temporary 505-acre parcel in the southern section a permanent part of the zone, and to reinstate the 505-acre parcel in the northern section. The applicant states that development of the CCC site has been rapid for both zone and non-zone activity, and that the additional space is needed to accommodate prospective zone users.

No manufacturing approvals are being sought in the application. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John Heinrich, District Director, U.S. Customs Service, Pacific Region, 300 South Ferry Street, Terminal Island, San Pedro, California 90731; and Colonel Tadahiko Ono, District Engineer, U.S. Army Engineer

District, Los Angeles, P.O. Box 2711, Los Angeles, California 90053–2325.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before May 29, 1989.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 11777 San Vicente Boulevard, Room 800, Los Angeles, California 90049.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Room 2835, Washington, DC 20230.

Dated: April 11, 1989.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–9194 Filed 4–17–89; 8:45 am]

BILLING CODE 3510-05-M

[Order No. 430]

Resolution and Order Approving the Application of the Vicksburg/Jackson Foreign-Trade Zone, Inc., for a Foreign-Trade Zone in the Vicksburg/Jackson, MI, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Vicksburg/Jackson Foreign-Trade Zone, Inc., filed with the Foreign-Trade Zones Board (the Board) on January 11, 1988, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone at sites near Vicksburg and in Jackson, Mississippi, within and adjacent to the Vicksburg Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish, Operate, and Maintain a Foreign-Trade Zone in the Vicksburg/Jackson, MI, Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Vicksburg/Jackson Foreign-Trade Zone, Inc. (the Grantee) has made application (filed January 11, 1988, FTZ Docket 1–88, 53 FR 1809) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Vicksburg and Jackson, Mississippi, adjacent to the Vicksburg Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 158, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 11th day of April 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Robert A. Mosbacher,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–9195 Filed 4–17–89; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 4-89]

Application for Extension of FTZ Subzone Status for SZ's 22C, 22D, and 22E, Power Packaging, Inc., Plants, Chicago, IL Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Illinois International Port District (IIPD), grantee of FTZ 22, requesting a 2-year time extension for FTZ subzone status at three food processing plants of Power Packaging, Inc. (PPI) in the Chicago, Illinois, area. The application was formally filed on April 6, 1989.

In March 1987, the Board authorized subzone status for the PPI plants (Board Order 347, 52 FR 10246, 3/31/87) for a two-year period (from date of activation), subject to extension. Subzone activity is restricted to the

production of sugar-containing products subject to the sugar quota program.

Zone procedures are being used for entries on the foreign sugar used to produce cake and flour mixes, breakfast cereals, pudding mixes, soup mixes, and other edible preparations. Customs entries are made on the finished products, and the sugar is ex-quota.

In requesting the extension, PPI indicates that subzone status has helped it compete with lower priced sugar-containing imports, preserving employment at its Chicago plants as had been contended in the original application.

Subzone authority is due to expire on June 29, 1989, and the FTZ Board is considering a temporary time extension of up to one year, during which time the proposal would be evaluated as part of an overall review of sugar-related activity in zones, which would be the subject of a separate **Federal Register** notice.

The application for a 2-year extension is being reviewed by the FTZ Staff. Comments are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before May 23, 1989.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 1406 Mid Continental Plaza Building, 55 East Monroe Street, Chicago, Illinois 60603.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: April 13, 1989.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-9251 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-508-801]

Final Determination of Sales at Less Than Fair Value: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Israel

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

ACTION: Notice.

SUMMARY: We determine that industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from Israel are being, or are likely to be, sold in the United States at less than fair value. We also determine that critical circumstances exist with respect to imports of industrial belts from Israel.

We have notified the U.S. International Trade Commission (ITC) of our determination and have directed. the U.S. Customs Service to continue to suspend liquidation of all entries of industrial belts from Israel as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Loc Nguyen, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1769 or (202) 377-3530.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that industrial belts from Israel are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice. We also determine that critical circumstances exist with respect to industrial belts from Israel.

Case History

On January 26, 1989, we made an affirmative preliminary determination (54 FR 5105, February 1, 1989). We received comments from petitioner and respondent.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-headings. The HTS sub-headings are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are industrial belts from Israel currently provided for under Tariff Schedules of the United States Annotated (TSUSA) item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510 and 773.3520; and currently classifiable under Harmonized Tariff Schedule (HTS) sub-headings 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Period of Investigation

The period of investigation is January 1, 1988, through June 30, 1988.

Fair Value Comparisons

To determine whether sales of industrial belts from Israel to the United States were made at less than fair value, we compared the United States price to the foreign market value. For our preliminary determination we used best information available as required by section 776(c) of the Act. As best information available, we took the highest margin contained in the petition for each of the product types for the period of investigation and calculated a simple average of those figures to determine a margin for the products under investigation. Since the respondent, Magam, failed to participate in the investigation, we are using the same methodology for calculating a margin for the final determination.

United States Price

United States price was based on the U.S. price information provided in the petition pursuant to section 772 of the Act.

Foreign Market Value

Foreign market value was based on home market prices provided in the

petition pursuant to section 773 of the Act.

Critical Circumstances

On June 30, 1988, petitioner alleged that critical circumstances exist with respect to imports of the subject merchandise from Israel. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A)(i) there is a history of dumping in the United states or elsewhere of the class or kind of merchandise which is the subject of the investigation; 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 merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Since the respondent, Magam, failed to participate in the investigation, we are determining that critical circumstances for this respondent exist based on best information available. As best information available, we are assuming that imports of industrial belts have been massive over a relatively short period of time. In determining knowlege of dumping, the Department normally considers margins of 25% or more sufficient to impute knowledge of dumping under section 735(a)(3)(A) (*sene, e.g., Final Determination of Sales at Less Than Fair Valuie; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987)). Therefore, in accordance with sections 735(a)(3)(A)(ii) and 735(a)(3)(B), we determine that critical circumstances exist with respect to Magam.

With respect to firms covered by the "All Other" rate, we have determined that imports of industrial belts have not been massive over a relatively short period of time and, therefore that critical circumstances do not exist.

Since we do not find that there have been massive imports of industrial belts from firms included in the "All Other" rate, we do not need to consider whether there is a history of dumping or whether importers of these products knew or should have known that the merchandise was being sold at less than fair value.

Interested Party Comments

Comment 1: Petitioner argues that, based on U.S. import statistics, IM 146 data, the Department should find that there have been massive imports of industrial belts over a relatively short period of time. Petitioner further asserts that an antidumping margin of 25% or more is sufficient to impute knowledge to the importer that the exporter was selling the merchandise at less than fair value.

DOC Position: Since the respondent, Magam, failed to participate in the investigation, as best information available, we are assuming that its imports of industrial belts from Israel have been massive over a relatively short period of time. Furthermore, we find that the best information available margin of 89.65% is sufficient to impute knowledge to the importer that the exporter was selling the merchandise at less than fair value.

With regard to firms covered by the "All Other" rate, see the "Critical Circumstances" section of this determination.

Comment 2: Petitioner argues that the Department's final determination should be based on the highest less-than-fair-value margin alleged in the petition.

DOC Position: The Department is applying the same methodology used in the preliminary determination to calculate the margins for the final determination. As best information available, we are taking the highest margin contained in the petition for each of the product types for the period of those figures to determine the margin for the products under investigation.

Comment 3: Petitioner asserts that in its scope of investigation at the preliminary determination, the Department listed only four HTS sub-headings. Petitioner requests that the Department list eighteen HTS sub-headings in its final determination.

DOC Position: We agree. The petition included nine TSUSA item numbers and four HTS sub-headings that petitioner believed would correspond to the TSUSA numbers when the HTS system became effective.

The Harmonized Tariff Schedule went into effect on January 1, 1989. Based on a concordance between TSUSA item numbers and HTS sub-headings listed in a January 1989 USITC publication, *The Continuity of Import and Export Trade Statistics After Implementation of the Harmonized Commodity Description and Coding System*, petitioner requested that the Department expand the four HTS sub-headings listed in our preliminary determination to eighteen sub-headings. We asked for comments from the interested parties in this investigation concerning industrial belts covered by the eighteen HTS sub-headings.

In our preliminary determinations, as now, we note that the written description of the products covered by the investigation is dispositive. The HTS numbers are provided for convenience and customs purposes as to the scope of the product coverage. We do not view providing additional HTS sub-headings as broadening the scope of this investigation.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of industrial belts from Israel, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of the preliminary determination in the **Federal Register**.

Normally, we would instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the estimated amounts by which the foreign market of subject merchandise from Israel exceeds the United States price as shown below. However, Artical VI.5 of the General Agreement on Tariffs and Trade provides that "no * * * product shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 722(d)(1)(D) of the Act which prohibits assessing dumping duties on the portion of the margin attributable to an export subsidy, since there is not reason to require a cash deposit or bond for the amount. Therefore, the bonding rate in this investigation will be reduced by the rate attributable to the export subsidies found in the concurrent countervailing duty determination. Accordingly, for duty deposit purposes, the bonding rate is 79.25% for Magam and all other manufacturers, producers, and exporters of the subject merchandise from Israel.

The cash deposit or bonding rate established in the preliminary determination shall remain in effect with respect to entries or withdrawals from warehouse made prior to the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

The margin percentages are shown below:

Manufacturer/producer/exporter	Margin percentage
Magam	79.25
All others	79.25

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on industrial belts from Israel entered, or withdrawn for warehouse, for consumption on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

April 11, 1989.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-9252 Filed 3-17-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-802]

Final Determination of Sales at Less Than Fair Value: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Italy

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

ACTION: Notice.

SUMMARY: We determine that industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from Italy are being, or are likely to be, sold in the United States at less than fair value. We also determine that critical circumstances exist with respect to imports of industrial belts from Italy.

We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of industrial belts from Italy as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Loc Nguyen, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769 or (202) 377-3530.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that industrial belts from Italy are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated margin is shown in the "Continuation of Suspension of Liquidation" section of this notice. We also determine that critical circumstances exist with respect to industrial belts from Italy.

Case History

On January 26, 1989, we made an affirmative preliminary determination (54 FR 5103, February 1, 1989). On January 26, 1989, Pirelli submitted revised computer tapes, and on February 21, 1989, Pirelli submitted a product concordance. On March 23, 1989, the Department held a public hearing. Interested parties submitted comments for the record.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date will be classified solely according to the appropriate HTS sub-headings. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are industrial belts from Italy provided for under Tariff Schedules of the United States Annotated (TSUSA) item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773,3510 and 773.3520; and currently classifiable under Harmonized Tariff Schedule (HTS) sub-headings 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Period of Investigation

The period of investigation is January 1, 1988, through June 30, 1988.

Fair Value Comparisons

To determine whether sales of industrial belts from Italy to the United States were made at less than fair value, we compared the United States price to the foreign market value. For our preliminary determination we used best information available as required by section 776(c) of the Act. As best information available, we took the highest margin contained in the petition for each of the product types and averaged those figures to determine a margin for the products under investigation. Since the respondent, Pirelli, failed to provide an adequate response, we are using the same methodology for calculating a margin for the final determination. *See* DOC Position to Comment 2.

United States Price

United States price was based on the U.S. price information provided in the petition pursuant to section 772 of the Act.

Foreign Market Value

Foreign market value was based on home market prices provided in the petition pursuant to section 773 of the Act.

Critical Circumstances

On June 30, 1988, petitioner alleged that critical circumstances exist with respect to imports of the subject merchandise from Italy. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; 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 merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we requested specific data on shipments of the subject merchandise as the most appropriate basis for our determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation.

We asked Pirelli to supply monthly volume shipment data from November, 1987 to January, 1989 in order for the Department to base the critical circumstances determination on company-specific data. Pirelli provided the Department with information concerning monthly import data.

Since the response of Pirelli in this investigation was not used in making fair value comparisons (*see* Comment 2), we are determining that critical circumstances for this respondent exist based on best information available. As best information available, and as a statement made against its own interest, we used the company-specific information that Pirelli provided to determine that critical circumstances exist. Comparing the seven months after the month in which the petition was filed to the seven months before and including the month in which the petition was filed, shipments by Pirelli increased 99%.

In determining knowledge of dumping, the Department normally considers margins of 25% or more sufficient to impute knowledge of dumping under section 735(a)(3)(A) (*see, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987)). Therefore, in accordance with sections 735(a)(3)(A)(ii) and 735(a)(3)(B), we determine that critical circumstances exist with respect to Pirelli.

With respect to firms covered by the "All Other" rate, we determine that critical circumstances do not exist because we have determined that imports of industrial belts have not been massive over a relatively short period of time. Since we do not find that there have been massive imports of industrial belts from firms included in the "All Other" rate, we do not need to consider whether there is a history of dumping or whether importers of these products knew or should have known that the merchandise was being sold at less than fair value.

Interested Party Comments

Comment 1: Petitioner alleges that the Department's negative critical circumstances preliminary determination was in error because company-specific data was not used. The respondent urges the Department to make a negative critical circumstances determination with respect to Pirelli.

DOC Position: We have determined that imports of industrial belts from Italy have been massive over a relatively short period of time, as best information available. Furthermore, the dumping margin of 74.9% leads us to conclude that the importer knew or should have known that the exporter was selling the merchandise at less than its fair value.

With regard to firms covered by the "All Other" rate, see the "Critical Circumstances" section of this determination.

Comment 2: Petitioner argues that the Department's final determination should be based on the highest less-than-fair-value margin alleged in the petition.

Respondent argues that the Department should have accepted and verified the actual sales information submitted by Pirelli for purposes of the final determination because information submitted by Pirelli after the preliminary determination did not constitute a new response.

The respondent further alleges that, should the Department decide to use best information available, the best information available is not that used in the preliminary determination. Respondent suggests that, because of its good faith efforts to cooperate, best information available should be the lower of (1) the highest rate found for any participating respondent, or (2) an average of the lowest rates alleged in the petition for each category of belt actually sold by Pirelli, or (3) the weighted average of the rates alleged in the petition for all belts actually sold by Pirelli.

DOC Position: To determine whether sales of industrial belts from Italy were made at less than fair value, we compared the United States price to the foreign market value as discussed in the *Fair Value Comparisons* section of this notice. For the reasons cited below we have determined, in accordance with section 776(c) of the Act, that the use of best information available is appropriate for the subject merchandise from Italy. Section 776(c) requires the Department to use best information available "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation."

Twenty-six days after the preliminary determination Pirelli submitted extensive corrections to its earlier submissions. Despite its earlier statements that all U.S. sales had identical matches, Pirelli's submission included a product concordance matching certain U.S. sales with sales of "similar" merchandise in the home market. Even with this information, only a little over 60% by volume and value of the subject merchandise sold by Pirelli in the U.S. had a match in the home market.

Given the significance of this new information, the Department determined that the submission by Pirelli was so substantial that it constituted a new response. While the Department normally allows minor revisions to questionnaire responses after the preliminary determination and during verification, it is our well established policy not to accept new responses that are filed after the preliminary determination. Moreover, to accept this new information at such a late point in the investigation would have denied the petitioner and other interested parties their statutorily-mandated opportunity to comment on the new response and

otherwise to participate in this investigation with regard to Pirelli.

While the Department may differentiate between cooperative and non-cooperative firms in assessing best information available, we were not able to adopt any of the alternatives suggested by respondent in this case. There were no other responding firms in Italy and the other alternatives would require use of unverified information about products actually sold by Pirelli.

Comment 3: Petitioner asserts that in its scope of investigation at the preliminary determination, the Department listed only four HTS sub-headings. Petitioner requests that the Department list eighteen HTS sub-headings in its final determination.

DOC Position: We agree. The petition included nine TSUSA item numbers and four HTS sub-headings that petitioner believed would correspond to the TSUSA numbers when the HTS system became effective.

The Harmonized Tariff Schedule went into effect on January 1, 1989. Based on a concordance between TSUSA item numbers and HTS sub-headings listed in January 1989 USITC publication, *The Continuity of Import and Export Trade Statistics after Implementation of the Harmonized Commodity Description and Coding System*, petitioner requested that the Department expand the four HTS sub-headings listed in our preliminary determination to eighteen sub-headings.

We asked for comments from the interested parties in this investigation concerning industrial belts covered by the eighteen HTS sub-headings. We have received no objections to the petitioner's request.

In our preliminary determinations, as now, we note that the written discription of the products covered by the investigation is dispositive. The HTS numbers are provided for convenience and customs purposes as to the scope of the product coverage. We do not view providing additional HTS sub-headings as broadening the scope of the investigation.

Comment 4: V. B. Splaun & Son, an importer, believes it is inappropriate to include nylon core flat belts imported from Italy in the scope of this investigation. V. B. Splaun & Son requests that these nylon-core belts be excluded from this investigation.

DOC Position: The information received was insufficient to determine whether the merchandise is properly excluded from the scope of this investigation. In addition, the information received from these firms arrived too late to be analyzed and verified for this final determination. If the final determination of the ITC results in an antidumping duty order on this merchandise, and upon receipt of proper documentation, the Department may conduct a scope ruling procedure concerning the products imported by these firms.

Continuation of Suspension of Liquidation: We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of industrial belts from Italy, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of the notice of the preliminary determination in the **Federal Register**. The U.S. Customs Services shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Italy exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Pirelli Trasmissioni Industriali, S.p.A.	74.90
All others	74.90

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on industrial belts from Italy entered, or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d).

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-9253 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-807]

Final Determination of Sales of Less Than Fair Value: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Japan

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

ACTION: Notice.

SUMMARY: We determine that industrial belts and components and parts thereof, whether cured or uncured (hereinafter referred to as industrial belts) from Japan are being, or are likely to be, sold in the United States at less than fair value. We also determine that critical circumstances exist with respect to import of industrial belts from Japan.

We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of industrial belts from Japan as described in the "Continuation of Suspension of Liquidation" section if this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Loc Nguyen, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769 or (202) 377-3530.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that industrial belts from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated margin is shown in the "Continuation of Suspension of Liquidation" section of this notice. We also determine that critical circumstances exist with respect to industrial belts from Japan.

Case History

On January 26, 1989, we made an affirmative preliminary determination (54 FR 5114, February 1, 1989). We received comments from petitioner. We have received a number of requests for exclusion of merchandise from the scope of this final determination (*see* comment number 4).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-headings. The HTS sub-headings are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are industrial belts from Japan currently provided for under Tariff Schedules of the United States Annotated (TSUSA) item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510 and 773.3520; and currently classifiable under Harmonized Tariff Schedule (HTS) sub-headings 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber of plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.*, closed loop) or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment power by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Period of Investigation

The period of investigation is January 1, 1988, through June 30, 1988.

Fair Value Comparisons

To determine whether sales of industrial belts from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value. For our preliminary determination we used best information available as required by section 776(c) of the Act. As best information available, we took the highest margin contained in the petition for each of the product types for the period of investigation and calculated a simple average of those figures to determine a margin for the products under investigation. Since the respondent, Bando, failed to participate in the investigation, we are using the same methodology for calculating a margin for the final determination.

United States Price

United States price was based on the U.S. price information provided in the petition pursuant to section 772 of the Act.

Foreign Market Value

Foreign market value was based on home market prices provided in the petition pursuant to section 773 of the Act.

Critical Circumstances

On June 30, 1988, petitioner alleged that critical circumstances exist with respect to imports of the subject merchandise from Japan. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person whom or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Since the respondent, Bando Chemical Industries (Bando), failed to participate in the investigation, we are determining that critical circumstances for this respondent exist based on best information available information. As best information available, we are assuming that imports of industrial belts have been massive over a relatively short period of time. In determining knowledge of dumping, the Department normally considers margins of 25% or more sufficient to impute knowledge of dumping under section 735(a)(3)(A) (*see, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Therefor, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987)). Therefore, in accordance with sections 735(a)(3)(A)(ii) and 735(a)(3)(B), we determine that critical circumstances exist with respect to Bando.

With respect to firms covered by the "All Other" rate, we have determined that imports of industrial belts have not been massive over a relatively short period of time and, therefore, that critical circumstances do not exist.

Since we do not find that there have been massive imports of industrial belts from firms included in the "All Other" rate, we do not need to consider whether there is a history of dumping or whether importers of these products know or should have known that the merchandise was being sold at less than fair value.

Interested Party Comments

Comment 1: Petitioner argues that, based on U.S. import statistics, IM 146 data, the Department should find that there has been massive imports of industrial belts over a relatively short period of time. Petitioner further asserts that an antidumping margin of 25% or more is sufficient to impute knowledge to the importer that the exporter was selling the merchandise at less than fair value.

DOC Position: Since the respondent, Bando, failed to participate in the investigation, as best information available, we are assuming that its imports of industrial belts from Japan have been massive over a relatively short period of time. Furthermore, we find that the best information available margin of 93.16% is sufficient to impute knowledge to the importer that the exporter was selling the merchandise at less than fair value.

With regard to firms covered by the "All Other" rate, see the "Critical Circumstances" section of this determination.

Comment 2: Petitioner argues that the Department's final determination should be based on the highest less-than-fair-value margin alleged in the petition.

DOC Position: The Department is applying the same methodology used in

the preliminary determination to calculate the margins for the final determination. As best information available, we are taking the highest margin contained in the petition for each of the product types for the period of investigation and then calculating a simple average of those figures to determine the margin for the products under investigation.

Comment 3: Petitioner asserts that in its scope of investigation at the preliminary determination, the Department listed only four HTS sub-headings. Petitioner requests that the Department list eighteen HTS sub-headings in its final determination.

DOC Position: We agree. The petition included nine TSUSA item numbers and four HTS sub-headings that petitioner believed would correspond to the TSUSA numbers when the HTS system became effective.

The Harmonized Tariff Schedule went into effect on January 1, 1989. Based on a concordance between TSUSA item numbers and HTS sub-headings listed in a January 1989 USITC publication, *The Continuity of Import and Export Trade Statistics After Implementation of the Harmonized Commodity Description and Coding System,* petitioner requested that the Department expand the four HTS sub-headings listed in our preliminary determination to eighteen sub-headings.

We asked for comments from the interested parties in this investigation concerning industrial belts covered by the eighteen HTS sub-headings.

In our preliminary determinations, as now, we note that the written description of the products covered by the investigation is dispositive. The HTS numbers are provided for convenience and customs purposes as to the scope of the product coverage. We do not view providing additional HTS sub-headings as broadening the scope of this investigation.

Comment 4: Nitta International and V.B. Splawn & Son, importers, believe it is inappropriate to include nylon core flat belts imported from Japan in the scope of this investigation. They request that these nylon-core belts be excluded from this investigation.

DOC Position: The information received was insufficient to determine whether the merchandise is properly excluded from the scope of this investigation. In addition, the information received from these firms arrived too late to be analyzed and verified for this final determination. If the final determination of the ITC results in an antidumping duty order on this merchandise, and upon receipt of proper documentation, the Department may conduct a scope ruling procedure concerning the products imported by these firms.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of industrial belts from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of the preliminary determination in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Japan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The average of the highest margin for each of the product types listed in the petition for the period of investigation is as follows:

Manufacturer/producer/exporter	Margin percentage
Bando	93.16
All others	93.16

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on industrial belts from Japan entered, or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

April 11, 1989.

[FR Doc. 89-9254 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-801]

Final Determination of Sales at Less Than Fair Value: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from the Republic of Korea

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

ACTION: Notice.

SUMMARY: We determine that industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value. We also determine that critical circumstances exist with respect to imports of industrial belts from the Republic of Korea.

We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of industrial belts from the Republic of Korea as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Loc Nguyen, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769 or (202) 377-3530.

SUPPLEMENTAL INFORMATION:

Final Determination

We determine that industrial belts from the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C 1673d(a)) (the Act). The estimated margins are shown in the "Continuation of Suspension of

Liquidation" section of this notice. We also determine that critical circumstances exist with respect to industrial belts from the Republic of Korea.

Case History

On January 26, 1989, we made an affirmative preliminary determination (54 FR 5116, February 1, 1989). On March 13, 1989, Dunlop Belting Products, Ltd. submitted some pricing data concerning their imports of industrial belts from Dongil Rubber Belting Co. (Dongil).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-headings. The HTS sub-headings are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are industrial belts from the Republic of Korea currently provided for under Tariff Schedules of the United States Annotated (TSUSA) item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510 and 773.3520; and currently classifiable under Harmonized Tariff Schedule (HTS) sub-headings 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Period of Investigation

The period of investigation is January 1, 1988, through June 30, 1988.

Fair Value Comparisons

To determine whether sales of industrial belts from the Republic of Korea to the United States were made at less than fair value, we compared the United States price to the foreign market value. For our preliminary determination we used best information available as required by section 776(c) of the Act. As best information available, we took the highest margin contained in the petition for each of the product types for the period of investigation and calculated a simple average of those figures to determine a margin for the products under investigation. Since the respondents, Dongil, failed to participate in the investigation, we are using the same methodology for calculating a margin for the final determination.

United States Price

United States price was based on the U.S. price information provided in the petition pursuant to section 772 of the Act.

Foreign Market Value

Foreign market value was based on home market prices provided in the petition pursuant to section 773 of the Act.

Critical Circumstances

On June 30, 1988, petitioner alleged that critical circumstances exist with respect to imports of the subject merchandise from the Republic of Korea. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; 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 merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Since the respondent, Dongil, failed to participate in the investigation, we are determining that critical circumstances for this respondent exist based on best information available. As best information available, we are assuming that imports of industrial belts have been massive over a relatively short period of time. In determining knowledge of dumping, the Department normally considers margins of 25% or more, sufficient to impute knowledge of dumping under section 735(a)(3)(A) (*see, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987)). Therefore, in accordance with sections 735(a)(3)(A)(ii) and 735(a)(3)(B), we determine that critical circumstances exist with respect to Dongil.

With respect to firms covered by the "All Other" rate, we have determined that imports of industrial belts have not been massive over a relatively short period of time and, therefore, that critical circumstances do not exist.

Since we do not find that there have been massive imports of industrial belts from other firms included in the "All Other" rate, we do not need to consider whether there is a history of dumping or whether importers of these products knew or should have known that the merchandise was being sold at less than fair value.

Interested Party Comments

Comment 1: Petitioner argues that, based on U.S. import statistics, IM 146 data, the Department should find that there have been massive imports of industrial belts over a relatively short period of time. Petitioner further asserts that an antidumping margin of 25% or more is sufficient to impute knowledge to the importer that the exporter was selling the merchandise at less than fair value.

Doc Postion: Since the respondent, Dongil, failed to participate in the investigation, as best information available, we are assuming that its imports of industrial belts from the Republic of Korea have been massive over a relatively short period of time. Furthermore, we find that the best information available margin of 64.37% is sufficient to impute knowledge to the importer that the exporter was selling the merchandise at less than fair value.

With regard to firms covered by the "All Other" rate, see the "Critical circumstances" section of this determionation.

Comment 2: Petitioner argues that the Department's final determination should

be based on the highest less-than-fair-value margin alleged in the petition.

DOC Postion: The Department is applying the same methodology used in the preliminary determination to calculate the margins for the final determination. As best information available, we are taking the highest margin contained in the petition for each of the product types the period of investigation and then calculating a simple average of those figures to determine the margin for the products under investigation.

Comment 3: Petitioner asserts that in its scope of investigation at the preliminary determination, the Department listed only four HTS sub-headings. Petitioner requests that the Department list eighteen HTS sub-headings in its final determination.

DOC Position: We agree. The petition included nine TSUSA item numbers and four HTS sub-headings that petitioner believed would correspond to the TSUSA numbers when the HTS system became effective.

The Harmonized Tariff Schedule went into effect on January 1, 1989. Based on a concordance between TSUSA item numbers and HTS sub-headings listed in a January 1989 USITC publication, *The Continuity of Import and Export Trade Statistics After Implementation of the Harmonized Commodity Description and Coding System,* petitioner requested that the Department expand the four HTS sub-headings listed in our preliminary determination to eighteen sub-headings.

We asked for comments from the interested parties in this investigation concerning industrial belts covered by the eighteen HTS sub-headings.

In our preliminary determinations, as now, we note that the written description of the products covered by the investigation is dispositive. The HTS numbers are provided for convenience and customs purposes as to the scope of the product coverage. We do not view providing additional HTS sub-headings as broadening the scope of this investigation.

Comment 4: On March 13, 1989, Dunlop Belting Products, Ltd. submitted pricing data concerning its imports of industrial belts from Dongil. Dunlop requests the Department to weight average the data relied on in the petition as best available information in calculating the fair value comparisons.

DOC Position: We have continued to take a simple average of the margins contained in the petition. It would not be appropriate, in our view, to use data submitted by Dunlop because it was not verified and we have no way of knowing whether it represents the totality of imports from Dongil. See our position to comment 2 concerning our methodology for making margin calculations in this determination.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of industrial belts from the Republic of Korea, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of the preliminary determination in the **Federal Register.** The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from the Reupblic of Korea exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The average of the highest margin for each of the product types listed in the petition for the period of investigation is as follows:

Manufacturer/producer/exporter	Margin percentage
Dongil	64.37
All others	64.37

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on industrial belts from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Timothy N. Bergan,
Acting Assistant Secretary
April 11, 1989.

[FR Doc. 89-9255 Filed 4-17-89; 8:45 am]
BILLING CODE 3510-DS-M

[A-559-802]

Final Determination of Sales at Less Than Fair Value: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Singapore

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

ACTION: Notice.

SUMMARY: We determine that industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from Singapore are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed The U.S. Customs Service to continue to suspend liquidation of all entries of industrial belts from Singapore as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry. We also determine that critical circumstances do not exist with respect to imports of industrial belts from Singapore.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen or Karmi Leiman, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3530 (Nguyen) or (202) 377-8371 (Leiman).

SUPPLEMENTAL INFORMATION:

Final Determination

We determine that industrial belts from Singapore are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act).

The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On January 26, 1989, we made an affirmative preliminary determination (54 FR 5110, February 1, 1989). The following events have occurred since the publication of that notice.

The questionnaire responses from Mitsuboshi Belting (Singapore) Pte. Ltd. (MBS), and its subsidiaries, Mitsuboshi Belting Ltd. of the United States (MBL USA) and Mitsuboshi Belting Ltd. of Canada (MBL Canada), were verified in Singapore from February 22–24, 1989, in Calgary, Canada from February 13–15, and in Lombard, Illinois from February 16–17, 1989.

On March 24, 1989, the Department held a public hearing. Interested parties also submitted comments for the record in their pre-hearing briefs of March 17, 1989, and in their post-hearing briefs of March 31, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS subheadings. The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, provided for under *Tariff Schedules of the United States Annotated* (TSUSA) item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520 and currently classifiable under HTS subheadings 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Period of Investigation

The period of investigation (POI) is January 1, 1988, through June 30, 1988.

Such or Similar Comparisons

For MBS, pursuant to section 771(16)(C) of the Act, we established one category of "such or similar" merchandise: V-belts.

Fair Value Comparisons

To determine whether sales of industrial belts from Singapore to the United States were made at less than fair value, we compared the United States price to the foreign market value, pursuant to sections 772 and 773 of the Act, respectively.

United States Price

For those sales by MBS that were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate indicator of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;
2. This was the customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent located in the United States acted only as the processor of sales-related documentation and a communication link with the unrelated U.S. buyers.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions or the functions themselves.

In instances where merchandise is ordinarily diverted into the related U.S. selling agent's inventory, we regard this factor as an important distinction because it is associated with a materially different type of selling activity than the mere facilitation of a transaction such as occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party places the merchandise into inventory, additional storage and financial carrying costs are commonly incurred. We use the inventory test because it can be readily understood and applied by respondents who must respond to Department questionnaires in a short period of time.

We calculated purchase price based on the packed, c.i.f., duty paid prices to unrelated purchasers in the United States. We made deductions from the purchase price, where appropriate, for foreign inland freight, U.S. and foreign brokerage and handling charges, ocean freight, marine insurance, U.S. duty, and U.S. inland freight, pursuant to section 772(d)(2)(A) of the Act.

For those sales placed into inventory, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act, since the first sale to an unrelated customer was made after importation. We calculated ESP based on packed, ex-warehouse or delivered, duty-paid prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, U.S. and foreign brokerage and handling charges, ocean freight, marine insurance, U.S. duty, U.S. inland freight, discounts, rebates, repacking, commissions, credit expenses, and other indirect selling expenses.

Foreign Market Value

We verified that home market sales of MBS are less than five percent of its third country sales and have, therefore, selected Canada as the appropriate third country, in accordance with § 353.5(c) of our regulations.

Because MBS is a subsidiary of Mitsuboshi Belting Ltd. of Japan, a producer of such or similar belts, petitioner requested that we invoke the rule under section 773(d) of the Act for calculating foreign market value for certain multinational corporations. The multinational provision allows foreign market value to be determined by reference to the foreign market value of "such or similar merchandise" sold by a related party in a country other than the country of exportation. Use of the provision requires the Department to determine that the following three conditions are met:

(1) The production facilities in the country of exportation are owned or controlled by a corporation which also

owns or controls facilities for the production of such or similar merchandise located in another country or countries;

(2) Sales of such or similar merchandise in the country of exportation are nonexistent or inadequate as a basis of comparison with sales of the merchandise to the United States;

(3) The foreign market value of such or similar merchandise produced in one or more facilities outside the country of exportation is higher than the foreign market value of such or similar merchandise produced in facilities in the country of exportation.

The first two conditions of section 773(d) are met. However, petitioner's allegation with respect to section 773(d)(3) is deficient. Where Japan-Canada price comparisons involved identical merchandise, export prices to Canada were found to be significantly higher than Japanese home market prices. Where price comparisons involved non-identical merchandise, it was not apparent to the Department from information submitted by the petitioner that the price comparisons were based on "similar" merchandise. For these reasons, we did not initiate the multinational provision.

As stated above, it was determined that Singapore's home market was not viable for comparison purposes. Therefore, in accordance with section 773(a) of the Act, we calculated foreign market value based on delivered, packed, third country (Canada) prices to unrelated purchasers. We made deductions, where appropriate, for Singapore and Canadian inland freight, Singapore and Canadian brokerage and handling charges, ocean freight, marine insurance, Canadian duty, discounts and rebates.

For foreign market value compared with U.S. purchase price we made adjustments under § 325.15 of our regulations for differences in circumstances of sale for commissions and credit expenses in the U.S. and Canadian markets.

For foreign market value compared with ESP, we deducted credit expenses and commissions, in accordance with § 353.15(c). We also deducted indirect selling expenses incurred on third country sales up to the amount of indirect selling expenses incurred on sales in the U.S. market, in accordance with § 353.15(c) of our regulations.

In order to adjust for differences in packing between the two markets, we deducted canadian packing costs from foreign market value and added U.S. packing costs.

Currency Conversion

For comparisons involving purchase price transactions, we used the official exchange rates in effect on the dates of sale, in accordance with § 353.56(a)(1) of our regulations. For comparisons involving ESP transactions, we used the official exchange rates in effect on the dates of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank of New York.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from Singapore. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, 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 merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Because the Department's import data pertaining to the subject merchandise are based on TSUSA basket categories, for purposes of the final determination, we used specific data on shipments of the subject merchandise as the most appropriate basis for our determination of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring companies from increasing imports massively prior to the suspension of liquidation. We asked MBS to supply monthly volume shipment data from November 1987 to January 1989 in order for the Department to base the critical circumstances determination on company-specific data. We verified the information submitted by MBS.

Based on our analysis of respondent's shipment data, we do not find that there have been massive imports of industrial belts from Singapore. Consequently, the requirements of section 735(a)(3)(B) have not been met and critical circumstances do not exist with respect to imports of industrial belts from Singapore.

Verification

We verified the information used in making our final determination in this investigation in accordance with section 776(b) of the Act. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by the respondents.

Interested Party Comments

Comment 1: Petitioner asserts that the Department discovered a significant number of discrepancies with the respondent's third-country data or problems with the methodologies employed. Therefore, the Department should not utilize respondent's submission, but use best information available.

Respondent argues that there is no basis for disallowing corrections to data made during verification. Respondents are required to prepare and submit voluminous data in a very short period of time, so the existence of clerical mistakes in the response can be expected. Respondent argues that petitioner's position, that no corrections should be allowed at or subsequent to verification, would prevent the Department from making a fair value determination based on accurate information.

DOC Position: We agree with respondent. A careful review of past antidumping cases, *Antifriction Bearings from the FRG* (which has been published in the **Federal Register**), *Light-Walled Welded Rectangular Carbon Steel Tubing from Argentina* (54 FR 13913, April 6, 1989), *Certain Granite Products from Italy* (53 FR 27187, July 19, 1988), and *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987) reveals that the facts involved in this case more closely resemble situations where the Department used responses rather than rejecting them due to verification corrections and new submissions. The minor revisions found at verification did not substantially exceed the methodological problems and mathematical errors commonly found during other investigations in which the Department used the response for purposes of the final determination. Furthermore, in both *Antifriction Bearings from the FRG* and *Tapered Roller Bearings and Parts Thereof,*

Finished or Unfinsihed, from Italy, certain information contained in the response could not be supported at verification. This is not the situation in this case. All data has been satisfactorily verified using standard verification practices and techniques.

Comment 2: Petitioner alleges that based on the company-specific data submitted by MBS, critical circumstances clearly exist with respect to imports of the subject merchandise from Singapore. Petitioner further argues that it has obtained additional evidence that MBL is increasing its U.S. inventory levels of industrial belts. Hence, for purposes of the final determination, the Department should render an affirmative critical circumstances finding.

Respondent argues that, contrary to petitioner's assertions, the facts of this case do not support an affirmative determination regarding critical circumstances. Respondent argues that the Department should compare the six month periods before and after the petition was filed rather than applying the three-month periods advocated by petitioner in this case.

DOC Response: In examining whether critical circumstances exist, it has been the Department's policy in recent cases to apply the principle of capturing shipment data up to the point of the preliminary determination. In this case, the preliminary determination was made in February 1989; therefore, we have compared the period between November 1987-June 1988 with the period between July 1988-January 1989. See section on *Critical Circumstances.*

Comment 3. Petitioner argues that the Department should have calculated foreign market value using the special rule for multinational corporations, 19 U.S.C. 1677b(d). Petitioner asserts that contrary to the Department's finding in the preliminary determination, it has provided sufficient price information to establish that the foreign market value of MBS Singapore's belts sold in Canada is lower than the foreign market value of "such and similar" merchandise produced and sold by MBL Japan in Japan, as required by 19 U.S.C. 1677b(d)(3). Specifically, petitioner argues that the Japan-Canada price comparison was based on "similar" merchandise. Petitioner states it has shown that the LA and LB belts sold by MBL in Japan are "such or similar" to the fractional horse power (FHP) belts (3L, 4L, and 5L) exported by MBS Singapore to the United States and Canada. Petitioner further argues that, in the case of industrial belts from Taiwan, the Department preliminarily determined that SM, SA, and SB belts manufactured by Hsing Kwo in Taiwan were "similar" merchandise to FHP belts (3L, 4L, and 5L) exported by Hsing Kwo to the U.S. The Department, therefore, should render a consistent decision in this investigation by concluding MBS's 4L, 5L FHP sold in the U.S. and Canada are "similar" to the LA and LB series sold by MBL in Japan. In rendering this decision, the Department must conclude that petitioner has satisfied the requirements of 19 U.S.C. 1677b(d)(3) by establishing that MBL's prices for belts sold in Japan were significantly higher than the prices for similar belts sold by MBS in Canada.

Respondents argue that 3L, 4L, and 5L belts are not "similar" to the LA and LB series. Bando's SA and SB series are similar to MBL's LA and LB series belts, and in fact compete in the same end-user market in Japan, *i.e.,* agricultural equipment. Furthermore, petitioner stated in the related investigation of industrial belts from Japan that SA and SB belts produced in Japan by Bando were not similar to the 3L, 4L and 5L series, and, therefore, the petitioner should be bound by its allegations.

DOC Position: The petitioner has not satified the requirements of 19 U.S.C. 1677b(d)(3). In the petition a concordance compares the models of FHP belts sold in the U.S. by MBL and Bando with those sold by the same companies in Japan. While, the petition indicates that the 4L and 5L series belts sold by MBS in the U.S. and Canda are in concordance with the SA and SB belts of Bando and the LA and LB belts of MBL sold in Japan, the Department made a preliminary determination that the Japan-Canada price comparison was not based on "similar" merchandise. Petitioner has failed to provide any new information showing the LA/LB series to be similar to the 4L/5L series of belts. Specifically, petitioner has failed to explain its inconsistent allegation in the investigation of Japanese industrial belts, that SA/SB belts are not similar to 4L/5L belts. In addition, petitioner has failed to refute the claim made by respondent that SA/SB are dissimilar to 4L/5L belts. Therefore, the issue of whether LA/LB and 4L/5L are similar remains unresolved. It is the petitioner's obligation to provide the Department with a reasonable basis to believe that the foreign market value of such or similar merchandise sold by MBL in Japan are higher than the foreign market value of similar merchandise sold by MBS in Canada. The fact that in the case of industrial belts from Taiwan, the Department made differences in merchandise adjustments between SM, SA, and SB belts manufactured by Hsing Kwo in Taiwan and FHP belts (3L, 4L, and 5L) exported by Hsing Kwo to the U.S. is irrelevant. Petitioner has not supplied information establishing the comparability of industrial belts between different producers in different countries.

Comment 4: Petitioner argues that 19 U.S.C. 1677b(d) and the legislative history do not require the petitioner to produce information pertaining to differences between the cost of merchandise sold in the country of exportation and the merchandise sold outside the country of exportation. Petitioner states that such adjustments are discretionary and that, in fact, it has never alleged that any adjustments should be made. Accordingly, the lack of information with respect to price adjustments for differences in merchandise or cost of production data does not provide a sufficient basis for the Department to refrain from invoking the special statutory rule for multinational corporations. Petitioner argues that if the Department believes that such adjustments are necessary, publicly available information can be utilized.

DOC Position: Within the context of this proceeding, section 773(d)(3) requires that the foreign market value of such or similar merchandise produced by Mitsuboshi in Japan be higher than the foreign market value of such or similar merchandise produced in Singapore (and exported to Canada). This requirement is more than just a simple price comparison. A difference between Japanese home market prices and export prices to Canada does not imply a difference between the respective foreign market values. If the price differential is wholly attributable to differences in merchandise, the foreign market values will be equal. Similarly, equal prices do not imply equal foreign market values. Therefore, a comparison of prices unadjusted for differences in merchandise does not constitute sufficient support for an allegation made with respect to 773(d)(3).

Comment 5: Petitioner argues that the Department should not make any adjustments to third country prices with regard to transportation charges, because the reported per unit movement charges are average costs based on the incorrect allocation of expenses incurred in a prior period. Petitioner argues that in order for the agency to accept the reasonableness of respondent's methodology, respondent should be required to demonstrate: (1) that once merchandise is sold (*i.e.,* withdrawn from the U.S. subsidiary's inventory), the subsidiary has no means

for tracking that particular merchandise back to the point at which it was received into inventory; and (2) that documentary evidence exists which shows that expenses of the prior period advocated by the respondent are the expenses that are directly related to the sales under consideration.

Respondent argues that what petitioner calls the use of "historical data" is not "historical" at all. Respondent argues that in any investigation of sales of fungible merchandise from an importer's inventory, the use of costs incurred outside the POI is necessary. Since the importer, by definition, does not manufacture the merchandise but imports it from a foreign country, in order to have the merchandise on hand for sales from inventory, the importer must have laid the merchandise into inventory at a date which preceded the date of sale. In determining what costs to use for expenses prior to the sale, the question is, therefore, at what period was the merchandise which was sold put into inventory. The best method for determining this period is the use of financial accounting records. An examination of MBL Canada's and MBL USA's financial records, performed by the Department at verification, reveals that the average turnover period for merchandise put in inventory in both countries is as stated by the companies. This methodology has been used consistently on both sides of the calculations for out-of-inventory sales in both markets. Respondent argues that the use of data from the period of investigation for the calculation of movement expenses from Singapore to the warehouse would not provide data on the belts sold from inventory on dates during that period. The transit time alone from Singapore to warehouse is at least a month and may be as much as six weeks. The belts must then be added to inventory, where they are treated as being completely fungible with other belts of the same description. Such fungible merchandise is completely different from television sets, large machinery, or automobiles which have serial numbers and may be sold and inventoried on that basis. For merchandise such as belts, there is simply no alternative but the first-in-first-out method used here. The Department has accepted this methodology before and accepted it in the preliminary determination in this case and verified it. At this point in the investigation, the Department has given respondents no indication that this methodology is incorrect.

DOC Position: We agree with respondent. Respondent has not used "historical" expenses related to past sales as a proxy for expenses related to sales during the POI, as is done when estimating warranty expenses. Instead, respondent has reasonably estimated the expenses incurred on belts sold during the POI. Therefore, we are accepting respondent's claimed expense for our final determination.

Comment 7: Petitioner argues that any claim for a downward adjustment to foreign market value for freight-out expenses (freight from MBL Canada's warehouse to the ultimate end-user) should be rejected because the allocation is based on total inland freight expenses, *i.e.*, expenses which are attributable to merchandise outside the scope of the investigation as well as to the sales under consideration. Petitioner asserts that such expenses cannot be tied directly to the merchandise subject to investigation and, therefore, there is no way to ensure that the reported per pound freight expenses are accurately reflective of the actual freight-out expenses on the subject merchandise.

DOC Position: We disagree. In most cases, when companies manufacture and/or sell more than one product, shipments are usually a mix of many products. It is almost impossible for these companies to segregate freight expenses of one product from freight expenses of another product in the same shipment. Thus, their accounting records only reflect total freight expenses. We verified that this is true for MBS Singapore, MBL USA, and MBL Canada. It is our policy to allow allocations based on total expenses over total sales in these cases.

Furthermore, if we disallow the adjustment for the Canadian market, we would also have to disallow the adjustment for the U.S. market, because the accounting records are kept exactly the same way in both countries and the calculation methodology used for U.S. sales is the same as that used for Canadian sales. Petitioner has not argued that the adjustment in the U.S. should be disallowed.

Comment 8: Petitioner argues that no deduction from foreign market value for cash discounts should be permitted, because verification shows that in several instances MBS incorrectly reported that the customer took early payment discounts even when the customer did not do so.

DOC Position: We checked all sales made to one customer and found that respondent correctly reported the discount given. We also checked twelve other sales at random and found that the actual discounts on nine sales were reported correctly. The discounts on two sales were quite a bit higher than was reported in the response, and there was one sale on which no discount was taken, although respondent reported giving a two percent discount. Because the misreported discounts were relatively few in number and involved errors in both directions, we are accepting respondent's claim for discounts.

Comment 9: Petitioner states that the revised short-term borrowing rate submitted by MBL Canada at verification constitutes "new information" and should be utilized, if at all, only as "best information otherwise available." Moreover, the revised figure itself is based on data derived from the period May 1987 to June 1988 and not during the period of investigation. *International Financial Statistics* show that lending rates in Canada during the POI were, on average, 10.09%. In the absence of period specific data, the Department should utilize the IMF data for its final determination.

DOC Response: We disagree. We verified that the revised short-term borrowing rate submitted is the actual rate paid by MBL Canada. The revised rate submitted was only slightly different from the estimated rate provided in the response.

Comment 10: Petitioner argues that the Department should disallow indirect selling expenses and inventory carrying costs for Canadian sales because MNBL Canada used expenses related to an earlier period to calculate these expenses for the POI and because MBL provided revised data, which is "new information," at verification.

Respondent argues that data concerning MBL Canada's indirect selling expenses were provided to the Department and to petitioner's counsel under Administrative Protective Order on January 4, 1989, well in advance of verification. Under these facts, petitioner is completely wrong in asserting that the information on MBL Canada's indirect selling expenses submitted at verification amounts to new information. On the contrary, the problems were called to the Department's attention and the corrected information was presented at the time most appropriate for its consideration.

DOC Response: We agree with respondent. We verified that the revised information submitted at vertification was correct.

Comment 11: Petitioner alleges that MBS did not provide movement charges

related to U.S. sales on a transaction-specific basis. MBS incorrectly calculated these expenses based on aggregate expenses. Furthermore, MBS made incorrect assertions with respect to ocean freight and marine insurance. Moreover, certain charges were reported in the wrong currencies, a fact which undermines the overall credibility of MBS's responses.

DOC Position: We disagree. We have verified all information regarding movement charges used in this determination. See also DOC response to Comment 7.

Comment 12: Petitioner claims that MBS reported per unit duty expenses on U.S. and Canadian sales using an incorrect methodology. As best information available, the DOC should apply the *ad valorem* duty rate listed in the TSUSA schedules to the imputed entered customs value, which would be the gross price less any U.S. movement charges.

DOC Position: In the original responses, both MBL USA and MBL Canada calculated duty expenses based on weight. At vertification, we checked customs entry forms and requested that the two companies recalculate their duty expenses based on entry value for each product. They have done so and provided us with costoms documents upon which these calculations were based. We have used these recalculated expenses for our final determination.

Comment 13: Petitioner argues that MBS did not report per unit packing expenses on transaction-specific charges and that respondent incorrectly aggregated the packing expenses and derived a POI average. Petitioner argues that the Department should apply the highest shipment-specific unit charge to all U.S. purchase price sales.

DOC Position: We disagree. We verified that MBS accurately reported Canadian and U.S. packing costs.

Comment 14: Petitioner asserts that, for purposes of the final determination, the Department should apply the discount discovered at verification to the appropriate ESP transactions.

DOC Position: We have done so.

Comment 15: Petitioner claims that the Department should apply the cash discount given to several ESP customers which was discovered during verification to all U.S. purchase price sales as well, since it is unclear from the verification report whether such expenses are exclusively related to ESP transactions.

DOC Position: We disagree. We found no indication at verification in Singapore that the cash discount given by MBL USA to its customers was given by MBS to its direct sale customers.

Comment 16: Petitioner argues that since the information given for commissions paid to the commision agent on direct sales made through MBL USA is not verified, the Department should use as best information available the highest rate reported in MBS's response.

DOC Response: We disagree. The statute does not require that we verify all information provided. Since we verified that the commissions paid by MBS on Canadian purchase price sales were accurate, there is no reason for us to believe that the reported commissions paid by MBS on U.S. purchase price sales are incorrect.

Comment 17: Petitioner asserts that the transportation expenses from MBS to MBL USA are not an accurate reflection of the actual expenses incurred on a transaction-specific basis, because they are based on the derivation of an average costs which have no direct relationship to the sales under consideration. Furthermore, MBS used an aggregate figure which included expenses for automotive as well as industrial belts.

DOC Position: We disagree. See DOC Position on Comment 7.

Comment 18: Petitioner argues that all packing expenses on U.S. EPS sales prices should be recalculated on the basis of financial statement figures. Furthermore, petitioner argues that since the verification team did not verify MBS's claim that only a certain percentage of its warehouse workers' time is spent packing the subject merchandise, the entire portion of those workers' wages and benefits should be included in the U.S. packing expenses claim.

DOC Position: The packing expenses on U.S. ESP sales have been recalculated on the basis of the financial statement.

We disagree with petitioner's argument that, because we did not verify the percentage of time the warehouse workers spent on packing, we should include the entire portion of those workers' wages and benefits in the U.S. packing claim. Respondent used the exact same percentage to calculate Canadian packing expenses. At verification in Canada, we visited the warehouse and checked the duty summary to show the variety of tasks performed by warehouse personnel and determined that forty percent was a reasonable estimate of the time spent by warehouse labor on packing. Because the same tasks are performed by warehouse personnel in the U.S., the forty percent is also a reasonable estimate for the U.S. market.

Comment 19: Petitioner asserts that during verification MBS provided no source documentation demonstrating that the pre-sale technical service expenses were included in the reported U.S. indirect selling expenses. Because the Department cannot ensure that such expenses have, in fact, been reported, it should increase foreign market value by the amount of U.S. technical service expenses but make no deduction for any technical expenses incurred in the home market.

DOC Position: We disagree. The travel expenses related to pre-sale technical service expenses are included in the travel and promotions expense reported in the response. At verification, we found no other technical service travel expenses in MBL USA's records.

Comment 20: Petitioner claims that, even though respondent reported that during the period of investigation no warranty expenses were incurred, there is frequently a substantial lag time between the sale of a product and any warranty claims made by the customer. Petitioner claims that MBS should have submitted warranty expenses related to sales of the products in each of the five years preceding the period of investigation. Since MBS did not do so, the Departemnt should use, as best information available, the highest warranty claim reported by respondents in the other antidumping duty investigations involving industrial belts.

DOC Position: MBS failed to report historical warranty expenses incurred on merchandise sold to either market. The Department, therefore, utilized the best information available. The Department, therefore, utilized the best information available. In considering the information available to us, we noted that MBL Canada has an express warranty of freedom from defects in material and workmanship, but incurred no warranty expenses during the POI. MBL USA also has an express warranty that the Three Star brand belts conform to or exceed the RMA standards, but did not incur any warranty expenses during the POI. Furthermore, MBS sells identical merchandise in the Canadian and U.S. markets. Therefore, we have assumed that warranty expenses were basically the same for both markets, and we did not make an adjustment for warranty expenses to either foreign market value or United States price.

Comment 22: Petitioner argues that in *Consumer Products Division, SCM Corp.* v. *Silver Reed America*, 753 F.2d 1033 9 Fed. Cir. 1985), the Federal Circuit approved the ESP offset on the basis of agency discretion. The court affirmed that primarily and in general deductions

should be limited to direct selling expenses. The ESP offset, fundamentally, is an exception. Thus, it is clear that when the amount of the offset exceeds the amount deducted from U.S. price, the general rule identified by the Court (*i.e.*, that adjustments be limited to directly related expenses) is thwarted. Given that exporter's sales price is a unit price, it is clear that the offset also should be on a per unit basis. MBL's theory of aggregate expenses would undermine that purpose of the offset and run afoul of the general rule limiting deductions to directly related expenses.

Petitioner further argues that the Department has consistently applied the ESP offset cap on a sale-by-sale basis and that respondent has failed to provide a sufficient justification for the proposed radical departure from the Department's well-established policy. In addition, a cap based on per unit expenses alleviates the administrative burden of closely scrutinizing alleged indirect selling expenses. Petitioner further argues that the respondent has misconstrued the Department's regulation and agency practice with respect to the commisison offset. Petitioner claims that the commission offset is also applied on a per unit basis.

Respondent claims that the Department should apply the ESP cap on the aggregate amount of indirect selling expenses in the United States and Canada and not on a sale-by-sale, product-by-product basis, because the Department's regulation provides that the offset be made "for all actual selling expenses in the home market up to the amount of selling expenses incurred in the United States market." Respondent claims that the Department's determinations in *Color Television Receivers from Korea*, 49 FR 7628, and *Television Receiving Sets, Monochrome and Color, from Japan*, 46 FR 30163 (June 5, 1981) show that on occasion the Department has applied the ESP offset cap on an aggregate basis. Respondent argues that the ESP offset cap should be treated in the same manner as the commission offset.

DOC Position: We agree with petitioner that it has been the Department's policy to calculate the ESP offset on a per unit basis. As we said in *Certain Internal Combustion, Industrial Forklift Trucks from Japan*, 53 FR 12552:

Capping on an aggregate basis would not reflect the individual circumstances of each sale, and may lead to adjustments distarted by the comparative size of each market. Thus, we continue to use our standard policy of capping home market indirect selling expenses on a sale-by-sale basis, as described in the Department's 1985 Adjustment Study.

Comment 23: Respondent argues that the manner in which the Department applied the ESP cap in the preliminary determination amounts to double ESP capping.

Petitioner argues that, contrary to the respondent's assertion, the Department has not utilized a two-step ESP cap procedure in this proceeding. Instead, consistent with agency practice, the Department capped the third country market indirect selling expenses on a sale-by-sale basis.

DOC Position: In the preliminary determination, we used our standard procedure and capped the third country market indirect selling expenses on a sale-by-sale basis. This did not amount to double ESP capping.

Comment 24: Petitioner asserts that in its scope of investigation at the preliminary determination, the Department listed only four HTS subheadings. Petitioner requests that the Department list eighteen HTS subheadings in its final determination.

DOC Position: We agree. The petition included nine TSUSA item numbers and four HTS subheadings that petitioner believed would correspond to the TSUSA numbers when the HTS system became effective.

The HTS went into effect on January 1, 1989. Based on a concordance between TSUSA item numbers and HTS subheadings listed in a January 1989 USITC publication, *"The Continuity of Import and Export Trade Statistics After Implementation of the Harmonized Commodity Description and Coding System,"* petitioner requested that the Department expand the four HTS subheadings listed in our preliminary to 18 subheadings. We asked for comments from the interested parties in this investigation concerning industrial belts covered by the 18 HTS subheadings.

In our preliminary determination as now, we note that the written description of the products covered by the investigation is dispositive. The HTS numbers are provided for convenience and customs purposes as to the scope of the product coverage. We do not view providing additional HTS subheadings as broadening the scope of this investigation.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of industrial belts from Singapore, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption, on or after January 26, 1989, the date of publication of the preliminary determination in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Mitsuboshi Belting (Singapore) Pte. Ltd.	31.73
All others	31.73

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on industrial belts from Singapore entered, or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

April 11, 1989.

[FR Doc. 89-9256 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-804]

Final Determination of Sales at Less Than Fair Value: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Taiwan

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

ACTION: Notice.

SUMMARY: We determine that industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from Taiwan are being, or are likely to be, sold in the United States (U.S.) at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of industrial belts from Taiwan as described in the "Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the date of publication of this notice, whether these imports are materially injuring, or threaten material injury to, a U.S. industry. We also determine that critical circumstances do not exist with respect to imports of industrial belts from Taiwan.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Joel Fischl, Office of Antidumping Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2613 or (202) 377-3003.

SUPPLEMENTAL INFORMATION:

Final Determination

We determine that industrial belts from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our preliminary determination (54 FR 5112, February 1, 1989), the following events have occurred. A public hearing was held on March 28, 1989. Petitioner filed a pre-hearing brief on March 22, 1989, and a post-hearing brief on March 31, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), and all merchandise entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The Department is providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the products covered by this investigation.

The products covered by this investigation are industrial belts from Taiwan, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520 and currently classifiable under HTS item numbers 5910.00.10, 5910.00.90, 4010.10.10, 4010.10.50, 3926.90.55, 4010.91.11, 4010.99.11, 3926.90.56, 3926.90.59, 4010.91.19, 4010.99.19, 3926.90.57, 4010.91.15, 4010.99.15, 7326.20.00, 3926.90.60, 4010.91.50 and 4010.99.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Period of Investigation

The period of investigation is January 1, 1988 through June 30, 1988.

Our investigation was limited to Hsing Kwo Rubber Mfg. Co., Ltd. (Hsing Kwo), the producer responsible for the bulk of Taiwanese exports of this product to the United States.

Such or Similar Comparisons

For Hsing Kwo, pursuant to section 771(16)(C) of the Act, we established one category of "such or similar" merchandise: V-belts.

Fair Value Comparisons

To determine whether sales of industrial belts from Taiwan to the U.S. were made at less than fair value, we compared the United States price to the foreign market value, pursuant to sections 772 and 773 of the Act, respectively.

United States Price

In our preliminary determination we calculated United States price using exporter's sales price methodology. However, as a result of information gathered at verification, we determined that purchase price would be the appropriate method. Virtually all of Hsing Kwo's sales are made through a related sales agent in the U.S. prior to importation. The related sales agent, Hsing Kwo USA (HKUSA), receives orders and transmits them to Taiwan. The manufacturer in Taiwan then packs the merchandise for each order in cartons stamped with shipping marks identifying the ultimate customer. The cartons are then packed into international shipping containers (along with cartons of V-belts destined for other customers as well as cartons of merchandise not covered by this investigation) which are shipped to HKUSA. HKUSA unpacks the containers and forwards the individual cartons on to the ultimate purchasers.

For these sales, the Department has determined that purchase price is the appropriate basis for U.S. price based on the following elements:

1. The merchandise in question was not introduced into the inventory of a related selling agent;

2. This was the customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent located in the U.S. acted as a processor of sales-related documentation, as a communication link with the unrelated U.S. buyer, and as a freight forwarder.

Given this, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the U.S., where the sales agent performs them. Whether these functions take place in the U.S. or abroad does not change the substance of the transactions or the functions themselves.

Because the balance of Hsing Kwo's sales (exporter's sales price transactions) was minimal, we have disregarded them for purposes of this determination.

We calculated purchase price based on packed, f.o.b. seller's warehouse

prices to unrelated purchasers in the U.S. We made deductions, where appropriate, for a harbor construction tax, inland freight and brokerage in Taiwan, ocean freight, marine insurance, and merchandise processing fees, harbor maintenance fees, customs duty, customs brokerage, and inland freight in the U.S. An addition was made, pursuant to section 772(d)(1)(B) of the Act, for import duties imposed by the country of exportation which have been rebated, or which have not been collected by reason of the exportation of the merchandise to the United States. We also added the amount of value added taxes which would have been collected if the merchandise had not been exported.

Minor revisions were made to certain charges. Based on verified information, brokerage, inland freight (for both Taiwan and the U.S.), and ocean freight were recalculated on a per inch basis, rather than value. All other charges, which had been allocated based on U.S. sales value were reallocated according to the basis on which they were incurred (*e.g.*, c.i.f. Los Angeles, f.o.b. Taiwan port).

Foreign Market Value

We determined there were sufficient sales in the home market to serve as the basis for calculating foreign market value. In accordance with section 773 of the Act, we calculated foreign market value based on packed, f.o.b. seller's warehouse or delivered prices to unrelated purchasers in Taiwan. We made deductions, where appropriate, for inland freight.

We made adjustments, where applicable, for differences in the physical characteristics of the merchandise in accordance with § 353.16 of the regulations.

We made adjustments under § 353.15(a) of the Commerce Regulations for differences in circumstances of sale for credit expenses where appropriate, and we offset commissions paid in the U.S. market with indirect selling expenses incurred in the home market.

We made an upward adjustment to the tax-exclusive home market prices for the value-added tax we computed for U.S. price.

Based on verified information, corrections were made to U.S. packing. Certain other charges and corrections were made using verified data.

Inland freight was recalculated on a per-inch basis.

Unreported credit and commission expenses on U.S. sales were included.

The home market interest rate was corrected, and difference in merchandise adjustments which had originally been applied to three belt types were applied to other belt types, where appropriate.

Currency Conversion

As noted above, we are basing United States price for all of our fair value comparisons on purchase price. Section 353.56(as)(1) of the Department of Commerce Regulations requires that in the case of purchase price transactions, the conversion of foreign currency into U.S. dollars shall be made as of the date of purchase or agreement to purchase. In this instance, because Hsing Kwo apparently assumed that United States price would be based on exporter's sales price, it provided only the date the merchandise was "sold" (invoiced) by Hsing Kwo's related selling agent in the U.S.—not the date the goods were purchased (ordered) by the ultimate unrelated customer. Since the date of purchase was not supplied by Hsing Kwo, we have used as best information available, the highest exchange rate certified by the Federal Reserve Bank of New York for the period of investigation.

Critical Circumstances

On June 30, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from Taiwan. Section 735(a)(3) of the Act provides that critical circumstances exist if we determined that:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; 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 merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

We generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we requested specific data on shipments of the subject merchandise as the most appropriate basis for our determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation.

We have asked Hsing Kwo to supply monthly volume shipment data in order for the Department to base the critical circumstances determination on company-specific data. We verified the information submitted by Hsing Kwo.

Because the verified data submitted by Hsing Kwo indicates that there have not been massive imports over a relatively short period, we find that the requirements of section 735(a)(3)(B) are not satisfied for Hsing Kwo.

We examined recent antidumping duty cases and found that there are currently no findings of dumping in the United States or elsewhere of the subject merchandise by Hsing Kwo. It is our standard practice to impute knowledge of dumping under section 735(a)(3)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient. [See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy (52 FR 24198, June 29, 1987).] However, in cases where the foreign manufacturer sells in the U.S. through a related company, we consider that lower margins may be sufficient. [See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Turcks from Japan (53 FR 12552, April 15, 1988).] Although Hsing Kwo sells in the U.S. through a related company, their margins are not sufficiently high to find that the requirements of section 735(a)(3)(A) are met. Therefore, we determine that critical circumstances do not exist with respect to imports of industrial belts from Taiwan.

Verification

We verified the information used in making our final determination in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original documents of the respondent.

Interested Party Comments

Comment 1: Petitioner contends that the rate for all Taiwanese companies should be based on the best information available due to "substantive deficiencies" in Hsing Kwo's response.

For further discussion of these "deficiencies", see the "United States Price" and "Foreign Market Value" sections of this notice, as well as comments 2–4, and 6–10.

DOC Position: The Department disagrees. A careful review of past antidumping cases, *Antifriction Bearings from FRG* (which has been published in the **Federal Register**, *Light-Walled Welded Rectangular Carbon Steel Tubing from Argentina* (54 FR 13913, April 6, 1989), *Certain Granite Products from Italy* (53 FR 27187, July 19, 1988), and *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987), reveals that the facts involved in Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Taiwan more closely resemble situations where the Department used responses, rather than rejecting them due to verification corrections and new submissions. The recalculations and revisions submitted at verification did not substantially exceed the methodological problems and mathematical errors commonly found during other investigations. Futhermore, in both *Antifriction Bearings from FRG* and *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy*, there was unverified response data. This is not the situation in this case. All data has been satisfactorily verified using standard verification practices and techniques.

Comment 2: Petitioner contends that the Department's review of clerical errors found in Hsing Kwo's sales listing at verification was one-sided. Petitioner is particularly concerned with the verification team's focus on transactions "where there were high LTFV margins", but alleged lack of focus on negative LTFV margins.

DOC Position: The Department disagrees. Petitioner erroneously assumes that only errors beneficial to Hsing Kwo were reviewed and corrected. This is not the case. Errors that worked both in Hsing Kwo's favor and against Hsing Kwo were discovered by the verification team. The verification report states that "outlier" sales are "sales that were considerably higher or lower than the norm", which included sales that had both high and low LTFV margins. A thorough verification of 280 randomly chosen sales were conducted, in addition to a review of 62 "outlier" sales. Petitioner's claim that error correction was one-sided is not correct.

Comment 3: Petitioner contends that because the Department could not verify the accuracy of the reported dates of sale, "it is likely that HK excluded various sales that were actually made during the POI."

DOC Position: We disagree. While Hsing Kwo reported home market sales on the basis of invoice date, rather than purchase order date, the difference between the two dates was not significant. Therefore, we have accepted home market sales reported on the basis of invoice date. With respect to U.S. sales, Hsing Kwo treated these as exporter's sales price sales and, hence, reported its sales based on the date that the merchandise was invoiced to the unrelated U.S. customer. As discussed above, we have determined that these transactions are properly treated as purchase price transactions. As a result, U.S. sales should have been reported based on the date of the purchase order. To compensate for this, we have applied the highest exchange rate in effect during the period of investigation.

Comment 4: Petitioner contends that the Department was unable to verify the volume and value of sales.

DOC Position: The Department disagrees. The volume and value of sales were thoroughly verified, and a minor mathematical error made by respondent was corrected.

Comment 5: Petitioner argues that if the Department treats Hsing Kwo's United States sales as purchase price transactions, all selling expenses incurred by HKUSA should be included in adjustments made pursuant to 19 U.S.C. 1677a(d)(2) and 19 CFR 353.15(a).

DOC Position: We have made a circumstance of sale adjustment for all differences in direct selling expenses pursuant to 19 CFR § 353.15(a). Furthermore, movement expenses were deducted pursuant to 19 U.S.C. 1677a(d)(2).

Comment 6: Petitioner contends that Hsing Kwo incorrectly reported its U.S. sales, resulting in "substantial revision and restatement" of all U.S. sales transactions. Additionally, because the corrections cannot be verified, it will be impossible for the Department to determine the integrity of the response.

DOC Position: We disagree. The revisions referred to by petitioner were simply separate reporting of previously aggregated data. Moreover, the verification team retained copies of all pertinent invoices, which enables the Department to check Hsing Kwo's corrections using verified information for the purpose of making our final determination.

Comment 7: Petitioner contends that Hsing Kwo did not properly identify customer relationships prior to the preliminary determination.

DOC Position: We disagree. Hsing Kwo did properly identify customer relationships. Petitioner seems to be referring to a minor error where Hsing Kwo reported a miniscule number of sales to two related customers in the home market. During verification, these sales were identified; Hsing Kwo was asked to delete these from their corrected tape. These sales were dropped from the data base as requested.

Comment 8: Petitioner contends that because Hsing Kwo did not report packing costs in the home market, the Department is precluded from making an adjustment to foreign market value for home market packing for the purposes of the final determination.

DOC Position: We agree.

Comment 9: Petitioner contends that no deduction from foreign market value for inland freight should be allowed because respondents should not "construct a questionnaire response materially different from the original response" during verification.

DOC Position: We disagree. We determined at verification that a quantity-based methodology was preferable to the value-based methodology employed by Hsing Kwo to calculate inland freight expense. We used verified data to recalculate inland freight.

Comment 10: Petitioner contends that difference in merchandise adjustment corrections made during verification should not be allowed.

DOC Position: We disagree. We used verified data to recalculate these adjustments.

Comment 11: Petitioner contends that because Hsing Kwo was not able to demonstrate clearly direct expenses, that the Department should not make adjustments to foreign market value for these selling expenses if purchase price is used as the basis for United States price.

DOC Position: We agree with respect to the expense categories alluded to in petitioner's comment. However, as noted above in the foreign market value section of this notice, based upon verified data, we did make circumstance of sale adjustments for credit expenses. We also offset U.S. commission expenses with indirect selling expenses incurred in the home market.

Comment 12: Petitioner contends that Hsing Kwo cannot reasonably advertise its belts to customers of its original equipment manufacturer (OEM) customers. Also, petitioner contends that the Department should release all advertisements obtained during verification.

DOC Position: We agree that no advertising expense adjustment should

be made with respect to Hsing Kwo's sales to OEM customers. Because we are unable to identify OEM sales in Hsing Kwo's sales listing, we have made no circumstance of sale adjustment for advertising expense. Instead, we included Hsing Kwo's advertising expense in the pool of indirect expenses used to offset commissions paid on certain U.S. sales. Also, the Department has released all samples of Hsing Kwo's advertising we collected to the petitioner.

Comment 13: Petitioner contends that the effective interest rate discovered at verification should be used to calculate credit costs in the home market. Additionally, because the Department verified payment dates to be inaccurate, these dates should not be relied on and a credit adjustment should not be allowed. If an adjustment is allowed, the shortest verified payment date of nine days should be used.

DOC Position: We agree that the effective interest rate discovered at verification should be used to calculate credit costs. Concerning the credit adjustment, based on verified payment and sales dates, we calculated an average time between shipment and payment which we used for the purpose of the final determination.

Comment 14: Petitioner argues that packing costs in the U.S. market should be deducted from United States price. Petitioner further argues that according to the Department's verification report, Hsing Kwo underreported U.S. packing costs and that consequently, if the Department is uncertain of these costs, the highest packing costs for any shipment should be used for all shipments.

DOC Position: Our methodology requires that we make no deduction from the United States sales price for U.S. packing expense, pursuant to section 772(d). Rather, we add the U.S. packing expense in calculating foreign market value, pursuant to section 772(d)(1), while subtracting home market packing expense. As noted above in the "Foreign Market Value" section of this notice, the respondent did not report home market packing expense, and we have made no deduction from foreign market value for the amount.

With regard to the second part of petitioner's comment, verification revealed that U.S. packing expense was *overstated*, rather than understated in the questionnaire response. For purposes of this final determination, we made the adjustment by using the verified average U.S. packing expense.

Comment 15: Petitioner argues that in calculating United States price, the Department should make an addition for duty drawback only on sales of belts that have a polyester cord.

DOC Position: As all of the belts sold to the U.S. by Hsing Kwo during the period of investigation are of polyester cord construction, we made an addition for duty drawback for all U.S. sales.

Comment 16: Petitioner argues that in calculating imputed U.S. credit expense, the Department should use the longest period (104 days) between shipment and payment found at verification for any of Hsing Kwo's U.S. sales.

DOC Position: We disagree. We calculated an average payment period based on verified payment and sale dates.

Comment 17: Petitioner contends that an adjustment for technical service expense incurred on U.S. sales is required.

DOC Position: We disagree. In its questionnaire response, Hsing Kwo misinterpreted the term "technical service." The technical service expenses originally reported by Hsing Kwo with respect to its U.S.sales were in fact indirect expenses for which no adjustment is warranted when a comparison involves purchase price sales.

Comment 18: Petitioner contends that specific documents collected at verification should be released under Administrative Protective Order (APO).

DOC Position: We have released to petitioner, under APO, certain supplemental submissions collected during verification that contained information not previously on the record. As to the verification exhibits, it is our policy not to release a respondent's supporting source documents under an administrative protective order when we have requested this additional information solely to further support a respondent's claim. Release of such documents can be damaging to the competitive position of the respondent. If petitioners did not agree with our position, the proper remedy was to appeal the refusal to release verification exhibits under APO, to the CIT while this investigation was in progress 19 U.S.C. 1677f(c)(2).

Comment 19: Petitioner argues that with respect to San Wu, a Taiwanese manufacturer of the subject merchandise to whom we did not present a questionnaire, and who consequently has not participated in this investigation, the final determination antidumping margin should be based upon "best information available" (company specific information from the petition) rather than the "all other rate" (the weighted average of the margin percentage the Department calculates for all questionnaire respondents). In this case, since there is only one questionnaire respondent, Hsing Kwo, the "all other rate" is the same as the margin percentage calculated for Hsing Kwo. Petitioner argues that only if the margin percentage the Department calculates for Hsing Kwo is higher than the rate shown for San Wu in the petition should the Department assign to San Wu the all other (Hsing Kwo) rate. Petitioner makes this argument due to the affiliation of San Wu with respondents in the companion investigations involving this same merchandise imported from Singapore and Japan respectively, and with these respondents' related U.S. importer. Based on the results of our preliminary determinations, petitioner anticipates that the final determination margin percentages calculated by the Department for San Wu's affiliates in Singapore and Japan will be higher than the margin percentage the Department calculates for Hsing Kwo in the Taiwan investigation, and that consequently, the related U.S. importer will have an incentive to shift its sources from Japan or Singapore to avoid any antidumping duty orders imposed on the subject merchandise from those countries.

DOC Position: We disagree. The Department's policy, as stated in § 353.38 of the Regulations, is to examine at least 60 percent of the exports from any given country under investigation, and to assign the "all other" rate to those products not investigated. The 60 percent minimum was satisfied by Hsing Kwo's exports. Exports of belts produced by San Wu in Taiwan (assuming an antidumping duty order with respect to Taiwan) would be subject to a suspension of liquidation, and the "all other" duty deposit rate pending an annual review pursuant to section 751 of the Act which would establish antidumping duties due, which may be more or less than duties deposited at entry of the merchandise.

Comment 20: Petitioner argues that critical circumstances exist with respect to imports of industrial belts from Taiwan.

DOC Position: We disagree. See our discussion of "Critical Circumstances" above.

Comment 21: In a letter to the Department dated April 5, 1989, petitioner makes certain allegations regarding Hsing Kwo's U.S. sales data.

DOC Position: Petitioner's comments are untimely, and improperly summarized in the public version. As such, the Department cannot consider information in the petitioner's April 5, 1989 submission. Comments submitted three working days before the final

determination do not allow the Department adequate time to properly analyze, or respond to, said comments. Furthermore, the public version of the above submission was improperly prepared; petitioner deleted the entire second and third pages of a three page submission. Only pertinent business proprietary information should be deleted or summarized from the public version.

Comment 22: Petitioner asserts that in its scope of investigation at the preliminary determination, the Department listed only four HTS sub-headings. Petitioner requests that the Department list eighteen HTS sub-headings in its final determination.

DOC Position: We agree. The petition included nine TSUSA item numbers and four HTS sub-headings that petitioner believed would correspond to the TSUSA numbers when the HTS system became effective.

The Harmonized Tariff Schedule went into effect on January 1, 1989. Based on a concordance between TSUSA item numbers and HTS sub-headings listed in a January 1989 USITC publication, *"The Continuity of Import and Export Trade statistics After Implementation of the Harmonized Commodity Description and Coding System"*, petitioner requested that the Department expand the four HTS sub-headings listed in our preliminary determination to eighteen sub-headings. We asked for comments from the interested parties in this investigation concerning industrial belts covered by the eighteen HTS sub-headings.

In our preliminary determinations, as now, we note that the written description of the products covered by the investigation is dispositive. The HTS numbers are provided for convenience and customs purposes as to the scope of the product coverage. We do not view providing additional HTS sub-headings as broadening the scope of this investigation.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of industrial belts from Taiwan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Taiwan exceeds the U.S. price as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Hsing Kwo	12.13
All Others	12.13

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty on industrial belts from Taiwan entered, or withdrawn from warehouse, for consumption after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-9257 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-802]

Final Determination of Sales at Less Than Fair Value: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From the United Kingdom

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

ACTION: Notice.

SUMMARY: We determine that industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from the United Kingdom (UK) are being, or are likely to be, sold in the United States at less than fair value.

We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from the UK as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple, or Mary Jenkins, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377-1769, or 377-1756, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that industrial belts from the UK are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a) (the Act). The average dumping margins are shown in the "Suspension of Liquidation" section of this notice. We also determine that critical circumstances exist with respect to imports from Arntz Belting Company, Ltd. (Optibelt). We have determined that critical circumstances do not exist with respect to imports from J.H. Fenner & Company and all other exporters and producers from the UK, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since our notice of preliminary determination (54 FR 5108, February 1, 1989), the following events have occurred:

Verification of the questionnaire responses provided by Fenner was conducted in the UK and the United States during February and March 1989

A public hearing was held on March 20, 1989. Petitioner, respondent, and other interested parties have filed pre- and post-hearing briefs.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), and all merchandise entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The Department is providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the products covered by this investigation.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, from the UK provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510 and 773.3520, and currently classifiable under HTS item numbers 5910.00.10, 5910.00.90, 4010.10.10, 4010.10.50, 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.91.11, 4010.91.15, 4010,91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.00.19, 4010.99.50 and 7326.20.00.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.*, closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Period of Investigation

The period of investigation (POI), is January 1, 1988 through June 30, 1988.

Our investigation was limited to J.H. Fenner, a voluntary respondent. Arntz Belting Company, Ltd. (Optibelt), the producer responsible for the bulk of the United Kingdom exports of this product to the United States, did not respond to the Department's questionnaire.

Such or Similar Comparisons

For Fenner, pursuant to section 771(16)(C) of the Act, we established one category of "such or similar" merchandise: V–belts.

Fair Value Comparisons

Fenner

To determine whether sales of industrial belts from the UK to the United States were made at less than fair value, we compared the U.S. price using exporter's sales price with the foreign market value pursuant to sections 772 and 773 of the Act, respectively.

Optibelt

To determine whether sales of industrial belts from the UK to the United States were made at less than fair value, we compared the United States price to the foreign market value. For our preliminary determination we used best information available as required by section 776(c) of the Act. As best information available, we took the highest margin contained in the petition for each of the product types for the POI and calculated a simple average of those figures to determine a margin for the products under investigation. Since the respondent, Optibelt failed to participate in the investigation we are using the same methodology for calculating a margin for the final determination.

United States Price

Fenner

Fenner's U.S. sales are treated as exporter's sale price transactions (ESP) for the following reasons: Fenner Manheim, a Fenner U.S. subsidiary, is more than a mere facilitator of transactions between Fenner U.K. and U.S. customers. Fenner Manheim purchases the merchandise from Fenner U.K. at a transfer price and resells the subject merchandise to its unrelated U.S. customers. Fenner Manheim independently determines the price and other terms of sale to U.S. unrelated customers based on market demand. Terms of sale to unrelated U.S. customers are also subject to change without penalty prior to the date Fenner Manheim ships the merchandise and invoices its U.S. customer.

To calculate ESP in accordance with section 772(c) of the Act, we used the packed, f.o.b. prices of industrial belts to unrelated purchasers in the United States.

During the POI, some of Fenner's shipments of V-belts also included products that were not subject to our investigation.

Fenner took the total movement charges for all products in each shipment of V-belts and allocated the movement expenses for V-belts by value for total merchandise shipped. We have not accepted Fenner's allocation of these expenses by value because shipping documents show that these expenses are based on the weight of each shipment. Because Fenner did not calculate movement expenses based on weight for the merchandise under investigation, we verified Fenner's actual movement expenses for V-belts and all products included in the same shipment with V-belts. As best information available (BIA), the total actual verified movement expenses were allocated over the total shipments of V-belts during the POI.

We made deductions for air freight, foreign inland freight and insurance, brokerage and handling charges, U.S. Custom duty, U.S. inland freight and other processing fees. We deducted indirect selling expenses in the home market and indirect selling expenses in the United States, inventory carrying cost in the home market and inventory carrying cost in the United States and cost for the time merchandise was in transit. We imputed inventory carrying cost based on Fenner's value of merchandise, the number of days merchandise was in inventory and Fenner's short-term borrowing rate. We deducted credit expenses. We made further deductions, where appropriate, for U.S. commissions paid to Fenner Manheim's sales representatives.

All movement charges, commissions and indirect selling expenses were calculated as a percentage of sales price to unrelated purchasers in the United States.

The total of the indirect selling expenses and commissions and inventory carrying cost formed the cap for the allowable home market indirect selling expenses offset under § 353.15(c) of our regulations (*see* 19 CFR 315.15(c)). We added the amount of value added tax which would have been collected if the merchandise had not been exported.

Optibelt

In accordance with section 772 of the Act, United States price was based on the U.S. price information provided in the petition.

Foreign Market Value

Fenner

In accordance with section 773(a) of the Act, we calculated foreign market

value based on the packed, f.o.b. prices to unrelated customers in the home market. To these prices we added the cost of U.S. packing. Fenner did not provide the cost of home market packing. Therefore, no deduction was made for home market packing cost.

We made deductions from the home market price for discounts. We made further deductions from the home market price for credit expenses. We deducted indirect selling expenses and inventory costs incurred on home market sales up to the amount of commissions and indirect selling expenses incurred on sales in the U.S. market, in accordance with section 353.15(c) of our regulations. We have made an upward adjustment to the tax-exclusive home market prices for the value added tax we computed for U.S. price. We have added export packing cost to the foreign market value.

Optibelt

In accordance with section 773 of the Act, foreign market value was based on home market prices provided in the petition.

Currency Conversion

We used the official exchange rates in effect on the dates of sale, in accordance with section 773(a)(1) of the Act. All currency conversions were made at the rates certified by the Federal Reserve Bank of New York.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from the UK. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporters was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Fenner

Because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we requested specific data on shipments of the subject merchandise as the most appropriate basis for our determination of critical circumstances. Furthermore, we believe that a company-specific critical circumstances determination better fulfills the critical circumstances provisions's objective of deterring a company from increasing imports massively prior to the suspension of liquidation.

We asked Fenner to supply monthly volume shipment data from November 1987 through January 1989 in order for the Department to base the critical circumstances determination on company-specific data. We verified the information submitted by Fenner.

Because the verified data submitted by Fenner indicate that there have not been massive imports over a relatively short period, we find that the requirements of section 735(a)(3)(B) are not satisfied for Fenner.

Optibelt

Since the respondent, Optibelt, failed to participate in the investigation, we are determining that critical circumstances for this respondent exist. Based on best information available, we are assuming that imports of industrial belts have been massive over a relatively short period of time. In determining whether there is a knowledge of dumping, the Department normally considers margins of 25 percent or more to impute knowledge of dumping under section 735(a)(3)(A). (*see e.g. Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987)). Therefore, in accordance with section 735(a)(3)(A)(ii) and 735(a)(3)(B), we determine that critical circumstances exist with respect to Optibelt.

With respect to other firms covered by the "All others" rate, we have determined that imports of industrial belts have not been massive over a relatively short period of time. Since we do not find that there have been massive imports of industrial belts from other firms included in the "All Other" rate, we do not need to consider whether there is a history of dumping or whether importers of these products knew or should have known that the merchandise was being sold at less than fair value.

Verification

As provided in section 776(b) of the Act, we verified all information provided by Fenner and used this information in reaching the final determination in this investigation. We used standard verification procedures including examination of relevant accounting records and original source documents provided by the respondent.

Interested Party Comments

Comment 1: Petitioner asserts that, in its scope of investigation at the preliminary determination, the Department listed only four HTS subheadings. Petitioner requests that the Department list all eighteen HTS subheadings in its final determination.

DOC Position: We agree. The petition includes nine TSUSA item numbers and four HTS sub-headings that petitioner believed would correspond to the TSUSA numbers when the HTS system become effective.

The Harmonized Tariff Schedule went into effect on January 1, 1989. Based on a concordance between TSUSA item numbers and HTS sub-headings listed in a January 1989 USITC publication, *The Continuity of Import and Export Trade Statistics After Implementation of the Harmonized Commodity Description and Coding System,* petitioner requested that the Department expand the four HTS sub-headings listed in our preliminary determination to eighteen sub-headings. We asked for comments from the interested parties in this investigation concerning industrial belts covered by the eighteen HTS sub-headings.

In our preliminary determination, as now, we note that the written description of the products covered by the investigation is dispostive. The HTS numbers are provided for convenience and customs purposes as to the scope of the product coverage. Accordingly, we do not view this as a broadening of the scope of this investigation.

Comment 2: Petitioner argues that the best information available (BIA) dumping margin for Optibelt should be the highest margin found in the petition since Optibelt failed to respond to the Department's questionnaire. Petitioner notes that it provided extremely detailed information in the petition with regard to Optibelt. Petitioner also stated that BTL, Ltd. a voluntary respondent who also did not respond to the questionnaire, should be subject to the "All other" rate.

DOC Position: The Department is applying the same methodology used inthe preliminary determination to

calculate the margins for the final determination. As best information available, we are taking the highest margin contained in the petition for each of the product types for the period of investigation and then simple averaging those figurers to determine the margins for the products under investigation. We agree with petitioner with regard to BTL and they are included in the "All other" rate.

Comment 3: Petitioner claims that Fenner's response should be deemed inadequate and should be rejected and that the margin for Fenner should be based on the highest margin found in the petition.

Respondent claims that for purposes of the final determination, the dumping margin for Fenner should be based on the information submitted by Fenner and verified by the Department. This would include the original questionnaire response and the supplement responses.

DOC Position: A careful review of past antidumping cases, *e.g., Antifriction Bearings from FRG* (issued by the Department on March 24, 1989), *Light-walled Welded Rectangular Carbon Steel Tubing from Argentina* (54 FR 13913, April 6, 1989), and *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987), reveals that the facts involved in this case more closely resemble situations where the Department used responses, rather than rejected them due to verification corrections and new submissions. The recalculations and revisions submitted at verification were typical minor methodological problems and mathematical errors similar to those commonly found during other investigations. This case differs substantially from both *Antifriction Bearings from the FRG* and *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy,* where submitted data were incorrect and the Department was never provided accurate and verifiable data. In this case, all data have been satisfactorily verified using standard verification practices and techniques.

Comment 4: Petitioner states that in many instances the revisions Fenner submitted during verification affect all of the sales reported in a particular market. Also, according to petitioner, most of the changes are quite substantial and favor the respondent. In addition, petitioner believes that respondent's revised response was not timely. Petitioner claims that rejection of the response is especially appropriate since Fenner is a voluntary respondent.

Respondent claims the corrections to the response made by the Department at verification should be considered for purposes of the final determination. Respondent argues that the changes were minor and were limited to the correction of information already on the administrative record and therefore did not amount to the submission of new information. Respondent states that it is the long established policy of the Department to accept corrections to the original response to conform to the information verified. Finally, respondent strongly disagrees with the suggestion by petitioner that Fenner adopted a "wait and see" attitude before telling the Department about discrepancies it discovered prior to verification. Respondent asserts it has always cooperated fully with the Department in this investigation.

DOC Position: Only revisions to Fenner's response concerning indirect selling expenses affect all sales in a particular market. In that instance, the correct indirect selling expenses were submitted by Fenner at verification and verified by the Department. Errors that worked both for Fenner and against Fenner were discovered during verification. These corrections were verified and the corrections were submitted to the Department. verification.

Comment 5: Petitioner claims Fenner has failed to adequately demonstrate that any adjustments should be made to foreign market value. Petitioner states that since neither verification nor post-verification submissions should be used to correct deficiencies in these adjustments, the Department should continue to disallow all adjustments claimed by Fenner.

DOC Position: We have accepted corrections for minor deficiencies found in Fenner's home market sales response. All adjustments relating to these deficiencies have been verified by the Department. We have determined that Fenner has adequately demonstrated the validity of the corrected information.

Comment 6: Petitioner states that in the event the Department uses Fenner's response, no deduction from foreign market value should be made for discounts, or, if discounts are allowed, the smallest discount should be applied to all sales. Petitioner claims that corrected information on home market discounts was submitted during and after verification and was revised to such a degree as to preclude its inclusion in the final determination.

DOC Position: We disagree. Although Fenner's methodology used in reporting gross price and discounts was determined to be inadequate at verification, during verification we found that net price was accurately reported on all home market sales. Fenner has adequately explained its methodology used in determining adjustments for other discounts and gross price. Based on Fenner's explanation, the Department has determined that the corrections to Fenner's gross price and other discounts are minor and that they do not warrant omission of adjustments to foreign market value.

Comment 7: Petitioner argues the Department should disallow any deduction from foreign market value for home market credit expenses since repondent calculated these costs using standard payment terms rather than actual number of days between date of sale and payment date. If revised payment periods are used by the Department, they should be used only for the individual transactions actually verified.

Respondent states that for purposes of the final determination, a credit expense should be imputed to each non-cash sale based on the verified company-specific interest rate during the POI and an average 45 day credit extension period for outstanding payments. Respondent claims the imputed average 45 day credit period is a conservative estimate of the actual average credit extension period and that the use of an average collection period is consistent with past Department practice.

DOC Position: The Department prefers to have credit reported on a transaction-by-transaction basis. However, given the massive number of transactions in the home market, we do not consider a methodology based on average credit days outstanding to be unreasonable. We verified the number of days credit was outstanding for a number of sales transactions and used the lowest number of days for payment outstanding found in these sales to calculate credit expenses.

Comment 8: With regard to home market indirect selling expenses, petitioner claims the Department should disallow this claim since respondent's revised data could not be verified.

Respondent argues that the Department should make appropriate deductions from foreign market value to account for indirect selling expenses incurred on home market sales. Respondent claims revised indirect selling expenses for the POI were verified.

DOC Position: The Department verified indirect selling expenses for all sales of all products sold by Fenner in the home market. The expenses verified by the Department and reported in its verification report were used to

calculate Fenner's indirect selling expenses.

Comment 9: Petitioner argues that the Department should disallow any inventory carrying costs claimed on home market sales. Petitioner believes it would be improper to deduct any home market warehousing or credit costs for the period in warehouse because such costs were not deducted from exporter's sales price sales in the preliminary determination.

DOC Position: For the final determination the Department has deducted from both sides inventory carrying costs for exporter's sales price transactions. We have also allowed inventory carrying costs claimed on home market sales.

Comment 10: Petitioner states that, according to the U.S. verification report, Fenner failed to report all of its U.S. sales during the period of investigation. Petitioner also believes that much of the information originally submitted by Fenner was unfairly revised during the U.S. verification. The revisions and omissions require the use of best information available for the final determination.

Respondent argues that the addition of three additional belt models to the U.S. and home market sales listings does not constitute an entirely new response. Accordingly to respondent, an inadvertent omission which is less than five percent of total sales is not a substantial deficiency, especially since the Department was informed about the omitted sales prior to starting verification and the Department verified the corrected volume and value of sales.

DOC Position: Prior to starting verification we were informed by Fenner that sales relative to three models had been omitted from its questionnaire response. Fenner was forthright in informing us of these omissions, and it cooperated in providing all information relating to sales of the omitted models. The Department examined all of Fenner's transfer invoices for sales of the subject merchandise to the United States during the POI. We confirmed that sales of the three omitted models were included in one shipment on one invoice that contained a large number of different products that were not subject to our investigation. We instructed Fenner to submit a revised response including the three omitted models and the verified adjustments associated with those models. We also instructed Fenner to include in the submission other minor corrections to its response that were made during verification. We do not consider these corrections to be substantial enough to warrant rejecting Fenner's response and using BIA.

Comment 11: Petitioner argues that revised and new information on U.S. movement and packing charges and U.S. credit costs provided at verification should have been submitted prior to verification. Because it was not, it should be rejected for purposes of the final determination.

With regard to credit expense, respondent claims that the verified company interest rate during the period of investigation should be used. For purposes of movement and packing expenses, Fenner claims the revised factors it provided, and the Department verified, should be used.

DOC Position: We are using verified movement and packing expenses as submitted in Fenner's responses prior to verification.

With regard to credit expense, the Department has verified a short-term borrowing rate for Fenner during the period of investigation. The interest rate Fenner originally reported was based on Fenner's short-term borrowing rate outside the period of investigation. Therefore, we are using the revised verified rate.

Comment 12: Petitioner claims that since the reported U.S. commission rates were found to be unreliable at verification they should be rejected. However, in the event the Department decides to deduct the commission rate from the exporter's sales price sales, the highest reported rate should be used.

DOC Position: We disagree. At verification we determined that there was one minor discrepancy in Fenner's reported commission rate. We were able to verify the correct rate. Therefore, we are using Fenner's commission rate as verified and reported in its corrected submission.

Comment 13: Petitioner claims Fenner's U.S. selling expenses are not attributable to U.S. sales of the subject merchandise during the period of investigation. Since no verified information is available, the Department should reject Fenner's response in its entirety and use BIA for the final determination.

DOC Petition: We are accepting Fenner's allocation of U.S. selling expenses. Our preference is for product-specific expenses; however, given the number of products sold by Fenner and the difficulty of assigning specific expenses to specific products, which include products not subject to the investigation, we believe it is reasonable to accept allocations. We were able to verify independently the amounts for each category that were included in the selling expense. We also verified that Fenner does not maintain records in such a way as to enable it to report its expenses for each separate class or kind of merchandise.

Comment 14: If the Department decides against using BIA, Fenner's home market selling expenses should be used as a reasonable proxy for non-U.S. indirect selling expenses incurred on U.S. sales.

DOC Position: We agree. To calculate non-U.S. indirect selling expense, we used as best information available a ratio of total indirect selling expenses in the home market to total sales made by Fenner during the period of investigation.

Comment 15: Petitioner states that Fenner failed to report imputed inventory costs on U.S. sales. For purposes of the final determination, the Department should use the information on the record to calculate these imputed costs on U.S. sales. Petitioner claims that these costs should be calculated from the time the merchandise leaves the foreign producer to the time the material is shipped from Fenner's U.S. subsidiary to the U.S. customer.

DOC Position: We have calculated inventory carrying costs for United States sales using the methodology outlined by the petitioner.

Comment 16: Petitioner believes the Department should determine that critical circumstances exist with regard to all U.S. sales of the subject merchandise from the U.K. Petitioner argues that given the size of the dumping margins and the absence of company-specific data, an adverse determination should be made.

Respondent claims that there was no substantial increase in export of the subject merchandise during the five months after the filing of the petition as compared to exports in the five months preceding the filing of the petition.

DOC Position: We have determined that since Optibelt failed to participate in the investigation, as best information available, we are assuming that imports of industrial belts from Optibelt have been massive over a relatively short period of time. Furthermore, we find that the best information available margin of 74.16 percent imputes knowledge that the importer knew or should have known that the exporter was selling the merchandise at less than its fair value.

With regard to other firms covered by the "All others" rate, see the Critical Circumstances section of this determination.

We have also determined that critical circumstances do not with regard to imports from Fenner. *See also* the

Critical Circumstances section of this determination.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from the UK, as defined in the "Scope of Investigations" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Where we have found affirmative critical circumstances in this final determination, we are instructing the U.S. Cusoms Service to suspend liquidation of such entries that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of the notice of the preliminary determinations in these investigations in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from the UK exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturers/producers/exporters	Margin percentage
J. H. Fenner & Co.	6.80
Arntz Belting Co., Ltd. (Optibelt)	74.16
All others	73.85

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to subject merchandise, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on industrial belts from the UK entered or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

These determinations are published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

April 11, 1989

[FR Doc. 89-9258 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-802]

Final Determination of Sales at Less Than Fair Value: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From the Federal Republic of Germany

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

ACTION: Notice.

SUMMARY: We determine that industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from the Federal Republic of Germany are being, or are likely to be, sold in the United States at less than fair value. We also determine that critical circumstances exist with respect to imports of industrial belts from the Federal Republic of Germany.

We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of industrial belts from the Federal Republic of Germany as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to the U.S. industry.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Contact Louis Apple or Loc Nguyen, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769 or (202) 377-3530.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that industrial belts from the Federal Republic of Germany are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice. We also determine that critical circumstances exist with respect to industrial belts from the Federal Republic of Germany.

Case History

On January 26, 1989, we made an affirmative preliminary determination (54 FR 5106, February 1, 1989). We have received a number of requests for exclusion of merchandise from the scope of this final determination (*see* comment numbers 4 and 5).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-headings. The HTS sub-headings are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are industrial belts from the Federal Republic of Germany currently provided for under Tariff Schedules of the United States Annotated (TSUSA) item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510 and 773.3520; and currently classifiable under Harmonized Tariff Schedule (HTS) sub-headings 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and

whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Period of Investigation

The period of investigation is January 1, 1988, through June 30, 1988.

Fair Value Comparisons

To determine whether sales of industrial belts from the Federal Republic of Germany to the United Staes were made at less than fair value, we compared the United States price to the foreign market value. For our preliminary determination, we used best information available as required by section 776(c) of the Act. As best information available, we took the highest margin contained in the petition for each of the product types for the period of investigation and calculated a simple average of those figures to determine a margin for the products under investigation. Since the respondent, Optibelt, failed to participate in the investigation, we are using the same methodology for calculating a margin for the final determination.

United States Price

United States price was based on the U.S. price information provided in the petition pursuant to section 772 of the Act.

Foreign Market Value

Foreign market value was based on home market prices provided in the petition pursuant to section 773 of the Act.

Critical Circumstances

On June 30, 1988, petitioner alleged that critical circumstances exist with respect to imports of the subject merchandise from the Federal Republic of Germany. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; 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 merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Since the respondent, Optibelt, failed to participate in the investigation, we are determining that critical circumstances for this respondent exist based on best information available. As best information available, we are assuming that imports of industrial belts have been massive over a relatively short period of time. In determining knowledge of dumping, the Department normally considers margins of 25% or more sufficient to impute knowledge of dumping under section 735(a)(3)(A) (*see, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987)). Therefore, in accordance with sections 735(a)(3)(A)(ii) and 735(a)(3)(B), we determine that critical circumstances exist with respect to Optibelt.

With respect to firms covered by the "All Other" rate, we have determined that imports of industrial belts have not been massive over a relatively short period of time and, therefore, that critical circumstances do not exist.

Since we do not find that there have been massive imports of industrial belts form firms included in the "All Other" rate, we do not need to consider whether there is a history of dumping or whether importers of these products knew or should have known that the merchandise was being sold at less than fair value.

Interested Party Comments

Comment 1: Petitioner argues that, based on U.S. import statistics, IM 146 data, the Department should find that there have been massive imports of industrial belts over a relatively short period of time. Petitioner further asserts that an antidumping margin of 25% or more is sufficient to impute knowledge to the importer that the exporter was selling the merchandise at less than fair value.

DOC Position: Since the respondent, Optibelt, failed to participate in the investigation, as best information available, we are assuming that its imports of industrial belts from the Federal Republic of Germany have been massive over a relatively short period of time. Furthermore, we find that the best information available margin of 100.60% is sufficient to impute knowledge to the importer that the exporter was selling the merchandise at less than fair value.

With regard to firms covered by the "All Other" rate, see the "Critical Circumstances" section of this determination.

Comment 2: Petitioner argues that the Department's final determination should be based on the highest less-than-fair-value margin alleged in the petition.

DOC Position: The Department is applying the same methodology used in the preliminary determination to calculate the margins for the final determination. As best information available, we are taking the highest margin contained in the petition for each of the product types for the period of investigation and then calculating a simple average of those figures to determine the margin for the products under investigation.

Comment 3: Petitioner asserts that in its scope of investigation at the preliminary determination, the Department listed only four HTS sub-hearings. Petitioner requests that the Department list eighteen HTS sub-headings in its final determination.

DOC Position: We agree. The petition included nine TSUSA item numbers and four HTS sub-headings that petitioner believed would correspond to the TSUSA numbers when the HTS system became effective.

The Harmonized Tariff Schedule went into effect on January 1, 1989. Based on a concordance between TSUSA item numbers and HTS sub-headings listed in a January 1989 USITC publication, *The Continuity of Import and Export Trade Statistics After Implementation of the Harmonized Commodity Description and Coding System,* petitioner requested that the Department expand the four HTS sub-headings listed in our preliminary determination to eighteen sub-headings. We asked for comments from the interested parties in this investigation concerning industrial belts covered by the eighteen HTS sub-headings.

In our preliminary determinations, as now, we note that the written description of the products covered by the investigation is dispositive. The HTS numbers are provided for convenience and customs purposes as to the scope of the product coverage. We do not view providing additional HTS sub-headings as broadening the scope of this investigation.

Comment 4: Siegling America, Belting Industries Co., Dovey Corporation and IRO Inc., importers, believe it is inappropriate to include nylon core, rubber and leather flat belts, urethane steel timing belts, knit carcas belts

treated with neophrene, corrugator belts, and cog belts, imported from the Federal Republic of Germany in the scope of this investigation. They request that these belt categories be excluded from this investigation.

DOC Position: The information received was insufficient to determine whether the merchandise is properly excluded from the scope of this investigation. In addition, the information received from these firms arrived too late to be analyzed and verified for this final determination. If the final determination of the ITC results in an antidumping duty order on this merchandise, and upon receipt of proper documentation, the Department may conduct a scope ruling procedure concerning the products imported by these firms.

Comment 5: On March 8, 1989, Continental AG submitted some information concerning synchronous belts imported from the Federal Republic of Germany.

DOC Position: We have notified Continental AG that we will not be using their submission in making a final determination because the information was not filed in time to be analyzed, verified and used in this final determination. (*see also* the DOC Position concerning Comment 4).

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of industrial belts from the Federal Republic of Germany, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of the preliminary determination in the **Federal Register.** The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from the Federal Republic of Germany exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The average of the highest margin for each of the product types listed in the petition for the period of investigation is as follows:

Manufacturer/producer/exporter	Margin percentage
Optibelt Corporation	100.60
All Others	100.60

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to any of the products under investigation, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on industrial belts from the Federal Republic of Germany entered, or withdrawn from wearehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

April 11, 1989.

[FR Doc. 89-9259 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-501]

Preliminary Determination of Sales at Less Than Fair Value; 12-Volt Motorcycle Batteries From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that 12-volt motorcycle batteries from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of 12-volt motorcycle batteries from Taiwan as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by June 22, 1989.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Martin, John Gloninger, or Mary S. Clapp, Office of Antidumping Investigation, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW. Washington, DC 20230; telephone: (202) 377-2830, 377-8330, or 377-3965.

SUPPLEMENTAL INFORMATION:

Preliminary Determination

We preliminarily determine that 12-volt motorcycle batteries are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of reinstitution of antidumping duty investigation (53 FR 46903, November 21, 1988), the following events have occurred: On November 29, 1988, the Department presented antidumping duty questionnaires to Ztong Yee Industrial Co., Ltd. (Ztong Yee), Wei Long Electric Industrial Co., Ltd. (Wei Long), and Cheng Kwang Storage Battery Co., Ltd. (Cheng Kwang). These companies accounted for a substantial portion of exports of the subject merchandise from Taiwan to the United States during the period of investigation. Responses to Section A to the questionnaire were due on December 13, 1988, and responses to the remaining sections were due on December 29, 1988.

At the request of the respondents, response deadlines were extended to December 20, 1988 for Section A, and to January 13, 1989 for sections B and C of the questionnaire. Responses to section A were filed on December 21, 1988, and to sections B and C on January 13, 1989 by all respondents. The Department issued deficiency letters on January 23, 1989 and on February 21, 1989. Supplemental responses were received from the respondents prior to this determination.

On December 30, 1988, the petitioner requested that the preliminary determination be postponed. On January 11, 1989 in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination to April 7, 1989 (54 FR 2197, January 19, 1989).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are 12-volt motorcycle batteries. Motorcycle batteries are lead-acid storage batteries which are rated from 2 to 32 ampere hours (10 hour rate) with voltage levels of either 6 or 12 volts. This investigation is limited to 12-volt motorcycle batteries. The batteries are mainly used as replacement batteries for motorcycles, but may, to a very limited extent, be used in snowmobiles, lawnmovers, and other such equipment. They are currently classifiable under HTS item number 8507.10.00.

Period of Investigation

The period of investigation is April 1, 1988, through September 30, 1988.

Fair Value Comparisons

To determine whether sales of 12-volt motorcycle batteries from Taiwan to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the United States price and foreign market value sections of this notice.

United States Price

Since all sales used in our analysis were made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act. The calculation of United States price for each respondent is detailed below.

A. Ztong Yee

We calculated purchase price based on the packed, C.I.F. price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, brokerage and handling in Taiwan, bank processing fees, and port changes.

We made additions for duty drawback and value-added taxes which would have been collected if the merchandise had not been exported.

Ztong Yee incorrectly reported sales to a related purchaser in the United States as purchase price sales. On March 28, 1989, the Department requested that Ztong Yee supply exporter's sales price information for sales made to a related purchaser in the United States, but we did not receive the information in time to use it in this preliminary determination. Therefore, for purposes of this preliminary determination, and in accordance with section 776(c) of the Act, we have used Ztong Yee's calculated rate for sales to unrelated purchasers, as the best information available (BIA), for sales to the related purchaser.

B. Wei Long

We calculated purchase price based on the packed, F.O.B. or C.I.F. price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, brokerage and handling charges in Taiwan, quantity discounts, port and bank processing fees.

C. Chang Kwang

We calculated purchase price based on the packed, F.O.B. or C.I.F. prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, brokerage and handling charges in Taiwan, bank processing fees, port charges, and inspection fees.

Foreign Market Value

In accordance with section 773(a)(1) of the Act, we calculated foreign market value based on home market or third country sales. The calculation of foreign market value for each respondent is detailed below.

A. Ztong Yee

For Ztong Yee, we determined there were sufficient sales in the home market to serve as a basis for calculating foreign market value. We calculated foreign market value based on packed F.O.B. and C.I.F. prices to unrelated purchasers in Taiwan. We made deductions, where appropriate, for inland freight and rebates.

We made circumstance of sale adjustments for differences in credit pursuant to 19 CFR 353.15. We made an upward adjustment to tax-exclusive home market prices for the value added tax we computed for United States price. In addition, we added commissions paid to selling agents in the United States where appropriate. We allowed an offset for indirect selling expenses in the home market (which includes advertising, travel and entertainment expenses, inventory carrying costs, warranty expenses and inspection fees) up to the amount of the commissions in the U.S. market in accordance with 19 CFR 353.15(c).

We made adjustments, where applicable, for differences in the physical characteristics of the merchandise in accordance with 19 CFR 353.16. Ztong Yee did not provide the cost of packing, claiming packing costs were the same for all markets. Therefore, no adjustment was made for packing. Ztong Yee, however, did report that batteries sold in the home market have acid packs. We treated the additional cost of these acid packs as part of the difference in merchandise adjustments.

Ztong Yee claimed advertising as a direct selling expense. However, its claim was not adequately supported, and we have treated advertising as an indirect selling expense for purposes of this determination.

B. Wei Long

Because Wei Long had no home market sales during the period of investigation, we used third country sales to an unrelated Taiwanese trading company and direct sales to a third country for the purpose of determining foreign market value in accordance with section 773(a)(1)(B) of the Act. We calculated foreign market value based on the packed, F.O.B. price to the unrelated trading company, and F.O.B. or C.I.F. prices for the direct sales. We made deductions where appropriate for brokerage and handling charges, foreign inland freight, ocean freight, marine insurance, quantity discounts, and port fees. We made circumstance of sale adjustments for differences in credit and warranty expenses pursuant to 19 CFR 353.15. We deducted third country packing and added U.S. packing.

In addition, we added commissions incurred on U.S. sales to foreign market value. However, Wei Long claimed an offset to U.S. commissions of "indirect selling expenses" incurred on sales to the third country market. It did not, however, include the requisite itemized breakdown of the indirect expenses claimed. Therefore, we have disallowed these expenses for purposes of the preliminary determination and have not performed the offset. If the appropriate information is submitted and verified, we will consider it for the final determination.

C. Cheng Kwang

Because Cheng Kwang's home market sales during the period of investigation were inadequate for determining foreign market value, we used third country sales to unrelated Taiwanese trading companies and direct sales to other third countries in accordance with section 773(a)(1)(B) of the Act. We calculated foreign market value comparisons based on the packed, F.O.B. or C.I.F. prices. We made deductions where appropriate for brokerage and handling charges, foreign inland freight, ocean freight, marine insurance, port usage fees, banking charges, and inspection charges.

We made a circumstance of sale adjustment for differences in credit expenses pursuant to 19 CFR 353.15. We deducted third country packing and added U.S. packing.

We made adjustments, where applicable, for differences in the physical characteristics of the merchandise in accordance with § 353.16 of the Commerce Regulations.

Cheng Kwang claimed an adjustment to third country price for additional costs incurred on smaller production lots. We disallowed this claim for the preliminary determination. If we are able to verify the costs for differing production lots and their corresponding relationship to selling price, we will consider this claim for the final determination.

Currency Conversion

Since we calculated United States price on a purchase price basis, we used the official exchange rates in effect on the date of sale, in accordance with § 353.56(a)(1) of the Commerce Regulations. All currency conversions were made at rates certified by the Federal Reserve Bank of New York.

Verification

We will verify the information used in making our final determination in accordance with section 776(b) of the Act.

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 entries of 12-volt motorcycle batteries from Taiwan that are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of 12-volt motorcycle batteries from Taiwan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

	Margin percentage
Manufacturer/producer/exporter:	
Ztong Yee	28.06
Wei Long	3.97
Cheng Kwang	1.00
All others	6.95

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or threaten material injury to, a U.S. industry before the later of 120 days after the date of this determination, or 45 days after the final determination, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m. on May 23, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Assistant Secretary by May 16, 1989. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

April 7, 1989.

[FR Doc. 89-9191 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-802]

Final Affirmative Countervailing Duty Determination: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Israel

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Israel of industrial belts and components and parts thereof, whether cured or uncured (industrial belts), as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 15.42 percent *ad valorem*. In addition, we determine that critical circumstances do exist in this case.

We have notified the United States International Trade Commission (ITC) of our determinations. If the ITC determines that imports of industrial belts materially injure, or threaten material injury to a U.S. industry, we will direct the U.S. Customs Service to resume suspension of liquidation of all entries of industrial belts from Israel that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of our countervailing duty order and to require a cash deposit on entries of industrial belts in an amount equal to the estimated net subsidy.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5414.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Israel of industrial belts. For purposes of this investigation, the following programs are found to confer subsidies:

- Encouragement of Capital Investment Law Grants
- Exchange Rate Risk Insurance
- Long-term Industrial Development Loans
- Encouragement of Research and Development Grants

We determine the estimated net subsidy to be 15.42 percent *ad valorem* for all manufacturers, producers, or exporters in Israel of industrial belts.

Case History

Since publication in the **Federal Register** of the *Preliminary Affirmative Countervailing Duty Determination: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Israel* (53 Fr 48670, December 2, 1988) (*Preliminary Determination*), the following events have occurred. We received requests for a public hearing from petitioner on December 7, 1988, and from respondents on December 9, 1988. On December 9, 1988, petitioner filed a request for alignment of the countervailing duty and antidumping final determinations. This postponement was approved under section 705 of the Act and published in the **Federal Register** on February 13, 1989 (54 FR 6562).

On March 29, 1989, in accordance with Article 5, paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (GATT Subsidies Code), we notified U.S. Customs to terminate the suspension of liquidation in this investigation as of April 1, 1989. Petitioner withdrew its request for a public hearing on March 3, 1989, and respondents withdrew their requests on March 8, 1989. We received written comments from petitioner on March 16 and March 20, 1989, and from respondents on February 23 and March 20, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedules* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-headings. The HTS sub-headings are provided for convenience and Customs purposes.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, formerly provided for under TSUSA item numbers 358.0210, 358,0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520 and currently classifiable under HTS item numbers 3926.9055, 3926.9056, 3926.9057, 3926.9059, 3926.9060, 4010.1010, 4010.1050, 4010.9111, 4010.9115, 4010.9119, 4010.9150, 4010.9911, 4010.9915, 4010.9919, 4010.9950, 5910.0010, 5910.0090, and 7326.2000.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Analysis of Programs

Because the Government of Israel (GOI) and Magam United Rubber Industries Ltd. (Magam) withdrew their questionnaire responses, this determination is based on the best information available.

For each program found to be countervailable in prior countervailing duty investigations involving Israel, we used as the best information available the highest rate ever found for that program in previous countervailing duty determinations or administrative reviews involving products from Israel. We did not conduct a verification, since respondents withdrew their responses from the record of the investigation.

Based upon our analysis of the petition, written comments from petitioner and respondents and prior Israeli cases, we determine the following:

I. Programs Determined to Confer Subsidies

We determine that subsidies are being provided to manufactures, producers, or exporters in Israel of industrial belts under the following programs:

A. The Encouragement of Capital Investment Law (ECIL) Grants

The purpose of the ECIL is to attract capial investment to Israel. In order to be eligible to receive various benefits under the ECIL, including investment grants, drawback grants, capital grants, accelerated depreciation, and reduced tax rates, the applicant must obtain "approved enterprise" status. (ECIL interest subsidy payments and tax programs are listed below under "Programs Determined Not to Be Used".) Approved enterprise status is obtained after review of information submitted to the Ministry of Industry and Trade, Investment Center Division.

Using our *Final Affirmative Countervailing Duty Determination: Potassium Chloride from Israel* (49 FR 35122, September 14, 1984) as the best information available, we determine that the provision of investment grants under this program confers a subsidy on exports of industrial belts from Israel and that the estimated net subsidy for all producers and exporters of industrial belts from Israel is 1.18 percent *ad valorem.*

B. Exchange Rate Risk Insurance

The Exchange Rate Risk Insurance Scheme (EIS), operated by the Israel Foreign Trade Risk Insurance Corporation Ltd. (IFTRIC), is aimed at insuring exporters against losses which result when the rate of inflation exceeds the rate of devaluation and the New Israeli Shekel (NIS) value of an exporter's foreign currency receivables does not rise enough to cover increases in local costs.

The EIS scheme is optional and open to any exporter willing to pay premiums to IFTRIC. Compensation is based on a comparison of the change in the rate of devaluation of the NIS against a basket of foreign currencies with the change in the consumer price index. If the rate of inflation is greater than the rate of devaluation, the exporter is compensated by an amount equal to the difference between these two rates multiplied by the value-added of the exports. If the rate of devaluation is higher than the change in the domestic price index, however, the exporter must compensate IFTRIC. The premium is calculated for all participants as a percentage of the value-added sales value of exports. IFTRIC changes this

percentage rate periodically but, at any given time, it is the same for all exporters.

In determining whether an export insurance program provides a countervailable benefit, we examine whether the premiums and other charges are adequate to cover the program's long-term operating costs and losses. In the last Israeli investigation, *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel* (52 FR 25447, July 7, 1987) (*Phosphoric Acid*), we found that this program conferred a countervailable benefit. Using our determination in *Phosphoric Acid* as the best information available, we determine that this program confers an export subsidy on exports of industrial belts from Israel.

For the preliminary determination we used the rate calculated for this program in the *Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from Israel* (52 FR 3316, February 3, 1987) as the best information available with respect to the amount of the subsidy. For this determination, we are using the rate calculated in *Preliminary Results of Countervailing Duty Administrative Review: Fresh Cut Roses from Israel* (54 FR 10395, March 13, 1989), since it is now the highest rate found for this program in all previous countervailing duty determinations and administrative reviews. On this basis, we determine that the estimated net subsidy for all producers and exporters of industrial belts in Israel is 9.18 percent *ad valorem.*

C. Long-term Industrial Development Loans

Prior to July 1985, approved enterprises were eligible to receive long-term industrial development loans funded by the GOI. In *Phosphoric Acid,* we determined that loans under this program are provided to a diverse number of industries. However, the interest rates charged on these loans vary depending on the development zone location of the borrower. The interest rates on loans to borrowers in Development Zone A are lowest, while those on loans to borrowers in the Central Zone are highest.

In the absence of government and company questionnaire responses and verified information, we assume, as the best information available, that the producers and exporters of industrial belts in Israel are not located in the Central Zone. Therefore, we determine that this program confers a regional subsidy on exports of industrial belts from Israel. Using the rate calculated in the *Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Israel* (52 FR 1651, July 7, 1987) as the best information available, we determine that the estimated net subsidy for all producers and exporters of industrial belts in Israel is 5.02 percent *ad valorem.*

D. Encouragement of Research and Development Law (ERDL) Grants

Petitioner alleges that research and development grants equal to 50 percent of approved project costs are available under ERDL where such activity is directed at export expansion. Using as the best information available our determination in *Phosphoric Acid,* we determine that this program confers a subsidy on exports of industrial belts from Israel and that the estimated net subsidy for all producers and exporters of industrial belts in Israel is 0.04 percent *ad valorem.*

II. Programs Determined Not to be Used

Using as the best information available the non-use of the following programs in previous investigations, we determine that the programs below were not used by manufacturers, producers, or exporters in Israel of industrial belts during the review period. For a full description of these programs, see the *Preliminary Determination.*

A. *Certain Benefits Under the Encouragement of Capital Investment Law (ECIL)*

1. *Accelerated Depreciation Under Section 42*
2. *Direct Reduction of Corporate Tax Under Section 47*
3. *Interest Subsidy Payments*

B. *Labor Training Grants from the Ministry of Labor*

C. *Special Export Marketing Financing from the Bank of Israel*

Critical Circumstances

On June 30, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from Israel. Section 705(a)(2) of the Act provides that critical circumstances exist if we determine that:

A. The alleged subsidy is inconsistent with the Agreement, and

B. There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

We generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. 19 CFR 355.16(f) (53 FR 52306, 52350)

In our preliminary determination of critical circumstances we used import statistics for the basket TSUSA categories applicable to industrial belts and determined that imports of the subject merchandise in the basket TSUSA categories from Israel were not massive over a relatively short period. For our final determination, however, we decided not to rely on basket-category import statistics. Instead, we are using an approach adopted in the recent antidumping determinations on antifriction bearings. In these determinations the Department assumed massive imports when import statistics were based on basket TSUSA categories and respondents did not supply information on company-specific exports of the subject merchandise or the information supplied could not be verified. See, for example, *Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany* and *Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from the United Kingdom.* The Commerce Department made these final determinations on March 24, 1989.

In this investigation we have circumstances which are similar to those in the antifriction bearings investigations. The import statistics are based on basket TSUSA categories and respondents withdrew their responses. Therefore, as best information available, we are assuming that imports from Israel have been massive over a relatively short period of time.

As described above, we have determined, on the basis of the best information available, that the GOI provides export subsidies on the merchandise under investigation. Article 9 of the GATT Subsidies Code prohibits the use of export subsidies on non-primary products. However, Article 14 provides an exception for developing countries, provided they do not use "export subsidies on their industrial products * * * in a manner which causes serious prejudice to the trade or production of another signatory" (Article 14, paragraph 3).

For a developing country like Israel, then the issue is whether we find that export subsidies are causing "serious prejudice" to U.S. trade or production of industrial belts. Under section 771(7)(c)(iii) of the Act, the ITC evaluates all relevant economic factors

bearing on the state of the industry, including actual and potential decline in output, sales, market share, profits, productivity, return on investment, and capacity utilization. Thus, in making its preliminary and final injury determinations, the ITC considers trade and production in the United States. We conclude that, in principle, serious prejudice can exist where material injury to a U.S. industry occurs by reason of imports benefiting from export subsidies.

Based upon the information in the record and the ITC's affirmative preliminary determination of August 14, 1988, we conclude that serious prejudice exists within the meaning of Article 14, paragraph 3. Therefore, we find that Israel's export subsidies on industrial belts are inconsistent with the GATT Subsidies Code.

For the reasons discussed above, we find that critical circumstances exist within the meaning of section 705(a)(2) of the Act. If the ITC's final determination should be negative, our critical circumstance finding will become moot; in any event, under section 705(a)(4)(A) of the Act, the ITC must make its own affirmative determination of critical circumstances.

Comments

Comment 1: Petitioner claims that the Department should countervail all subsidy programs found to be used in prior Israeli cases at the highest rate calculated for each program, including programs subsequently found to have been discontinued. In making its determination on the basis of the best information available, the Department must adversely infer that respondents failed to supply information on possible new programs that may have been created to replace the discontinued programs. The Department should use the subsidy rates applicable to the discontinued programs as the best information available for the new programs that may have been established.

DOC Position: Since respondents withdrew their responses from the record in this investigation, the Department made its final determination on the basis of the best information available, using as the best information its findings from past countervailing duty determinations or administrative reviews concerning products from Israel. In addition, to calculate a countervailing duty rate in this investigation, the Department used the highest countervailing duty rate previously found in any final countervailing duty determination or administrative review for each of the programs.

In so doing, the Department has adversely inferred that respondent has used each of the ongoing programs previously found countervailable, and that respondent has realized from each program a benefit equal to the highest benefit found in any countervailing duty determination or administrative review. Petitioner has not provided any evidence of new programs that may have been established to replace the programs discontinued. Therefore, the Department sees no reason to make additional adverse inferences.

Comment 2: Petitioner claims that the Department should recognize the existance of a new program granting a partial risk guarantee for unsuccessful export marketing activities and should determine that this program is countervailable. (This program was briefly mentioned in the government response, which, as noted above, was subsequently withdrawn.) Petitioner suggests using the exhange rate risk insurance scheme as a proxy for quantifying the benefit of the program.

DOC Position: We disagree. Both the GOI and Magam withdrew their responses from the record of this investigation. Consequently, the Department made its determination on the basis of the best information available. As the best information available, the Department used the conclusions reached in past Israeli cases. The Department considers it inappropriate to use a portion of the withdrawn response concerning an export market risk guarantee while disregarding the remainder of the responses. As set out in our response to *Comment 3*, we have refused to consider information from the withdrawn response concerning respondent's location within the Central Zone. It would be inconsistent and inappropriate for the Department to pick and choose information from the withdrawn response, using information unfavorable to respondents but not using information favorable to respondent. Furthermore, we note that petitioner has not supplied any substantive information with respect to this possible other program, nor has it described how it might be countervailable.

Comment 3: Respondents maintain that the Department failed to use the best information available in its preliminary determination for two of the programs under investigation: ECIL Grants and Long-Term Industrial Development Loans. Respondents indicate that benefits under these programs vary by zone and that no benefits are received by firms located in the Central Zone. Respondents state that Magam is located in Central Zone and have supplied a letter from the Government of Israel attesting to this statement. Respondents conclude that the Department should find that Magam has received no benefits under these programs, since it is located in the Central Zone.

Petitioner claims that the Department should not accept incomplete information submitted by Magam indicating that it may be within the Central Zone and, therefore, may be precluded from receiving preferential interest rates under the ECIL.

DOC Position: The GOI and Magam chose to withdraw their questionnaire responses in this investigation. Therefore, we were unable to verify any of the information needed to make this final determination. Under the provisions of the Act, we must verify all information used in our final determination. Because we were unable to verify any information in this investigation, it was necessary to make this final determination on the basis of the best information available.

It would be contrary to the provisions of the Act and Department practice to use partial information provided by respondents in the absence of complete and accurate questionnaire responses which were subject to verification. If the Department were to follow such a practice, potential respondents would have no reason to respond to the Department's questionnaire and would, instead, provide only information favorable to their case. Obviously, this would be an unacceptable result. See *Association Colombiana de Exportadores de Flores* v. *United States*, Slip op. 89-3 (Ct. Int'l Trade, January 6, 1989).

Comment 4: Respondents claim that the Department should not make an affirmative determination of critical circumstances, since imports from Israel account for a small percentage of U.S. consumption of the subject merchandise.

DOC Position: Because the Department's import data on the subject merchandise are based on basket TSUSA categories, we would normally look to respondents for accurate data on exports of the subject merchandise to the U.S.

In this case, however, respondents have withdrawn their responses, thus eliminating our usual alternative source of import statistics. Therefore, as best information available, we are assuming that imports from Magam have been massive over a relatively short period. Since, in this case, there are also export subsidies inconsistent with the agreement, as explained in the critical circumstances section of this

determination, we have made an affirmative determination of critical circumstances. See our discussion of this issue in the section of this notice on critical circumstances.

Comment 5: Petitioner asserts that, in the scope of investigation at the preliminary determination, the Department listed only four of the 18 HTS items corresponding to the nine TSUSA numbers. Petitioner requests that the Department list all 18 numbers in its final determination.

DOC Position: The scope of this investigation has not changed since the initiation. The petition included nine TSUSA item numbers and four HTS sub-headings that petitioner believed corresponded to the TSUSA numbers.

The Harmonized Tariff Schedule went into effect on January 1, 1939. Based on a January 1989 ITC publication, petitioner requested that the Department expand the four HTS sub-headings to eighteen sub-headings.

We consulted with the respondents in each country subject to concurrent countervailing and antidumping investigations involving industrial belts and received no objections to the petitioner's request.

In our preliminary, as now, we note that the written description of the products covered by the investigation is dispositive. The HTS numbers are provided for convenience and customs purposes as to the scope of the product coverage.

Verification

As noted above, the questionnaire responses in this investigation were withdrawn. Therefore, we did not conduct a verification. In accordance with section 776(c) of the Act, we made our final determination on the basis of the best information available.

Suspension of Liquidation

In accordance with our preliminary affirmative countervailing duty determination published on December 2, 1988, we directed the U.S. Customs Service to suspend liquidation on the products under investigation and to require a cash deposit or bond equal to the duty deposit rate. This final countervailing duty determination was extended to coincide with the companion final antidumping determinations, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act). Under Article 5, paragraph 3 of the GATT Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidy and injury. Therefore, on March 29, 1989, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 1, 1989, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between December 2, 1988, and March 31, 1989. Since we are now making a final affirmative determination of critical circumstances, the suspension of liquidation becomes retroactive to September 3, 1988, which is 90 days prior to the date on which liquidation was first suspended. We shall instruct the U.S. Customs Service also to suspend liquidation on all unliquidated entries made between September 3, 1988, and December 1, 1988. If the ITC issues a final affirmative injury determination, we will reinstate suspension of liquidation under section 705 of the Act on the date of publication of the countervailing duty order and again require a cash deposit on all entries of the subject merchandise in an amount equal to 15.42 percent *ad valorem.*

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on all entries of industrial belts from Israel entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

April 7, 1989.

[FR Doc. 89-9296 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-580-802]

Final Negative Countervailing Duty Determination: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that *de minimis* benefits which constitute subsidies within the meaning of the U.S. countervailing duty law are being provided to manufacturers, producers, or exporters in Korea of industrial belts and components and parts thereof, whether cured or uncured (industrial belts), as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 0.41 percent *ad valorem.* Since this rate is de minimis, our final countervailing duty determination is negative.

We have notified the United States International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5414.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that *de minimis* benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters in Korea of industrial belts. For purposes of this investigation, the following programs are found to confer subsidies:

- Short-Term Export Financing
- Export Tax Reserves
- Duty Drawback on Non-Physically Incorporated Items and Allowances for Excessive Loss and Wastage Rates

We determine the estimated net subsidy to be 0.41 percent *ad valorem* for all manufacturers, producers or exporters in Korea of industrial belts. Since this rate is *de minimis*, our final countervailing duty determination is negative.

Case History

Since the last **Federal Register** publication pertaining to this investigation [*Preliminary Affirmative Countervailing Duty Determination: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from the Republic of Korea* (53 FR 48672, December 2, 1988) (*Preliminary Determination*)], the following events have occurred. On December 9, 1988, petitioner filed a request for alignment of the countervailing duty and antidumping final determinations. This postponement was approved under section 705 of the Act and published in the **Federal Register** on February 13, 1989 (54 FR 6562).

We conducted verification in Korea from January 23 through January 27, 1989, of the questionnaire responses of the Government of Korea (GOK), Dongil Rubber Belt Co., Ltd. (Dongil), and Taelim Moolsan Co., Ltd. (Taelim Moolsan), a trading company whose exports to the United States are purchased from Dongil. At the GOK we also verified information provided in the GOK responses with respect to another producer of industrial belts which exports to the United States, Hankook Belt Industry (Hankook). All the information submitted by the GOK concerning was received prior to verification.

Petitioner and respondents requested a public hearing in this case which was held on March 16, 1989. Both parties filed pre-hearing briefs on March 13, 1989, and post-hearing briefs on March 23, 1989. On March 29, 1989, in accordance with Article 5, paragraph 3 of the Agreement of Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (GATT Subsidies Code), we notified U.S. Customs to terminate the suspension of liquidation in this investigation as of April 1, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-headings. The HTS sub-headings are provided for convenience and customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, formerly provided for under TSUSA item numbers 358.0210, 358.0290, 358,0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510 and 773.3520; and currently classifiable under HTS sub-headings 3926.9055, 3926.9056, 3926.9057, 3926.9059, 3926.9060, 4010.1010, 4010.1050, 4010.9111, 4010.9115, 4010.9119, 4010.9150, 4010.9911, 4010.9915, 4010.9919, 4010.9950, 5910.0010, 5910.0090 and 7326.2000.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses and lift trucks.

Analysis of Programs

As mentioned above, we received and were able to verify the questionnaire respones of Dongil and Taelim. Another producer, Hankook, did not directly respond to our questionnaire. However, information with respect to Hankook, which we were also able to verify, was provided in the GOK response. This information was received prior to verification. A certain limited amount of information pertaining to Hankook was not provided by the GOK and could not be verified. For one program described below (see Section I.C.) where we did not have verified information with respect to Hankook, we used the best information available.

We calculated the country-wide estimated net subisdy rate by weight averaging the respective company-specific rates according to the respondent companies' share of exports of the subject merchandise to the United States. Because this rate is *de minimis*, despite Hankook's level of benefits, our final determination is negative. (See, *Final Negative Countervailing Duty Determinations: Standard Line Pipe. Light-walled Rectangular Tubing and Heavy-Walled Rectangular Tubing from Malaysia* (53 FR 46904, November 21, 1988); see also preamble discussion of § 355.20(d) of the Commerce Department's regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.38), which codifies existing practice.) For informational purposes, at the end of the individual program descriptions below, we have included company-specific rates.

For purposes of this final determination, the period for which we are measuring subsidies ("the review period") is calendar year 1987 which corresponds to the fiscal year of Dongil.

Based upon our analysis of the petition, the responses to our questionnaires, verification, and written comments filed by petitioner and respondents, we determine the following:

I. Programs Determined to Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers and exports in Korea of industrial belts under the following programs:

A. Short-Term Export Financing

The Short-Term Export Financing Regulations provide the guidelines for short-term export financing. Under these regulations, export financing takes the form of loans on bills related to export sales transactions. Eligibility is based upon presentation of export documents or upon past export performance. Export loans based on past performance cannot exceed 90 days, while loans based on specific export documents cannot exceed 180 days and are limited to the terms of the applicable letter of credit. During our review period, the rate of interest charged on short-term export financing remained constant at ten percent, the ceiling established by the Bank of Korea (BOK).

Short-term export financing is available in Korea to finance three types of transactions: (1) Purchases of imported materials, (2) purchases of domestic material, and (3) production. Each type of transaction carries with it a "loan exchange ratio." This ratio, expressed in won, determines the maximum won loan amount per dollar value of the transaction. The ratio varied between small- and medium-sized companies on the one hand, and large-sized companies on the other. We verified that the exchange ratios in

effect during the review period were reduced as of February 8, 1988.

The BOK also establishes rediscount ratios that set the proportion of a short-term loan which the commercial bank may rediscount through the central bank. During the period of investigation, the rediscount ratio for short-term export financing was lowered from 60 percent to 40 percent for large-sized firm, and from 90 percent to 60 percent for small- and medium-sized firms. The rediscount ratio on domestic commercial financing remained at 60 percent for large-sized companies. Small- and medium-sized firms are defined as companies with fewer than 300 employees. We verified that both Dongil and Hankook are classified as large companies.

We verified that both Hankook and Dongil received financing under this program. Because only exporters are eligible to use short-term export financing, we determine these loans to be countervailable to the extent that they are provided on preferential terms. Moreover, we determine that the different rediscount ratios applicable to financing for the large firms during the review period resulted in the provisions of export financing on preferential terms for large firms. This is because in lending to large firms, commercial banks had an incentive to channel more funds to finance those firms' export transactions and, thus, fewer funds to finance their domestic transactions. This is the same analysis we employed in *Certain Stainless Steel Cooking Ware from the Republic of Korea: Final Affirmative Countervailing Duty Determination* (51 FR 42687, November 26, 1986) (*Cooking Ware*). At verification, we found that in September 1988, the BOK equalized the rediscount ratios.

To determine the extent to which these loans are provided on preferential terms, we used verified information provided by the GOK to construct a weighted-average short-term interest rate to represent what large firms pay to finance domestic transactions. Because, during the review period, commercial banks had an incentive to direct their loans to large firms for financing export transactions rather than domestic transactions, large firms would have needed to seek alternative sources for financing domestic sales.

The weighted-average interest rate we have computed is a best estimate measure of the preference created by the different rediscount ratios. It incudes the interest rates on commercial bank loans for domestic transactions; the issuance of commercial paper; and financing from investment and finance companies, merchant banking companies, and mutual savings and finance companies. We verified that these sources constitute all the forms of short-term commercial financing in Korea. They differ from those used in our *Preliminary Determination* in that we have deleted mutual credit cooperatives and included merchant banking companies. We verified that the former were used as a source of short-term finance almost exclusively by households and the latter were a source for companies.

The GOK does not maintain detailed statistical information concerning the weighted-average or average interest rate charged by commercial banks. The BOK annual report only lists the interest rate bands within which banks are permitted to make loans Therefore, to determine an average interest rate for commercial banks in Korea, we used as the best information available the results of a survey of Korean commercial banks conducted by the GOK. The survey provides the percentage of short-term loans offered by a number of Korean national and local commercial banks at half-percent intervals within the interest rate band allowed by the BOK. Local commercial banks are allowed to charge interest rates up to one percent higher than national commercial banks. We verified that local banks account for 9.1 percent of all commercial bank loans, and national banks, 90.9 percent. We then weight average the national and local commercial bank average interest rates to determine a single weighted-average commercial bank interest rate for the review period of 11.15 percent.

The weights assigned to each of the other sources of short-term domestic credit (*i.e.*, commercial paper, financing from investment and finance companies, merchant banking companies, and mutual savings and finance companies) were derived from the BOK *Monthly Bulletin*. From the *Monthly Bulletin*, we determined the amount of, and interest rates charged on, short-term financing from each of these sources.

Using the above data, we calculated a weighted-average short-term interest rate benchmark of 11.79 percent. We compared this rate to the 10 percent interest rate on export loans received by Dongil and Hankook. (We verified that Taelim Moolsan did not receive any export loans during the period of review.) To determine the benefit of the preferential interest rate, we subtracted the interest paid on the export loans at 10 percent from the interest the companies would have paid if the loans had been contracted at the benchmark.

Because the benefit was not segregable by product or market, we divided the benefit by the total exports of the respective companies during the review period. On this basis, we calculated an estimated net subsidy of 0.14 percent *ad valorem* for Dongil and 0.17 percent *ad valorem* for Hankook. The country-wide rate equals 0.14 percent *ad valorem*.

B. Export Tax Reserves Under Articles 22 and 23

Articles 22 and 23 of the Act Concerning the Regulation of Tax Reduction and Exemption permit deductions from taxable income by exporting firms for a number of different reserves covering export losses, overseas market development and price fluctuation losses.

Under Article 22, a corporation may establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of the foreign exchange earnings component of net income. It certain export losses occur, they may be offset by the reserve fund. Following the tax year in which the reserve amount was created, there is a one-year grace period. After the grace period, amounts remaining in the reserve that have not been offset by actual losses are returned to the taxable income account in three equal annual installments.

Article 23, which governs overseas market development funds, allows a corporation to establish a reserve fund amounting to one percent if its foreign exchange earnings in the respective tax year. Expenses incurred in development overseas markets may be offset from the reserve fund. Funds remaining in the reserve after the tax year are treated as under Article 22.

The balance in both reserve funds is not subject to corporate tax, although all moneys in the reserve funds, if not used to offset losses, are eventually returned to income and subject to corporate tax.

We determine that these export reserves programs confer benefits which constitute export subsidies because they provide a deferment, contingent upon export performance, of direct taxes. We verified that Dongil and Hankook, but not Taelim Moolsan, utilized the provisions under the export tax reserves.

To measure the benefit conferred by the deferments, we followed the same methodology previously use in *Cooking Ware* and calculated the tax savings by multiplying the amount maintained in the reserves by the companies' effective tax rates.

We treated the tax savings on these funds as short-term interest-free loans. Accordingly, to determine the benefit, the amount of the companies' tax savings was multiplied by the average short-term national and local commercial bank interest rate (11.15%) which we calculated under the section above.

On this basis, we calculated an estimated net subsidy of 0.13 percent *ad valorem* for Dongil and 0.00 percent *ad valorem* for Hankook. The country-wide rate is 0.12 percent *ad valorem*.

C. Duty Drawback on Non-Physically Incorporated Items and Allowances for Excessive Loss and Wastage Rates

We examined the Korean duty drawback system to determine whether the companies under investigation were receiving benefits from the allowance of duty drawback on non-physically incorporated items and on recoverable scrap. We verified that input usage rates are determined every four years for producers of exported products. The survey upon which the GOK based its input usage rates was based on an audited survey of Dongil's production process. Tables of these rates are used by Korean Customs for duty drawback purposes.

We verified that recoverable scrap is factored into the usage rates and that, therefore, for Dongil, the loss and waste rates built into the input usage tables are not excessive. Moreover, we verified that Dongil does not have recoverable scrap from its production process. We also verified that Dongil did not receive any duty drawback on non-physically incorporated items. We were unable to make these determinations for Hankook since we could not conduct a complete on-side verification of Hankook and its production process.

We also verified that a fixed rate duty drawback system is used by the GOK for export shipments valued at less than $20,000. The fixed rate duty drawback is calculated yearly on a product-specific basis. The GOK determines the rate, on an industry-wide basis, based on the previous year's non-fixed rate duty drawback experience of a given product. The rate applicable in the review period was 22 won per dollar of export value.

Since we verified that Dongil has no recoverable scrap and that it has not received any duty drawback on non-physically incorporated items, we determine that Dongil receives no subsidy under this program.

We were unable to verify, however, that Hankook did not receive drawback on non-physically incorporated items or on recoverable scrap. Therefore, as the best information available, we assumed that the entire amount of duty drawback received by Hankook during the review period was excessive and therefore constitutes a countervailable subsidy.

We were able to verify the amount of drawback received by Hankook on its total exports of the subject merchandise. However, we could not verify the value of Hankook's total exports of the subject merchandise. Therefore, as the best information available, we used the fixed duty drawback rate of 22 won per dollar of export value to calculate the estimated net subsidy.

We applied the rate of 22 won per dollar to Hankook's total exports of the subject merchandise to the United States as an estimate of the total amount of duty drawback that Hankook received on its shipments of the subject merchandise to the United States. We then converted this won value to a dollar value using, as the best information available, the highest dollar/won exchange rate in effect during the review period. We allocated this amount over Hankook's total exports of the subject merchandise to the United States, a figure we had verified in dollars. The result of this calculation yields an estimated net subsidy of 2.78 percent *ad valorem* for Hankook. The country-wide rate is 0.15 percent *ad valorem*.

We also considered using as the best information available the highest estimated net subsidy found for this program in all previous Korean cases. However, the highest rate previously found for this program is smaller than the rate calculated above. Therefore, we used the methodology detailed above.

II. Programs Determined Not To Be Used

We determine, based on verified information, that the programs listed below were not used by manufacturers, producers and exporters in Korea of industrial belts during the review period. For a full description of these programs, see our *Preliminary Determination*.

A. Unlimited Deduction of Overseas Entertainment Expenses

B. Loans to Promising Small and Medium Enterprises

C. Exemption from the Acquisition Tax

D. Tax Incentives for Businesses Moving to a Provincial Area

E. Free Export Zone Program

F. Export Credit Financing from the Export-Import Bank of Korea (KXMB)

G. Export Guarantees from the KXMB

III. Programs Determined To Have Been Terminated

We determine, based on verified information, that the progrmas listed below were terminated and that no benefits were conferred on producers and exporters in Korea of industrial belts during the review period. For a full description of these programs see our *Preliminary Determination*.

A. Special Depreciation Under Article 11 of the Act Concerning the Regulation of Tax Reduction and Exemption (ACTRE)

B. Tax Credit for Investment for Key Industries

C. Accelerated Depreciation Under Article 25 of the Act Concerning the Regulation of Tax Reduction and Exemption

D. Tariff Reductions on Plant and Equipment

E. Export Tax Reserves Under Article 24

V. Program Determined To Not Exist

We determine that the following program does not exist.

Loans for Expansion or Construction of Manufacturing Facilities

Interested Party Comments

Comment 1: Petitioner asserts that the Department's use of a weighted average of interest rates from various types of financial institutions as the benchmark for the short-term export financing program results in an underestimation of the full benefit. Specifically, petitioner states that, regarding commmercial banks, the Department incorrectly included in the calculation of the benchmark the rates on sources of funds targeted by the government for particular uses. Petitioner also asserts that insofar as Dongil received short-term loans from commercial banks during the review period, it received government-directed financing. In addition, petitioner contends that targeted funds are likely to be provided to a specific enterprise or industry and should not be considered by the Department to be appropriate bases for the benchmark rate. Petitioner also suggests that the Department should adjust the benchmark calculation by excluding the commercial lending rate and including the curb market rate, *i.e.*, the rate charged by private money lenders.

Respondents claim that Dongil's sources of short-term export financing are commercial banks only, so the curb market should not be included in the benchmark rate.

DOC Position: Petitioner's allegation that all commercial bank loans are targeted to specific enterprises or industries was first raised in the March 13, 1989, pre-hearing brief, and is, therefore, untimely and cannot be

considered for purposes of this final determination.

The curb market has not been included in our calculation of the benchmark for the following reasons: (a) Information from verification and through discussions with officials of the U.S. Treasury Department, the International Monetary Fund, and the World Bank indicates that the curb market is a very marginal source of funds in the Korean financial markets; (b) these same sources indicate that the curb market is not a viable source of financing for any but the smallest companies; and (c) we do not have adequate information on interest rates in the curb market.

Comment 2: Respondents assert that the Department should use Dongil's company-specific cost of comparable short-term commercial bank financing as the short-term interest rate benchmark. Respondents argue that because short-term interest rates in Korea vary greatly depending on the creditworthiness of individual borrowers, a country-wide average rate would be higher since it includes less creditworthy companies. Moreover, respondents maintain that because Dongil is the only exporter of the subject merchandise and the Department already has information concerning Dongil's cost of alternative financing, the calculation of a company-specific rate would not be overly burdensome.

Petitioner claims that the Department should follow its precedent and its preference articulated in the *Subsidies Appendix* attached to the notice of *Cold-Rolled Cabon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984) and use the country-wide short-term benchmark.

DOC Position: In order to administer the countervailing duty law in an administrably manageable way, it is necessary for uniformity that we use a country-wide benchmark for short-term financing programs instead of a company-specific benchmark. See, for example, *Final Affirmative Countervailing Duty Determination and Order: Welded Carbon Steel Pipe and Tube Products from Argentina,* (49 FR 37619, September 27, 1988).

Comment 3: Respondents assert that the Department has verified the actual distribution of commercial bank short-term interest rates in Korea through survey results of Korean banks submitted by the GOK at verification. They contend that the Department should ensure that the country-wide benchmark reflects this survey. Furthermore, respondents argue that the information was timely since it was submitted at verification and before the Department's new regulations took effect.

Petitioner claims that to the extent that the Department may use commercial bank rates in the benchmark for the final determination, the Department should maintain the rate used in the preliminary determination. Petitioner states that the information regarding the interest rate distribution within the regulated band may be incomplete. Moreover, the information, which was not submitted until verification, was untimely.

DOC Position: Although we recognize that the survey results provided by the GOK may not be a precise reflection of the country-wide weighted-average short-term commercial bank interest rate in Korea, we have decided to use the results as the best information available. We note that interest rate information provided in the survey was verified and that it is consistent with information provided in the GOK annual reports and monthly bulletins.

We find that the survey data is timely because we specifically asked the respondent for the data in our deficiency questionnaire of December 15, 1988. In any event, we agree with respondents that the information was timely since the new regulations were not in effect at the time of verification. Furthermore, our findings were in our verification report and petitioner had adequate time to comment.

Comment 4: Respondents assert that the short-term interest rate benchmark ought to be based exclusively on commercial bank lending rates in the final determination. Respondents state that the Department used a weighted-average basket of interest rates because it determined that the higher rediscount ratio for short-term commercial bank export financing conferred a preference on export financing relative to domestic short-term commercial bank financing. However, respondents assert that, as the rediscount ratios for export and domestic financing were equalized before the preliminary determination, there is no longer an incentive to prefer export financing to domestic financing.

DOC Position: We agree with respondents that the equalization of the rediscount ratios constitutes a program-wide change. However, it is the Department's policy to take into account only those program-wide changes which are measurable and verifiable. The equalization of the rediscount ratios took place in September 1988. The interval since then represents too short a time to measure adequately the effect of that change on the lending practices of Korean commercial banks. Moreover, we do not have the information to allow us to calculate a commercial bank short-term interest rate based on the period since September 1988. Therefore, for the purposes of this final determination, we are not taking this change into account because the effects of the change cannot be measured.

Comment 5: Respondents assert that the Department should take into account in the final determination another program-wide change which occurred, with respect to the short-term export financing program, prior to the preliminary determination. Specifically, the Department should take into account the information submitted during verification that the GOK effectively abolished the short-term export financing program by allowing all interest rates in the Korean economy to vary according to market forces.

Petitioner claims that the Department should not take into account the changes in the program because the effects are speculative and it is the Department's policy to take into account only those changes that are quantifiable and verifiable.

DOC Position: It is the Department's policy to take into account program-wide changes which occur prior to the preliminary determination and are both measurable and verifiable. The effective date for the liberalization of interest rates in the Korean economy was December 5, 1988, which was after the date of publication of the *Preliminary Determination.* Therefore, this program-wide change occurred too late to be taken into account.

Comment 6: Respondents assert that the Department should consider as a program-wide change the reduction in the loan exchange ratios in the short-term export financing program. According to respondents, the reduction is measurable and was verified and thus should be taken into account.

Petitioner claims that the Department, by ascribing 1988 loan exchange ratios onto Dongil's export borrowing in 1987 as proposed by respondents, would be indulging in speculation. The effect of the change in the loan exchange ratios, according to petitioner, is neither quantifiable nor verifiable. Hence, no adjustment should be made for the reduction in the loan exchange ratios.

DOC Position: We agree with petitioner. Although this particular change occurred prior to our preliminary determination and we were able to verify the change, we cannot measure the effect of the change on the benefit provided to Dongil under the program. The review period for this investigation

is calendar year 1987. Consequently, we do not have verifed information with respect to Dongil's 1988 sales, nor its level of borrowing in 1988. Thus, any calculation performed by the Department would be too speculative.

Comment 7: Petitioner asserts that the Department erred in not finding Dongil's long-term loans countervailable in the preliminary determination. Petitioner claims that long-term financing is regulated by the GOK through various financial institutions and loans received from regulated sources are at interest rates below the benchmark rate and as such are on preferential terms. Also, petitioner maintains that approximately 55 percent of commercial loans are directed loans and on this basis, as best information available, the Department should find the long-term loans of Dongil to be provided to a specific enterprise or industry.

DOC Position: Petitioner first raised this argument in its pre-hearing brief.

It is untimely and cannot be considered for purposes of this final determination because the argument was raised after verification and, consequently, we do not have the information to evaluate the argument.

Comment 8: Petitioner asserts that deductions from taxable income through export tax reserves should be treated solely as tax savings in the year received and not as an interest-free loan. Respondents claim that the export tax reserves programs are tax deferrals and the Department should follow its longstanding practice of treating tax deferrals as short-term interest-free loans. Respondents argue that the actual losses of a company in Korea may be used to reduce ordinary income or to reduce the export tax reserves, but not both. Thus, the tax reserves programs do not result in tax savings, it only creates a tax deferral for a specific, limited period of time.

DOC Position: We agree with respondents. We find that the tax reserves programs provide a tax deferral, not tax savings. All money in the reserves, if not used to offset losses, is eventually added back to income and subject to tax. If used to offset losses, the reserve is reduced by the loss amount.

Comment 9: Petitioner states that Dongil's effective tax rate as reported in its response includes the effects of the subsidy benefit from the export tax reserves programs. Therefore, use of this rate understates Dongil's tax savings resulting from their use of the export tax reserves programs. As an alternative effective tax rate, petitioner proposes a "national" effective tax rate for large corporations as reported in an outside source. Respondents deny that there is a national effective tax rate. Further, they claim that the Department should use company-specific effective tax rates in calculating any benefits received under the export tax reserves programs.

DOC Position: We agree with petitioner that the effective tax rate used to calculate the benefit from the export tax reserves programs should not reflect the benefit from the programs. We disagree, however, with the substitution of an unverified tax rate from an outside source. Instead, we recalculated Dongil's and Hankook's respective effective tax rates by increasing their taxable income by the amount of the reserves set aside under the export tax reserves programs and also increasing the amount of taxes that the companies would have paid absent their use of the tax reserves programs.

Comment 10: Respondents assert that the Department must distinguish between "special exports" and "general exports" in the export tax reserves programs because the amount of export income that can be contributed towards a reserve depends on the country to which the goods have been exported. Thus, respondents claim that, for Dongil, the Department should calculate any subsidy margin by dividing the amount of Dongil's reserves attributable to U.S. exports by Dongil's total U.S. exports. Petitioner claims that the information segregating the tax benefit according to the destination of the exports was provided for the first time at verification. Therefore, under the new procedural regulations, the data submitted was not timely and should not be considered.

DOC Position: The actual benefit attributable to exports to the United States is better measured by the amount of the reserves attributable to the United States and not to worldwide exports. Respondents were able to segregate benefits attributable to exports to the United States at verification and we were able to verify this information. The information provided at verification was not a major change to respondent's original submission, but rather was a clarification to their original submission. We fully described the information submitted by respondent in our verification report. Consequently, petitioner had adequate time to comment. Finally, we note that the new procedural regulations were not in effect at the time of verification and therefore, are not controlling.

Comment 11: Petitioner asserts that the appropriate calculation of the rate for Hankook based on the best information available would be to divide Dongil's total drawback by Hankook's exports. Respondents claim that the GOK supplied Hankook's total duty drawback amount on all exports of the subject merchandise in response to the Department's questionnaires. Additionally, there are no non-physically incorporated inputs in the production of industrial belts and Korea eliminated its practice of permitting drawback on non-physically incorporated items. Therefore, neither Dongil nor Hankook received a countervailable benefit from this program.

DOC Position: We verified the total amount of duty drawback received by Hankook on the subject merchandise. Therefore, there is no justification for substituting Dongil's drawback amount for Hankook's drawback amount. However, because Hankook did not respond to our questionnaires and did not permit a complete on-site verification, as the best information available, we have assumed that Hankook's drawback amount was excessive and calculated the estimated net subsidy as described in Section I.C.

Comment 12: Petitioner asserts that since Hankook's failure to respond to the Department's questionnaires led the Department to the use of the best information available for the preliminary determination, the Department should continue to use best information available for the final determination. Respondents argue that information regarding Hankook's export data and program participation was submitted in the GOK responses and that the only new information submitted at verification related to the type of belt exported. Therefore, the Department should not use best information available.

DOC Position: Prior to our preliminary determination, we received incomplete information on Hankook from the GOK. Therefore, for the purposes of the preliminary determination, some of the information we used for Hankook was the best information available. Subsequent to the preliminary determination, but prior to verification, the GOK provided Hankook's export data and additional information on its program participation. At verification for the first time, Hankook claimed that the belts it exported to the United States were not covered by the scope of the investigation. Since this was new information first submitted at verification we did not accept this information. Moreover, discussions with the ITC product experts suggested that the belts produced by Hankook may be within the scope of the investigation.

We used the verified information to compute Hankook's estimated net subsidy with respect to the short-term export financing and export tax reserves programs. For the duty drawback program, however, we lacked verified data on Hankook's total exports of the subject merchandise to all markets. As best information available, therefore, we derived an estimate of the amount of duty drawback received by Hankook on its exports of the subject merchandise to the United States. We made this calculation as described in Section I.C.

As mentioned above, the only new information submitted at verification related to the type of belt exported by Hankook. We did not use this information for purposes of this final determination (see *DOC Position* on *Comment 15*).

Comment 13: Petitioner asserts that although Dongil did not benefit from the accelerated depreciation program under Article 25 of ACTRE during the review period, it did use the program during the review period and the benefit was reported on its tax return filed in 1988. As such, petitioner states, a separate duty deposit rate should be established. Respondents claim that there was no program-wide change before the preliminary determination; that participation in a program in one year but not in another does not constitute a change in the program; and that changes in levels of participation by individual companies are taken into account in an administration review, not in the duty deposit rate. Therefore, respondents argue that a separate duty deposit rate should not be established.

DOC Position: It is the Department's practice to provide for a separate duty desposit rate only to take into account program-wide changes which occur prior to the preliminary determination and which are measurable and verifiable. We do not consider participation in a program in one year, but not in another, to constitute a program-wide change. The accelerated depreciation provision under Article 25 was claimed by Dongil on its tax return filed after the review period. According to our standard practice, we use a cash-flow analysis for determining when the benefits of a countervailable tax program are received. Under this analysis, we consider the benefit from a tax program to be received when the tax return is filed. Therefore, we have determined that Dongil did not benefit from Article 25 during the review period.

Comment 14: Petitioner asserts that the Department's preliminary finding of critical circumstances should be upheld in the final determination. Petitioner states that a comparison of imports three months prior to the filing of the petition to imports for three months after that point demonstrates that there have been massive imports of the subject merchandise over a relatively short period of time. Respondents claim that critical circumstances did not exist at the time of the preliminary determination and do not exist presently. In fact, they state, Dongil's exports of the subject merchandise have declined since 1987. Therefore, the Department should not find critical circumstances in this case.

DOC Position: As we have found the benefits in this investigation to be *de minimis*, critical circumstances do not exist (see *Critical Circumstances* section below).

Comment 15: Respondents assert that Hankook exports only hexagonal belts used in riding lawnmowers to the United States. They state that hexagonal belts are not covered in the description of the subject merchandise under investigation and in fact are expressly excluded from the scope of the investigation. Therefore, Hankook should be excluded from the final determination.

Petitioner claims that hexagonal belts are within the scope of the investigation and are covered in the general description of the scope. Although certain belts used in integral combustion engines are excluded from the investigation, hexagonal belts do not fall into this category. Therefore, Hankook is an exporter of subject merchandise and should be included in the final determination.

Doc Position: Discussions with product experts at the ITC and information submitted by petitioner indicate that the belts exported by Hankook are not used in the engine of the lawmower, but rather to turn the mowing blades. Given this fact, hexagonal belts we considered as industrial, not automotive, belts. Furthermore, we note that Hankook did not permit a complete verification, and did not provide until verification, the information on the type of belt the company exports. Therefore, information regarding the type of belt manufactured by Hankook was untimely and not verified.

Comment 16: Petitioner asserts that, in its scope of investigation at the preliminary determination, the Department listed only four of the 18 HTS items corresponding to the nine TSUSA numbers. Petitioner requests that the Department list all 18 HTS numbers in its final determination.

DOC Position: The scope of this investigation has not changed since the initiation. The petition included nine TSUSA item numbers and, at the time, four HTS sub-headings that petitioner believed would correspond to the TSUSA numbers when the HTS system would become effective.

The Harmonized Tariff Schedule went into effect on January 1, 1989. Based on a concordance between TSUSA item numbers and HTS sub-heading listed in the January 1989 ITC publication "The Continuity of Import and Export Trade Statistics After Implementation of the Harmonizied Commodity Description and Coding System", petitioner requested that the Department expand the four HTS sub-headings and listed in our preliminary determination to eighteeen sub-headings.

We asked for comments from the interested parties in this investigation concerning industrial belts covered by the eighteen HTS sub-headings. We have received no objections in this particular determination.

In our preliminary determination, as now, we note that the written descriptions of the products covered by the investigation is dispositive. The HTS numbers are provided for convenience and customs purposes as to the scope of the product coverage. Accordingly, we do not view this as a broadening of the scope of this investigation.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act, with respect to imports of industrial belts from Korea. In determining whether critical circumstances exist, we must examine whether there is a reasonable basis to believe or suspect that (1) the alleged subsidy is inconsistent with the *GATT Subsidies Code*, and (2) there have been massive imports of the subject merchandise over a relatively short period.

Because we determine that the benefit provided to manufacturers, producers, or exporters of industrial belts in Korea is *de minimis*, the final determination is negative. Therefore, critical circumstances do not exist.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. As mentioned previously, when we could not verify the information, we used the best information available. During verification, we followed standard verification procedures, including meeting with government and company officials; inspecting documents and ledgers; tracing information in the response to source documents, accounting ledgers, and financial

statements; and collecting additional information that we deemed necessary for making out final determination.

Suspension of liquidation

The estimated net subsidy rate for industrial belts is 0.41 percent *ad valorem*. Under section 355.7 of our regulations, an aggregate net subsidy of less than 0.5 percent *ad valorem* is considered *de minimis*.

Since the suspension of liquidation was discontinued on April 1, 1989, 120 days after our preliminary determination, there is no need to instruct the U.S. Customs Service to discontinue the suspension of liquidation. However, we are instructing the U.S. Customs Service to refund all estimated countervailing duties deposited on all unliquidated entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between September 3, 1988, and March 31, 1989.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Since we have determined that only *de minimis* countervailing benefits are being provided to manufacturers, producer or exporters in Korea of industrial belts, this investigation will be terminated upon the publication of this notice in the **Federal Register**. Hence, the ITC is not required to make a final injury determination.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

April 11, 1989.

[FR Doc. 89-9260 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-559-803]

Final Negative Countervailing Duty Determination: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that *de minimis* benefits which constitute bounties or grants within the meaning of the U.S. countervailing duty law are being provided to manufacturers, producers, or exporters in Singapore of industrial belts and components and parts thereof, whether cured or uncured (industrial belts), as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is 0.35 percent *ad valorem*. Since this rate is *de minimis*, our final countervailing duty determination is negative.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5414.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that *de minimis* countervailable benefits, within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to Singaporean manufacturers, producers, or exporters of industrial belts. For purposes of this investigation, the following program is found to confer bounties or grants:

- Short-term loans provided under the Monetary Authority of Singapore Rediscount Facility

Although we have determined this program to be countervailable, the respondent received *de minimis* benefits during the review period. Since the countervailable benefits are *de minimis*, we determine that no benefits which constitute bounties or grants within the meaning of section 701 of the Act are being provided to Singaporean manufacturers, producers, or exporters of industrial belts. The review period corresponds to the respondent company's fiscal year, April 1, 1987, through March 31, 1988.

Case History

Since the last **Federal Register** publication pertaining to this investigation [Preliminary Negative Countervailing Duty Determination: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured from Singapore 53 FR 48677, December 2, 1988) Preliminary Determination)], the following events have occurred. On December 9, 1988, petitioner filed a request for alignment of the countervailing duty and antidumping final determinations. This postponement was approved under section 705 of the Act and published in the **Federal Register** on February 13, 1989 (54 FR 6562).

We conducted verification in Singapore, from January 31 through February 2, 1989, of the questionnaire responses of the Government of Singapore (GOS) and Mitsuboshi Belts (Singapore) Pte. Ltd. (MBS).

Petitioner and respondents requested a public hearing, which was held on March 16, 1989. Pre-hearing briefs were filed by petitioner and respondents on March 15 and February 24, respectively. Both parties filed post-hearing briefs on March 28, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-headings. The HTS sub-heading are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210 358.0290 358.0610 358.0690 358.0800 358.0900 358.1100 358.1400 358.1600, 657.2520, 773.3510, and 773.3520 and currently classifiable under HTS item numbers 3926.9055, 3926.9056, 3926.9057, 3926.9059, 3926.9060, 4010.1010, 4010.1050, 4010.9111, 4010.9115, 4010.9119, 4010.9150, 4010.9911, 4010.9915, 4010.9919, 4010.9950, 5910.0010, 5910.0090 and 7326.2000.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring bounties or grants ("the review period") is April 1, 1987 to March 31, 1988, which corresponds to the fiscal year of the respondent company.

Based upon our analysis of the petition, the responses to our questionnaires, verification, and written comments filed by the petitioner and respondents, we determine the following:

I. Program Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Singapore of industrial belts under the following program

Monetary Authority of Singapore (MAS) Rediscount Facility

Under the MAS Rediscounting Scheme, the MAS rediscounts pre-export and export bills of exchange. A qualifying exporter applies for financing from an approved bank, which then discounts the exporter's bills at an MAS-established discount rate plus a maximum spread of 1.5 percent. The bank subsequently rediscounts the bills with the MAS, at the MAS discount rate. The usual period for financing under this program is three months.

Because this program is available only to exporters, we determine that it is countervailable to the extent that it is offered at preferential rates. To determine whether financing under this program was made at preferential rates, we compared the interest rates charged on these loans to a short-term benchmark. In deriving the short-term benchmark, we followed the same methodology explained in our recent *Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders: Antifriction Bearings (Other Than Tapered Roller Bearings) and parts Thereof from Singapore,* announced on March 23, 1989. Three types of short-term financing were available, exclusively in Singapore dollars, during the review period: overdrafts, short-term loans and commercial bills. Because none of the types of short-term financing was predominant during the review period, we used a weighted average of the rates on these types of financing as our benchmark. Based on the comparison of our short-term benchmark with the MAS rates, we found that the rates on the MAS rediscount facility were preferential. Therefore, we determine this program to be countervailable.

To calculate the benefit arising from this program, we followed our short-term loan methodology, which has been applied consistently in our past determinations and which is described in more detail in the *Subsidies Appendix* attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

We compared the amount of interest actually paid during the review to the amount the company would have paid at the benchmark rate. MBS utilized MAS financing on a shipment-by-shipment basis and was, therefore, able to segregate MAS loans according to product and export destination. Therefore, we allocated the total benefit attributable to U.S. sales of the subject merchandise over export sales of the subject merchandise to the United States during the review period. The estimated net bounty or grant under this program is 0.35 percent *ad valorem.*

II. Programs Determined Not to be Used

We determine, based on verified information, that the programs listed below were not used by manufacturers, producers, or exporters in Singapore of industrial belts during the review period. For a full description of these programs, see our *Preliminary Determination.*

A. Tax Incentives Under the EEIA

The EEIA offers tax incentives under the following provisions:

- Part II: Pioneer Industries
- Part IV: Expansion of Established Enterprises
- Part VI: Production of Export
- Part VII: International Trade Incentives
- Part VIII: Foreign Loans for Productive Equipment
- Part IX: Royalties, Fees and Development Contributions
- Part X: Investment Allowances
- Part XI: Warehousing and Servicing Incentives

B. Double Deduction of Export Promotion Expenses under the Income Tax Act (ITA): Sections 14B and 14C

C. Research and Development (R&D) Incentives: Section 19B and 14E of the ITA

D. Research and Development Assistance Scheme (RDAS)

E. Singapore Economic Development Board (EDB)

Comments

Comment 1: Petitioner argues that the Department should not use the three-month rate on commercial bills as the benchmark for the calculation of the benefit from MAS loans because it is not representative of short-term financing in Singapore. Petitioner states that the mere comparability of terms between MAS loans and commercial bills constitutes an insufficient basis for selecting commercial bills as the benchmark. Moreover, commercial bills are no longer a predominant form of short-term financing and they have no reserve requirements, which petitioner argues is preferential.

Respondents argue that the commercial bill rate is the appropriate benchmark because the terms on commercial bills are most comparable to the financing terms on MAS loans. Respondents refer to the commercial bill benchmark used in *Final Negative Countervailing Duty Determinations: Certain Textile Mill Products and Apparel from Singapore,* (50 FR 9840, May 6, 1985) (*Textiles*) and statements made by officials in Singapore quoting commercial bills as the most comparable alternative to MAS financing. Respondents also argue that overdrafts and short-term money market loans should not be included in the benchmark because they are mainly used to finance non-commercial transactions. In addition, respondents maintain that overdrafts are often treated as unsecured long-term loans and are, therefore, an inappropriate comparison to MAS loans.

DOC Position: Four types of short-term financial instruments are available to exporters in Singapore: commercial bills, overdrafts, short-term loans and trust receipts. None of the four types of financing represented a predominant form of short-term financing. Commercial bills, although the alternative most comparable to MAS financing, represented less than six percent of total short-term financing during the review period. Therefore, for our benchmark, we used a weighted average of the three types of short-term financing available exclusively in Singapore dollars, namely, overdrafts, short-term loans and commercial bills. This weighted average best represents the market cost to an exporter of financing short-term cash needs. Trust receipts were not included in our benchmark calculation because we did not have adequate data on this type of financing. In addition, some of the financing in this category may be given in foreign currencies.

We disagree with petitioner that commercial bills should not be included in the benchmark calculation. They represent an alternative form of financing and should, therefore, be included in the weighted average. Petitioner has not explained how reserve requirements make the calculated rates on commercial bills preferential given our reliance on estimated spreads.

We also disagree with respondents' assertion regarding overdrafts. Overdrafts are, by definition, a form of

short-term financing, as are short-term money market loans. As such, we included them in our benchmark calculation.

Comment 2: Petitioner argues that the Department has not verified the use or administration of Parts IX and X of the Economic Expansion Incentive Act (EEIA) and that the Department should determine on the basis of best information available that the program is contingent upon exporting and is a countervailable export program. Petitioner argues that a portion of the Ribstar poly-V belts manufactured by the respondent are industrial belts within the scope of the investigation. Because respondent stated in the questionnaire response that benefits claimed under these sections were for a product outside the scope of this investigation, petitioner argues that total benefits claimed under these sections of the EEIA should be considered as best information available and allocated over the production of industrial belts.

Respondents state that while the parent company, which is located in Japan, manufactures industrial Ribstar poly-V belts, the respondent company manufactures only automotive Ribstar poly-V belts. Therefore, any benefits claimed under Parts IX and X of the EEIA are not within the scope of the investigation. Furthermore, the benefits that were claimed were for tax year 1988 which is outside the period of investigation.

DOC Position. We verified that the Ribstar poly-V belts manufactured by MBS are automotive belts and not industrial belts and that the benefits under Parts IX and X of the EEIA were claimed outside the period of investigation. Furthermore, the benefits claimed under Part X of the EEIA did not pertain to the R&D incentives under investigation.

Comment 3: Petitioner argues that verification exhibits should be released in their entirety based on the intent of the Omnibus Trade and Competitiveness Act of 1988 (the Act of 1988), the Court's determination that computer tapes may be released under an administrative protective order (APO), and prior ITA practice of releasing verification exhibits.

Respondents argue that there is no basis for releasing business proprietary verification exhibits. Respondents state that the section of the Act quoted by petitioner contains no mention of verification exhibits, nor does the legislative history of the 1988 Act. Respondents furthermore state that access to verification exhibits has been limited to specific cases by the courts.

DOC Position: It is our policy not to release a respondent's supporting source documents under an administrative protective order when we have requested this additional information solely to further support respondents' claims. Release of such documents can be damaging to the competitive position of the respondent. If petitioners did not agree with our position, the proper remedy was to appeal the refusal to the release of verification exhibits under APO to the Court of International Trade (CIT) while this investigation was in progress (19 U.S.C. 1677f(c)(2)).

Comment 4: Petitioner asserts that, in its scope of investigation at the preliminary determination, the Department listed only four of the 18 HTS items corresponding to the nine TSUSA numbers. Petitioner requests that the Department list all 18 HTS numbers in its final determination.

DOC Position: The scope of this investigation has not changed since the initiation. The petition included nine TSUSA item numbers and, at the time, four HTS sub-headings that petitioner believed would correspond to the TSUSA numbers when the HTS system would become effective.

The Harmonized Tariff Schedule went into effect on January 1, 1989. Based on a concordance between TSUSA item numbers and HTS sub-headings listed in the January 1989 ITC publication "*The Continuity of Import and Export Trade Statistics After Implementation of the Harmonized Commodity Description and Coding System*", petitioner requested that the Department expand the four HTS sub-headings listed in our preliminary determination to eighteen sub-headings.

We asked for comments from the interested parties in this investigation concerning industrial belts covered by the eighteen HTS sub-headings. We have received no objections in this particular determination.

In our preliminary determination, as now, we note that the written descriptions of the products covered by the investigation is dispositive. The HTS numbers are provided for convenience and customs purposes as to the scope of the product coverage. Accordingly, we do not view this as a broadening of the scope of this investigation.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act, with respect to imports of industrial belts from Singapore. In determining whether critical circumstances exist, we must examine whether there is a reasonable basis to believe or support that (1) the alleged subsidy is inconsistent with the *Subsidy Code*, and (2) there have been massive imports of the subject merchandise over a relatively short period.

Because we determine that the benefit provided to manufacturers, producers, or exporters of industrial belts in Singapore is *de minimis*, the final determination is negative. Therefore, critical circumstances do not exist.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. During verification, we followed standard verification procedures, including meeting with government and company officials, inspecting documents and ledgers, tracing information in the response to source documents, accounting ledgers, and financial statements, and collecting additional information deemed necessary for making our final determinations.

ITC Notification

Since Singapore is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 of the Act applies to these investigations. However, Singapore is a signatory to the General Agreement on Tariffs and Trade. At the time of the preliminary determination, certain products included in the scope of these investigations (*i.e.*, those classified under items 358.0610, 358.0690, 358.1400, 657.2520, 773.3510 and 773.3520 of the *Tariff Schedules of the United States Annotated*) were nondutiable. However, on January 1, 1989, Singapore lost its Generalized System of Preference status. Thus, all of the merchandise covered by this investigation is now dutiable. Consequently, even if our final determination had been affirmative, the U.S. International Trade Commission (ITC) would not have been required to make a final injury determination in this proceeding.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

April 11, 1989.

[FR Doc. 89-9261 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-802]

Final Affirmative Countervailing Duty Determination; Steel Wheels From Brazil

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

ACTION: Notice of final affirmative countervailing duty determination.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers or exporters in Brazil of steel wheels, as described in the "Scope of Investigation" section of this notice. The estimated net subsidy and duty deposit rates are specified in the "Suspension of Liquidation" section of this notice.

We have notified the U.S. International Trade Commission (ITC) of our determination. If the ITC determines that imports of steel wheels materially injure, or threaten material injury, to a United States industry, we will direct the U.S. Customs Service to resume suspension of liquidation of all entries of steel wheels from Brazil that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the countervailing duty order, and to require a cash deposit as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Bernard Carreau, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters in Brazil of steel wheels. For purposes of this investigation, we find the following programs to confer subsidies:

- CACEX Preferential Working Capital Financing for Exports
- Income Tax Exemption for Export Earnings
- CIC-OPCRE 6-2-6 Financing
- BEFIEX: IPI Export Credit Premium, and Import Duty and IPI Tax Reductions
- FINEX (Resolution 509) Export Financing
- Upstream Subsidy (steel input)

We determine the estimated net subsidy to be 1.82 percent *ad valorem* for Borlem S.A. and 17.29 percent *ad valorem* for all other manufacturers, producers or exporters in Brazil of steel wheels.

Case History

Since the publication of the preliminary determination (*Steel Wheels From Brazil; Preliminary Affirmative Countervailing Duty Determination and Initiation of Upstream Subsidy Investigation*) (53 FR 43749; October 28, 1988), the following events have occurred. Respondents submitted a supplemental response containing information pertaining to Borlem do Nordeste on December 23, 1988, and a response to our upstream questionnaire on January 6, 1989. We conducted verification in Brazil, from January 25, to February 3, 1989, of the questionnaire responses of the Government of Brazil (GOB), Rockwell-Fumagalli, Borlem, S.A., Borlem do Nordeste (BNE), and Usinas Siderurgicas de Minas Gerais (USIMINAS).

Petitioner requested a public hearing. Petitioner and respondents filed pre-hearing briefs on March 1, 1989. We held a public hearing on March 3, 1989. Petitioner and respondents filed post-hearing briefs on March 27, 1989.

Scope of Investigation

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

The products covered by this investigation are steel wheels (except custom wheels), assembled or unassembled, consisting of both a disc and a rim, designed to be mounted with both tube type and tubeless pneumatic tires, in wheel diameter sizes ranging from 13.0 inches to 16.5 inches, inclusive, and generally for use on passenger automobiles, light trucks and other vehicles. In 1988, such merchandise was classifiable under item 692.3230 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item number 8708.70.80.

In our preliminary determination, we stated that "until we have sufficient information to make a definitive scope ruling, we tentatively determine that rims or discs, imported separately, are included in the scope of this investigation."

Petitioner argues that rims should be included within the scope of the order to prevent circumvention. The petition described the merchandise covered as wheels from Brazil, which included rims and centers for such wheels so as to avoid possible circumvention through the shipment of wheel components rather than finished wheels. In an October 7, 1988 letter to the department, petitioner restated this position with regard to the rims market by asserting that its "intention was not to include within the scope of the imports subject to investigation rims sold as distinct articles of commerce and, therefore, not in circumvention of an order. . . . Petitioner's concern lies with circumvention." In other submissions, petitioner was inconsistent regarding the reasons for including rims in the scope. We conclude, however, that petitioner's primary concern is circumvention.

We verified that during the period of review the only parts of steel wheels imported from Brazil into the United States were rims. Discs were not imported. These rims were purchased by unrelated custom wheel manufacturers who combined the rims with non-Brazilian discs to make custom wheels at their own facilities. The discs add significant value to the rims.

The rims that are now imported are not of concern to the petitioner. The rims that are currently being imported are used exclusively for the manufacture of custom wheels, and the petitioner has explicitly indicated that it did not wish to include custom wheels in the scope of the order (October 7, 1988 letter). Nor is it likely that imports of these rims would undermine the effectiveness of a countervailing duty or antidumping order on steel wheels. While the steel wheels that are subject to this investigation are purchased by original equipment manufacturers (i.e., automobile manufacturers), the custom wheels that incorporate the rims currently being imported are sold exclusively in the aftermarket (*i.e.*, to automobile owners).

In past cases where petitioners have raised concerns about circumvention of any resulting order, the department has specifically included parts in the scope of an investigation because of

uncertainty as to the authority of the Department to include parts subsequent to the publication of an order where parts are imported to circumvent the order. See, *e.g., Cellular Mobile Telephones from Japan* (50 FR 42577 (1985)). Now, however, section 781 of the Omnibus Trade and Competitiveness Act of 1988 not only clarifies that the Department has such authority but sets forth the criteria for dealing with this type of circumvention. Therefore, notwithstanding pre-1988 Act administrative precedents, it is neither necessary nor appropriate to include rims in the scope of the proceeding at this time. If in the future there is evidence of circumvention of the order on steel wheels by importation of Brazilian rims and discs, the Department will invoke the remedies available under section 781.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring subsidies ("the review period") is calendar year 1987. Based upon our analysis of the petition, the responses to our questionnaire, verification, and written comments filed by petitioner and respondents, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers and exporters in Brazil of steel wheels under the following programs.

(1) CACEX Preferential Working Capital Financing for Exports

Under this program, the Department of Foreign Commerce ("CACEX") of the Banco do Brasil provides short-term working capital financing to exporters at preferential rates. The loans have a term of one year or less. During the period of review, Fumagalli made interest payments on CACEX loans, but Borlem did not use this program.

On August 21, 1984, resolution 950 make CACEX working capital financing available through commercial banks at prevailing market rates, with interest due at maturity. It authorized the Banco do Brasil to pay the lending institution an "equalization fee," or rebate, of up to 10 percentage points over the commercial interest rate, which we verified the lending institution passed on to the borrowers. On May 2, 1985, Resolution 1009 increased the equalization fee to 15 percentage points.

Since the interest charged on CACEX export financing under Resolutions 950 and 1009 is at prevailing market rates, this program would not be countervailable absent the equalization fee and the exemption from the IOF (a tax on financial transactions). Therefore, the interest differential for these loans is equal to the equalization fee plus the 1.5 percent IOF. Because this program provides financing at preferential rates only to exporters, we determine that it is countervailable.

We consider the benefit from loans to occur when the borrower makes the interest payments. For CACEX loans on which interest was paid during the period of review, we multiplied the interest differential by the length of the loan and the loan principal. We allocated the result over Fumagalli's total exports. On this basis, we determine the benefit from this program to be zero for Borlem and 1.10 percent *ad valorem* for Fumagalli and all other firms.

(2) Income Tax Exemption for Export Earnings

Under this program, exporters of steel wheels are eligible for an exemption from income tax on the portion of their profits attributable to exports. According to Brazilian tax law, the tax-exempt fraction of profit is calculated as the ratio of export revenue to total revenue. Because this program provides tax exemptions that are limited to exporters, we determine that it is countervailable. Fumagalli used this program in 1987, but Borlem did not.

The nominal corporate tax rate in Brazil is 35 percent. However, Brazilian tax law permits companies to reduce their income taxes by investing up to 26 percent of their tax liability in specified companies and funds. This tax credit effectively reduces the nominal 35 percent corporate tax rate. Because Fumagalli invested in the specified companies and funds, its effective tax rate was lower than the nominal 35 percent rate during the period of review.

We calculated Fumagalli's effective tax rate by dividing its net tax liability by its taxable profit. We calculated the benefit by multiplying the amount of tax-exempt profit by the effective tax rate and allocating the result over Fumagalli's total exports. On this basis, we determine the benefit from this program to be zero for Borlem and 0.39 percent *ad valorem* for Fumagalli and all other firms.

(3) CIC–OPCRE 6–2–6 (CIC–CREGE 14–11) Financing

Under its Circular CIC–CREGE 14–11, later modified by Circular CIC–OPCRE 6–2–6, the Banco do Brasil provides preferential financing to exporters on the condition that they maintain on deposit a minimum level of foreign exchange. The interest rate is based on the cost of funds to banks plus a spread of three percentage points, which is below our benchmark rate. The loans have a term of one year and a variable interest rate, which changes every quarter. Because this program provides loans at preferential rates only to exporters, we determine that it is countervailable.

Fumagalli made payments on a loan under this program during the period of review. The interest payments on this loan were made on the last day of each month, and the full principal was repaid at maturity. Borlem did not participate in this program during the review period.

Based on information gathered during verification from commercial banking sources in Brazil, we have determined that the "taxa ANBID" rate published by *Gazeta Mercantil*, a Brazilian daily financial publication, is a broader measure of the rates available for short-term financing and is a more accurate basis for calculating our benchmark than the rate for the discounting of accounts receivable used in our preliminary determination. Because of the complex calculations necessary to convert the rates on discounts of accounts receivable into an annual benchmark, certain distortions can occur that sometimes lead to a benchmark below the rate of inflation. The "taxa ANBID" is an average monthly lending rate calculated by the National Association of Brazilian Investment Banks (ANBID) and is based on a survey of the monthly rates on short-term loans charged by Brazilian commerical banks. We calculated our annual average benchmark by compounding the "taxa ANBID" rate published for each month during 1987.

To calculate the benefit, we compared the benchmark with the preferential rate and multiplied the differential by the term of the loan and the loan principal. We then divided the result by Fumagalli's total exports. On this basis, we determine the benefit from this program to be zero for Borlem and 0.14 percent *ad valorem* for Fumagalli and all other firms.

Because we verified that, effective September 20, 1988, the interest rate on all CIC–OPCRE 6–2–6 loans was equal to the ANBID rate (our commercial benchmark rate), we determine that these loans are not longer preferential. Therefore, for purposes of the cash deposit of estimated countervailing duties, we determine the benefit from this program to be zero for all firms.

(4) BEFIEX

The Commission for the Granting of Fiscal Benefits to Special Export Programs ("BEFIEX") allows Brazilian exporters, in exchange for export commitments, to take advantage of several types of benefits, such as import duty reductions, an IPI export credit premium, and tax exemptions or tax credits. Because these benefits are provided only to exporters, we determine that this program is countervailable.

(a) *The IPI Export Credit Premium.* This benefit is a cash payment by the Brazilian government to exporters. The amount of the payment is a fixed percentage of the f.o.b. price of the exported merchandise. The payment is made through the bank involved in the export transaction. Fumagalli was eligible for the maximum IPI export credit premium, which was 15 percent during the period of review. Borlem was not eligible to receive this benefit during the period of review.

We calculated the benefit by dividing the amount of IPI credit premiums received by Fumagalli on shipments of the merchandise to the United States by the company's exports of the merchandise to the United States. On this basis, we determine the benefit from this program to be zero for Borlem and 12.47 percent *ad valorem* for Fumagalli and all other firms.

(b) *Import Duty and IPI Tax Reductions on Imported Capital Equipment.* Fumagalli received reductions of customs duties and the IPI tax on imported capital equipment used in the manufacture of the subject merchandise during the review period.

To calculate the benefit, we divided the total amount of the reductions received in 1987 by Fumagalli's total exports in 1987. On this basis, we determine the benefit to be zero for Borlem and 0.43 percent *ad valorem* for Fumagalli and all other firms.

(5) FINEX Export Financing

Resolutions 68 and 509 of the Conselho Nacional do Comercio Exterior (CONCEX) provide that CACEX may draw upon the resources of the Fundo de Financiamento a Exportacao (FINEX) to subsidize short- and long-term loans for both Brazilian exporters (Resolution 68) and foreign importers (Resolution 509) of Brazilian goods. CACEX pays the lending bank an "equalization fee" that makes up the difference between the subsidized interest rate and the prevailing commercial rate. CACEX also provides the lending bank with a "handling fee" equal to two percent of the loan principal in order to encourage foreign bank participation in the program. During the period of review, the interest rates on Resolution 509 dollar loans ranged between 5.25 percent and 8.19 percent per annum, which are below our benchmark rate. Because this program provides loans at preferential rates only to exporters (or their foreign importers), we determine that it is countervailable.

We consider loans to U.S. importers to be equivalent to loans to their corresponding exporters. One of Fumagalli's importers had Resolution 509 FINEX loans on which it made interest payments in 1987. Neither Borlem nor its importers used this program during the period of review. Since Resolution 509 loans to U.S. importers are given in U.S dollars, we chose as a benchmark interest rate the average quarterly interest rate for commercial and industrial short-term dollar loans, as published by the United States Federal Reserve Board. The average rate was 10.47 percent per annum in 1986 and 9.81 percent per annum in 1987.

To calculate the benefit, we multiplied the value of the loan principal on which interest payments were due in 1987 by the differential between the preferential interest rate and our benchmark. Since we were able to tie these loans to exports to the United States, we divided the result by Fumagalli's exports of steel wheels to the United States in 1987. On this basis, we determine the benefit to be zero for Borlem and 1.04 percent *ad valorem* for Fumagalli and all other firms.

II. Upstream Subsidy

Petitioner has alleged that steel wheel producers benefit from an upstream subsidy, as defined in section 771A of the Act, by virtue of domestic subsidies provided to producers of the major raw material imput in steel wheels: hot-rolled sheet and coil. We verified that USIMINAS supplied all of the steel used in the merchandise exported to the United States in 1987. We determine that USIMINAS benefited from two domestic subsidies in 1987: government provision of equity and import duty and IPI tax reductions under CDI.

A. Government Provision of Equity of USIMINAS

Siderurgia Brasileira S.A. (SIDERBRAS) is a government-controlled corporation under the jurisdiction of the Ministry of Industry and Commerce. Pursuant to Decree Law No. 6159 of December 6, 1974, SIDERBRAS became the holding company for the federally-owned steel corporations. SIDERBRAS is a majority shareholder of nine Brazilian steel producers, including USIMINAS, and a minority shareholder of one small Brazilian steel producer. From 1977 through 1987, SIDERBRAS made equity infusions in USIMINAS.

We have consistently held that government provision of, or assistance in obtaining, capital does not *per se* confer a subsidy. Government equity purchases or financial backing bestow a countervailable benefit only when provided on terms inconsistent with commercial considerations. Because USIMINAS' shares are not publicly traded, there is no market-determined price for its shares. Therefore, we examined whether USIMINAS was a reasonable investment (a condition we have termed "equityworthy") in order to determine whether the equity infusions were inconsistent with commercial considerations.

A company is a reasonable investment if it shows the ability to generate a reasonable rate of return within a reasonable period of time. For purposes of this determination, we reviewed the company's financial data and other factors on the record. We focused on the rate of return on equity and long-term prospects for the company in question for the period 1980 through 1987. (Petitioner alleged that USIMINAS was unequityworthy based on prior determinations by the Department. We did not investigate equity infusions from 1977 through 1979 because we have previously determined that USIMINAS was equityworthy in those years.) We examined financial ratios, profitability, and other factors, such as market demand projections and current operating results, to evaluate the company's current and future ability to earn a reasonable rate of return on investment.

Based on these factors, as applied to information on the record, we conclude that USIMINAS was unequityworthy between 1980 and 1987 (see also, *Certain Carbon Steel Products from Brazil; Final Affirmative Countervailing Duty Determinations* (49 FR 17988; April 26, 1984) (USIMINAS unequityworthy between 1980 and 1982); *Final Affirmative Countervailing Duty Determination; Certain Agricultural Tillage Tools from Brazil* (50 FR 34525; August 26, 1985) (USIMINAS unequityworthy in 1983); *Certain Carbon Steel Products from Brazil; Final Results of Countervailing Duty Administrative Review* (52 FR 829; January 9, 1987) (USIMINAS unequityworthy in 1984). Accordingly, we determine that the actions of the Government of Brazil in taking an equity position in USIMINAS

in the years 1980 through 1987 were inconsistent with commercial considerations and may confer a subsidy.

To the extent that we find government investment to be commercially unreasonable and the government's rate of return on its investment less than the national average rate of return on investment, we consider the investment to provide a countervailable benefit. Starting in the year such an infusion is made, we examine the "rate of return shortfall," which is the difference between the national average rate of return on equity and the company's rate of return on equity. We continue to examine the shortfall in each year of a 15-year period, the average useful life of capital assets in integrated steel mills according to the Asset Guideline Classes of the U.S. Internal Revenue Service. For example, we would examine the rate of return shortfall for the 1980 equity infusion in each year through 1994. If no shortfall exists for any year under review during the 15-year period, there is no countervailable subsidy for that particular year. If a shortfall does exist for the year under review, we multiply the rate of the shortfall by the amount of the original equity infusion to find the benefit for the review period.

For purposes of this determination, we consider the amounts received from SIDERBRAS as "advances for future capital increase" and "capitalized funds" in a particular year as the amount of the equity infusion in that year. According to generally accepted accounting principles in Brazil, these amounts become part of a firm's capital account at the time of receipt, and they appeared as part of USIMINAS' capital account in its financial statements. That the amounts in these accounts are later transferred to the paid-in capital account with the formal issuance of shares has no impact on the total amount in the capital account. Furthermore, when determining the rate of return on equity, it is standard accounting practice in Brazil to include advances for future capital increase and capitalized funds as equity in that calculation.

Due to inflation, the nominal values of the original equity infusions in USIMINAS have increased substantially. All companies in Brazil must regularly restate the value of certain accounts (including equity) according to a standard factor for monetary correction. The index used for monetary correction is the readjusted value of Brazilian Treasury bills, *Obrigacoes do Tesouro Nacional* ("OTN," formerly ORTN). For each year's equity infusions, we converted the actual cruzeiro (or cruzado, after the February 1986 currency reform) amount received into an OTN equivalent by dividing the amount received by the average value of the OTN in that year. To obtain the 1987 cruzado value of the government's equity infusions since 1980, we multiplied the OTN equivalents by the average cruzado value of the OTN in 1987.

We measured USIMINAS' rate of return by dividing its net loss in 1987 by its total capital and compared the result with the national average rate of return on equity in Brazil in 1987, as reported in a September 1988 special annual edition of *Exame*, a Brazilian business publication. USIMINAS' rate of return was lower than the national average. We then multiplied this rate of return shortfall by the 1987 cruzado value of all equity infusions (back to 1980) that we have found to be inconsistent with commercial considerations.

However, because USIMINAS' net loss was very large during the 1987 review period, the benefit calculated using the rate of return shortfall methodology exceeded the amounts we would have calculated for the review period had we treated the equity infusions as outright grants rather than equity. Under no circumstances do we countervail in any year an amount greater than what we would have countervailed in that year had we treated the government's equity infusions as outright grants. Therefore, we have capped the subsidy for the review period at the level that would have resulted if we had treated the equity infusions as grants.

To determine the grant cap for the review period, we allocated the OTN equivalents of the equity infusions in each year from 1980 through 1987 using a declining balance methodology and the 15-year allocation period. Because there is no nongoverment long-term cruzado borrowing in Brazil, we have used as a discount rate the highest rate the Brazilian government pays on its longest-term OTNs' 8 percent on 5-year OTNs. (The discount rate we normally use in our grant methodology is a rate that incorporates both the "real" and inflation components of an interest rate, and we apply this discount rate to the original amount of the grant. However, by converting the equity amounts to OTNs as a means of determining their value over time, we have accounted for the effects of hyperinflation on the amount of the original equity infusions. Therefore, we have used as our discount rate the interest rate on OTNs, which is a real interest rate, as the basis for allocating the inflation-adjusted OTN values over time.) We then converted the OTN benefit allocated to 1987 into cruzados by multiplying that benefit by the average value of the OTN in 1987. Finally, we divided this cruzado benefit by the value of USIMINAS' total sales in 1987. On this basis, we determine the subsidy to USIMINAS from this program to be 5.82 percent *ad valorem*.

B. Fiscal Benefits by Virtue of a Project Approved by CDI

Under Decree Law 1428, the Industrial Development Council ("CDI") provides for the exemption of up to 100 percent of the customs duties and up to 10 percent of the IPI tax, a value-added tax on domestic sales, on certain imported machinery for specific projects in 14 industries approved by the Brazilian goverment. The recipient must demonstrate that this machinery or equipment is not available from a Brazilian manufacturer.

Decree Law 1726 repealed this program in 1979. However, companies whose projects were approved prior to the repeal continue to receive benefits from this program pending completion of the project. USIMINAS received benefits under this program during 1987. Because this program is limited to specific enterprises of industries, we determine that it is countervailable.

To calculate the benefit, we divided the total amount of import duty and IPI tax reductions in 1987 by USIMINAS' total 1987 sales. On this basis, we determine the subsidy to USIMINAS from this program to be 0.79 percent *ad valorem*.

C. Competitive Benefit

Section 771A(a)(2) provides that the domestic subsidies described above must bestow a competitive benefit on the merchandise. Section 771(A)(b) states:

> * * * a competitive benefit has been bestowed when the price for the input product referred to in subsection (a)(1) for such use is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

To determine the price that steel wheel producers would have paid in an arm's length transaction, we first look to see at what price a steel wheel producer could have bought the input from an unsubsidized seller in Brazil. During the review, the only producers in Brazil of hot-rolled sheet and coil were USIMINAS, Companhia Siderurgica

Paulista (COSIPA) and Companhia Siderurgica Nacional (CSN). Although we have not determined in this investigation whether COSIPA and CSN received countervailable subsidies, we determined in a past investigation and administrative review (see the final determination and final results of review on *Certain Carbon Steel Products* (op. cit.)) that both companies benefited from countervailable government provisions of equity. Based on our equity methodology, most of these equity infusions would continue to provide benefits in 1987 to the extent that these companies' rates of return fell below the national average rate of return on equity. Furthermore, a report submitted by the GOB, "Evaluation of the Financial Restructuring of the SIDERBRAS Group: Report to the SIDERBRAS Directors" (February 1989), indicates that both COSIPA and CSN received additional equity infusions from SIDERBRAS through 1988—in fact, more than USIMINAS received. The report also indicates that COSIPA and CSN had worse profitability, liquidity and leverage ratios than USIMINAS in 1987.

Based on this information, we believe it is reasonable to assume that other domestic suppliers of hot-rolled sheet and coil received subsidies during the period of review. Therefore, the prices charged by these companies would not be an appropriate benchmark for determining whether a competitive benefit arises through the steel wheels producers' purchase of this input from USIMINAS.

In the absence of an unsubsidized domestic price, we look to world market prices as a potential benchmark. Generally, we will use the price of one of the world's lowest-cost producers. During the review period, one of the lowest-cost producers of steel was the Republic of Korea (ROK). If the world market price is lower than the price that producers of the merchandise actually paid for the input product, we would conclude that there is no competitive benefit on the merchandise. If the world market price is higher than the price that producers paid for the input product, we would conclude that there is a competitive benefit on the merchandise. The amount of the competitive benefit would depend on the difference between the subsidized price and the world market price.

As the best estimate of the price of Korean steel in Brazil, we used the average monthly c.i.f. price for hot-rolled sheet and coil, with the specifications needed to produce wheels, imported into the United States from the ROK in 1987. We found that the Korean prices were on average over 50 percent higher than domestic Brazilian prices in 1987. Therefore, we conclude that there is a competitive benefit.

D. Significant Effect

For purposes of determining whether the competitive benefit has a significant effect on the cost of producing the merchandise, we multiplied the *ad valorem* subsidy rate on the steel input by the proportion of the total production costs of steel wheels accounted for by the steel input. Multiplying those proportions by the total domestic subsidy for USIMINAS yields a rate of 2.66 percent for Fumagalli and 2.31 percent for Borlem.

In the *Final Affirmative Countervailing Duty Determination; Certain Agricultural Tillage Tools from Brazil* (50 FR 34525; August 26, 1985), we established thresholds regarding the existence of a significant effect. We stated that we would presume no significant effect if the *ad valorem* subsidy rate on the input product multiplied by the proportion of the input product in the cost of manufacturing the merchandise accounted for less than one percent. If the result of this calculation is higher than five percent, we would presume that there is a significant effect. If the result is between one and five percent, we would examine the effect of the input subsidy on the competitiveness of the merchandise. Since in this case the input subsidy allocated to the merchandise yields rates that are between one and five percent for both Fumagalli and Borlem, we have examined the price sensitivity of steel wheels.

A steel wheel is a relatively unsophisticated product made by welding a circular rim to a disc. This process requires standard technology that is available both in Brazil and the United States. The quality of the product made in Brazil is similar, if not identical, to that made in the United States. In fact, the wheels imported into the United States from Brazil are made to standard specifications. These specifications include size, thickness, Society of Automotive Engineer grades of steel, and, in certain instances, the casting process for making the steel used in the wheels. For example, we verified that, in at least one contract, a U.S. importer required that continuous cast steel be used in the wheels.

USIMINAS, which supplied all of the steel used in the wheels exported to the United States during the period of review, has a special line of steel used exclusively for the production of wheels. Fumagalli, which accounted for over 95 percent of the wheels exported to the United States from Brazil during the period of review, is owned entirely by Rockwell International Corp., A U.S. firm. Fumagalli exports over 90 percent of the wheels it produces, mostly to the United States. Rockwell maintains strict quality control over the wheels produced by Fumagalli. In Fumagalli's product manual, every type of wheel produced is matched to specific models of cars produced by the world's major automobile manufacturers.

The only U.S. importers of steel wheels from Brazil are original equipment manufacturers (OEM's) of automobiles. The ITC found in its preliminary determination (*Certain Steel Wheels from Brazil; Investigation No. 701-TA-246 (Preliminary)*) that a wheel producer must be approved by the OEM's purchasing and engineering departments before it can submit a bid. Once the supplier is approved, it achieves the same status as all other approved suppliers. Both Fumagalli and Kelsey-Hayes, the petitioner, are approved suppliers for all the major U.S. automobile manufacturers. The ITC found that an OEM's request for a quotation usually includes a set of specifications and criteria for the wheels.

The ITC also found that steel wheel producers have little bargaining power in the contract negotiations because of the market power of the large automobile manufacturers. The overwhelming majority of the demand for steel wheels stems from the demand for new automobiles. The ITC report quotes the petitioner as saying "* * * because the market for steel wheels is static, from the standpoint that there are no new potential customers for wheels, price competition is severe." (p.A-34).

Although we recognize, as stated in the ITC report, that there are nonprice factors, such as long-standing supplier relationships and reliability in delivery, that may affect the outcome of the bid, we conclude, given the uniformity of the Brazilian and U.S. product, that price is the single most important factor in determining which supplier wins the bid. Therefore, we conclude that subsidies to the input supplier have a significant effect on the competitiveness of Brazilian steel wheels.

In summary, we have determined that: (1) There are domestic subsidies to input suppliers; (2) there is a competitive benefit bestowed on producers of steel wheels; and (3) subsidies to input producers have a significant effect on the cost of manufacturing steel wheels. Therefore, we determine that producers

of steel wheels in Brazil benefit from an upstream subsidy.

Since the amount of the differential between the Korean and Brazilian prices is higher than the amount of domestic subsidy on USIMINAS steel, we conclude that there is a full pass-through of the subsidy from USIMINAS to the wheel producers. To determine the amount of the upstream subsidy, we multiplied the total domestic subsidy on the input product by the proportion of the *value* of the merchandise accounted for by the input product. (Although we use the *cost* of the merchandise for purposes of determining whether the input subsidy has a significant effect on the merchandise, we calculate the upstream subsidy, as we do most other subsidies, on an *ad valorem* basis.) We determine the upstream benefit for Borlem to be 1.82 percent *ad valorem* and 1.72 percent *ad valorem* for all other firms.

III. Programs Determined Not To Be Used

We determine that manufacturers, producers and exporters in Brazil of steel wheels did not receive benefits during the review period under the following programs:

(1) Accelerated depreciation for Brazilian-made capital goods;

(2) Financing for the storage of merchandise destined for export ("Resolution 330");

(3) Federal stock (EGF) loans; and

(4) Industrial enterprise (FST) loans.

COMMENTS

Comment 1: The Government of Brazil (GOB) argues that the Department overstated the amount of the benefit attributable to the income tax exemption for export earnings. The Department mistakenly divided the benefit received by Fumagalli by the total exports of Borlem. Furthermore, the Department should allocate the benefits from this program over total sales instead of total exports. Since the program rebates direct taxes, it is a domestic subsidy, which requires the Department to allocate the benefit over total sales. In addition, effective January 1, 1988, the GOB decreed that export earnings are no longer fully exempt from income taxes and are now subject to a 3 percent tax. Therefore, the Department should take into account this program-wide change in calculating the rate of cash deposit of estimated countervailing duties for this program.

Department's Position: We have corrected the clerical error made in our preliminary determination by dividing the benefit to Fumagalli by that firm's total exports. We have considered and rejected in other Brazilian countervailing duty cases the GOB's claim that the income tax exemption is a domestic subsidy. See, *e.g., Certain Carbon Steel Products From Brazil* (op. cit.). The GOB has provided neither new evidence nor new arguments that convince us to reconsider this issue. With respect to program-wide changes in this program, we do not have sufficient information to recalculate the cash deposit rate. Because none of the companies we verified has yet filed income tax statements incorporating this change, we are unable to measure the effect of the change.

Comment 2: The GOB argues that the Department overstated the benefit from CACEX preferential export financing by failing to take into account the length of each loan when calculating the benefit. In addition, the GOB claims that, in calculating the short-term interest rate benchmark, the Department should not include the IOF tax. The IOF functions as an indirect tax, and neither the exemption nor the rebate of an indirect tax is considered a subsidy under the General Agreements on Tariffs and Trade and U.S. law. Inclusion of the IOF in the benchmark improperly countervails an exemption of an indirect tax applicable to exports. In addition, the Department should also take into account a reduction in the equalization rate from 15 to 7.5 percent, effective November 30, 1988, for purposes of calculating the cash deposit rate.

Department's Position: We have corrected the clerical error of failing to take the length of the loans into account. We have considered and rejected in other Brazilian countervailing duty cases the GOB's claim concerning the propriety of including the IOF tax in our benchmark. See, *e.g., Certain Castor Oil Products From Brazil; Final Results of Countervailing Duty Administrative Review* (48 FR 40534, September 8, 1983). The Brazilian government has provided neither new evidence or new arguments that convince us to reconsider this issue. We have not taken into account the reduction in the equalization rate because it is our policy to consider only those program-wide changes that occur prior to our preliminary determination, which was published on October 28, 1988.

Comment 3: The GOB argues that loans issued pursuant to the Banco do Brasil's CIC-CREGE 14-11 circular (later modified by circular CIC-OPCRE 6-2-6) do not constitute a government program and, therefore, cannot confer a subsidy on exports of steel wheels. The Banco do Brasil receives no financial support from the GOB for this program and operates the program in a manner consistent with commercial considerations. Even assuming, *arguendo*, that the program is countervailable, the Department has overstated the benefit by using an incorrect benchmark. The Department has used the discounting of accounts receivable rate in past investigations and administrative reviews because there was no published short-term commercial interest rate information available. In this investigation, the Department should use the "taxa ANBID" rate published in *Gazeta Mercantil*, which it has verified is the general commercial rate for short-term loans. Furthermore, if the Department uses the discounting of accounts receivable as its benchmark, it should adjust its methodology for compounding interest.

Department's Position: We have considered and rejected in other Brazilian countervailing duty cases the GOB' argument concerning whether this program is countervailable. *See, e.g., Final Affirmative Countervailing Duty Determination; Brass Sheet and Strip From Brazil,* (51 FR 40837, November 10, 1986). The Brazilian government has provided neither new evidence nor new arguments that convince us to reconsider this issue. As noted in the discussion in section I(3) of this notice, we have used the "taxa ANBID" rate as our benchmark.

Comment 4: The GOB argues that the Department overstated the benefit attributable to the IPI export credit premium program by dividing the amount of the benefit received on Fumagalli's total exports by the firm's exports to the United States. In addition, the Department verified that Fumagalli will not be eligible for the IPI credit premium on exports made after December 31, 1989. The Department should adjust the deposit rate automatically on January 1, 1990 to reflect this change.

Department's Position: We have corrected our calculation of the benefit from this program by dividing the IPI export credit premiums received on shipments of the subject merchandise to the United States by exports of this merchandise to the United States (see section I(4) of this notice). Regarding Fumagalli's future ineligibility for the IPI export credit premium, it is our policy to take into account only those program-wide changes that occur prior to our preliminary determination. Any program-wide change that is scheduled to occur in 1990 can only be addressed in the context of an administrative review.

Comment 5: The GOB argues that Decree Law 1428, which allows import duty exemptions on imported capital equipment of firms with projects approved by the Conselho de Desenvolvimento Industrial (CDI), is not limited to an industry or group of industries and is therefore, not countervailable.

Department's Position: We disagree. We have found that CDI benefits are provided by the government to specific industries (see section II.B.).

Comment 6: The GOB argues that the Department should adjust the deposit rate to take into account a program-wide change, effective May 18, 1988, whereby the exemption of imported capital equipment from the IPI tax is no longer specifically provided under the BEFIEX and CDI programs and is now generally available.

Department's Position: We disagree. Although we verified that program-wide changes took place, the availability of this exemption is still subject to certain conditions. At this time, we do not have sufficient information to make a determination that this program is not specifically provided and no longer countervailable. For this reason, we are not adjusting the rate of cash deposit of estimated countervailing duties for this program.

Comment 7: The GOB argues that FINEX financing under Resolutions 68 and 509 is not countervailable because the program is consistent with the Arrangement on Guidelines for Officially Support Export Credits, which is not considered an illegal export subsidy under item (k) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code). The Department verified that the lending rate for FINEX financing is LIBOR plus a spread of 0.5 precent, a rate comparable to commercial lending rates for importers in the United States. Furthermore, the Department verified that, effective January 4, 1989, the FINEX program as suspended. This should be taken into account in any calculation of the rate of cash deposit of estimated countervailing duties.

Department's Position: We disagree. Since the FINEX loans in this case are short-term loans, they are not covered by the Arrangement and, hence, do not fall within the second paragraph of item (k). Regarding the preferentiality of FINEX lending rates, the Banco Central do Brasil (BCB) provides all or some portion of a spread (the equalization fee) above an interest rate based on LIBOR. Exporters and importers were unable to demonstrate either the value of the spread or the portion of the spread that was retained by the intermediary bank. Therefore, we have assumed that the full benefit from the equalization fee was passed through to the importer. Since Resolution 509 short-term loans are given in U.S. dollars, we maintain that the appropriate benchmark is the average rate for comparable short-term loans in the United States, as published by the Federal Reserve. We have no documentation regarding an average lending rate based on LIBOR. Concerning the suspension of this program, it is our policy to take into account only those program-wide changes that occur prior to our preliminary determination.

Comment 8: The GOB argues that, in alleging an upstream subsidy, petitioner never made an allegation that the GOB's equity infusions in USIMINAS provided a subsidy during the period of review. On this basis, the GOB contends that the statutory requirements for initiating and upstream subsidy investigation were not met on this issue. The GOB further argues that if petitioner intended to imply, by referring to the section 751 administrative review on *Certain Carbon Steel Products from Brazil; Final Results of Countervailing Duty Administrative Review* (52 FR 829; January 9, 1987), that USIMINAS was unequityworthy for the years 1980 through 1984, then petitioner's implied allegation only provides a basis for investigation equity infusions in those years.

Department's Position: We disagree. In making the upstream subsidy allegation, petitioner cites the administrative review on carbon steel products. Petitioner based the allegation on the amount of the domestic subsidies determined in that review. Although the various domestic subsidies were not specifically identified, a clear reading of the results of that review leaves no doubt that petitioner was alleging the existence of equity infusions in an unequityworthy company. Subsidies from equity infusions from 1980 through 1984 were the single largest component of the total domestic subsidy found in that review. With respect to the investigation of equity infusions since 1984, the Department would be remiss in its administration of the countervailing duty law if it did not examine additional equity infusions in a company it had previously determined to be unequityworthy.

Comment 9: The GOB asserts that the Department's determination that USIMINAS was not equityworthy from 1980 through 1984 in the administrative review of carbon steel products was incorrect and should be reversed. The GOB contends that the methodology employed by the Department in determining the USIMINAS was not equityworthy was erroneous because it: (1) Placed undue reliance on marginal returns on equity in the late 1970s to evaluate long-term future earnings potential; (2) relied on financial ratios that were distorted by the inclusion of expansion project assets not yet in operation; (3) improperly used subsequent operating performance to judge the reasonableness of SIDERBRAS' rate of return expectations at the time the equity was provided; (4) did not address evidence submitted by respondents concerning projections of long-term growth in steel demand in both the domestic Brazilian and international markets; and (5) ignored independent studies by the World Bank and other reputable sources which had favorable views on the prospects of the Stage III project as well as USIMINAS' performance and projected relatively high rates of return in the long-term on the investments made by SIDERBRAS.

The GOB argues that the factors that should be examined in assessing the prospects for future performance include: the long-term market environment, the company's anticipated costs of production, the company's ability to operate efficiently, and the company's ability to operate profitably.

Department's Position: We disagree. We stand by the methodology used in our determination in the administrative review of carbon steel products, which was upheld by the Court of International Trade in *Companhia Siderurgica Paulista, S.A., et al. v. United States,* 700 F. Supp. 38, Slip Op. 88–158, November 9, 1988. Although USIMINAS was not a party to this court proceeding, the methodology used in the administrative review to determine that the GOB's equity infusions in COSIPA, CSN and USIMINAS were countervailable was identical for all three companies.

Comment 10: The GOB argues that the Department incorrectly determined the USIMINAS was not equityworthy from 1980 through 1984. The Department evaluated government investments by SIDERBRAS from the point of view of a private outside investor instead of a private owner-investor. The GOB argues that its motive, as an owner-investor, is to maximize average returns on its past and future investments in USIMINAS, not to maximize marginal returns on investments, as an outside investor would. Therefore, it is unreasonable to expect SIDERBRAS to treat past equity infusions as sunk costs.

The GOB contends that the equity infusions in these years are directly tied to the massive long-term Stage III expansion project undertaken by USIMINAS. The government's decision to invest in Stage III was made in 1975. The decision relied on favorable long-term domestic and international market projections and World Bank appraisals which showed favorable financial returns for the projects. The GOB further contends that if it no longer provided equity, consequently forcing the Stage III project to a halt it would forego the future benefits from the expansion project, and therefore, realize no return on its past investments.

Department's Position: We disagree. Both a rational outside investor and a rational owner-investor make investment decisions at the margin. The relevant question for both types of investors is: What is the marginal rate of return on each cruzeiro/cruzado invested? An investor in USIMINAS does not ignore the potential return from the assets that the company has already acquired. The potential for a favorable return from those assets is an integral part of the investment calculus. However, a rational investor does not let the value of past investments affect present or future investment decisions. The decision to invest is only dependent on the marginal return expected from each additional equity infusion. Therefore, new equity infusions contemplated by investors such as the Brazilian government should not be affected by past investments or sunk costs.

We do not dispute the findings of the long-term market projections or World Bank project reports made in 1975. The GOB designed the Stage III expansion projects as a keystone in its Second National Development Plan (1971–1979). The plan explicitly called for steel investments with the objective of national self-sufficiency by 1979. With an anticipated completion date of 1979, Stage III was designed to supply steel for the Development Plan's large public sector investment program. The decision to sign the contracts for Stage III was based on the national goal of public welfare maximization and not necessarily on commercial considerations.

Although the decision to invest was made in 1975, actual construction began in the late 1970s. By that time, the investment climate had deteriorated, international markets for steel began to decline, and public sector investment dried up. Stage III may still have yielded positive financial returns despite the financial and economic conditions at the time. However, because a sufficient rate of return on equity depends on the performance of the firm as a whole, an investor will invest based on the rate of return for the entire firm, not the rate of return for an individual project such as Stage III.

Current and anticipated future economic conditions and the effects of massive expansion projects on a steel company are just as important as projected long-term markets in an investor's prediction of USIMINAS' long-term viability and, therefore, the decision to invest in the company. Consistent with the desire to maximize overall profits, a rational owner-investor must constantly reevaluate projects such as Stage III in light of other investment opportunities before determining whether those projects should be continued, delayed or abandoned.

Comment 11: The GOB argues that the Department's evaluation of the performance of USIMINAS during the Stage III expansion program was short-sighted in that it incorrectly focused on financial performance instead of current operating performance. The short-term static financial ratios and overall operating performance that the Department relied on are insufficient measures of long-run investment potential and future company performance.

If the Department continues to depend on short-term indicators, it should adjust USIMINAS' overall operating performance by eliminating nonproductive assets (*i.e.*, assets under construction) and related liabilities from the calculation of the financial ratios. When made, these adjustments reveal a healthy current operating performance for USIMINAS during the periods the Department found the company not equityworthy. More importantly, such adjustments show strong profit margins and asset turnover, current operating performance measures which are fundamental determinants in the rate of return on equity.

The GOB contends that the economic constraints existing in the late 1970s and early 1980s, such as government price increases, high real domestic and international interest rates, a temporary cyclical downturn in the steel market, and lower-than-expected government equity infusions were unanticipated transient problems that were insufficient to cause SIDERBRAS to abandon its long-term investment plans. These transient problems and their effects on the companies are relatively unimportant because they do not have a direct bearing on the company's long-term prospects.

The GOB believes that the logical conclusion from the evaluation of equityworthiness is that the only problem faced by the firms was undercapitalization, or lack of equity infusions. Therefore, the GOB believes that SIDERBRAS should have infused more, not less, equity into the companies.

Department's Position: We disagree. The most significant factor in determining the required rate of return on an investment is the degree of risk. The greater the risk of the investment, the higher the expected rate of return. From the point of view of an investor, the purchase of equity is highly risky compared to other types of investments.

In contemplating an equity purchase, an investor will evaluate past and present company performance, anticipated future economic conditions, and overall investment climate. Important determinants in the evaluation include the financial stability of the company (*e.g.*, asset structure, funding sources, and risk of insolvency), past earnings, and the amount of financial leverage in the company's capital structure. Therefore, we disagree with the Brazilian government that present and past performance indicators are relatively unimportant in an investment decision.

Investors will also assess the potential future performance of the company. In this case, the GOB undertook a massive expansion program designed to exploit the projected increase in the demand for steel. In evaluating the equityworthiness of USIMINAS, we do not rely exclusively on the future prospects of the expansion project. We also cannot ignore, just as an investor would not have ignored, the effects of such an expansion on the company's present operations and future viability. An investor purchases equity based on the rate of return of the firm as a whole, not on the financial returns from a specific project.

From an investor's point of view, there is no relevant distinction between financial and operating results. Rather, an investor will look to the rate of return on equity, which is primarily a function of three variables: profit margin (income/sales), asset turnover (sales/assets), and financial leverage (assets/equity).

Evaluation on the basis of current operating results (profit margin and asset turnover), without considering nonoperational assets and accompanying liabilities, may be an appropriate approach for managing or

analyzing profit centers with a company. An investor, however, is concerned with the company's overall performance. An investor must evaluate the effects of the Stage III expansion project on the whole company. Nonperforming assets not only drag down overall operating performance, but the chance that they might never come on-stream creates additional uncertainty for future earnings and therefore increases the risk of the investment.

The rate of return on equity equation shows the fundamental interrelationship between financial performance (financial leverage) and operating performance (profit margin and asset turnover). The decision to continue Stage III in the face of inadequate equity infusions from the Brazilian government led to substantial increases in the company's financial leverage. There is a direct relationship between financial leverage and earnings variability. Therefore, both are also directly related to investment risk.

In the late 1970s and early 1980s the Brazilian steel industry was characterized by Stage III construction delays, marginal or negative earnings, and a mounting economic and financial crisis. The lack of funding in the industry became critical. (The GOB had a history of underfunding steel expansion projects.) By 1982, USIMINAS would have required hundreds of millions of dollars in equity to correct its financial position. Although it is now clear that the company were severely undercapitalized, we cannot base our equityworthiness decision on what the financial standing of the company might have been if this were not the case.

USIMINAS responded to its condition in the late 1970s by contracting variable-rate debt at a time of high real interest rates and using increasing amounts of short-term debt. Not only was USIMINAS undercapitalized, but it mismatched long-term assets with expensive short-term debt.

During this time, an investor would have found that USIMINAS was incapable of covering the additional debt expense with internally-generated funds. The company had a low probability of increasing earnings over the short- and medium- term from domestic sales because of the squeeze between supplier price increases and the government's policy of steel price suppression. Further, it became increasingly evident that there was a long-term decline in the world-wide demand for steel, continuing the depression of steel prices in the international market.

A project such as Stage III can have future positive returns only if the company does not become insolvent. In this case, the continuation of Stage III severely jeopardized USIMINAS' financial standing. Even if we disregard profit margins and asset turnover, we cannot disregard the adverse effects of increased financial leverage on the company's equity standing. The additional risk in the highly leveraged company would have dissuaded any private investor from purchasing equity in USIMINAS during the periods we consider it not to be equityworthy.

Comment 12: The GOB argues that its investments in USIMINAS in 1987 were not on terms "inconsistent with commercial considerations." The investments were part of the SIDERBRAS Restructuring Plan, by which USIMINAS transferred some of its debt to SIDERBRAS. This transfer was reflected as a reduction in long-term and short-term debt and an equal increase in the equity held by SIDERBRAS. The Restructuring Plan also provided for the recapitalization of SIDERBRAS; operational improvements and investments to improve operating efficiency and reduce costs; a commitment to support a realistic pricing policy to allow USIMINAS to recover its costs; and a commitment that SIDERBRAS not undertake investments unless adequate funding is available. The effect of these measures has been to greatly improve the ability of USIMINAS to meet its debt service obligations and earn a reasonable rate of return. A study by independent financial experts has projected substantial returns on equity over the next ten years for USIMINAS. Thus, when the GOB invested additional equity in USIMINAS under the Restructuring Plan, it had a reasonable expectation of a very high real return on its investment.

Department's Position: We disagree. From the perspective of a rational private investor, USIMINAS was no more attractive as a potential investment in 1987 than it was in any of the earlier years in which we determined it to be unequityworthy. Its financial ratios since 1984 indicated no appreciable improvement and, in many areas, had deteriorated. The company had become even more severely leveraged and, in those years in which it did not have a loss, did not demonstrate the ability to generate more than minimal profits.

While the GOB's decision to convert some of USIMINAS' debt to equity clearly addressed one of the basic problems facing USIMINAS, there were still considerable risks associated with any further investment in USIMINAS. The debt conversion was only one component of the Restructuring Plan, and its success was dependent on other contingencies, such as a proper pricing policy. The suppression of steel prices throughout the 1980s as part of the GOB's policies to counter inflation, and the GOB's failure to provide scheduled equity infusions due to budgetary constraints, led to results considerably different from the attractive rates of return projected for USIMINAS in the studies conducted in relation to earlier investment plans.

In this respect, there is a clear distinction between a reasonable private investor's expectations and those of a government owner-investor. In light of the past, a private investor would have to consider the possibility that future macroeconomic concerns of the GOB could jeopardize any investment in an ailing, if recovering, company, whereas the GOB at any time could decide to renege on its commitments to the improvement of USIMINAS' financial health in favor of national economic and social obligations. In doing so, the GOB might again choose to sacrifice the interests of USIMINAS to some more important public welfare goal.

The GOB refers to a study submitted by independent financial experts to SIDERBRAS in February 1989 evaluating the results of the Restructuring Plan through 1988. This study projects substantial rates of return on equity for USIMINAS as a result of the Restructuring Plan. While the projections of this study may prove accurate, they were not contemporaneous with the Restructuring Plan, and we cannot consider the results of this study to be the basis on which the GOB made its investment decisions in 1987. The GOB provided us with no studies contemporaneous with its investment decision.

Comment 13: The BOG claims that the amounts for "advances for future capital increase" that appear in the "Statement of Changes in Financial Position" are end-of-year amounts that in certain years include interest and monetary correction accrued during the year. Therefore, the GOB argues that the Department should use the OTN rate at the end of the year when converting these amounts into OTN equivalents.

Department's Position: We disagree. Advances for future capital increase are received at various points during the year. It is not apparent from the "Statement of Changes in Financial Position," nor could we verify, that in some years these amounts included interest and monetary correction. We have assumed that the amounts of the

advances that we used for calculating the value of the equity infusions are the nominal amounts received during the year. Therefore, we used the average OTN rate for the year when converting these amounts into OTN equivalents.

Comment 14: Respondents argue that it is inappropriate to include investments made during the year of review when calculating the benefit from equity infusions. Respondents claim that it is improper to assume that the investor would expect a return on equity for investments made during the year equal to the rate of return on investments for a full year. Therefore, respondents argue that the Department should either exclude such equity infusions or calculate a prorated return based on the number of months since the equity infusion was made.

Respondents further argue that, when calculating USIMINAS' loss as a percentage of its total capital, the Department should add back any losses deducted from capital. To do otherwise would overstate the percentage of the loss.

Department's Position: We disagree. Adjusting the rate of return calculation to exclude or prorate equity infusions during the year would either reduce the rate of return on equity in profitable years or increase the rate of loss on equity in unprofitable years. The methodology proposed by respondents runs counter to standard accounting practices in Brazil. By using USIMINAS' total capital (including all equity received and losses incurred), we calculated a negative rate of return for USIMINAS in 1987 that was identical to that reported in the September 1988 edition of *Exame.*

Comment 15: The GOB argues that the Department should change its policy of using as its benchmark a national average rate of return and use instead an average rate of return applicable to heavy industry, thus recognizing the structural differences and increased capital requirements of heavy industries.

Department's Position: We disagree. A national average rate of return is a more accurate reflection of the return that a reasonable investor could expect from a prudent investment than an industry-specific rate. A national average rate of return reflecting the different rates of return and levels of risk in the whole economy is a better benchmark with which to compare rates of return for particular investments. Only by comparing the expected returns and risks across the whole economy can the investor decide where to invest his money most effectively. In contrast, an industry-specific benchmark rate would not serve as a reasonable basis for comparison because it does not take into account the variety of investment options available to an investor.

Furthermore, the use of an industry-specific average rate of return would be especially inappropriate in this case because a large portion of the steel industry in Brazil is controlled by the government. For this reason, the use of the steel sector rate of return would not provide an objective standard. It is far more reasonable to use the national average rate of return because it includes the rates of return for government-owned firms and private firms as well as for profitable and unprofitable firms.

Comment 16: Respondents argue that the Department should use 1988 as the review period for the upstream subsidy portion of this investigation. Calendar year 1988 is the most recently completed fiscal year prior to the date of the upstream subsidy questionnaire response. Information from 1988 provides the most accurate basis for determining the existence of an upstream subsidy.

Petitioner contends that the Department cannot measure upstream subsidies for a different year than that used for all other subsidies.

Department's Position: We agree with petitioner. We announced in our initiation notice on August 24, 1988 that the period of review was calendar year 1987. We must use the same period for measuring all subsidies because to do otherwise might distort the average benefit we attempt to capture in our "snapshot" view of the firm. Furthermore, we cannot use a review period that did not conclude until after our preliminary determination.

Comment 17: Fumagalli contends that, because the government controls the price of steel, the Department should treat the alleged below-market prices of steel as a direct subsidy, not as an upstream subsidy. Fumagalli notes the Department's practice in a number of cases involving products from Mexico (*e.g., Anhydrous and Aqua Ammonia from Mexico* (48 FR 28522) and *Oil Country Tubular Goods from Mexico* (49 FR 47054)). In those cases, where the Department examined the effect of the Mexican government's price control on natural gas, the Department found that low-priced natural gas was available to a wide variety of users and not limited to a particular industry or group of industries. Since the Brazilian government controls the price of steel, and steel is available to a wide variety of users, the provision of steel at government-regulated prices to wheel producers is analogous to government controls on natural gas prices in Mexico. Therefore, the Department should analyze both situations in the same way.

Department's Position: The cases that Fumagalli refers to deal with the alleged preferential pricing of inputs, which is a direct subsidy, not an upstream subsidy. The statute includes a special provision for upstream subsidies, as well as a specific three-pronged test for determining whether an upstream subsidy exists. We do not believe that the existence of price controls precludes us from invoking the the upstream subsidy provision (see our response to Comments 18 and 20).

Comment 18: Fumagalli argues that the specificity analysis that applies to any domestic subsidy also applies to upstream subsidies. Thus, an upstream subsidy is only countervailable if the benefit of that subsidy on downstream products is limited "to a specific enterprise or industry, or group of enterprises or industries."

Fumagalli cites *Certain Steel Products from the Federal Republic of Germany* (47 FR 26321), where the petitioner alleged that German steel producers benefited from subsidies provided by the German government to coal producers. In its preliminary determination in that case, the Department found there was no benefit because low-priced coal was not limited to the steel industry but was, in fact, available to a wide variety of users in the FRG.

Fumagalli contends that the legislative history of the Trade and Tariff Act of 1984 makes clear that the upstream subsidy provision did not change basic Department practice regarding subsidies. Congress intended that the specificity test be used to determine whether the low-priced input was made available only to a specific industry or group of industries. In fact, in a letter to Congress, the former Secretary of Commerce indicated that the Department intended the upstream subsidy provision to apply "where an input is provided to a particular industry or group of industries, . . . "

Petitioner argues that it is clear in the statute and in the legislative history that the specificity test applies only at the upstream level (*i.e.*, on the input product). The statute clearly states that the Department is to look at the competitive benefit from the upstream subsidy on the merchandise under investigation. To determine competitive benefit, the Department must compare the price of the input product from the subsidized producer with a benchmark price. In situations where prices of the input product are artificially depressed in the country under investigation, the

statute authorizes the Department to use other sources for the benchmark price, presumably including prices outside the country. This provision would make no sense if there were a specificity requirement at the downstream level.

Department's Position: We agree with the petitioner that a second-tier specificity test is not required in the analysis of upstream subsidies. If Congress had intended to include a separate specificity test, it would have included the same specificity language in the upstream subsidy provision that is included in the definition of domestic subsidy, as provided for in section 771(5)(B) of the Act. Domestic subsidies given directly to the input producer (in this case, the steel producer) must be specifically provided, and domestic subsidies given directly to the downstream producer (in this case, the wheel producers) must be specifically provided, but subsidized inputs purchased by downstream producers need not be specifically provided in order to be countervailable.

The House Conference Report describes an upstream subsidy as a subsidy paid by a government on an input product used to manufacture the merchandise under investigation. The report states, "The potential for an upstream subsidy exists only when a sector-specific benefit meeting all the other criteria of being a subsidy is provided *to the input producer*." (emphasis added). H.R. Rep. No. 98–1156, 98th Cong., 2nd Sess. 171 (1984). The report makes no mention of a sector-specific requirement for the downstream purchaser of the input product.

Furthermore, the Report indicates that the House Bill included a requirement that the upstream subsidy result in a "price for the intermediate product lower than the generally available price of that product in that country. * * *," but the Conferees agree to "* * * substitute for generally available price determination a determination that the upstream subsidy in the judgment of the administering authority bestows a competitive benefit on the merchandise * * *". This clarifies that Congress considered and rejected the second-tier specificity requirement.

The upstream subsidy provision was intended to codify and strengthen existing practice. See S. Rep. No. 98–485, 98th Cong. 2nd Sess. 33 (1984). Although we found in the preliminary determination on *Certain Steel Products from the Federal Republic of Germany* that subsidies to the coal industry did not benefit the steel industry because the coal was not specifically provided to the steel industry, we abandoned this analysis in our final determination (47 FR 39345, September 7, 1982). In the final determination, we found that there was no benefit not because the coal was not specifically provided, but because the price of German coal was higher than world market prices. This approach is very similar to the analysis we use to determine the existence of a competitive benefit.

Thus, despite an early flirtation with the idea of a second-tier specificity test, both Congress and the Department in the end rejected this approach in favor of the competitive benefit test.

Comment 19: The GOB argues that, since wheel producers were able to import steel at prices less than the prices paid to USIMINAS, they derived no competitive benefit from any alleged upstream subsidy. Fumagalli provided information showing that hot-rolled coil was available in January 1989 from the Republic of Korea for less than what the wheel producers paid for steel in Brazil. Furthermore, since wheel producers can obtain full reimbursement for any duties paid on imported steel through Brazil's duty drawback system (provided for in Decree-Law NR 37/66 and Decree 68,904/71), the Department should take duty drawback into account when calculating the benchmark price.

Department's Position: Fumagalli cites a price from 1989, and our period of investigation is 1987. We found that Korean prices were on average over 50 percent higher than USIMINAS' prices in 1987. Since the world market benchmark price is higher than the Brazilian price, thus making importation economically impractical, the issue of using an import price adjusted for duty drawback is moot.

Comment 20: Fumagalli argues that the existence of price controls on domestically-sold Brazilian steel makes it impossible for a Brazilian steel producer to pass through the benefit of any subsidies it receives to the downstream purchaser. In an environment where prices are determined by an intervening and superseding cause, such as government price controls, prices will not vary, regardless of the level of subsidization of any individual producer. There is no evidence that the government of Brazil sets prices for any reason other than to control inflation. Thus, absent a causal relationship between the price of steel to wheel exporters and any subsidies received by steel producers, no competitive benefit can be bestowed.

Petitioner contends that controls on the selling price of steel guarantee the pass-through of any upstream subsidy to the downstream producer. Some of the difference between the controlled price of steel and the market price is accounted for by subsidies to the steel producer. Thus, government subsidies offset differences between the two prices.

Department's Position: We disagree that the existence of price controls renders the pass-through of benefits impossible. Price controls in and of themselves are not dispositive of whether the input was sold at a subsidized price. For example, if there were unsubsidized sellers of the input product subject to the same price controls as subsidized sellers, we would determine that there is no competitive benefits because the downstream producer could have bought the input at the same price from an unsubsidized seller. Conversely, if all sellers of the input product are subsidized and all are subject to the same price controls, we cannot determine whether, or to what extent, prices in the domestic market reflect the subsidies received. In such cases, we resort to world market prices. If the world market price is higher than the domestic price of the subsidized sellers, as in this case, we conclude that the subsidy is built into the price of the input product even if the price is controlled.

Comment 21: Fumagalli contends that, in determining whether the competitive benefit has a significant effect on the merchandise, the Department should calculate the cost of steel as a percentage of the U.S. selling price of the merchandise rather than as a percentage of the cost of production of the merchandise. Fumagalli contends that this is the most accurate measure of the effect of an upstream subsidy on the competitiveness of the merchandise because it captures the degree of underselling of the merchandise in the U.S. market vis-a-vis merchandise sold by competing U.S. firms.

Department's Position: We disagree. Section 771A(a)(3) of the Act clearly states that the Department must examine whether the subsidy on the input product has a significant effect on the "cost of manufacturing or producing the merchandise."

Comment 22: Fumagalli contends that, for purposes of its upstream subsidy analysis, the Department should include general and administrative expenses in its calculation of the cost of manufacturing or producing the merchandise. According to the verification report, the Department calculated the cost of hot-rolled sheet and coil as a percentage of manufacturing costs by erroneously applying its standard practice in antidumping proceedings, in which the

cost of manufacture is interpreted as the cost of production minus general and administrative expenses.

Department's Position: There is no explicit direction in the statute or the legislative history as to how to calculate the cost of manufacturing or producing the merchanise in an upstream subsidy investigation. In this case, we measured the significant effect of the upstream subsidy on the cost of the merchandise based on the cost of manufacture. We have applied our standard practice used in antidumping proceedings of calculating the cost of manufacture by deducting general and administrative expenses from the cost of production. We note that using the cost of production, including general and administrative expenses, would not change the results of our significant effect analysis in this case.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, inspecting documents and ledgers, tracing information in the response to source documents, accounting ledgers and financial statements, and collecting additional information that we deemed necessary for making our final determination.

Suspension of Liquidation

In accordance with our preliminary affirmative countervailing duty determination, published on October 28, 1988, we directed the U.S. Customs Service to suspend liquidation on the products under investigation and to require a cash deposit or bond equal to the duty deposit rate. This final countervailing duty determination was extended, pursuant to section 703(h) of the Act, because of the upstream subsidy investigation. Under Article 5, paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), provisional measures cannot be imposed for more than 120 days without final affirmative determination of injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after February 27, 1989, but to continue the suspension of liquidation of all entries or withdrawals from warehouse, for consumption, of the subject merchanise entered between October 28, 1989, and February 26, 1989. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and require duty deposits on all entries of the subject merchandise in the amounts indicated below:

Manufacturer/producer/exporter	Estimated net subsidy	Duty deposit rate
Borlem, S.A.	1.82	1.82
All others	17.29	17.15

ITC notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonprorietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on all entries of steel wheels from Brazil entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Date: April 7, 1989.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-9189 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-557-804]

Initiation of Countervailing Duty Investigation; Certain Steel Wire Nails From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Malaysia of certain steel wire nails (steel nails), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If this investigation proceeds normally, we will make our preliminary determination on or before June 15, 1989.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-5414.

SUPPLEMENTARY INFORMATION:

The Petition

On March 22, 1989, we received a petition in proper form filed by members of the Nail Committee of the American Wire Producers Association, on behalf of the U.S. industry producing steel nails. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.12), the petition alleges that manufacturers, producers, or exporters in Malaysia of steel nails receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended ("the Act").

Malaysia is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, sections 303 (a)(1) and (b) of the Act apply to this investigation. Accordingly, petitioner is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on steel nails from Malaysia and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are

initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Malaysia of steel nails, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before June 15, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-headings. The HTS sub-headings are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are certain steel wire nails from Malaysia. These nails are: steel wire nails of one-piece construction as currently provided for in HTS items 7317.00.5505, 7317.00.5510, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590 and 7317.00.6560; steel wire nails of two-piece construction, as currently provided for in HTS item 7317.00.7500; and steel wire nails with lead heads, as currently provided for in HTS item 7317.00.7500.

Allegation of Bounties or Grants

The petition lists certain practices by the Government of Malaysia which allegedly confer bounties or grants on manufacturers, producers, or exporters in Malaysia of steel nails. We are initiating an investigation of the following programs:

- Export Tax Incentives

—Abatement of Taxable Income Based on the Ratio of Export Sales to Total Sales
—Abatement of Five Percent of the Value of Indigenous Materials Used in Exports
—Double Deduction for Export Credit Insurance Payments
—Double Deduction for Export Promotion Expenses
—Industrial Building Allowance
—Residual Benefits From the Allowance of a Percentage of Net Taxable Income Based on the FOB Value of Export Sales Under Section 29 of the Investment Incentives Act (IIA) of 1968

- Export Credit Refinancing
- Official Export Insurance Program Administered by the Malaysian Credit Export Insurance Behard (MECIB)
- Pioneer Status Under the IIA of 1968
- Investment Tax Allowance for Under Chapter 2 of the PIA of 1986
- Long-Term Loans From the Development Bank of Malaysia for *Bumiputras* (people of native Malaysian descent)
- Double Deduction for Operational Expenses
- Other Tax Incentives

—Abatement of Five Percent of the Adjusted Income for a Period of Five Years for Manufacturing Companies Located in Designated "Promoted Industrial Areas"
—Reinvestment Allowance

Although not specifically alleged by petitioners, we are also investigating whether the manufacturers and exporters of steel nails in Malaysia receive countervailable benefits under the following programs, which we have found to be either countervailable or not used in previous Malaysian investigations:

- Abatement of Taxable Income of Five Percent for Trading and Agricultural Companies Exporting Malaysian-made Products
- Pioneer Status under the PIA of 1986
- Other Medium- and Long-Term Government Financing from:

—The Industrial Development Bank of Malaysia (IDBM)
—The Borneo Development Corporation (BDC)
—The Sabar Development Bank (SDB)

We are not initiating an investigation of the following allegations made by the petitioner:

- Abatement of Taxable Income Based on a Percentage of the Value-Added of Exported Products

This program was determined not to exist in *Final Affirmative Countervailing Duty Determination: Carbon Steel Wire from Malaysia* (53 FR 13303, April 22, 1988) (*Wire Rod II*).

- Upstream subsidy allegation

Petitioners allege that an upstream subsidy is conferred upon producers and exporters of steel nails in Malaysia, based, in part, on the Department's previous affirmative determination in *Wire Rod II.*

Under section 701(e) of the Act, whenever the Department has reasonable grounds to believe or suspect that an upstream subsidy is being paid or bestowed, the Department must investigate whether an upstream subsidy has in fact been paid or bestowed. The standard established in section 355.12 of the Commerce Regulations (19 CFR 355.12(b)(8)) states that petitioner must provide the following factual information regarding an alleged upstream subsidy:

(i) Domestic subsidies described in section 771(5) of the Act that the government of the affected country provides to the upstream supplier;

(ii) The competitive benefit the subsidies bestow on the merchandise; and

(iii) The significant effect the subsidies have on the cost of producing the merchandise.

Petitioners cite the Department's final determination in *Wire Rod II* to support the allegation that the input to nails is subsidized. Petitioners also provide information regarding significant effect. However, petitioners have not provided any supporting information which indicates that a competitive benefit is bestowed on the producers of steel nails.

Petitioners state that the Department's previous finding in *Wire Rod II* and the fact that the Malaysian steel nails producers undersell their U.S. counterparts demonstrates the bestowal of a competitive benefit. However, this argument is insufficient for purposes of demonstrating the bestowal of a competitive benefit.

Instead, petitioners must provide evidence which indicates that the price for wire rod paid by the Malaysian nail producers is lower than an arm's length unsubsidized price. We therefore conclude that petitioners have not provided the Department with a reasonable basis to believe or suspect that producers and exporters of steel nails in Malaysia benefit from an upstream subsidy.

This notice is published pursuant to section 702(c)(2) of the Act.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-9190 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Nubmer: 89-106. *Applicant:* University of California, Department of Chemistry, La Jolla, CA 92093. *Instrument:* Stopped-Flow Spectrophotometer, Model SF-51. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended use:* The instrument will be used for the study of the transient phase kinetics of the reduction of dihydrofolate by NADPH and the heterolytic cleavage of hydrogen peroxide by cytochrome c perodidase. The instrument will also be used for educational purposes in the course Graduate Research, Chem 299. *Application Received by Commissioner of Customs:* March 16, 1989.

Docket Number: 89-108. *Applicant:* University of Montana, Flathead Lake Bio. Station, 311 Bio. Station Lane, Polson, MT 59860. *Instrument:* Precision Dissolved Oxygen Meter and Accessories, Model 781b. *Manufacturer:* Strathkelvin Instruments, United Kingdom. *Intended use:* The instrument will be used for the study of microbes and aquatic insects to determine the metabolic activity of specific aquatic organisms. In addition, instrument will be used for instruction purposes in the courses Lake Ecology and River Ecology. *Application Received by Commissioner of Customs:* March 17, 1989.

Docket Number: 89-109. *Applicant:* University of Cincinnati, Chemistry Department, Mail Location 172, Cincinnati, OH 45221-0172. *Instrument:* Vibrating-Tube Densimeter and Accessories, Model 03-D. *Manufacturer:* SODEV, Inc., Canada. *Intended use:* The instrument will be used to measure the densities of solutions of various concentrations in studies to develop a better understanding of the aggregation of surfactants in aqueous solutions. In addition, the instrument will be used for educational purposes in a two-quarter undergraduate laboratory course for senior-year chemistry students. *Application Received by Commissioner of Customs:* March 17, 1989.

Docket Number: 89-110. *Applicant:* Haverford, College, Haverford, PA 19041-1328. *Instrument:* Stopped-flow Spectrophotometer, Model SF-51. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended use:* The instrument will be used in studies of the coordiantion environment of transition metals (such as iron, cobalt, nickel, manganese, etc.) as found both in biological macromolecules (such as enzymes and other proteins) and in synthetic inorganic compounds. In addition, the instrument will be used for educational purposes in the courses Chemistry 301a and 302b—Laboratory in Chemical Structure and Reactivity. Both of thesc courses are designed to foster familiarity with and confidence in modern chemical laboratory techniques as applied to the conduct of chemical and biochemical research. *Application Received by Commissioner of Customs:* March 20, 1989.

Docket Number: 89-111. *Applicant:* South Dakota School of Mines and Technology, 501 E. St. Joseph, Rapid City, SD 57701. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad 2. *Manufacturer:* VG Istopes Ltd., United Kingdom. *Intended use:* The instrument will be used for studies of the ultra-trace element characteristics of geological materials including minute glasses and crystals. Experiments will be conducted to define processes in magmatic and hydrothermal systems in the earth's crust. The instrument will also be used for educational purposes in the course Atomic Absorption,—Inductive Coupled Argon Spectroscopy and Inductive Coupled Plasma Mass Spectrometry. *Application Received by Commissioner of Customs:* March 20, 1989.

Docket Number: 89-112. *Applicant:* University of Hawaii at Manoa, Hawaii Institute of Geophysics, 2525 Correa Road, HIG 114, Honolulu, HI 96822. *Instrument:* Rotating Anode X-ray Generator. Manufacturer: Rigaku, Japan. *Intended use:* The instrument will be used in studies of earth materials of geophysical and geochemical importance (silicates, oxides, metals and alloys) to determine atomic crystal structure, molar volumes, equation of state (P-V-T), of Earth's mantle phases. In addition, the instrument will be used for educational purposes in several geophysical courses. *Application Received by Commissioner of Customs:* March 20, 1989.

Docket Number: 89-114. *Applicant:* South Dakota State University, Chemistry Department, Box 2202, Brookings, SD 57007-0896. *Instrument:* Mass Spectrometer, Model MS 25. *Manufacturer:* Kratos Analytical Inc., United Kingdom. *Intended use:* The instrument will be used in studies of organic molecules. Experiments will consist of low-resolution mass measurement, high-resolution mass measurement, fast-atom bombardment mass spectrometry, gas chromatography-mass spectrometry, high performance liquid-chromatography mass spectrometry, pyrolysis mass spectrometry, and metastable-analysis mass spectrometry. In addition, the instrument will be used in undergraduate and graduate thesis research requirement courses: CH 591, CH 790, CH 890. *Application Received by Commisisoner of Customs:* March 21, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-9192 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-DS-M

Pennsylvania State University, et al.; Consolidated Decision on Applications for Duty-free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-086R.

Applicant: Pennsylvania State University, University Park, PA 16802.

Instrument: Mass Spectrometer, Model M25SE.

Manufacturer: Kratos Scientific Instruments, United Kingdom.

Intended use: See notice at 53 FR 4867, February 18, 1988.

Reasons for this Decision: The foreign instrument provides a scan speed to 0.1 second per decade.

Advice Submitted by: The National Institutes of Health, December 20, 1988.

Docket Number: 88-215R.

Applicant: University of Dallas, Irving, TX 75062-4799.

Instrument: Rapid Kinetics Accessory, Model SFA-11.

Manufacturer: Hi-Tech Scientific, Ltd., United Kingdom.

Intended use: See notice at 53 FR 43464, October 27, 1988.

Reasons for this Decision: The foreign article directly delivers mixed reagent solutions through a removable chamber to an observation cell configuration standard to many spectrometric instruments.

Advice Submitted by: The National Institutes of Health, December 20, 1988.

Docket Number: 88-275.

Applicant: Vanderbilt University, Nashville, TN 37232.

Instrument: Conductance Catheter (Signal Condition Processor), Model SIGMA-5.

Manufacturer: Stichting LEYCOM, The Netherlands.

Intended use: See notice at 53 FR 39494, October 7, 1988.

Reasons for this Decision: The foreign instrument continuously measures ventricular (heart) volume by analyzing five segmented signals from an impedance catheter.

Advice Submitted by: The National Institutes of Health, December 20, 1988.

Docket Number: 88-276.

Applicant: Albert Einstein College of Medicine of Yeshiva University, Bronx, NY 10461.

Instrument: Mass Spectrometer, MAT 90.

Manufacturer: Finnigan, West Germany.

Intended use: See notice at 53 FR 39494, October 7, 1988.

Reasons for this Decision: The foreign instrument provides: (1) Continuous flow FAB, (2) resolution to 50 000, (3) mass range to 17 500, and (4) scan speed to 0.1 second per decade.

Advice Submitted by: The National Institutes of Health, December 20, 1988.

Docket Number: 88-282.

Applicant: Vanderbilt University, School of Medicine, Nashville, TN 32732.

Instrument: Cytogenetic Scanning Analyzer System, Model Cytoscan CS2.

Manufacturer: Image Recognition Systems, United Kingdom.

Intended use: See notice at 53 FR 43462, October 27, 1988.

Reasons for this Decision: The foreign instrument accurately locates metaphase chromosomes and provides a 1024 element CCD imaging array.

Advice Submitted by: The National Institutes of Health, December 20, 1988.

Docket Number: 88-283.

Applicant: Kansas State University, Manhattan, KS 66506.

Instrument: Rapid Kinetics Accessory, Model SFA-11.

Manufacturer: Hi-Tech Scientific, United Kingdom.

Intended use: See notice at 53 FR 43462, October 27, 1988.

Reasons for this Decision: The foreign article directly delivers mixed reagent solutions through a removable chamber to an observation cell configuration standard to many spectrometric instruments.

Advice Submitted by: The National Institutes of Health, December 20, 1988.

Docket Number: 88-291. Cornell University, Ithaca, NY 14853-1301.

Instrument: Preparative Quench and Stopped-Flow Spectrofluorometer, Model PQ/SF-53.

Manufacturer: Hi-Tech Scientific, United Kingdom.

Intended use: See notice at 53 FR 43463, October 27, 1988.

Reasons for this Decision: The foreign instrument provides preparative quench and stopped flow spectrofluorometry using four syringes with two independent drive rams.

Advice Submitted by: The National Institutes of Health, December 20, 1988.

Docket Number: 88-299.

Applicant: National Institute of Standards and Technology, Gaithersburg, MD 20899.

Instrument: Electron Back-Scatter Pattern Imaging and Analysis System, Model EBSP 8400.

Manufacturer: Custom Camera Design, United Kingdom.

Intended use: See notice at 53 FR 43464, October 27, 1988.

Reasons for this Decision: The foreign instrument can display and record back-scattered electron diffraction patterns with a spatial resolution of 0.3 μm.

Advice Submitted by: The National Institutes of Health, January 26, 1989.

Docket Number: 88-302.

Applicant: National Institute of Standards and Technology, Gaithersburg, MD 20899.

Instrument: Two Monochromator Bending Devices.

Manufacturer: Grenoble Modular Instruments, France.

Intended use: See notice at 53 FR 43464, October 27, 1988.

Reasons for this Decision: The foreign instrument can focus monochromatic neutrons to improve signal by a factor of three.

Advice Submitted by: The National Institutes of Health, January 26, 1989.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health advises that: (1) The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-9193 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

Visiting Committee on Advanced Technology; Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet Tuesday, May 2, 1989, from 10:00 a.m. to 5:00 p.m. and Wednesday, May 3, 1989, from 8:30 a.m. to 1:30 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The discussion on NIST Budget scheduled to begin at 4:20 p.m. and ending 5:00 p.m. on May 2, 1989, will be closed.

DATES: The meeting will convene May 2, 1989, at 10:00 a.m. and adjourn at 1:30 p.m. on May 3, 1989. A closed session is scheduled on May 2, 1989, beginning at 4:20 p.m. and adjourning at 5:00 p.m.

ADDRESS: The meeting will be held in Conference Room 1103, Radio Building, National Institute of Standards and Technology, Boulder, Colorado.

FOR FURTHER INFORMATION CONTACT: Dale Hall, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on April 10, 1989, that the portion of this meeting which involves examination and discussion of the 1991 budget proposal may be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409. One portion of the meeting, which involves discussion of future NIST budget requests, may be

closed to the public. In accordance with section 552(b)(9)(B) of Title 5, United States Code, since that portion of the meeting is likely to divulge matters that may be likely to significantly frustrate implementation of proposed agency action. All other portions of the meeting will be open to the public, and the Chairperson will entertain comments or questions at an appropriate time during the meeting. Any person wishing to attend the meeting should inform Dale Hall at the address shown above.

Raymond G. Kammer,

Acting Director.

Date: April 11, 1989.

[FR Doc. 89-9146 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Western Pacific Precious Corals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a draft environmental assessment and request for comments.

SUMMARY: The Southwest Region of the National Marine Fisheries Service has prepared an environmental assessment (EA) of a proposed action to issue an experimental fishing permit (EFP) to allow the harvest of 10,000 kilograms (kg) of precious corals in the exclusive economic zone (EEZ) seaward of Hawaii using tangle net gear. The purpose of this notice is to solicit public comments on the EA, which summarizes management of coral under the Fishery Management Plan for the Precious Coral Fisheries of the Western Pacific Region (FMP) and the effects the experimental fishery might have on precious coral stocks and associated resources.

DATE: Comments on the draft EA are due by May 8, 1989.

ADDRESSES: Send comments to E.C. Fullerton, Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: A copy of the EA may be obtained from Doyle Gates, Pacific Island Coordinator, Southwest Region, NMFS, 2570 Dole St., Room 106, Honolulu, Hawaii 96822-2396 (808-955-8831); or James Morgan, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731 (213-514-6667).

SUPPLEMENTARY INFORMATION: On February 9, 1989, the Southwest Regional Director, NMFS, received an application for an experimental fishing permit to harvest precious corals in the western Pacific. A notice of receipt of the application was filed with the **Federal Register** on February 15, 1989, and published February 21, 1989 (54 FR 7462). The applicant proposes to harvest 10,000 kg of precious corals using tangle gear from exploratory areas in the EEZ seaward of Hawaii in a two-year period. As part of its review of the permit application under 50 CFR Part 680 of the rules implementing the FMP, the NMFS has prepared an EA on the proposed fishing operation for public review. The EA describes the expected impacts of fishing if the permit is granted. Under the proposed alternative in the EA, a permit would be issued to allow the requested level of harvest, but conditions would be imposed to ensure adequate monitoring of the harvest operation and complete data collection.

The application was reviewed by the Western Pacific Fishery Management Council (Council) at its 64th regular meeting in Honolulu, Hawaii, on February 14-15, 1989. The Council recommended that the permit be issued with the provision that the Regional Director be authorized to place an observer on the applicant's vessel as necessary to ensure monitoring of the operation and collection of data. The Council's recommendation will be considered when developing conditions to include in the permit.

Comments received on the EA and the application will help determine if the application for the permit should be approved, and if approved, what additional conditions should be included in the permit.

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

Dated: April 12, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-9164 Filed 4-17-89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, 10 May 1989.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Alternate OSD Federal Register Liaison Officer, Department of Defense.

L.M. Bynum,

April 12, 1989.

[FR Doc. 89-9242 Filed 4-17-89; 8:45 am]

BILLING CODE 3810-01-M

DoD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, 16 May 1989.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

April 12, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-9243 Filed 4-17-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations

ACTION: Change in date of Advisory Committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations scheduled for May 1, 1989 as published in the **Federal Register** (Vol. 54, No. 9, Page 1428, Friday, January 13, 1989, FR Doc. 89-887) will be held on May 16, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 12, 1989.

[FR Doc. 89-9245 Filed 4-17-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow on Forces Attack (FOFA); Meetings

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Follow on Forces Attack (FOFA) will meet in closed session on May 3 and May 19, 1989 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the preceived needs of the Department of Defense. At these meetings the Task Force will continue to review, in detail, classified material associated with conventional military capabilities in NATO to include special targeting requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

April 12, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-9246 Filed 4-17-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology, Air Force Subgroup; Meeting

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Low Observable Technology, Air Force Subgroup will meet in closed sessions on May 8-9, June 13-14, and September 14-15, 1989 at the Pentagon, Arlington, Virginia..

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will provide the Air Force with scientific advice on its activities in this area.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly these meetings will be closed to the public.

April 12, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Lisison Officer, Department of Defense.

[FR Doc. 89-9247 Filed 4-17-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Intent to Prepare a Draft Environmental Impact statement for Proposed Flood-Control Measures on Guadalupe River, Santa Clara County, CA

AGENCY: U.S. Army Corps of Engineers (San Francisco District), Department of Defense.

ACTION: Notice of intent to prepare a draft environmental impact statement.

1. *Proposed Action.* The Corps of Engineers (Corps) has received an application for a Department of the Army permit from the Santa Clara Valley Water District (Water District) to construct flood-control facilities along Guadalupe River between Interstate Highway 280 (I-280) and Blossm Hill Road, a distance of 5.5 miles. The permit application will be processed by the Regulatory Branch of the San Francisco District, Corps of Engineers pursuant to section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) and section 404 of the Clean Water Act of 1977, as amended (33 U.S.C. 1344).

The purpose of the proposed project is to reduce overbank flooding from Guadalupe River, thereby lessen the flood hazard and damage to residences and businesses in the City of San Jose.

In accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq*), the Corps has determined that the proposed action may have a significant impact on the quality of the human environment and therefore requires the preparation of an Environmental Impact Statement (EIS). A combined EIS/Eir (Environmental Impact Report) will be prepared with the Corps as the Federal lead agency and the Water District as the lead agency for the EIR.

2. *Flood-Control Alternatives.* Four conceptual measures have been identified by the Water District in its planning process.

a. *No Action Plan.* Under this plan, which is equivalent to permit denial by the Corps, no action would be taken by the Water District to reduce flooding from Guadalupe River.

b. *Upstream Storage Plan.* This alternative consists of construction of dams and reservoirs upstream of the flood-prone area.

c. *Offstream Storage Plan.* This plan calls for construction of offstream storage facilities to store floodflows until the water can be released safely.

d. *Channel Modification Plan.* The channel modification alternative consists of three basic design concepts,

namely, (1) Bypass channel, (2) Lined channel, and (3) Widened channel.

The Water District has developed a Channel Modification Plan, which it has designated as the preliminary selected plan for the permit application. The proposed channel modification plan consists of the following measures from downstream to upstream: Bypass channel with gabion sideslopes between I-280 and Willow Glen Way; Partial East Bank widened chanel from Willow Glen Way to southbound Almaden Expressway; West Bank Levee from southbound to northbound Almaden Expressway; East Bank Widened Channel from 1500 feet upstream northbound Almaden Expressway to Bryan Avenue; West Bank Widened Channel from Bryan Avenue to Cross Creek; East Bank Widened Channel from Cross Creek to Branham Lane; and West Bank Widened Channel from Branham Lane to Blossom Hill Road.

3. *Scoping Process.* Pursuant to the National Environmental Policy Act, as amended, agency planning for Federal or federally permitted projects must include a "scoping" process. Scoping primarily involves determining the scope of issues to be addressed, and identifying the significant issues for in-depth analysis in the draft EIS. The scoping process includes public participation to integrate information regarding public needs and concerns into the environmental document.

The Water District has established a public involvement program and sponsored public meetings and workshops to receive comments on the preliminary selected plan. Comments already received will be utilized in preparation of the draft EIS. A scoping meeting has been scheduled for March 29, 1989 at 7:30 p.m. at Terrel Elementary School, 3925 Pearl Avenue, San Jose. Government agencies, public and private interest groups are also invited to further participate in the scoping process by submitting comments on issues pertaining to the proposed project.

a. Significant Issues. The following significant issues have already been identified as significant and they will be analyzed in the draft EIS:

(1) Water quality
(2) Hydrology
(3) Fish and wildlife resources
(4) Wetland and aquatic habitat
(5) Riparian Habitat
(6) Rare and endangered species
(7) Cultural resources
(8) Growth inducement
(9) Aesthetic quality
(10) Recreational opportunities

b. *Environmental Requirements.* Environmental review and other consultation requirements applicable to the proposed action include:

(1) National Environmental Policy Act, as amended
(2) Clean Water Act, as amended
(3) Clean Air Act, as amended
(4) National Historic Preservation Act, as amended
(5) Fish and Wildlife Coordination Act
(6) Endangered Species Act, as amended
(7) Coastal Zone Management Act; and
(8) Council on Environmental Quality Memorandum—Analysis of Impacts on Prime and Unique Agricultural Lands.

4. *Availability of EIS.* The draft EIS will be available for public review in December 1989.

5. *Points of Contact.* Questions regarding the scoping process or preparation of the draft EIS may be directed to Lars M. Forsman, Regulatory Branch (Telephone 415-974-0421). Questions about processing of the permit application may be directed to Frank Kelleher, Regulatory Branch (Telephone 415-974-0424).

John O. Roach, II

Army Liaison Officer with the Federal Register.

[FR Doc. 89-9175 Filed 4-17-89; 8:45 am]

BILLING CODE 3710-FS-M

Armed Forces Institute of Pathology Scientific Advisory Board; Meeting

In order to comply with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Armed Forces Institute of Pathology's Scientific Advisory Board, May 31 and June 1, 1989, at 0830 hours in the Director's Conference Room, Armed Forces Institute of Pathology, Washington, DC 20306-6000. This meeting will be open to the public.

The proposed agenda will include professional discussion of the mission of the Armed Forces Institute of Pathology relating to consultation, education and research. The Executive Secretary from whom substantive program information may be obtained is Colonel Lloyd A. Schlaeppi, Executive Officer, Armed Forces Institute of Pathology, Washington, DC 20306-6000, telephone (202) 576-2900.

For the Director:

Lloyd A. Schlaeppi,

Colonel, MS, USA, Executive Officer.

[FR Doc. 89-9174 Filed 4-17-89; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Coastal Engineering Research Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Date of Meeting: May 9-11, 1989.

Place: Wilmington Hilton, Wilmington, North Carolina.

Time: 8:00 a.m. to 5:00 p.m. on May 9; 8:30 a.m. to 4:45 p.m. on May 10; 8:30 a.m. to 11:45 a.m. on May 11.

Theme: Shoreline Erosion and Restoration.

Proposed Agenda: The morning session on May 9 will consist of a review of CERB business, South Atlantic Division Research Needs, a presentation by a local congressman; a presentation on the management of North Carolina's ocean hazard areas; and an overview of Wilmington District coastal projects and field trip.

The afternoon of May 9 will be devoted to a bus trip and tour of Carolina Beach, Fort Fisher, and the North Carolina Aquarium.

The session on May 10 will consist of several presentations entitled: Introduction to Theme of Shoreline Erosion and Restoration; Beach Preservation Technology '89; Numerical Modeling/Coastal Processes; Physical Modeling/Coastal Processes; Monitoring/Kings Bay Navigation Channel and Adjacent Shorelines; Helicopter LIDAR Bathymeter; Low Cost Shore Protection/Section 54; Shore Damage Reduction Manual; and Beach Nourishment Using Dredged Material/Section 933 Authority. The session will also consist of two panel discussions. One panel will discuss Shore Protection Structures including Seawalls—Special Edition of the Journal of Coastal Research and Offshore Breakwaters, and the other panel will discuss Beachfills including Corps of Engineers Beachfill Projects—Past/Future; State of Florida's Beachfill Program; Wilmington District Beachfill Design Procedures; and Beachfill Research and Development.

On May 11 there will be a discussion of the theme and recommendations by members of the Board.

This meeting is open to the public; participation by the public is scheduled for 9:45 a.m. on May 11.

The entire meeting is open to the public subject to the following:

1. Since seating capacity of the

meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

2. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Inquiries and notice of intent to attend the meeting may be addressed to Lieutenant Colonel Jack R. Stephens, Acting Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Waterways Experiment Station, P.O. Box 631, Vicksburg, Mississippi 39181-0631.

Jack R. Stephens,

Lieutenant Colonel, Corps of Engineers, Acting Executive Secretary.

[FR Doc. 89-9214 Filed 4-17-89; 8:45 am]

BILLING CODE 3710-08-M

Intent To Prepare Draft Environmental Impact Statement (DEIS) for Proposed Flood Control Project; Las Vegas Wash and Tributaries; Clark County, NV

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: This project would include construction of a number of detention and conveyance structures and improvements along Tropicana and Flamingo washes. The proposed plan for flood control would reduce the peak discharge of a 100-year flood so that the resulting downstream discharges could be carried through the urban communities within existing rights of way, flood control facilities, and other existing constraints. Other tributaries, including Las Vegas Range Wash, Lower Las Vegas Wash, Las Vegas Creek, and Duck Creek, which were covered in previous environmental reports, will be dropped from further study at this time. Those tributaries will be assessed in one or more additional studies. A time schedule for the additional tributaries studies has not yet been developed.

Alternatives: The No-Action alternative and variations of the Clark County Regional Flood Control District's Flood Control Master Plan (FCMP) will be considered in the Tropicana and Flamingo Washes study area. The following alternatives will be considered during the feasibility study: (a) Lined channels, (b) unlined channels, (c) floodways, (d) detention basins, (e) debris basins, (f) diversion dikes, (g) storm drains, and (h) bridges and culverts. The sizes and exact locations of these facilities are not known at this time.

Scoping Process: A public meeting will be held on May 1, 1989 to assess public needs and desires relative to protection formulation. The public meeting will be held in Las Vegas. Participation in the public meeting by Federal, State, and local agencies, and other interested private organizations and parties is encouraged. Significant issues to be addressed in these public meetings include: potential impacts to biological resources (including endangered and threatened species), cultural resources, land use, water quality, and air quality.

Time and Locations of Scoping Meeting: A scoping meeting will be held according to the following schedule:

Area, Location, and Time: The public scoping meeting for the Flamingo Wash and Tropicana Wash Feasibility Study will be held at the Clark High School Cafeteria, 4291 Pennwood Avenue, Las Vegas, Nevada 89102 on Monday, May 1, 1989 between 7:00-9:30 p.m.

Availability of the DEIS: The Draft EIS is anticipated to be circulated for public review in Fall 1989.

ADDRESS: Comments and questions regarding the project may be addressed to U.S. Army Corps of Engineers, Los Angeles District, ATTN: Mr. Ronald MacDonald, CESPL-PD-RQ, P.O. Box 2711, Los Angeles, California 90053-2325, (213) 894-3661.

Date: March 28, 1989.

Tadahiko Ono,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 89-9173 Filed 4-17-89; 8:45 am]

BILLING CODE 3710-KF-M

Joint Chiefs of Staff

National Defense University Transition Planning Committee; Meeting

AGENCY: The Joint Staff, Office of the Chairman of the Joint Chiefs of Staff, DOD.

ACTION: Notice of meeting of the National Defense University Transition Planning Committee (Long Committee).

SUMMARY: The Chairman, Joint Chiefs of Staff has scheduled a meeting of the Long Committee.

DATES: The meeting will be held on Apirl 25 and 26, 1989. Due to issues raised by reviewing authorities as part of the substantiation process for the need for the Long Committee, and the necessary charter establishment notice and filing requirements, the 15-day notice of meeting could not be accomplished.

ADDRESS: The meeting will be held at the Center for Naval Analysis, 4401 Ford Road, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Colonel Tom Berta, Executive Assistant, Long Committee, J-7, Joint Doctrine and Education Division, Washington, DC 20318-7000. To reserve space, interested persons should phone: 202-694-6469.

SUPPLEMENTARY INFORMATION: The Committee will be examining the desirability and feasibility of establishing a National Center for Strategic Studies. The meeting is open to the public, but the limited space available for observers will be allocated on a first-come, first-served basis.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 12, 1989.

[FR Doc. 89-9244 Filed 4-17-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER89-309-000, et al.]

Detroit Edison Company, et al.; Electric rate, Small Power Production, and Interlocking Directorate Filings

April 10, 1989.

Take notice that the following filings have been made with the Commission:

1. Detroit Edison Co.

[Docket No. ER89-309-000]

Take notice that the Detroit Edison Company (Detroit Edison) on March 31, 1989, tendered for filing its Certificate of Concurrence with the filing by Northern Indiana Public Service Company of Amendment No. 3 dated March 31, 1989 to the Operating Agreement dated May 1, 1979 among Consumers Power Company, the Detroit Edison Company and Northern Indiana Public Service Company. The Operating Agreement is designed as Detroit Edison Rate Schedule FERC No. 26.

Detroit Edison states that Amendment No. 3 modifies the provisions of the current Rate Schedule by deleting Service Schedule D (Conservation Energy) and increasing rates established for Emergency Service, Short-Term Capacity and Energy and Interchange

Power, as set forth in Service Schedules A, B and C respectively.

The new rates for Emergency Service are established at levels currently in effect for similar service offered by neighboring utilities to remove incentives for the scheduling of emergency service in non-emergency situations. Current provisions for the return of equivalent energy and third party emergency service are deleted.

Amendment No. 3 also deletes provisions for the supply of Short-Term Capacity and Energy on an hourly basis and provides for Short-Term Capacity and Energy to be supplied on a daily basis from third parties. The Amendment also permits rates established for Short-Term Capacity and Energy and Non-Displacement Energy, when generated on the system of the supplying party, to be set in a zone of reasonableness between an upper limit established at cost-justified levels and the 110% of out-of-pocket cost as a lower limit, as competitive conditions dictate.

Further, Amendment No. 3 establishes a maximum demand charge for Non-Displacement Energy transactions. This rate is stated in hourly form based on 5 peak days per week with 16 peak hours per day. The total demand charge in any one day may not exceed the product of one-fifth of the maximum weekly Short-Term Capacity and Energy rate and the greatest hourly kilowatt reservation on that day.

Economy Energy charges have been modified to provide that compensation for such energy, when obtained from or delivered to third parties, shall be the greater of 15% of gross savings, less the cost of transmission losses, or the sum of an hourly demand charge and an energy charge of one mill per kilowatthour. As with the demand charge for Non-Displacement Energy transactions, the total demand charge in any one day may not exceed the product of one-fifth of the maximum weekly Short-Term Capacity and Energy rate and the greatest hourly kilowatt reservation on that day.

Comment date: April 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Iowa Public Service Co.

[Docket No. ER89-308-000]

Take notice that Iowa Public Service Company (IPS) on March 30, 1989, submitted in response to a request from Commission Staff, a revised tariff sheet and additional support materials to the proposed Full Requirements Wholesale—Service Schedule No. 2 Original Issue Sheets Nos. 5, 6 and 6A, and executed Full Requirements Power Agreements filed on May 31, 1988, to permit the following Iowa municipalities to receive services pursuant to the filed rates: Auburn, Denver, Estherville, Hudson, Livermore, Pocahontas, Rockford, and Sergeant Bluff.

IPS requests a waiver of the Commission's regulations and allow the Agreements to become effective as of their respective dates. The earliest operative date is May 1, 1987.

These amendments have been served on all the affected municipalities and the Iowa Utilities Board.

Comment date: April 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Southwestern Electric Power Co.

[Docket No. ER89-262-000]

Take notice that on March 31, 1989, Southwestern Electric Power Company (SWEPCO) tendered for filing a revised final return on common equity ("Final ROE") to be used in redetermining or "truing-up" cost-of-service formula rates for wholesale service in 1988 to Northeast Texas Electric Cooperative, Inc., the City of Bentonville, Arkansas, the City of Hope, Arkansas, the Oklahoma Municipal Power Authority, Rayburn Country Electric Cooperative, Inc., Cajun Electric Power Cooperative, Inc. and TEX-LA Electric Cooperative of Texas, Inc. SWEPCO provides service to these customers under contracts which provide for periodic changes in rates and charges determined in accordance with cost-of-service formulas, including a formulaic determination of the return on common equity. The revised Final ROE reflects a minor adjustment to the original filing on March 1, 1989 in this proceeding.

Copies of the filing were served upon the affected wholesale customers, the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: April 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Tampa Electric Co.

[Docket No. ER89-304-000]

Take notice that on March 30, 1989, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the sale by Tampa Electric to the Utilities Commission, City of New Smyrna Beach, Florida (New Smyrna Beach) of capacity and energy from Tampa Electric's coal-fired resources. Tampa Electric states that the Letter of Commitment is submitted as a supplement to Service Schedule D (long-term interchange service) under the existing agreement for interchange service between Tampa Electric and New Smyrna Beach, designated as Tampa Electric Rate Schedule FERC No. 13.

Tampa Electric proposes an effective date of June 1, 1989 for the Letter of Commitment.

Copies of the filing have been served on New Smyrna Beach and the Florida Public Service Commission.

Comment date: April 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Maine Public Service Co.

[Docket No. ER89-305-000]

Take notice that on March 30, 1989, Maine Public Service Company (Maine Public) tendered for filing a proposed initial rate schedule pertaining to a Purchase Agreement (Agreement) between Maine Public and Boston Edison Company (Boston Edison) for the sale of capacity and energy to Boston Edison. Under this Agreement, Maine Public will sell its full entitlement to capacity and energy from Wyman Unit No. 4 to Boston Edison for the seven month period beginning April 1, 1989 and ending October 31, 1989 and that it be cancelled on October 31, 1989, in accord with the terms of the Agreement.

Comment date: April 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Consumers Power Co.

[Docket No. ER89-310-000]

Take notice that Consumers Power Company (Consumers) on March 31, 1989 tendered for filing its Certificate of Concurrence with Northern Indiana Public Service Company's (Northern Indiana) filing of Amendment No. 3 dated March 31, 1989 to the Operating Agreement dated May 1, 1979 among Consumers, the Detroit Edison Company (Detroit) and Northern Indiana. The Commission has designated the Operating Agreement as Consumer's Rate Schedule FERC No. 45.

Amendment No. 3 deals with service provided by Northern Indiana as well as with service provided by the Michigan companies. Amendment No. 3 changes rates for emergency service (Service Schedule A), short-term service (Service Schedule B) and interchange power (Service Schedule C), replacing the current fixed rates with flexible rates having a cost-based upper limit when either of the parties to the Operating Agreement generate the power being sold. It also provides for rates applicable to power being supplied from

third parties. A floor is set for emergency energy pricing in line with the floor accepted for filing in Docket No. ER88-504. Also, a cost-based floor is established for economy energy sales. Finally, "Service Schedule D—Fuel Conservation Energy" is cancelled by Amendment No. 3.

Comment date: April 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Virginia Turbo Power Systems-II, L.P.

[Docket No. QF89-205-000]

On March 24, 1989 Virginia Turbo Power Systems-II, L.P. (Applicant), of P.O. Box 1396, Houston, Texas, 77251, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Unionville, Orange County, Virginia. The facility will consist of a combustion turbine-generator, a heat recovery steam generator, a condensing-extraction steam turbine, a gas to water heat exchanger, a steam to water heat exchanger and a hot water storage tank. Thermal energy from the facility will be sold to Battlefield Farms, Inc. for use in heating an existing 11.8-acre greenhouse located adjacent to the cogeneration facility. The total net electric power production capacity of the facility will be 140 MW. The primary energy source will be natural gas. Installation is scheduled to commence during the fourth quarter of 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Turbo Power System-I, L.P.

[Docket No. QF89-204-000]

On March 24, 1989 Virginia Turbo Power Systems-I, L.P. (Applicant), of P.O. Box 1396, Houston, Texas, 77251, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to ¶ 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Stevensburg, Culpeper County, Virginia. The facility will consist of a combustion turbine-generator, a heat recovery steam generator, a condensing-extraction steam turbine generator, a gas to water heat exchanger, a steam to water heat exchanger and a hot water storage tank. Thermal energy from the facility will be sold to Van Wingerden of Culpeper, Inc. for use in heating an existing 12.0-acre greenhouse located adjacent to the cogeneration facility. The total net electric power production capacity of the facility will be 140 MW. The primary energy source will be natural gas. Installation is scheduled to commence during the fourth quarter of 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commissions Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9224 Filed 4-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-166-002 et al.]

Pawtucket Power Associates, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

April 12, 1989.

Take notice that the following filings have been made with the Commission:

1. Pawtucket Power Associates, Inc.

[Docket No. QF88-166-002]

On April 4, 1989, Pawtucket Power Asociates, Inc. (Applicant), c/o Energy Management, Inc., 8 Newbury Street, Fifth floor, Boston, Massachusetts 02116 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The toping-cycle cogeneration facility will be located in Pawtucket, Rhode Island. The facility will consist of one combustion turbine generator, one heat recovery steam generator and one extraction/condensing steam turbine generator. Themal energy recovered from the facility will be used by Colfax, Inc. for manufacturing of food products. The primary energy source will be natural gas. The facility is now expected to be on-line in November 1990.

The recertification is requested due to a change in the electric power production capacity from 53,536 kilowatts to 61,520 kilowatts, and a change of the applicant's mailing address.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Frontier Energy Associates, L.P.

[Docket No. QF85-640-001]

On March 29, 1989, Frontier Energy Associates, L.P. (Applicant), of 201 South Union Street, P.O. Box 497, Olean, New York 14760, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Jefferson County, Pennsylvania. The facility will consist of three dual fuel reciprocating engines, three heat recovery steam generators and a steam turbine generator unit. Heat recovered from the facility in the form of hot water will be used for greenhouse space heating. The maximum net electric power production capacity will be 16.178 MW. The primary energy source will be natural gas. Installation will begin in mid 1989.

The original application was filed by Frontier Energy Associates, and was granted on December 17, 1985 (33 FERC ¶ 62,385). The instant recertification is requested due to changes in the ownership of the facility, changes to the configuration of the facility and increases in the electric and steam outputs of the facility.

Comment date: Thirty days from publication in the **Federal Register**, 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, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9225 Filed 4-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8862-001 Alabama]

Coffeeville Hydroelectric Partners; Availability of Environmental Assessment

April 12, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Coffeeville Lock & Dam Water Power Project located on the Tombigbee River in Clarke and Choctaw Counties, Alabama, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9228 Filed 4-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1178-000 et al.]

Paiute Pipeline Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Paiute Pipeline Co.

[Docket No. CP89-1178-000]

April 12, 1989.

Take notice that on April 10, 1989, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193-4197, filed in Docket No. CP89-1178-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Natural Gas Clearinghouse Inc. (NGC), a natural gas marketer, under Paiute's blanket certificate issued in Docket No. CP87-309-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Paiute states that pursuant to a transportation service agreement dated November 14, 1988, under its Rate Schedule IT-1, the transportation service will be provided for a primary term up to and including October 31, 1991, and month-to-month thereafter, subject to termination at the expiration of the primary term or upon the first day of any calendar month thereafter by either party upon thirty days written notice. Paiute proposes to transport up to 115,000 MMBtu equivalent of natural gas per peak day for NGC from the point of receipt at the interconnection between the facilities of Paiute and Northwest Pipeline Corporation at the Idaho-Nevada border. Paiute states that it would transport and redeliver the gas to NGC at delivery points which are identified in the transportation service agreement and that no new facilities will need to be constructed to provide the subject transportation service. Paiute estimates that it will transport for NGC approximately 11,499 MMBtu equivalent of natural gas on an average day and approximately 4,197,000 MMBtu equivalent of natural gas on an annual basis.

Paiute advises that service under the 120-day automatic provisions of §§ 284.223(a) of the Commission's regulations commenced on January 25, 1989, as reported in Docket No. ST89-2405-000.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Co.

[Docket No. CP89-1153-000]

April 12, 1989.

Take notice that on April 5, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1153-000 a request, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to provide interruptible transportation service on behalf of OXY USA, Inc. (OXY), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Pursuant to an interruptible gas transportation agreement dated January 6, 1989, United proposes to transport up to 1,030 MMBtu of natural gas per day for OXY from an existing point of receipt located in Claiborne Parish, Louisiana to an existing point of delivery located in Iberia Parish, Louisiana. OXY has informed United that it expects to have the full 1,030 MMBtu transported on an average day and, based thereon, estimates that the annual transportation quantity would be 375,950 MMBtu. United advises that the transportation service commenced on March 1, 1989, as reported in Docket No. ST89-2768-000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. El Paso Natural Gas Co.

[Docket No. CP89-1122-000]

April 13, 1989.

Take notice that on March 31, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed an application in abbreviated form pursuant to section 7(b) of the Natural Gas Act, and sections 157.5, *et seq.*, and 157.7(a) of the Commission's Regulations, for permission and approval to abandon certain transportation and delivery service authorized by the Commission's order issued February 12, 1989, in Docket No. CP79-251 to be rendered by El Paso for the account of Western Gas Interstate Company (WGI), all as more fully set forth in the application on file with the Commission and open to public inspection.

The Commission's order in Docket No. CP79-251 granted permanent certificate authority for, *inter alia*, the transportation and delivery by El Paso of up to 2,500 Mcf of natural gas per day, on a best efforts basis, for the account of WGI and the delivery of such gas to Southern Union Company (Southern Union) at certain existing delivery points on El Paso's interstate transmission pipeline system in the

States of Texas and New Mexico. Such service was to be provided in accordance with the provisions of a Gas Transportation Agreement dated January 31, 1979, (Transportation Agreement) between El Paso and WGI, which comprises special Rate Schedule T-17 to El Paso's FERC Gas Tariff, Third Revised Volume No. 2.

In accordance with the Transportation Agreement, El Paso agreed to accept, at an existing point of receipt located in San Juan County, New Mexico, up to 2,500 Mcf per day of natural gas acquired by WGI and to deliver equivalent quantities of natural gas, less shrinkage, if any, to Southern Union for the account of WGI at certain existing points of delivery located in Curry County, New Mexico, or Hutchinson County, Texas. In order to assist WGI in making such quantities of natural gas available to Southern Union, El Paso agreed to receive, gather, process, dehydrate, as required, and to transport and deliver such natural gas for the account of WGI on a best efforts basis. The primary term of the Transportation Agreement extended for a period of five (5) years from the date of initial deliveries and from year to year thereafter, subject to termination by either El Paso or WGI upon due notice to either party.

Ordering Paragraph (F) of the Commission's order issued February 12, 1980, in Docket No. CP79-251, required the Transportation service to commence within one (1) year from the date of the order. Deliveries did not commence within the one (1) year period specificed in the order or at any time thereafter. Therefore, the certificate authorization issued to El Paso in Docket No. CP79-251 has expired. Accordingly, El Paso and WGI have entered into a Letter Agreement dated February 16, 1989, terminating the Transportation Agreement, which would end the agreement designated special Rate Schedule T-17.

Comment date: May 4, 1989, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary

[FR Doc. 89-9223 Filed 4-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1165-000, et al.]

Panhandle Eastern Pipe Line Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line

[Docket No. CP89-1165-000]

April 11, 1989.

Take notice that on April 7, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP89-1165-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle proposes to transport natural gas on a firm basis for Northern Indiana Fuel & Light Co., Inc. (NIFL). Panhandle explains that service commenced March 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-2840. Panhandle explains that the peak day quantity would be 2,405 Dt., the average daily quantity would be 2,405 Dt., and that the annual quantity would be 877,825 dekatherms. Panhandle explains that it would receive natural gas for NIFL's account at various receipt points in the states of Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois. Panhandle states that it would redeliver the gas to NIFL in Allen County, Indiana.

Comment date: May 25, 1989 in accordance with Standard Paragraph G at the end of the notice.

2. United Gas Pipeline Co.

Docket No. CP89-1152-000]

April 11, 1989.

Take notice that on April 5, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-885-000 a request pursuant to Section 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of American Central gas Companies (American Central), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 185,400 MMBtu equivalent of natural gas on a peak day, 185,400 MMBtu equivalent on an average day, and 67,671,000 MMBtu equivalent on an annual basis. It is stated that United would receive the gas

for American Central's account at existing points on United's system in Louisiana, Texas, and Mississippi, and would deliver equivalent volumes at existing points on United's system in Louisiana, Texas, Mississippi and Alabama. It is asserted that the transportation service would be effected utilizing existing facilities and would not require any construction of additional facilities. It is explained that the transportation service commenced February 13, 1989, as reported in Docket No. ST89-2730.

Comment date: May 25, 1989, in accordance with Standard Paragraph G at the end of this notice

3. United Gas Pipe Line Co.

[Docket No. CP89-1148-000]

April 11, 1989.

Take notice that on April 5, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1148-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Williams Gas Marketing (Williams), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspecion.

United states that it proposes to transport natural gas on behalf of Williams from a point of receipt located in Vermilion Parish, Louisiana to various points of delivery located in Louisiana and Texas.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Williams would be 51,500 MMBtu equivalent, 51,500 MMBtu equivalent and 18,797,500 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89-2772, filed with the Commission on March 21, 1989, it reported that transportation service for Williams had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: May 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

Valley Gas Transmission, Inc.

[Docket No. CP89-1162-000]

April 11, 1989.

Take notice that on April 6, 1989, Valley Gas Transmission, Inc. (Valley), 1301 McKinney, Suite 700, Houston, Texas 77010, filed in Docket No. CP89-1162-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Tenngasco Exchange Corporation (Tenngasco), under Valley's blanket certificate issued in Docket No. CP86-171-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Valley requests authorization to transport, on an interruptible basis, up to a maximum of 4,000 MMBtu of natural gas per day for Valley from a receipt point located in Louisiana to a delivery point located in Louisiana. Valley anticipates transporting, on an average day 1,300 MMBtu and an annual volume of 1,460,000 MMBtu.

Valley states that the transportation of natural gas for Tenngasco commenced February 1, 1989, as reported in Docket No. ST89-2731-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Valley in Docket No. CP86-171-000.

Comment date: May 25, 1989, in accordance with Standard Paragraph G at the end of this notice

5. Tennessee Gas Pipeline Co.

[Docket No. CP89-1158-000]

April 12, 1989.

Take notice that on April 6, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1158-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Chevron USA, Inc. (Chevron), a producer, under the blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated February 21, 1989, under its Rate Schedule IT, it proposes to transport up to 60,000 dekatherms (dt) per day equivalent of natural gas for Chevron. Tennessee states that it would transport the gas from receipt points located offshore Louisiana and offshore Texas, and deliver such gas to various delivery points off Tennessee's system located in the state of Louisiana.

Tennessee advises that service under § 284.223(a) commenced February 25, 1989, as reported in Docket No. ST89-2774 (filed March 22, 1989). Tennessee further advises that it would transport 60,000 dt on an average day and 21,900,000 dt annually.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1161-000]

April 12, 1989.

Take notice that on April 6, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1161-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Midland Cogeneration Venture, Limited Partnership (MCV), an end user, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated October 1, 1988, under its Rate Schedule PT, it proposes to transport up to 35,000 dekatherms (dt) per day equivalent of natural gas for MCV. Panhandle states that it would transport the gas from receipt points in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois, and deliver such gas, less fuel used and unaccounted for line loss, to Michigan Gas Storage in Oakland County, Michigan.

Panhandle advises that service under § 284.223(a) commenced March 1, 1989, as reported in Docket No. ST89-2837. Panhandle further advises that it would transport 35,000 dt on an average day and 12,775,000 dt annually.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Transcontinental Gas Pipe Line Corp.

[Docket No. CP89-1097-000, CP89-1098-000, CP89-1099-000, CP89-1100-000, CP89-1101-000, CP89-1102-000, CP89-1103-000, CP89-1104-000, CP89-1107-000, CP89-1110-000, and CP89-1154-000*

Take notice that on March 29, 1989 and on April 5, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket Nos. CP89-1097-000, *et al.*, applications pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon firm sales

* The above proceedings are not consolidated.

entitlement to eleven customers, all as more fully set forth in the applications on file with the Commission and open to public inspection.[1]

Transco states that pursuant to § 284.10 of the Commission's Regulations, the customers, as noted in the Appendix, converted firm sales entitlements under their respective Service Agreements to firm transportation under Transco's Rate Schedule FT. Transco states that it now requests to abandon firm sales entitlement to each customer associated with the reductions in firm sales service to be effective as of the dates noted on the Appendix. Transco states that pursuant to § 284.10(f)(2), the exercise of contract conversion rights by a firm sales customer under § 284.10(d) constitutes consent by that customer to the abandonment of sales service to the extent of the conversion.

Comment date: May 3, 1989, in accordance with Standard Paragraph F at the end of this notice.

[1] See attached appendix for details of each application, including customer name, rate schedule, revised sales entitlement, etc.

APPENDIX

[Docket No. CP89-1097-000, *et al.*]

Docket No. CP89-	Filed	Customer	Rate schedule	Firm sales entitlement (Mcf/d)			Effective date of reduction
				Current	Reduction	Revised	
1097-000	3/29/89	United Cities Gas-Georgia Division	CD-1	8,100	2,430	5,670	10/17/88 & 2/8/89
1098-000	3/29/89	Washington Gas Light Co	CD-2	46,750	8,250	38,500	11/1/88
1099-000	3/29/89	City of Greer, SC	OG	5,000	1,500	3,500	2/1/89
1100-000	3/29/89	City of Lexington, NC	CD-2	8,900	1,335	7,565	2/1/89
1101-000	3/29/89	United Cities Gas-S.C. Div.	CD-2	6,700	1,624	5,076	10/17/88 & 2/8/89
1102-000	3/29/89	South Carolina Pipeline Co	CD-2	24,905	4,395	20,510	11/1/88
1103-000	3/29/89	City of Bessemer, NC	OG-2	2,000	600	1,400	3/6/89
1104-000	3/29/89	City of Kings Mountain, NC	G-2	4,100	1,230	2,870	2/15/89
1107-000	3/29/89	City of Shelby, NC	CD-2	11,600	1,740	9,860	12/1/88
1110-000	3/29/89	City of Union, SC	CD-2	5,600	1,680	3,920	2/1/89
1154-000	4/5/89	Long Island Lighting Co	CD-3	114,632	10,283	104,349	3/24/89

8. United Gas Pipe Line Co.

[Docket No. CP89-1143-000]

April 12, 1989.

Take notice that on April 5, 1989, United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1143-000, a request pursuant to §§ 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service on behalf of Bocce Energy Corporation (Bocce), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that pursuant to an Interruptible Gas Transportation Agreement dated February 9, 1989, it would transport a maximum daily quantity of 20,600 MMBtu for Bocce. United further states that it would receive the natural gas at various existing receipt points on its system in Louisiana and Texas and would redeliver the natural gas in Louisiana and Mississippi. United indicates that the estimated average daily and annual quantities would be 20,600 MMBtu and 7,519,000 MMBtu, respectively.

United states that it commenced the transportation of natural gas for Bocce on March 1, 1989, as reported in Docket No. ST89-2736-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. West Texas Gathering Co.

[Docket No. CP89-1120-000]

April 12, 1989.

Take notice that on March 31, 1989, West Texas Gathering Company (West Texas), 550 West Lake Boulevard, Suite 170, Houston, Texas 77079, filed in Docket No. CP89-1120-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

West Texas states the authorization requested in this blanket open-access transportation certificate is being filed concurrently with, and as an integrated part of, a comprehensive open-access plan designed by West Texas to provide for (1) completion at the earliest practicable date of West Texas' transition to full open-access transporter status; and (2) adoption of the rate recovery procedure prescribed by Order No.

West Texas indicates it filed, on February 15, 1989, tariff sheets to set forth rates, terms and conditions for open-access transportation under section 311 of the Natural Gas Policy Act of 1978. West Texas states that the filing was accepted subject to conditions in an order issued on March 17, 1989, in Docket No. RP89-67-000. West Texas states that it would comply with the conditions in paragraph (c) of § 284.221 of the Commission's Regulations, which paragraph refers to Subpart A of Part 284 of the Commission's Regulations.

Comment date: May 3, 1989, in accordance with Standard Paragraph F at the end of this notice.

10. Texas Gas Transmission Corp.

[Docket No. CP89-1119-000]

April 12, 1989.

Take notice that on March 31, 1989, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP89-1119-000, an application for a certificate of public convenience and necessity pursuant to sections 7(b) and

7(c) of the Natural Gas Act (NGA) to implement a Gas Inventory Charge (GIC) mechanism applicable to sales customers purchasing service pursuant to Rate Schedules G, CD, CDL and proposed Rate Schedules CDN and GN, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas states that the GIC proposal as outlined in the application establishes a charge which would be assessed to particular customers not purchasing at certain threshold levels to recover the cost to Texas Gas of contracting for and maintaining supply reserves and deliverability sufficient to stand ready to serve that customer's daily contract demand and annual requirement levels, which Texas Gas indicates in recent years have, generally, been substantially in excess of the level of individual customers' actual purchases.

Texas Gas states that the GIC unit charge would be derived, as explained in the application, by applying the then effective Commission interest rate times 125 percent of the weighted average cost of gas purchased from all field suppliers included each year in Texas Gas' November quarterly purchased gas adjustment filing.

Texas Gas states that the unit charge would be assessed against deficiencies in purchases by those sales customers who fail to purchase quantities in an amount at least equal to that customer's assigned "Seasonal Quantity Level." It is indicated that each customer's Seasonal Quantity Level would be established for each gas year and be derived from seasonal threshold levels which represent individualized load factors expressed as a percentage of each customer's applicable daily contract demand. Texas Gas states also that customers shall have the right annually to adjust their Seasonal Quantity Level.

Texas Gas explains that the GIC represents the cost incurred by Texas Gas of holding gas in inventory to meet the customer's regulatory right to call for a specified quantity of supply at any time. Its purpose, as explained by Texas Gas, is to (1) provide customers the opportunity to make an informed economic choice in selecting the supply option or options which meet their supply portfolio planning requirement, and (2) to avoid the billing of retrospective take-or-pay costs in current sales rates by providing sales customers the incentive to nominate carefully and prudently their intended sales demands, requiring payment on a current basis for excessive nominated requirements.

Texas Gas also is requesting permission to automatically abandon its sales service obligation to the extent any existing sales customer chooses to convert all or a portion of its sales service entitlement in favor of firm transportation, pursuant to Order No. 500.

Comment date: May 3, 1989, in accordance with Standard Paragraph F at the end of this notice.

11. United Gas Pipe Line Co.

[Docket No. CP89-1149-000]

April 12, 1989.

Take notice that on April 5, 1989, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1149-000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for Texaco, Inc. (Texaco), a producer of natural gas, under United's blanket transportation certificate which was issued by Commission order on January 15, 1988, in Docket No. CP88-6-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United indicates that it will receive the gas from Texaco at various existing delivery points in Panola, Rusk, Harrison, Smith Gregg and Cherokee Counties, Texas, and deliver the gas for the account of Texaco at various interconnections in Panola, Smith, Upshur, Gregg, Rusk Harrison and Shelby Counties, Texas. United will transport the gas pursuant to its Rate Schedule ITS.

United proposes to transport up to 51,500 MMBtu of gas per peak and average day and approximately 18,797,500 MMBtu of gas annually. United indicates that the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on March 2, 1989, pursuant to a transportation agreement dated May 11, 1988, as amended January 25, 1989, United notified the Commission of the commencement of the transportation service in Docket No. ST89-2766-000 on March 21, 1989.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Tennessee Gas Pipeline Co.

[Docket No. CP89-1159-000]

April 12, 1989.

Take notice that on April 6, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1159-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Chevron USA, Inc. (Chevron), a producer, pursuant to Tennessee's blanket certificate issued in Docket No. CP87-115-000 and section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Tennessee requests authority to transport up to 25,000 dt equivalent of natural gas per day for Chevron on an interruptible basis pursuant to a transportation agreement dated February 17, 1989, between Tennessee and Chevron. Tennessee states that the transportation agreement provides for Tennessee to receive the gas at specified points located offshore Louisiana for redelivery to various delivery points located at interconnections with the facilities of Columbia Gulf Transmission Company, Transcontinental Gas Pipe Line Corporation, United Gas Pipe Line Company, Southern Natural Gas Company, ANR Pipeline Company, and Monterey Pipeline Company.

Tennessee indicates it would provide the service for a primary term of two years from the date of execution of the agreement to be continued on a month-to-month basis thereafter. Tennessee indicates, however, that either party may terminate this agreement at any time upon at least thirty days prior written notice to the other party. Tennessee states that it would charge the rates and abide by the conditions provided by its Rate Schedule IT.

It is indicated that the estimated maximum daily volume and average day volume would be 25,000 dt equivalent of natural gas and that the annual volume would be 9,125,000 dt equivalent of natural gas. Tennessee states that it commenced a 120-day transportation service for Chevron on March 1, 1989, as reported in Docket No. ST89-2775-000. It is indicated that Tennessee would use existing facilities to implement the service.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP89-1155-000]

April 12, 1989.

Take notice that on April 5, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89-1155-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon partially firm sales service to Midwest Gas, a division of Iowa Public Service Company (Midwest Gas) (formerly Iowa Public Service Company).

Midwest Gas, it is said, has elected to convert 22,000 Mcf per day of firm sales entitlements to firm transportation. It is stated that the contract demand conversion option made available to Midwest Gas is consistent with Order Nos. 436 and 500 guidelines and the Stipulation and Agreement in Docket No. RP85-206-000. Northern seeks approval to permanently abandon that portion of its certificated sales obligation to Midwest Gas which was converted to firm transportation service.

Pursuant to 18 CFR 284.10(d)(2) the exercise of the customer's option to convert constitutes consent to the proposed abandonment.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP89-1129-000]

April 12, 1989.

Take notice that on March 31, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89-1129-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Citizens Gas Supply Corp. (Citizens), a marketer, under Northern's blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that pursuant to an interruptible transportation service agreement dated February 21, 1989, it proposes to receive up to 60 billion Btu per day from specified points located onshore and offshore Texas and Louisiana and redeliver the gas at specified points located onshore Texas and Louisiana and offshore Texas, Mississippi, and Louisiana. Northern states that the peak day volumes, average day volumes, and annual volumes would be 60 billion Btu, 45 billion Btu, and 21,900 billion Btu, respectively. It is stated that on February 21, 1989, Northern commenced a 120-day transportation service for Citizens under § 284.223(a) as reported in Docket No. ST89-2608-000.

Northern also states that no facilities need be constructed to implement the service. It is indicated that Northern would provide the service for a primary term expiring one year from the date of initial transportation and would continue the service on a month to month basis unless terminated by either party upon thirty days prior written notice to the other party. Northern proposes to charge the rates and abide by the terms and conditions of its Rate Schedule IT-1.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP89-1160-000]

April 12, 1989.

Take notice that on April 6, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89-1160-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon partially firm sales service to Iowa Electric Light and Power Company (Iowa Electric).

Iowa Electric, it is said, has elected to convert 18,750 Mcf per day of firm sales entitlements to firm transportation. It is stated that the contract demand conversion option made available to Iowa Electric is consistent with Order Nos. 436 and 500 guidelines and the Stipulation and Agreement in Docket No. RP85-206-000. Northern seeks approval to permanently abandon that portion of its certificated sales obligation to Iowa Electric which was converted to firm transportation service.

Pursuant to 18 CFR 284.10(d)(2) the exercise of the customer's option to convert constitutes consent to the proposed abandonment.

Comment date: May 3, 1989, in accordance with Standard Paragraph F at the end of this notice.

16. United Gas Pipe Line Co.

[Docket No. CP89-1150-000]

April 12, 1989.

Take notice that on April 5, 1989, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89-1150-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas on an interruptible basis for Texaco Gas Marketing, Inc., (Texaco). United explains that service commenced February 27, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-2770. United explains that the peak day quantity would be 103,000 MMBtu, the average daily quantity would be 103,000 MMBtu, and that the annual quantity would be 37,595,000 MMBtu. United explains that it would receive natural gas for Texaco's account at various receipt points in the state of Louisiana and Offshore Louisiana. United states that it would redeliver the gas at existing interconnections in the state of Louisiana.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. CNG Transmission Corp.

[Docket No. CP89-1127-000]

April 12, 1989.

Take notice that on March 31, 1989, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP89-1127-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Columbia Gas of Ohio (Columbia of Ohio) and the use of facilities constructed under Natural Gas Policy Act of 1978 section 311 authorization, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG proposes to sell up to 1,500 dt equivalent of natural gas per day and 60,000 dt equivalent on an annual basis to Columbia of Ohio for resale to customers in the community of Lithopolis, Ohio. It is stated that the sale would be made pursuant to the terms of CNG's Rate Schedule SCQ and a contract between CNG and Columbia of Ohio dated May 16, 1988. It is asserted that the rate charged would be the rate specified in Rate Schedule SCQ of CNG's currently effective FERC Gas Tariff, Volume No. 1. It is explained that the term of the state would commence on the date of initial deliveries and

would continue until December 31, 1988, and thereafter until terminated by either party with 12 months notice.

It is stated that the deliveries would be made at an existing interconnection between CNG and Columbia of Ohio located in Franklin County, Ohio, which was constructed in August 1988 under Section 311 authorization, enabling CNG to transport gas for Columbia of Ohio. CNG requests section 7(c) authorization for the delivery point in order to make jurisdictional sales. It is explained that the sale would benefit CNG by increasing throughput on its system and would benefit Columbia of Ohio by expanding its retail market.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. United Gas Pipe Line Co.

[Docket No. CP89-1145-000]

April 12, 1989.

Take notice that on April 5, 1989, United Gas Pipe Line Company (United), P.O. Box 1478 Houston, Texas 77251-1478, filed in Docket No. CP89-1145-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Catamount Natural Gas, Inc., (Catamount), a natural gas marketer, under its blanket authorization issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United would perform the proposed interruptible transportation service for Catamount, pursuant to an interruptible transportation service agreement dated December 15, 1988 (Contract No. TI-21-2012). The transportation agreement is effective for a primary term of one month from the date of first delivery thereunder or such date that the parties mutually agree to terminate the agreement, and shall continue month to month thereafter unless terminated by thirty days written notice by either party. United proposes to transport up to a maximum of 51,500 MMBtu of natural gas on an average and peak day; and on an annual basis 18,797,500 MMBtu of natural gas for Catamount. United proposes to receive the subject gas at the existing interconnection between United and facilities at Eugene Block 32, Offshore, Louisiana, and the existing interconnection between United and Sea Robin Pipeline Company near Erath, Vermilion Parish, Louisiana. It is stated that the points of delivery are located in Ascension Parish and St. Mary Parish, Louisiana. United avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. United commenced such self-implementing service on March 11, 1989, as reported in Docket No. ST89-2738-000.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. United Gas Pipe Line

[Docket No. CP89-1151-000]

April 12, 1989.

Take notice that on April 5, 1989, United Gas Pipe Line Company, (United) P.O. Box 1478, Houston, Texas, 77251-1478 filed in Docket No. CP89-1151-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of American Central Gas Companies (American Central), under its blanket authorization issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United would perform the proposed interruptible transportation service for American Central, a marketer of natural gas, pursuant to a interruptible gas transportation service agreement dated November 9, 1988, as amended on February 20, 1989 (Contract No. TI-21-1971). The term of the transportation agreement is for a primary term of one month from the first delivery of gas and shall continue in effect for successive one month terms thereafter until terminated. United proposes to transport on a peak day up to 185,400 MMBtu; on an average day up to 185,400 MMBtu; and on an annual basis 67,671,000 MMBtu for American Central. United proposes to receive the subject gas from various exiting points of receipt on its system for delivery to American Central at existing points in Alabama, Mississippi, Texas and Louisiana. The proposed rate to be charged its pursuant to United's Rate Schedule ITS. United indicates that it would be using existing facilities to provide the proposed transportation service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. United commenced such self-implementing service on February 28, 1989, as reported in Docket No. ST88-2764-000.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Southern Natural Gas Co.

[Docket No. CP89-1163-000]

April 12, 1989.

Take notice that on February 21, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-1163-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Texaco, Inc. (Texaco), a producer of natural gas, under Southern's blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport, on an interruptible basis, up to 50,000 MMBtu equivalent of natural gas on a peak day, 25,000 MMBtu equivalent on an average day, and 9,125,000 MMBtu equivalent on an annual basis for Texaco. It is stated that Southern would receive the gas at an existing point on Southern's system on Matagorda Island, offshore Texas, and would deliver equivalent volumes at existing points on Southern's system near the terminus of the Matagorda Offshore Pipeline System in Refugio County, Texas. It is asserted that Southern would utilize existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced February 24, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-2700.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will

not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9222 Filed 4-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-124-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 12, 1989.

Take notice that CNG Transmission Corporation ("CNG"), on March 31, 1988, pursuant to Section 4 of the Natural Gas Act and the Commission's Order No. 500, as amended, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Original Sheet Nos. 161A, 161B and 161C
First Revised Sheet Nos. 34, 39, 161 and 162
Third Revised Sheet Nos. 51, 52, 58, 60, 85 and 86
Fourth Revised Sheet No. 32
Seventh Revised Sheet No. 31

The proposed effective date of the revised tariff sheets is May 1, 1989.

The purpose of the filing is to modify CNG's tariff to permit the passthrough of take-or-pay-related costs from CNG's producer suppliers. CNG is proposing tariff sheets that will permit the passthrough of 75 percent of its producer-related take-or-pay costs—broadly defined to include take-and-pay and take-or-pay buyout, buydown and contract reformation costs, both cash and non-cash—that it has paid or incurred or is obligated to pay or incur under settlements entered into with producers through March 31, 1989. Twenty-five percent of the take-or-pay costs would be recovered through direct bills to CNG's sales customers and 50 percent of all such costs would be recovered through a surcharge to the commodity component of CNG's sales, transportation and storage injection rates. CNG, for purposes of this filing, utilizes the deficiency method set out in Order No., 500 to allocate take-or-pay costs among customers.

The filing seeks to collect 75 percent of the current take-or-pay principal cash balance from producers of $7.3 million and 75 percent of the non-cash consideration of approximately $1.0 million, plus applicable interest.

Copies of the filing were served upon CNG's customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR § 385.214 and 385.211). All motions or protests should be filed on or before April 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

By the Commission

Lois D. Cashell,

Secretary.

[FR Doc. 89-9226 Filed 4-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-50-000, CP68-179-013, et al., and CP89-555-000 (Unconsolidated)]

Florida Gas Transmission Co.; Informal Conference

April 11, 1989.

Take notice that an informal conference will be convened in the above-captioned proceedings on May 3, 1989, at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The conference is being convened at the request of Florida Gas Transmission Company in order to discuss the daily and annual contract quantity nominations made by customers as part of the capacity allocation process in these proceedings.

Any party, as defined by 18 CFR 385.102(c), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald A. Heydt (202) 357-8730 or John J. Keating (202) 357-5762.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9227 Filed 4-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-130-001]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

April 12, 1989.

Take notice that Transwestern Pipeline Company (Transwestern) on April 7, 1989 tenders for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following sheets:

Substitute 34th Revised Sheet No. 6
Substitute 35th Revised Sheet No. 6

Transwestern states that these tariff sheets reflect revisions to two tariff sheets originally filed on March 31, 1989 in Docket No. RP89-130-000. Subsequent to the March 31, 1989 filing, Transwestern discovered that the above tariff sheets reflect the correct proposed surcharges but do not reflect the currently effective transportation rates approved effective February 1, 1989, by order issued January 31, 1989, in Transwestern's rate case, Docket No. RP89-48-000, and should be substituted

for those filed on March 31, 1989, in Docket No. RP89-130-000.

Transwestern requests that the Federal Energy Regulatory Commission grant any and all waivers of its rules, regulations and orders as may be necessary, so as to permit Substitute 35th Revised Sheet No. 6 to become effective April 1, 1989 and Substitute 34th Revised Sheet No. 6 to become effective February 1, 1989, as originally proposed in the March 31, 1989 filing in Docket No. RP89-130-000.

Copies of the Filing were served on Transwestern's jurisdictional customers and interested state commissions.

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, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 19, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 89-9229 Filed 4-17-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51730; FRL-3557-3]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 44 such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 89-440, 89-441—May 30, 1989.
P 89-447, 89-448, 89-449—May 31, 1989.
P 89-450—June 3, 1989.
P 89-451—May 31, 1989.
P 89-452—May 31, 1989.
P 89-452, 89-453—June 3, 1989.
P 89-454—May 31, 1989.
P 89-455, 89-456—June 3, 1989.
P 89-457, 89-458, 89-459—June 4, 1989.
P 89-461, 89-462, 89-463—June 5, 1989.
P 89-464, 89-465, 89-466, 89-467, 89-468—June 6, 1989.
P 89-469—June 7, 1989.
P 89-470—May 28, 1989.
P 89-471, 89-472, 89-473, 89-474, 89-475, 89-476—June 7, 1989.
P 89-477, 89-478, 89-479, 89-480, 89-481, 89-482, 89-483, 89-484, 89-485, 89-486, 89-487, 89-488—June 10, 1989.
P 89-489—June 11, 1989.

Written comments by:

P 89-440, 89-441—April 30, 1989.
P 89-447, 89-448, 89-449—May 1, 1989.
P 89-450—May 4, 1989.
P 89-451—May 1, 1989.
P 89-452, 89-453—May 4, 1989.
P 89-454—May 1, 1989.
P 89-455, 89-456—May 4, 1989.
P 89-457, 89-458, 89-459—May 5, 1989.
P 89-461, 89-462, 89-463—May 6, 1989.
P 89-464, 89-465, 89-466, 89-467, 89-468—May 7, 1989.
P 89-469—May 8, 1989.
P 89-470—April 28, 1989.
P 89-471, 89-472, 89-473, 89-474, 89-475, 89-476—May 8, 1989.
P 89-477, 89-478, 89-479, 89-480, 89-481, 89-482, 89-483, 89-484, 89-485, 89-486, 89-487, 89-488—May 11, 1989.
P 89-489—May 12, 1989.

ADDRESS: Written comments identified by the document control number "[OPTS-51730]" and the specific PMN number should be sent to: Document Control Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room 201 East Tower, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TTD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 89-440

Manufacturer. Mazer Chemicals Div. of PPG Chemicals.

Chemical. (S) Ethanol, 2-(2-hydroxypropyl)amine.

Use/Production. (S) Adjust ph of synthetic cutting and lubricants and coolants. Prod. range: 30,000-50,000 kg/yr.

P 89-441

Manufacturer. Mazer Chemicals Div. of PPG Chemicals.

Chemical. (S) Ethanol, 2-(Bis-2-hydroxypropyl)amine.

Use/Production. (S) Adjust ph of synthetic cutting and grinding lubricants and coolants. Prod. range: 15,000-30,000 kg/yr.

P 89-447

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Styrene acrylic peroxide copolymer.

Use/Production. (G) Destructive use. Prod. range: Confidential.

P 89-448

Manufacturer. Confidential.

Chemical. (G) Cyclic phosphate.

Use/Production. (G) Additive flame retardant. Prod. range: Confidential.

P 89-449

Manufacturer. E.I. Du Pont & De Nemours & Co., Inc.

Chemical. (G) Polyvinyl alcohol.

Use/Production. (G) Disposable nonwoven products. Prod. range: Confidential.

Toxicity Data. Skin irritation: negligible species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea pig).

P 89-450

Manufacturer. E.I. Du Pont & De Nemours & Co., Inc.

Chemical. (G) Vinyl acetate copolymer.

Use/Production. (G) Intermediate. Prod. range: Confidential.

P 89-451

Manufacturer. Confidential.

Chemical. (G) Silicone-imide black copolymer.

Use/Production. (G) Electronics, separation membrane coatings. Prod. range: Confidential.

P 89-452

Manufacturer. Confidential.

Chemical. (G) Silicone-imide black copolymer.

Use/Production. (G) Electronics, separation membrane coatings. Prod. range: Confidential.

Toxicity Data. Mutagenicity: negative.

P 89-453

Manufacturer. Confidential.

Chemical. (G) Silicone-imide black copolymer.

Use/Production. (G) Electronics, separation membrane coating. Prod. range: Confidential.

P 89-454

Importer. Polysar Inc.

Chemical. (G) Amine substituted cycloaliphate epoxide.

Use/Import. (G) Open, nondispersive uses. Import range: Confidential.

P 89-455

Manufacturer. Eastman Chemicals Division.

Chemical. (S) Reaction mixture resulting from the treatment of p-diisopropylbenzene with air.

Use/Production. (S) Chemical reactant. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 3,200 mg/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: moderate species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea pig).

P 89-456

Manufacturer. The Dow Chemical Company.

Chemical. (G) Unsaturated organic substituted diketone.

Use/Production. (S) Intermediate for polymer manufacture. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat). Eye irritation: moderate species (Rabbit). Skin irritation: negligible species (Rabbit).

P 89-457

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Unsaturated polyester resin.

Use/Production. (S) Automotive body patch resin. Prod. range: Confidential.

P 89-458

Manufacturer. Amoco Petroleum Additive Company.

Chemical. (G) Dithiophosphoric acid ester.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute dermal toxicity: LD50 > 2 g/kg species (Rabbit). Inhalation toxicity: LC50 > 0.198 mg/1 species (Rat). Eye irritation: strong species (Rabbit). Skin irritation: moderate species (Rabbit).

P 89-459

Manufacturer. Amoco Petroleum Additive Company.

Chemical. (G) Metallo dithiophosphate.

Use/Production. (S) Additive in motor oil. Prod range: Confidential.

Toxicity Data. Acute dermal toxicity: LD50 > 2 g/kg species (Rabbit). Inhalation toxicity: LC50 > 1 mg/1 species (Rat). Skin irritation: strong species (Rabbit).

P 89-461

Manufacturer. Confidential.

Chemical. (G) Brominated alkylated aniline.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 3,204 mg/kg species (Rat). Acute dermal toxicity: LD50 10,300 mg/kg species (Rabbit). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 89-462

Manufacturer. Confidential.

Chemical. (G) Naphthoic phenyl ester.

Use/Production. (G) Intermediates for photochemicals. Prod. range: Confidential.

P 89-463

Manufactuer. Confidential.

Chemical. (G) Polymer of polyalkylene glycol; alkyl diol; and monocyclic dicarboxylic acid, dialkyl ester.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Static acute toxicity: LC50 680 mg/1 time 96 mg/1 species (Fathead minnow). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit).

P 89-464

Manufacturer. The Dow Chemical Company.

Chemical. (G) Toluene diisocyanate prepolymer.

Use/Production. (G) Raw material polyurethane foam. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50>4,000 mg/kg species (Rat). Inhalation toxicity: LC50 13.9 ppm species (Rat).

P 89-465

Manufacturer. The Dow Chemical Company.

Chemical. (G) Toluene dissocyanate prepolymer.

Use/Production. (G) Raw material polyurethane foam. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50>4,000 mg/kg species (Rat). Inhalation toxicity: LC50 13.9 ppm species (Rat).

P 89-466

Manufacturer. The Dow Chemical Company.

Chemical. (G) Thermoplastic polyurethane resin.

Use/Production. (S) Extrusion of plastic articles. Prod. range: Confidential.

P 89-467

Manufacturer. The Dow Chemical Company.

Chemical. (G) Thermoplastic polyurethane resin.

Use/Production. (S) Extrusion of plastic articles. Prod. range: Confidential.

P 89-468

Importer. Confidential.

Chemical. (G) Aliphatic polycarboxylic acid metal salt.

Use/Import. (G) Continued use bleaching agent. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50>5.0 g/kg species (Rat). Acute dermal toxicity: LD50>2.0 g/kg species (Rabbit). Static acute toxicity: LC50>1,800 mg/l time 96h species (Rainbow trout). Eye irritation: none species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea pig).

P 89-469

Manufacturer. Eastman Kodak Company.

Chemical. (S) 1-(2-Chloroethyl)-4-(1,1-dimethylethyl)benzene.

Use/Production. (G) Chemical intermediate. Prod. range: 2,000-10,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50>5,000 mg/kg species (Rat). Acute dermal toxicity: LD50>20 ml/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: moderate species (Guinea pig). Skin sensitization: negative species (Guinea pig).

P 89-470

Manufacturer. Confidential.

Chemical. (G) Copper phthalocyanine derivative.

Use/Production. (G) Additive for printing inks. Prod. range: Confidential.

P 89-471

Manufacturer. Eastman Kodak Company.

Chemical. (G) Substituted hydrazinopyrazole.

Use/Production. (G) Chemical intermediate. Prod. range: 10,000-24,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50>2,000 mg/kg species (Rat). Acute dermal toxicity: LD50>2,000 mg/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit). Skin sensitization: negative species (Guinea pig).

P 89-472

Manufacturer. Eastman Kodak Company.

Chemical. (G) Substituted thiazinohydrazine.

Use/Production. (G) Chemical intermediate. Prod. range: 10,000-24,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 1015 mg/kg species (Rat). Acute dermal toxicity: LD50>2,000 mg/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit). Skin sensitization: negative species (Guinea pig).

P 89-473

Importer. SICAP Ink Systems Corporation.

Chemical. (G) Amine polymer.

Use/Import. (G) Chemical intermediate. Import range: 10,000-24,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species(Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species(Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Guinea pig). Skin sensitization: negative species(Guinea pig).

P-89-474

Manufacturer. Confidential.

Chemical. (G) Amino-functional siloxane.

Use/Production. (G) Intermediate in the manufacture of aminofunctional siloxane. Prod. range: Confidential.

P-89-475

Manufacturer. Confidential.

Chemical. (G) Aminofuncitonal siloxane.

Use/Production. (G) Intermediate in the manufacture of aminofunctional siloxane. Prod. range: Confidential.

P-89-476

Manufacturer. Confidential.

Chemical. (G) Aminofunctional siloxane.

Use/Production. (G) Intermediate in the manufacture of aminofunctional siloxane. Prod. range: Confidential.

P-89-477

Manufacturer. Stockhausen Inc.

Chemical. (S) N,N,N,-trimethyl-3-((1-oxo-2-propenyl)amino)-1-propanaminium chloride, homopolymer.

Use/Production. (S) Flocculant for inorganic, organic and biological materials. Prod. range: Confidential.

P-89-478

Manufacturer. Confidential.

Chemical. (G) Fatty acid polyamine condensate.

Use/Production. (G) Dispersive use: petroleum production additive. Prod. range: Confidential.

P-89-479

Manufacturer. The Dow Chemical Company.

Chemical. (G) Semicrystalline polyamide.

Use/Production. (S) Electric and electronic industries, automotive and appliance industries, film, fiber. Prod. range: Confidential.

P-89-480

Manufacturer. The Dow Chemical Company.

Chemical. (G) Semicrystalline polyamide.

Use/Production. (S) Electric and electronic industries, automotive and appliance industries, film, fiber. Prod. range: Confidential.

P-89-481

Manufacturer. The Dow Chemical Company.

Chemical. (G) Semicrystalline polyamide.

Use/Production. (S) Electric and electronic industries, automotive and appliance industries, film, fiber. Prod. range: Confidential.

P-89-482

Manufacturer. The Dow Chemical Company.

Chemical. (G) Semicrystalline polyamide.

Use/Production. (S) Electric and electronic industries, automotive and appliance industries, film, fiber. Prod. range: Confidential.

P-89-483

Importer. Confidential.

Chemical. (G) Hydroxyalkylamine.

Use/Import. (G) Catalyst. Import range: Confidential.

P-89-484

Manufacturer. Confidential.

Chemical. (S) Isophoronediisocyanate; 2-hydroxyethyl acrylate carbonic acid polymer accession.

Use/Production. (S) Coating binder for industrial use. Prod. range: 2,000-10,000 kg/yr.

P-89-485

Manufacturer. Eastman Chemicals Div. of Eastman Kodak.

Chemical. (S) Alkenes, C2-C3 hydroformylation products, C3-C12 fraction; obtained by hydroformylation of ethyleneand propylene, removal of propionaldehyde and butyraldehydes and further distillation to obtain a fraction rich in C3-C12 oxygenated hydrocarbons.

Use/Production. (S) Solvent for the wood treating industry. Prod. range: Confidential.

P-89-486

Manufacturer. Eastman Chemicals Div. of Eastman Kodak.

Chemical. (S) Alkenes, C2-C3 hydroformylation products, C6-C24 fraction; obtained by hydroformylation of ethylene and propylene, removal of propionaldehyde and butyraldehydes and further distillation to obtain a fraction rich in C5-C24 oxygenated hydrocarbons.

Use/Production. (S) Solvent for the wood treating industry. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species(Rat). Acute dermal toxicity: LD50 8.12 ml/kg species(Rat). Eye irritation: moderate species(Rabbit). Skin irritation: strong species(Rabbit). Skin sensitization: negative species (Guinea pig).

P-89-487

Importer. Basf Corporation Engineering Plastics.

Chemical. (G) Polyarylethersulfone.

Use/Import. (G) Molding resin. Import range: Confidential.

P-89-488

Manufacturer. Confidential.

Chemical. (G) Medium oil alkyd.

Use/Production. (S) Intermediate, paint resin. Prod. range: Confidential.

P-89-489

Manufacturer. Confidential.

Chemical. (G) Polyestermide resin.

Use/Production. (S) Polymer used in spray applied paint. Prod. range: Confidential.

Dated: April 10, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-9215 Filed 4-17-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Renewal without any change.

Title: Recordkeeping and Confirmation Requirements for Securities Transactions.

Form Number: None.

OMB Number: 3064-0028.

Expiration Date of Current OMB Clearance: June 30, 1989.

Frequency of Response: On the occasion of transactions; usually quarterly for customer statements.

Respondents: Insured state nonmember banks effecting securities transactions for their customers.

Number of Recordkeepers: 7,117.

Average Number of Hours Per Recordkeeper: 16.6.

Total Annual Recordkeeping Hours: 118,142.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before June 19, 1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the clearance of the information collection requirements contained in FDIC regulation 12 CFR 344 pertaining to recordkeeping and confirmation for securities transactions effected by FDIC-supervised banks. The purpose of the requirements is to ensure that purchasers of securities in transactions effected by insured state nonmember banks are provided with adequate information concerning the transactions. The requirements are also designed to ensure that insured state nonmember banks maintain adequate records and controls with respect to the securities transactions they effect.

Dated: April 12, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-9177 Filed 4-17-89; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-002153-008

Title: City of Long Beach Terminal Agreement

Parties: City of Long Beach, C. Brewer Terminals, Inc.

Synopsis: The Agreement provides for a reduction in area covered by the Permit for Pier J and reduces compensation accordingly. The Agreement restates and extends the Agreement for 10 years ending March 31, 1998.

By Order of the Federal Maritime Commission.

Dated: April 13, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-9186 Filed 4-17-89; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Showa Line, Ltd., 188 Embarcadero, Suite 480, San Francisco, California 94105.

Vessel: Oceanic Grace.

Date: April 12, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-9160 Filed 4-17-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Mac & Sons, Inc. dba B & M International, 140 N. Hydraulic, P.O. Box 47531, Wichita, KS 67205, Officers: Mac Tommy Udoh, President, Cynthia A. Muhlenkort, Secretary, Gary A. Hastie, Vice President.

Shipwell Overseas Transport, 139 Mitchell Ave., #222, South San Francisco, CA 94080, Officer: Jorg O. Berger, Sole Proprietor.

Merchants International, Inc., 13996 Park Centre Rd., Herdon, VA 22071, Officers: James A. Riley, III, President, Frances Riley, Secretary.

Consuelo E. Kelly dba Kelly International, 9034 Manning, Kansas City, MO 64138, Officer: Consuelo E. Kelly, Sole Proprietor.

Allfreight International Cargo, Inc., 144-40 156th Street, Jamaica, NY 11434, Officer: John Bagguley, President.

First American Air Services, Inc., 146-92 Guy R. Brewer Boulevard, Jamaica, NY 11434, Officers: Mohammad Javid

Omar, President, Alvaro Marrero, Export Manager.

U.S. Supply Corp. Freight Forwarding Div., 10925 N.W. 27 Street, Suite 201, Miami, FL 33172, Officer: Nancy Calderon, General Partner.

Global Wide Enterprises, Inc. dba Global Wide Shipping Co., 4819 S. Ashland Ave., Chicago, IL 60609, Officers: Samir S. Hassan, President/Stockholder, Magdy M. Ahmed El-Hawary, Manager/Treasurer, Nerin A. Hassan, Secretary/Stockholder.

Ambrosio Shipping Company of Tidewater, Inc., 120 Atlantic Street, Norfolk, VA 23510, Officers: Patrick Ambrosio, President/Director, Cheryl A. Stockstad, V. President/Secr./Treas./Dir.

International Forwarding Services, Inc., 6701 N.W. 84th Avenue, Miami, FL 33166, Officers: Ramon Montesano, President, Mayde Montesano, Secretary/Treasurer.

Right-O-Way Ocean Transport International, Inc., dba Ocean Transport International, 180 South Prospect Avenue, Tustin, CA 92680, Officers: Alexander J. Milovic, President/C.E.O., Mogens D. Hansen, Vice President, David Webber, Secretary/Treasurer.

Abacus Forwarding, Inc., 9400 4th St., Suite 114, St. Petersburg, FL 33702, Officers: Dan S. Cannistra, President, Linda B. Cannistra, Treasurer.

World Ocean Cargo, Inc., 751 Sullivan Rd., Building B, #104, College Park, GA 30349, Officers: Jack E. Brown, President/Director, David Hales, Secretary/Treasurer/Director, Alan Hales, Vice President/Director.

Eversunny International Forwarding, Inc., 6 Billingsley Drive, Livingston, NJ 07039, Officers: Phylia Wang, President/Dir./Stockh./Treas., T. I. Wang, Stockholder, Jen-Wen Wang, Director/Stockholder, Haddy Wang, Stockholder/Secretary.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: April 12, 1989.

[FR Doc. 89-9159 Filed 4-17-89; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89C-0095]

IOLAB Corp.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that IOLAB Corp. has filed a petition proposing that the color additive regulations be amended to provide for the safe use of D&C Violet No. 2 for coloring polymethylmethacrylate intraocular lens haptics.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1), 74 Stat. 402-403 (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 9C0216) has been filed by IOLAB Corp., 500 Iolab Dr., Claremont, CA 91711 proposing that the color additive regulations be amended in Part 74—Listing of Color Additives Subject to Certification (21 CFR Part 74) to provide for the safe use of D&C Violet No. 2 for coloring polymethylmethacrylate intraocular lens haptics.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: April 6, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-9183 Filed 4-17-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89M-0043]

Meadox Medicals, Inc.; Premarket Approval of Stryker® Dacron® Ligament Prosthesis

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Meadox Medicals, Inc., Oakland, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the Stryker® Dacron® Ligament Prosthesis. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 30, 1988, of the approval of the application.

DATE: Petitions for administrative review by May 18, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael J. Blackwell, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7156.

SUPPLEMENTARY INFORMATION: On August 5, 1985, Meadox Medicals, Inc., Oakland, NJ 07436, submitted to CDRH an application for premarket approval of the Stryker® Dacron® Ligament Prosthesis. The device is a prosthetic ligament fabricated from a combination of texturized and untexturized Dacron® yarns. The device consists of a knitted velour tube with a reinforcing core made up of four woven tapes. The device is placed intra-articularly by tibial and femoral attachments through bone tunnels. The device is indicated for use only as an intra-articular permanent replacement for the anterior cruciate ligament (ACL) of the knee for skeletally mature patients who have had at least one failed autogenous intra-articular reconstruction of their ACL.

On January 22, 1988, the Orthopedic and Rehabilitation Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On December 30, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Michael J. Blackwell (HFZ-410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) to the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21

CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 1033(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 18, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 7, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89-9136 Filed 4-17-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89M-0089]

Siemens-Pacesetter®, Inc.; Premarket Approval of the Sensolog Model 703 Pulse Generator (Models 703K, 703S and 703T) and the P700 Programmer)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Siemens-Pacesetter®, Inc., Sylmar, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Sensolog Model 703 Pulse Generator (Models 703K, 703S, and 703T) and the P700 Programmer. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 28, 1989, of the approval of the application.

DATE: Petitions for administrative review by May 18, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donald F. Dahms, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-3171.

SUPPLEMENTARY INFORMATION: On February 5, 1988, Siemens-Pacesetter®, Inc., Sylmar, CA 91342, submitted to CDRH an application for premarket approval of the Sensolog Model 703 Pulse Generator (Models 703K, 703S, and 703T) and the P700 Programmer.

The Sensolog Model 703 Pulse Generator is intended for use in patients who require permanent atrial or ventricular pacing and in whom an increase in pacing rate concurrent with physical activity is desired. Indications and applications for atrial use are sinus arrest, S-A block, sinus bradycardia, and bradycardia-tachycardia syndrome. Indications and applications for ventricular use are sinus node arrest and/or bradycardia, with or without AV conduction disorder; intermittent or complete AV conduction disorder with normal sinus function; and bradycardia-tachycardia syndrome or other manifestations of the sick sinus syndrome resulting in symptomatic bradycardia.

The P700 Programmer is intended to be utilized to noninvasively interrogate and program the Sensolog pacemaker. In addition, it may be utilized to program and/or interrogate other currently available programmable Siemens-Elema pulse generators.

On February 6, 1989, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 28, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contract Donald F. Dahms, (HFZ-450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the Act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviwed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 18, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commission of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 7, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89-9135 Filed 4-17-89; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. May 4 and 5, 1989, 9 a.m., National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, May 4, 1989, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5:30 p.m.; open committee discussion, May 5, 1989, 9 a.m. to 5:30 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4730 or 419-259-6211.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in treatment of cardiovascular disorders and diseases and makes recommendations regarding the appropriate clinical development of such products.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 20, 1989, 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 required to make their comments.

Open committee discussion. The committee will discuss Cardura (dozazosin mesylate), new drug application (NDA) 19-668, Pfizer Laboratories, for hypertension; Adenocard (adenosine), NDA 19-937, Medco, for paroxsysmal supraventricular tachycardia (SVT); and Capoten (captopril), NDA 18-343, Squibb Corp., for dosing and labeling revisions.

Ear, Nose, and Throat Devices Panel

Date, time, and place. May 8, 1989, 8:30 a.m., Conference Rm. G, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; David A. Segerson, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8185 (voice/TDD).

A sign language interpreter is available for the hearing-impaired upon request. Those desiring this assistance should notify Carlton M. Coleman, 301-443-3310 (voice) or 301-443-1818 (TDD), no later than April 24, 1989.

General function of the committtee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 24, 1989, 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 required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for the Symbion Ineraid Cochlear Implant System.

Microbiology Devices Panel

Date, time, and place. May 8, 1989, 10 a.m., Rm. 800, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 5 p.m.; Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 1, 1989, 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 required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for the detection of specific IgM antibody to hepatitis A virus.

Blood Products Advisory Committee

Date, time, and place. May 10 and 11, 1989, 8 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, May 10, 1989, 8 a.m. to 10 a.m. (invitation to public to respond to March 15, 1989, memorandum on autologous donations), unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, May 11, 1989, 8 a.m. to 11:30 a.m.; Linda A. Smallwood, Division of Blood and Blood Products (HFB-400), Center for Biologics Evaluation and Research, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-496-4396.

General function of the committee. The committee reviews and evaluates available data on the safety, effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. On the morning of May 10, 1989, the committee will discuss: recovered plasma standards, the recommendation for change in hemoglobin values, and label indications for use of desmopressin acetate (DDAVP); and in the afternoon the committee will hear updates on coagulation and monoclonal products, and will discuss the proposed unified HIV memorandum. On May 11, 1989, the committee will discuss the status of erythropoietin and the recommendation

for a change in the medical device classification of cell separators.

Clinical Chemistry and Clinical Toxicology Devices Panel

Date, time, and place. May 15, 1989, 9 a.m., Rm. 503-529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Kaiser J. Aziz, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 1, 1989, 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 required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for the measurement of cyclosporine by high performance liquid chromatography (HPLC).

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours and 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: April 13, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-9185 Filed 4-17-89; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcigenesis Studies of Crocidolite Asbestos

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxiciology and carcinogenesis studies of crocidolite asbestos.

Toxicology and carcinogenesis studies of crocidolite asbestos were conducted by administering the chemical to male and female F344/N rats at a concentration of 1% in feed for the lifetime of the animals.

Under the conditions of these feed studies, crocidolite asbestos was not overtly toxic and did not cause a carcinogenic response when ingested at a concentration of 1% in the diet by male and female F344/N rats for their lilfetime.

Copies of *Toxicology and Carcinogenesis Studies of Crocidolite Asbestos in F344/N Rats (Feed Studies)* (TR 280) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3991; FTS: 629-3991.

Dated: April 12, 1989.

David P. Rall,

Director.

[FR Doc. 89-9166 Filed 4-17-89; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Erythromycin Stearate

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of erythromycin stearate, a broad-spectrum macrolide antibiotic.

Toxicology and carcinogenesis studies of a erythromycin sterate were conducted by feeding diets containing 0, 5,000, or 10,000 ppm of this chemical to groups of 50 F344/N rats of each sex for 103 weeks. Diets containing 0, 2,500, or 5,000 ppm were fed to groups of 50 mice of each sex for 103 weeks.

Under the conditions of these 2-year studies, there was no evidence of carcinogenic activity * of erythromycin stearate for male or female F344/N rats administered erythromycin stearate in the diet at 5,000 or 10,000 ppm. There was no evidence of carcinogenic activity of erythromycin stearate for male or female $B6C3F_1$ mice administered erythromycin stearate in the diet at 2,500 or 5,000 ppm. Dose-related increases in the incidences of granulomas of the liver were observed in male and female rats.

The study scientist for this bioassay is Dr. J.E. French. Questions or comments about the contents of this Technical Report should be directed to Dr. French at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-7790; FTS: 629-7790.

Copies of *Toxicology and Carcinogenesis Studies of Erythromycin Stearate in F344/N Rats and $B6C3F_1$ Mice (Feed Studies)* (TR 338) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3991; FTS: 629-3991.

Dated: April 12, 1989.

David P. Rall,

Director.

[FR Doc. 89-9167 Filed 4-17-89; 8:45 am]

BILLING CODE 4140-01-M

*The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of evidence of carcinogenicity observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that cannot be evaluated because of major flaws ("inadequate study").

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-1969; FR-2652]

Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals; Revised Notice of Fund Availability

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Revised notice of fund availability.

SUMMARY: On January 9, 1989, HUD published a Notice of Fund Availability for fiscal year 1989 for the Section 8 Moderate Rehabilitation Program for Single Room Occupancy (SRO) Dwellings for Homeless Individuals under section 441 of the Stewart B. McKinney Homeless Assistance Act (54 FR 758). Among other things, the Notice set an application submission deadline of April 10, 1989, and limited potential eligible applicants to public housing agencies (PHAs) that are currently administering a Moderate Rehabilitation Program under 24 CFR Part 882.

This Notice announces an extension of the time for submitting applications from April 10, 1989 to May 17, 1989. It also opens the application process to all PHAs, not just those presently administering a Moderate Rehabilitation Program.

DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The information collection requirements contained in this Notice have been submitted to the Office Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2502-0367. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530.

This Notice

On January 9, 1989, the Department published in the **Federal Register** (54 FR 758) a Notice of Fund Availability. The Notice announced the availability of funding for fiscal year 1989 for the Section 8 Moderate Rehabilitation Program for Single Room Occupancy (SRO) Dwellings for Homeless Individuals, as authorized by section 441 of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987).

Section IIIA. of the Notice required the submission of applications by April 10, 1989. It also limited eligible applicants to PHAs that are currently administering a Moderate Rehabilitation Program under 24 CFR Part 882.

Today's Notice makes the following two changes to the January 9 Notice:

—It extends the application submission deadline from April 10, 1989 to May 17, 1989; and

—It permits all PHAs to submit applications, not just those that are presently administering a Section 8 Moderate Rehabilitation Program. Accordingly, the first sentence of section III.A.(1) is amended to remove the phrase "that are currently administering a Moderate Rehabilitation Program under 24 CFR Part 882". Also, section III.C.(8) is amended to add the following sentence: "If a PHA has not administered a Section 8 Moderate Rehabilitation Program, the PHA must demonstrate that it: (a) Has the ability to operate a rehabilitation program, or (b) will contract with a qualified agency or entity which will assist the PHA in operating a rehabilitation program, or (c) will develop the capability to operate a rehabilitation program."

Section 441 of the McKinney Act provides that funding will be provided to applicants:

> that best demonstrate a need for the assistance * * * and the ability to undertake and carry out a program to be assisted * * *.

In the first funding round under section 441 (see 52 FR 38380, published on October 15, 1987), the Department chose to limit PHA participation to those with on-going Section 8 Moderate Rehabilitation Programs because of the overriding need to make assistance available for the homeless on an emergency basis. For the current (second) funding round, the Department has determined not to limit the competition to PHAs with experience in the Section 8 Moderate Rehabilitation Program and that other PHAs may be able to carry out highly successful SRO programs under section 441.

The extension of the deadline for application submission is designed to ensure that any PHAs that this Notice has made newly eligible have adequate opportunity to prepare and submit an application. The extension also reflects HUD's desire to ensure that the applications ultimately selected for funding are of the highest quality. Any PHA that has already submitted an

application in response to the January 9 Notice may amend the application, but the complete application must be received by May 17, 1989. (To the extent feasible, HUD intends to review the applications received by the April 10 deadline for completeness and to notify PHAs of missing information.)

Finally, it should be noted that the changes announced in this Notice only modify the description of what PHAs are eligible to submit applications and the time for application submission. All other provisions of the January 9 Notice remain in effect for the fiscal year 1989 funding round.

Other Matters

Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Information Collection Requirements

The collection of information requirements contained in this Notice have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2502-0367. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN NOTICE OF FUND AVAILABILITY—SECTION 8 MODERATE REHABILITATION PROGRAM FOR SINGLE ROOM OCCUPANCY DWELLINGS FOR HOMELESS INDIVIDUALS

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals (2502-0367).	24 CFR 882	150	1	150	25	3,750

Federalism and Family

The General Counsel, as the Designated Official under Executive Orders 12612, *Federalism*, and 12606, *The Family*, has determined that this Notice does not have the requisite effects to trigger review under either Order. the Notice only changes the pool of eligible applicants and the deadline for application submission under a previous Notice. It does not have any significant federalism or family effects.

Federal Programs

The Catalog of Federal Domestic Assistance Programs number is 14.156, Lower Income Housing Assistance Program.

Authority: Secs. 401, 441, Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987); sec. 485, Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: April 10, 1989.

James Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89-9318 Filed 4-17-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-09-4214-12; I-1639]

Partial Termination of Classification for Multiple Use Management; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification termination.

SUMMARY: This action partially terminates a classification order which segregated 531,160 acres from disposal under various land laws. The classification is no longer needed because the Resource Management Plan prepared for the area provides the necessary protection of the resources this classification sought to protect. In addition, many of the disposal laws for which the lands were segregated have since been repealed by the Federal Land Policy and Management Act of 1976. This action will open 402,138 acres of public lands specified to the agricultural land laws. These lands with the exception of 760 acres closed to the mining laws, have been and continue to be open to the mining and mineral leasing laws and to all other public land laws. This action will also open an additional 760 acres to the mining laws.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1597.

1. Pursuant to authority delegated to me by BLM Manual, section 1203-Delegation of Authority (48 FR 85), I hereby terminate the Bureau of Land Management Multiple-Use Classification Order dated November 9, 1987, and published in the **Federal Register** November 16, 1967, Vol. 32, No. 222, Pages 15767-15768, insofar as if affected the lands described below:

Boise Meridian

T. 19 N., R. 21 E.,
All the public lands outside the National Forest boundary except sec. 28, SE¼SE¼.
T. 20 N., R. 21 E.,
All public lands outside the National Forest boundary.
T. 21 N., R. 21 E.,
Sec. 35.
T. 23 N., R. 21 E.,
Sec. 12, lot 6.
T. 13 N., R. 22 E.,
Sec. 2, that portion in Lemhi County.
T. 17 N., R. 22 E.,
Sec. 1, E½.
T. 18 N., R. 22 E.,
All public lands outside the National Forest boundary.
T. 19 N., R. 22 E.,
All public lands outside the National Forest boundary.
T. 20 N., R. 22 E.
Secs. 1 to 5, inclusive;
Sec. 8;
Sec. 11, E½;
Secs. 12 and 13;
Secs. 17 to 19, inclusive;
Sec. 23, E½;
Secs. 24 and 30;
Sec. 31, N½;
Sec. 32, N½.
T. 21 N., R. 22 E.,

Sec. 21, E½, E½W½;
Sec. 22;
Sec. 23, SW¼;
Secs. 26 to 28, inclusive;
Secs. 33 to 36, inclusive.
T. 22 N., R. 22 E.,
Sec. 1;
Sec. 2, SE¼;
Sec. 3, NW¼;
Sec. 4;
Sec. 10, SE¼;
Secs. 11 to 15, inclusive;
Secs. 21 to 28, inclusive;
Secs. 33 to 36, inclusive.
T. 23 N., R. 22 E.,
Secs. 4 to 9, inclusive;
Sec. 10, NW¼NW¼, S½NW¼, SW¼;
Sec. 13, SW¼;
Secs. 14 to 16, inclusive;
Sec. 17 NW¼NE¼, S½NE¼, NW¼, S½;
Sec. 18 lot 1;
Sec. 19, lots 4 and 6;
Secs. 20 to 23, inclusive;
Sec. 26, W½;
Secs. 27 and 28;
Secs. 33 and 34.
T. 24 N., R. 22 E.,
All public lands outside the National Forest boundary.
T. 17 N., R. 23 E.,
Sec. 1, NW¼;
Secs. 2 to 6, inclusive;
Sec. 7, N½;
Secs. 8 to 11, inclusive;
Secs. 13 to 16, inclusive;
Sec. 17, N½;
Sec. 21, NE¼;
Sec. 22, N½, SE¼;
Secs. 23 and 24;
Sec. 25, N½, SW¼;
Sec. 26 E½.
T. 18 N., R. 23 E., all.
T. 19 N., R. 23 E.,
All public lands outside the National Forest boundary.
T. 20 N., R. 23 E.,
Secs. 6 to 8, inclusive;
Secs. 16 to 22, inclusive;
Secs. 26 to 28; inclusive;
Sec. 29, N½, SE¼;
Sec. 30 NE¼;
Sec. 33, NE¼;
Secs. 34 and 35.
T. 21 N., R. 23 E.,
Sec. 1;
Sec. 4 NE¼, N½SW¼;
Secs. 5 to 8, inclusive;
Secs. 12 and 13;
Sec. 14, E½;
Sec. 17, NW¼;
Sec. 18, N½;
Secs. 23 and 24;
Sec. 26;
Sec. 27, E½;
Sec. 31, W½.
T. 22 N., R. 23 E.,
Secs. 3 to 32, inclusive;
Sec. 33, W½, W½E½.
T. 23 N., R. 23 E.,
Sec. 29;
Sec. 32, E½;
Sec. 33.
T. 16 N., R. 24 E.,
Sec. 10, E½, SE¼NW¼, E½SW¼;
Sec. 11;
Sec. 13, S½S½;
Sec. 14;
Sec. 15, N½, SE¼;
Sec. 23, N½, SE¼;
Secs. 24 and 25;
Sec. 26, NE¼.
T. 17 N., R. 24 E.,
Secs. 1 and 2;
Secs. 5 and 8;
Sec. 9, W½, SE¼;
Sec. 11, N½;
Sec. 12;
Secs. 16 to 20, inclusive;
Sec. 21, N½, SW¼;
Sec. 28, NW¼;
Sec. 29 N½.
T. 18 N., R. 24 E.,
Secs. 1 to 3, inclusive;
Sec. 4, E½;
Sec. 6, S½;
Sec. 7;
Sec. 9 E½;
Secs. 10 to 15, inclusive;
Sec. 16, E½;
Sec. 18;
Sec. 21, E½;
Secs. 22 to 27, inclusive;
Sec. 28, E½;
Sec. 33, lots 1 and 2, S½NE¼;
Sec. 34, lots 1, 2, 3, 4, 5, 6, 7, 8, S½N½;
Secs. 35 and 36.
T. 19 N., R. 24 E.,
Sec. 1, S½;
Secs. 2 to 4, inclusive;
Secs. 9 to 16, inclusive;
Sec. 21, E½;
Secs. 22 to 27, inclusive;
Sec. 28, E½;
Sec. 33, E½;
Secs. 34 to 36, inclusive.
T. 20 N., R. 24 E.,
Sec. 3;
Sec. 4, N½;
Sec. 5, N½;
Sec. 10;
Sec. 11, SW¼;
Sec. 15;
Secs. 20 to 22, inclusive;
Sec. 23, S½;
Sec. 25, N½, SW¼;
Secs. 26 to 29, inclusive;
Secs. 32 to 35, inclusive;
T. 21 N., R. 24 E.,
Secs. 6 to 8, inclusive;
Secs. 16 to 21, inclusive;
Secs. 28 to 30, inclusive;
Sec. 31, N½;
Secs. 32 and 33.
T. 22 N., R. 24 E.,
Secs. 30 and 31.
T. 15 N., R. 25 E.,
Secs. 1 and 2;
Secs. 11 to 13, inclusive;
Secs. 24 and 25.
T. 16 N., R. 25 E.,
Sec. 1;
Sec. 13, SW¼;
Sec. 14, W½, W½NE¼, SE¼;
Sec. 15, E½;
Sec. 18, S½SW¼, SW¼SE¼;
Sec. 19, W½, W½E½;
Sec. 19, W½, W½E½;
Sec. 19, W½, W½E½;
Sec. 22, NE¼;
Sec. 23, N½;
Sec. 30, W½, W½E½.
T. 17 N., R. 25 E.,
Secs. 3 to 10, inclusive;
Secs. 15 to 18, inclusive;
Sec. 19, N½;
Secs. 20 to 22, inclusive;
Secs. 26 to 28, inclusive;
Secs. 34 and 35.
T. 18 N., R. 25 E., all.
T. 19 N., R. 25 E.,
All public lands outside the National Forest boundary.
T. 14 N., R. 26 E.,
Sec. 1;
Secs. 12 to 14, inclusive;
Sec. 15, E½;
Sec. 22, E½;
Secs. 23 to 25, inclusive;
Sec. 26, E½;
Sec. 36, E½.
T. 15 N., R. 26 E.,
Sec. 5, W½, N½NE¼;
Secs. 6 and 7;
Sec. 8, NW¼;
Sec. 13, E½;
Secs. 18 to 20, inclusive;
Sec. 21, W½;
Secs. 24 and 25;
Sec. 28, W½W½;
Secs. 29 and 30;
Sec. 36.
T. 16 N., R. 26 E.,
Secs. 7 and 16;
Sec. 22, N½, N½S½;
Sec. 23, N½, N½S½;
Secs. 24 and 25;
Secs. 31 and 32.
T. 18 N., R. 26 E.,
Sec. 31.
T. 12 N., R. 27 E.,
All public lands outside the National Forest boundary.
T. 13 N., R. 27 E.,
All public lands outside the National Forest boundary.
T. 14 N., R. 27 E.,
All the township except sec. 35, NW¼NW¼.
T. 15 N., R. 27 E.,
All public lands outside the National Forest boundary.
T. 16 N., R. 27 E.,
All public lands outside the National Forest boundary.
T. 17 N., R. 27 E.,
All public lands outside the National Forest boundary.
T. 11 N., R. 28 E.,
All public lands outside the National Forest boundary.
Tps. 1, 13, and 14 N., R. 28 E., all.
T. 15 N., R. 28 E.,
Secs. 30 to 34, inclusive;
T. 11 N., R. 29 E., all.
T. 12 N., R. 29 E.
All public lands outside the National Forest boundary.
T. 13 N., R. 29 E.,
Unsurveyed, all public lands outside the National Forest boundary.
T. 14 N., R. 29 E.,
Unsurveyed, all public lands outside the National Forest boundary.
T. 11 N., R. 30 E.,
All public lands outside the National Forest boundary.

The areas described aggregate approximately 401,378 acres in Lemhi County.

2. The Multiple Use Classification cited in paragraph one, which segregated certain recreation sites from the mining and agricultural land laws, is hereby terminated insofar as it affects the sites described below:

Boise Meridian

Little Morgan Creek

T. 15 N., R. 21 E.,
Sec. 1, SW¼NW¼, W½SW¼;
Sec. 2, SE¼NE¼, E½SE¼;
Sec. 11, NE¼NE¼.

Baldy Ridge

T. 19 N., R. 23 E.,
Sec. 19, NE¼SE¼.

Ezra Creek

T. 18 N., R. 21 E.,
Sec. 31, NE¼SW¼.

William Creek

T. 20 N., R. 21 E.,
Sec. 10, S½NW¼, SW¼;
Sec. 11, SW¼NW¼.

Smokey Cubs

T. 16 N., R. 27 E.,
Sec. 19, lot 3.
T. 16 N., R. 26 E.,
Sec. 24, SW¼NE¼, N½SE¼.

The areas decribed aggregate 760 acres in Lemhi County.

3. The following-described recreation sites remain segregated from the mining and agricultural land laws by virtue of the November 9, 1967, Classification Order:

Cow Creek

T. 16 N., 21 E.,
Sec. 8, lots 4 and 5.

Cronks Canyon

T. 16 N., R. 21 E.,
Sec. 8, lot 8;
Sec. 17, lot 1.

Ezra Creek

T. 17 N., R. 21 E.,
Sec. 9, lots 1 and 4.

McKim Creek

T. 17 N., R 21 E.,
Sec. 17, lot 10.

Ringle Creek

T. 18 N., R. 21 E.,
Sec. 33, lots 1, 4 and 5.

Williams Creek

T. 20 N., R. 21 E.,
Sec. 10, N½NW¼;
Sec. 11, lot 9.

Twelve Mite Site

T. 20 N., R. 21 E.,
Sec. 35, lot 1.

Boyle Creek

T. 23 N., R. 21 E.,
Sec. 12, lot 6.

T. 23 N., R. 22 E.,
Sec. 7, lots 4 and 5;
Sec. 18, lot 1.

Bolander's Ranch

T. 23 N., R. 22 E.,
Sec. 19, lots 4 and 6.

Agency Creek

T. 19 N., R. 24 E.,
Sec. 25, SE¼NW¼.

Smokey Cubs Site

T. 16 N., R. 26 E.,
Sec. 24, SE¼NE¼.
T. 16 N., R. 27 E.,
Sec. 19, lot 2.

The areas described aggregate 757.41 acres in Lemhi County.

4. The segregative effect on the lands described in paragraphs one and two will terminate upon publication of this notice in the Federal Register as provided by the regulations in 43 CFR 2091.7-1(b)(3).

5. At 9:00 a.m. on May 9, 1989, the lands described in paragraph one and two shall be open to the agricultural land laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All valid applications received at or prior to 9:00 a.m. on May 9, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. The lands described in paragraphs one and two, with the exception of 760 acres closed to the mining laws, have been and continue to be open to the mining and mineral leasing laws and to all other public land laws.

6. At 9:00 a.m. on May 9, 1989, the lands described in paragraph two shall be open to location and entry under the United States mining laws. Appropriation of land described under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights sinced Congress has provided for such determinations in local courts.

Dated: April 7, 1989.

Delmar D. Vail,

State Director.

[FR Doc. 89-9187 Filed 4-17-89; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-09-4214-12; I-1542]

Termination of Classification for Multiple Use Management; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification termination.

SUMMARY: This action terminates a classification order which originally segregated approximately, 1,175,680 acres from disposal under various land laws. The lands are located in the Shoshone District and within the Monument Resource Area. The classification was partially terminated in August of 1982 and May of 1984. The remaining classification is no longer needed because the Resource Management Plan prepared for the area provides the necessary protection of the resources this classification sought to protect. In addition, many of the disposal laws for which the lands were segregated have since been repealed by the Federal Land Policy and Management Act of 1976. This action will open approximately 873,304 acres of public lands specified to the agricultural land laws. These lands, with the exception of 160 acres closed to the mining laws, have been and continue to be open to the mining and mineral leasing laws and to all other public land laws. This action will also open an additional 160 acres to the mining laws.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1597.

1. Pursuant to authority delegated to me by BLM Manual, section 1203—Delegation of Authority (48 FR 85), I hereby terminate the Bureau of Land Management Multiple-Use Classification Order dated June 14, 1968, and published in the Federal Register June 28, 1968, Vol. 33, No. 126, Pages 9513-9515, insofar as it affected the lands described below:

Boise Meridian

Blaine County

T. 1 S., R. 21 E.,
Sec. 24, E½ SW¼, SE¼;
Sec. 25, NE¼, E½ NW¼, S½;
Sec. 36.
T. 2 S., R. 21E.,
Sec. 1;
Sec. 2, lot 1, SE¼NE¼, SE¼;
Sec. 11, E½, SE¼SW¼;
Sec. 12;
Sec. 13;
Sec. 14, lots 1, 2, 3, 6, 7, S½NE¼, SE¼ NW¼, E½SW¼, SE¼;
Sec. 15, SE¼SW¼, S½SE¼;
Sec. 21, SE¼NE¼, NE¼SE¼, S½SE¼;

Sec. 22, lots 1, 2, 3, 5, 6, 7, S½NE¼, SE¼ NW¼, E½SW¼, SE¼;
Secs. 23 to 27, inclusive;
Sec. 28, NE¼, S½;
Sec. 32, NE¼, E½NW¼, S½;
Secs. 33 to 36, inclusive.
T. 1 S., R. 22 E.,
Sec. 1, lot 1, S½NE¼;
Sec. 2, lots 3 and 4, S½SW¼;
Sec. 3, lot 1;
Sec. 10, E½E½;
Secs. 11 to 14, inclusive;
Sec. 15, E½E½, SW¼SE¼;
Sec. 19, lots 6, 7, S½NE¼, E½SW¼, SE¼;
Sec. 20, lot 1, S½N½, S½;
Secs. 21 to 36, inclusive.
T. 2 S., R. 22 E.,
T. 1 S., Rs. 23, 24 E.,
T. 2 S., Rs. 23, 24, 25, 26 E.,
T. 6 S., R. 26 E.,
T. 7 S., R. 26 E.
Secs. 1 to 18, inclusive;
Sec. 19, lots 1, 2, 3, N½NE¼, E½NW¼, NE¼SW¼;
Sec. 20, N½NW¼;
Sec. 22, E½;
Secs. 23 to 26, inclusive;
Sec. 27, E½;
Sec. 34, E½;
Secs. 35 and 36.
T. 8 S., R. 26 E.,
Secs. 1, 2 and 3;
Sec. 4, SE¼SE¼;
Sec. 9, NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Secs. 10 to 15, inclusive;
Sec. 19, lots 2, 3, 4, SE¼NW¼, S½NE¼, SE¼, E½SW¼;
Secs. 20 to 36, inclusive, in Blaine County.
Tps. 6, 7, 8 S., R. 27 E.,
T. 9 S., R. 27 E.,
Secs. 1 to 27, inclusive, in Blaine County;
Secs. 21 to 24, inclusive, in Blaine County.
T. 8 S., R. 28 E.,
Secs. 4 to 9, inclusive;
Secs. 16 to 21, inclusive;
Secs. 28 to 33, inclusive.

Lincoln County

T. 5 S., R. 18 E.,
Sec. 13, E½SE¼;
Sec. 23, SE¼NE¼, SW¼SW¼, E½SW¼, SE¼;
Sec. 24, NE¼, SW¼NW¼, E½NW¼, S½;
Secs. 25 and 26;
Sec. 27, S½NE¼, E½SW¼, SE¼;
Sec. 34, NE¼, ER½NW¼, N½SW¼, SE¼SW¼, SE¼;
Secs. 35 and 36.
T. 6 S., R. 18 E.,
Secs. 1 and 2;
Sec. 3, lots 1, 2, 3, S½NE¼, SE¼NW¼, S½;
Sec. 7, E½NE¼;
Sec. 8, N½, N½SW¼, SE¼;
Sec. 9, N½, N½SW¼, SW¼SW¼, N½SE¼;
Sec. 10, N½NE¼;
Sec. 11, N½N½, S½NW¼, NE¼SW¼;
Sec. 12, N½N½;
Sec. 17, E½NE¼.
T. 4 S., R. 19 E.,
Sec. 25, SE¼SE¼;
Sec. 34, SE¼NE¼, SE¼SW¼, SE¼;
Sec. 35, NW¼NE¼, S½NE¼, NW¼, S½;
Sec. 36, NE¼NE¼, S½NE¼, NW¼, S½.
T. 5 S., R. 19 E.,
Secs. 1, 2, and 3;
Sec. 4, lot 1, S½NE¼, SE¼SW¼, SE¼;
Sec. 5, SW¼SW¼;
Sec. 7, E½NE¼, SE¼SW¼, NE¼SE¼, S½SE¼;
Secs. 8 to 17, inclusive;
Sec. 18, lots 3, 4, E½, E½SW¼;
Secs. 19 to 36, inclusive.
T. 6 S., R. 19 E.,
Sec. 1;
Sec. 3, W½;
Secs. 4, 5, 6;
Sec. 7, N½N½;
Sec. 8, N½N½;
Sec. 9, N½N½;
Sec. 10, N½NW¼;
Sec. 12;
Sec. 13, N½.
T. 3 S., R. 20 E.,
Sec. 12, NE¼, E½NW¼, S½;
Sec. 13;
Sec. 14, E½E½, SW¼NE¼;
Sec. 23, NE¼NE¼, S½N½, S½;
Secs. 24, 25, 26;
Sec. 34, SE¼;
Secs. 35 and 36.
T. 4 S., R. 20 E.,
Secs. 1 and 2;
Sec. 3, E½, E½SW¼;
Sec. 8, SE¼SE¼;
Sec. 9, S½SW¼, SE¼;
Secs. 10 to 16, inclusive;
Sec. 17, SE¼NE¼;
Sec. 20, E½SE¼;
Secs. 21 to 28, inclusive;
Sec. 29, NE¼, NE¼NW¼, S½NW¼, S½;
Sec. 30, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Secs. 31 to 36, inclusive.
T. 5 S., R. 20 E., all.
T. 6 S., R. 20 E.,
Secs. 1 to 15, inclusive;
Sec. 16, N½;
Sec. 17, N½;
Sec. 18, lots 1, 2, NE¼, E½NW¼.
T. 3 S., R. 21 E.,
Secs. 1 to 5, inclusive;
Sec. 6, lot 7, E½SW¼, S½SE¼;
Secs. 7 to 36, inclusive.
Tps. 4, 5, S., R. 21 E., all.
T. 6 S., R. 21 E.,
Secs. 1 to 18, inclusive;
Sec. 23, N½N½, SE¼NE¼;
Sec. 24, N½N½.
Tps. 3, 4, 5 S., R. 22 E.. all.
T. 6 S., R. 22 E.,
Secs. 1 to 18, inclusive;
Sec. 19, lots 1 to 6, inclusive, NE¼, N½SE¼, SE¼SE¼;
Secs. 20 to 24, inclusive;
Sec. 25, NW¼;
Sec. 26;
Sec. 27, N½;
Sec. 28, NE¼, N½NW¼;
Sec. 29, N½NE¼, NE¼NW¼;
Sec. 35.
Tps. 3, 4, 5, S., R. 23 E.,
Secs. 4 to 9, inclusive;
Secs. 16 to 21, inclusive;
Secs. 28 to 33, inclusive.
T. 6 S., R. 23 E.,
Secs. 4 to 9, inclusive;
Secs. 16 to 20, inclusive.
T. 7 S., R. 23 E.,
Sec. 5, lots 2, 3, 4, S½NW¼, N½SW¼, north of UPRR:
Sec. 6, N½, north of UPRR.

Minidoka County

Tps. 3, 4, 5, S., R. 23 E.,
Secs. 1, 2, 3;
Secs. 10 to 15, inclusive;
Secs. 22 to 27, inclusive;
Secs. 34, 35, 36.
T. 6 S., R. 23 E.,
Secs. 1, 2, 3;
Secs. 10 to 15, inclusive;
Sec. 22, E½NE¼;
Sec. 23, N½, SE¼;
Sec. 24, 25;
Sec. 26, E½;
Sec. 34, E½;
Secs. 35 and 36.
Tps. 3, 4, 5, S., R. 24 E., all.
T. 6 S., R. 24. E.,
Secs. 1 to 30, inclusive;
Sec. 31, lots 1 to 6, inclusive;
Sec. 36, all.
T. 7 S., R. 24 E.,
Sec. 5, lots 1, 2, 3, SW¼NE¼.
Tps. 3, 4, 5, 6 S., R. 25 E., all.
T. 7 S., R. 25 E.,
Secs. 1 to 4, inclusive;
Sec. 5, lots 1, 2, S½NE¼, SE¼NW¼, E½SW¼, NE¼;
Sec. 9, NE¼, N½NW¼;
Sec. 10, N½,N½SW¼, SE¼;
Secs. 11 to 13, inclusive;
Sec. 14, N½, NE¼SW¼, SE¼;
Sec. 15, N½NE¼, SE¼NE¼;
Sec. 24, NE¼, N½NW¼, SE¼NW¼, E½SW¼, N½SE¼, SW¼SE¼.
T. 8 S., R. 25 E.,
Sec. 24, SE¼NE¼, SE¼SW¼, SE¼;
Sec. 25, all;
Sec. 26, S½N½, S½;
Sec. 27, S½SW¼, SE¼;
Sec. 35, NW¼NW¼;
Sec. 36, all.

Power County

T. 7 S., R. 28 E.,
Secs. 4 to 9, inclusive;
Secs. 16 to 21, inclusive;
Secs. 25 to 36, inclusive.
T. 8 S., R. 28 E.,
Secs. 3 to 10, inclusive;
Secs. 13, 14, 15;
Secs. 22 to 27, inclusive;
Secs. 34, 35, 36.
T. 9 S., R. 28 E.,
Secs. 1 to 12, inclusive;
Secs. 13 to 19, inclusive, in Power County north of Snake River.
T. 7 S., R. 29 E.,
Sec. 29, W½NE¼, NW¼, N½SW¼, NW¼SE¼;
Sec. 30, N½, E½SW¼, N½SE¼, SW¼SE¼.
T. 8 S., R. 29 E.,
Secs. 16 to 21, inclusive;
Secs. 28 to 36, inclusive.
T. 9 S., R. 29 E.,
Secs. 1 to 20, inclusive, in Power County north of Snake River.
T. 8 S., R. 30 E.,
Sec. 31, in Power County north of Snake River.

The areas described aggregate approximately 873,144 acres of public land in

Blaine, Lincoln, Minidoka, and Power Counties.

2. The Multiple Use Classification cited in paragraph one, which segregated certain recreation sites from the mining and agricultural land laws, is hereby terminated insofar as it affects the sites described below:

Boise Meridian

Lincoln County, Narrows Site

T. 3 S., R. 20 E.,
Sec. 12, SW¼SW¼;
Sec. 13, NW¼NW¼;
Sec. 14, NE¼NE¼.

Power County, Gifford Springs Site

T. 9 S., R. 28 E.,
Sec. 17, SE¼NE¼.

The areas described aggregate 160 acres of public land in Lincoln and Power Counties.

3. The segregative effect on the lands described in paragraphs one and two will terminate upon publication of this notice in the **Federal Register** as provided by the regulations in 43 CFR 2091.7-1(b)(3).

4. At 9:00 a.m. on May 12, 1989, the lands described in paragraphs one and two shall be open to the agricultural land laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All valid applications received at or prior to 9:00 a.m. on May 12, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. The lands described in paragraphs one and two, with the exception of 160 acres closed to the mining laws, have been and continue to be open to the mining and mineral leasing laws and to all other public land laws.

5. At 9:00 a.m. on May 12, 1989, the lands described in paragraph two shall be open to location and entry under the United States mining laws. These lands have been and will continue to be open to the mineral leasing laws and all other public land laws. Appropriation of land described under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Delmar D. Vail,
State Director.

Dated: April 7, 1989.

[FR Doc. 89-9188 Filed 4-17-89; 8:45 am]

BILLING CODE 4310-GG-M

[CA-940-09-4212-13; CACA 19657]

California; Realty Action; Exchange of Public and Private Lands in Lassen and Modoc Counties and Order Providing for Opening of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance documents and opening order.

ADDRESS: Inquiries concerning the land should be addressed to: Chief, Branch of Adjudication and Records, Bureau of Land Management, 2800 Cottage Way (Room E-2841), Sacramento, California 95825.

SUMMARY: The purpose of the exchange was to acquire non-federal lands that provide significant water sources for livestock grazing, wildlife habitat, fisheries management, and recreational uses. The exchange benefits the general public and local agricultural economy, and provides for improved management of the Federal and private lands. The public interest has been well served by making the exchange. The lands acquired in this exchange will be opened to operation of the public land laws and to full operation of the United States mining and mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Peter Humm, Susanville District Office, (916) 257-5381 or Dianna Storey, California State Office, (916) 978-4820.

1. The United States issued two (2) land exchange conveyance documents to the John Hancock Mutual Life Insurance Company, a Massachusetts corporation, on December 6 and 14, 1988, pursuant to the authority of Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), for the following described public lands:

Mount Diablo Meridian, California

T. 35 N., R. 12 E.,
Sec. 9, lots 1 to 4, inclusive;
Sec. 10, lots 2, 3, and 4;
Sec. 11, lots 1, 2, and 3;
Sec. 12, lots 1 to 4, inclusive;
Sec. 13, all;
Sec. 14, W½;
Sec. 15, all.

T. 36 N., R. 12 E.,
Sec. 14, NW¼;
Sec. 15, SE¼NE¼, W½E½, and W½;
Sec. 22, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 25, all;
Sec. 27, E½ and E½NW¼;
Sec. 31, SE¼NE¼ and E½SE¼;
Sec. 32, NW¼NW¼ and S½;
Sec. 33, SW¼NW¼ and W½SW¼;
Sec. 35, all.

T. 41 N., R. 12 E.,
Sec. 12, W½SW¼;
Sec. 13, W½NW¼;
Sec. 22, SW¼NW¼;
Sec. 24, SW¼NW¼ and W½SW¼.

T. 35 N., R. 13 E.,
Sec. 7, lots 1 and 2;
Sec. 8, lots 1 to 4, inclusive;
Sec. 9, lots 1 to 4, inclusive;
Sec. 10, lots 2, 3, and 4;
Sec. 15, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 17, W½ and SE¼;
Sec. 18, all.

T. 36 N., R. 13 E.,
Sec. 30, lots 3 and 4, and E½SW¼;
Sec. 31, lots 3 and 4, and E½SW¼;
Sec. 32, S½;
Sec. 33, SW¼SW¼.

The areas described aggregate 6,321.97 acres in Lassen and Modoc counties.

2. In exchange for the lands described in paragraph 1, on December 6, 1988, the United States accepted title to the following described private lands from the said John Hancock Mutual Life Insurance Company:

Lassen County

Parcel No. 1

Mount Diablo Meridian, California

T. 37 N., R. 12 E.,
Sec. 1, S½S½;
Sec. 2, SE¼SE¼;
Sec. 11, N½ and N½SE¼.

Excepting Therefrom that portion which lies within that certain map entitled, "Moon Valley Ranch Unit No. 2", filed February 20, 1969, in the office of the County Recorder, Lassen County, California, in Book 6 of Maps, at Page 86.

Sec. 12, NW¼NW¼, NE¼NE¼, S½N½, and S½.

Excepting From The SE¼SW¼ and S½SE¼ all that portion lying Southerly of the Northerly Right-of-Way line of Ash Valley Road as shown on those certain maps entitled "Moon Valley Ranch Unit No. 1", filed July 12, 1968 in the office of the Lassen County Recorder, in Book 6 of Maps at page 67 and "Record of Survey No. 6-02-87 for John Hancock Mutual Life Insurance Co.", filed on February 27, 1987 in the office of the Lassen County Recorder in Book 25 of Maps at page 76.

Sec. 13, E½W½, lying Westerly of the center line of Ash Valley Road and Williams Road, as said roads are shown on that certain map entitled "Record of Survey No. 6-02-87 for John Hancock Mutual Life Insurance Co.", filed on February 27, 1987 in the office of the Lassen County Recorder in Book 25 of Maps at page 76.

Parcel No. 2

Mount Diablo Meridian, California

T. 37 N., R. 13 E.,
Sec. 3, SW¼NW¼ and W½SE¼ lying Westerly of the Westerly right of way line of U.S. Highway 395, as said Westerly line is described in the Deeds from Glenn C. Talbott, et ux to the State of California, recorded October 10, 1939 in Book 38 of Deeds, at page 98 and recorded February 13, 1940 in Book 38 of Deeds at page 292.

Excepting therefrom all right, title and interest, including any reversionary interest, in and to all oil, oil rights, mineral rights, natural gas rights and other hydrocarbons by whatsoever name known, together with all geothermal steam and steam power that may be within or under said land as described in the deed to Eastwood Minerals and Energy Company, a California corporation, recorded September 23, 1974, in Book 283, page 37 of Official Records, which deed provides as follows:

"*Together with* the perpetual right of drilling, mining, exploring and operating therefor, and storing in and removing the same from said land, or any other land, including the right to whipstock or directionally drill and mine from lands, other than those hereinafter described, oil or gas wells, tunnels and shafts into, through or across the subsurface of the land hereinafter described and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines, with the right to drill, mine, store, explore and operate through or on, and utilize all or any portion of the surface and subsurface and of the land hereinafter described."

Parcel No. 3

Mount Diablo Meridian, California

T. 37 N., R. 13 E.,
Sec. 4, lots 1 and 2, S½NE¼, SE¼, E½SW¼, and SE¼NW¼;
Sec. 6, lot 7;
Sec. 7, lots 1 to 4, inclusive, and E½W½;
Sec. 9, N½NE¼ and NE¼NW¼.

Parcel No. 4

Mount Diablo Meridian, California

T. 38 N., R. 12 E.,
Sec. 13, SW¼SE¼;
Sec. 24, NW¼NE¼;
Sec. 26, NE¼NW¼;
Sec. 34, SW¼SW¼.

Parcel No. 5

Mount Diablo Meridian, California

T. 38 N., 13 E.,
Sec. 5, SE¼SW¼;
Sec. 8, W½NW¼ and NE¼NW¼;
Sec. 17, N½SE¼, SW¼NE¼, and SE¼NW¼.

Excepting therefrom that portion conveyed by Carrie Craft Tagney, et al, to the Nevada-California-Oregon Railway, a corporation, recorded October 24, 1930, in Book 26 of Deeds, at page 370.

Sec. 19, lot 4, SE¼NW¼, and E½SW¼;
Sec. 20, SE¼NW¼, NE¼SW¼, and N½SE¼;
Sec. 33, SW¼ and W½SE¼.

Parcel No. 6

Mount Diablo Meridian, California

T. 39 N., R. 12 E.,
Sec. 26, S½SE¼ and S½N½SE¼;
Sec. 28, S½SW¼ and S½N½SW¼.
Sec. 36, All.

Excepting from Parcels 1, 3, 4, 5 and 6, all right, title and interest, including any reversionary interest, in and to all oil, oil rights, mineral rights, natural gas rights and other hydrocarbons by whatsoever name known, together with all geothermal steam and steam power that may be within or under said land as described in the deed to Eastwood Minerals and Energy Company, a California corporation, recorded September 23, 1974, in Book 283, page 37 of Official Records, which deed provides as follows:

"*Together with* the perpetual right of drilling, mining, exploring and operating therefor, and storing in and removing the same from said land, or any other land, including the right to whipstock or directionally drill and mine from lands, other than those hereinafter described, oil or gas well tunnels and shafts into, through or across the subsurface of the land hereinafter described and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such well, or mines, with the right to drill, mine, store, explore and operate through or on, and utilize all or any portion of the surface and subsurface of the land hereinafter described."

Modoc County

Parcel No. 1

Mount Diablo Meridian, California

T. 40 N., R. 13 E.,
Sec. 12, SW¼NE¼, E½SW¼, W½SW¼ and SE¼SE¼.

Except an undivided one-half interest in and to all mineral rights, as reserved by Allen Wall, et ux, in the Deed recorded January 21, 1955 in Book 127, Page 54, Official Records of Modoc County.

Sec. 13, NE¼ and E½NW¼.

Except an undivided one-half interest in and to all mineral rights, as reserved by Allen Wall, et ux, in the Deed recorded January 21, 1955 in Book 127, Page 54, Official Records of Modoc County.

Parcel No. 2

Mount Diablo Meridian, California

T. 40 N., R. 13 E.,
Sec. 11, S½NE¼ and SE¼;
Sec. 12, SE¼NE¼, NE¼SE¼, W½SW¼ and S½NW¼;
Sec. 13, W½NW¼;
Sec. 14, N½NE¼.

Parcel No. 3

T. 41 N., R. 12 E.,
Sec. 25, a portion of the E½NW¼, W½NE¼ and NW¼SE¼ as described in a Trustees Deed to John Hancock Mutual Life Insurance Co., a Massachusetts Co. and more particularly described as follows:

Beginning at the Northeast corner of the W½NE¼ of said section 25; thence along the Northerly line of said section 25 South 89° 24' 42" West 1324.23 feet to the North quarter corner of said section 25; thence continuing along the Northerly line of said section 25 South 89° 39' 02" West 941.97 feet to the Easterly line of State Highway 395 as described in a Deed to the State of California, recorded April 30, 1957 in Book 148, Page 263, Modoc County Official Records; thence Southeasterly along the Easterly line of said State Highway to the Easterly line of the NW¼SE¼ of said Section 25; thence North 0° 16' 36" East 474.83 feet along the Easterly line of said NW¼SE¼ of said Section 25 to the Northeast corner thereof; thence North 0° 27' 51" East along the Easterly line of the W½NE¼ of said Section 25 a distance of 2,701.05 feet to the point of beginning.

Excepting therefrom all oil, oil rights, mineral rights, natural gas rights, and other hydrocarbon by whatsoever name known together with in all geothermal steam and steam power that may be within or under said land, together with the right of entry, for the exploration and development of same as conveyed to Eastwood Minerals and Energy Company, a California corporation, by Deed, recorded July 25, 1974 in Book 229 page 125, Modoc County Official Records.

The areas described aggregate 5,242.61 acres in Lassen and Modoc Counties.

3. The appraised value of the public lands is $1,010,000; the private lands is $970,000. A payment in the amount of $40,000 was made to the United States to equalize values between the public and private lands.

4. At 10 a.m. on May 18, 1989, the lands described in paragraph 2 above shall be open to operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on May 18, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. At 10 a.m. on May 18, 1989, the lands described in paragraph 2 above shall be open to location under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of opening is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over

possessory rights since Congress has provided for such determinations in local courts.

6. At 10 a.m. on May 18, 1989, the lands described in paragraph 2 above shall be open to applications and offers under the mineral leasing laws.

Robert C. Nauert,

Chief, Branch of Adjudication and Records.

[FR Doc. 89-9142 Filed 4-17-89; 8:45 am]

BILLING CODE 4310-40-M

National Park Service

Concession Contract Negotiations; Waterton Inter-Nation Shoreline Cruise Co., Ltd.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with Waterton Inter-Nation Shoreline Cruise Company, Ltd., authorizing them to continue to provide boat cruise and boat transportation services for the public at Glacier National Park, Montana, for a period of five (5) years from January 1, 1989, through December 31, 1993.

EFFECTIVE DATE: June 19, 1989.

ADDRESS: Interested parties should contact the Regional Director, Rocky Mountain Region, National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Lakewood, Colorado 80225, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on August 31, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. section 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Jack Neckels,

Deputy Regional Director, Rocky Mountain Region.

Date: March 22, 1989.

[FR Doc. 89-9143 Filed 4-17-89; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-21.108]

Houze Glass Corp.; Point Marion, PA; Negative Determination on Reconsideration

On February 9, 1989 the Department issued an Affirmative Determination Regarding Application for Reconsideration of the denial notice in the subject case.

Workers at Houze Glass produce decorated mugs and glassware. They do not produce the ceramic or glass blanks.

The American Flint Glass Workers Local #547 with support from the company stated that the Department used the wrong aggregate import data and submitted additional customer information for use in determining whether the contributed importantly test was met. It was also claimed that the conditions that led to the approval of eligibility in 1986 under TA-W-16,543 still exist under the current petition.

In order for a worker group to be certified eligible to apply for adjustment assistance it must meet all three criteria of the Group Eligibility Requirements of the Trade Act including the "contributed importantly" test. The "contributed importantly" test is generally demonstrated by means of a customer survey. The Department's denial was based on the fact that the "contributed importantly" test was not met. The Department's survey of Houze Glass' customers showed that the respondents either did not purchase imported decorated glass or ceramic ware or they decreased their imports during the survey period.

Reconsideration findings show that the customer mix has changed since the last certification primarily because Houze Glass divested its retail segment from its business. The large national retail accounts have been replaced by smaller advertising specialty and promotion accounts. Other findings on reconsideration show that the respondents from the advertising segment either did not import decorated mugs or glassware or had decreasing import purchases during the survey period. Accordingly, the reduced business of Houze Glass is the result of management's decision to divest itself of the retail segment and specialize in the advertising specialty and promotion segment.

Conclusion

After reconsideration, I affirm the original notice of negative determination regarding eligibility to apply for adjustment assistance to workers and former workers at Houze Glass Corporation, Point Marion, Pennsylvania.

Signed at Washington, DC, this 11th day of April 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-9236 Filed 4-17-89; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Maryland State Standards; 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 the 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 July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of Subpart 0 to Part 1952 containing the decision.

The Maryland State Plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of Subpart 0 sets forth the State's schedule for the adoption of Federal standards. By letter dated February 22, 1989, from Commissioner Henry Koellein, Jr., Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to: 29 CFR 1910.177, amendments and revisions to Servicing of Multi-Piece and Single Piece Rim

Wheels, as published in the Federal Register of September 8, 1988 (53 FR 34737). This standard is contained in COMAR 09.12.31. The Maryland Occupational Safety and Health Standard was promulgated after public hearings on October 19, 1988. This standard was effective on February 20, 1989.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standard, it has been determined that the State standard is identical to the Federal standard and, accordingly, is approved.

3. *Location of the Supplement for Inspection and Copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied at the following locations during normal business hours: Office of the Regional Administrator, U.S. Department of Labor—OSHA, 3535 Market Street, Suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner, Maryland Division of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the Office of State Programs, U.S. Department of Labor—OSHA, Room N-3700, Third Street and Constitution Avenue, NW., Washington, DC 20210.

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 Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standard is identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standard was adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective April 18, 1989.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Philadelphia, Pennsylvania, this 13th day of March 1989.

Linda R. Anku,

Regional Administrator.

[FR Doc. 89-9237 Filed 4-17-89; 8:45 am]

BILLING CODE 4510-26-M

Nevada State Standards; 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 (hereafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereafter 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(e) of the Act and 29 CFR Part 1902. On January 4, 1974, notice was published in the **Federal Register** (39 FR 1008) of the approval of the Nevada plan and the adoption of Subpart W to Part 1952 of Title 29 containing the decision. The Nevada plan provides for the adoption of Federal standards as State standards by reference.

By letters dated December 28, 1988, from Nancy C. Barnhart to Frank Strasheim and incorporated as part of the plan, the State submitted State standard revisions identical to 29 CFR 1910.1001, and 29 CFR 1926.58, Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite in General Industry and Construction (September 14, 1988, 53 FR 35610) and 29 CFR 1910.20 Access to Employee Exposure and Medical Records (September 29, 1988, 53 FR 38140).

These standards are contained in the Division of Occupational Safety and Health Standards for General Industry and Construction Standards. The subject standards, 29 CFR 1910.1001, and 29 CFR 1926.58, Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite, and 29 CFR 1910.20, Employee Exposure and Medical Records were adopted by reference on October 14, 1988 and November 11, 1988 respectively, pursuant to Nevada State law, section 618.295.

2. Decision

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the standards are identical to the Federal standards and accordingly are approved.

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, 71 Stevenson Street, Room 415, San Francisco, CA 94105; and Director, Division of Occupational Safety and Health, 1370 South Curry Street, Carson City, Nevada 89710; and Directorate of Federal Compliance and State Programs, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

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 Nevada State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal Standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with procedural requirements of State law and further participation would be unnecessary.

This decision is effective April 18, 1989.

(Section 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at San Francisco, California, this 13th day of March, 1989.

Frank Strasheim,

Regional Administrator.

[FR Doc. 89-9238 Filed 4-17-89; 8:45 am]

BILLING CODE 4510-26-M

Oregon State Standards; 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 approval 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 the adoption of Federal standards by reference.

In response to Federal standards changes, the State has submitted by letter dated January 11, 1989, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State Definition and Requirements for a Nationally Recognized Testing Laboratory Standard comparable to 29 CFR 1910.7, as published in the **Federal Register** (53 FR 12120) dated April 12, 1988, and amended May 11, 1988 (53 FR 16838).

The State's rules pertaining to Nationally Recognized Testing Laboratories, contained in OAR 437-02-005/ were adopted by reference and became effective on November 10, 1988, pursuant to ORS 654.025(2), ORS 656.726(3), and ORS 183.335, as ordered and transmitted under Oregon APD Administrative Order 17-1988. At the same time the State also adopted by reference 29 CFR 1910.1, 1910.2, 1910.3, 1910.4, 1910.5, and 1910.6 for clarification purposes and due to the reference to them by other sections of 29 CFR 1910. As ordered and transmitted under Oregon APD Administrative Order 23-1988, Oregon also amended on December 30, 1988, effective January 1, 1989, the following previously approved State rules in 16 divisions to be identical to the Federal counterparts by updating definitions relating to testing laboratories:

OAR 437-41-005/1910.35(h)
OAR 437-61-005/1910.155(c)(3)(i)
OAR 437-66-055/1910.251(b)
OAR 437-79-245/1910.265(d)(2)(iv)(c)
OAR 437-88-210/1910.28(g)(3)
OAR 437-88-235/1910.28(i)(1)
OAR 437-89-490/1910.181(j)(4)(i)
OAR 437-123-005/1910.106(a)(35)
OAR 437-125-005/1910.110(a)(14)
OAR 437-125-305/1910.110(f)(5)(iv)
OAR 437-143-005/1910.103(a)(1)(ii)
OAR 437-45-2551/1910.109(d)(2)(iii)(a)
OAR 437-63-230/1910.178(a)(7)
OAR 437-67-005/1910.399(a)(1)
OAR 437-88-205/1910.205/1910.28(f)(2)
OAR 437-88-230/1910.28(h)(2)
OAR 437-89-360/1910.180(i)(4)(i)
OAR 437-119-005/1910.107(a)(8)
OAR 437-124-005/1910.108(a)(3)
OAR 437-125-125/1910.110(c)(5)(i)(g)
OAR 437-126-010/1910.111(b)(1)(ii)
OAR 437-317-025/1910.266(c)(4)(iii)-(iv)

On October 3, 1988, the State mailed the proposed November 10 amendment of rules to those on the Department of Insurance and Finance mailing list, established pursuant to OAR 436-01-000 and to those on the Department's distribution list as their interest appeared. On December 14, 1988, the State mailed the proposed December 30 amendment of rules to those on its lists. No written comments or requests for a public hearing were received.

As noted at OAR 437-02-007, by adopting these rules, Oregon does not establish its own program to accredit testing laboratories but will accept the Federal OSHA laboratory accreditation program as valid for compliance with its rules.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standard, it has been determined that the State standard and amendments are identical to the Federal standard and amendments.

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, Room 6003 Federal Office Building, 909 First Avenue, Seattle, Washington 97174; Department of Insurance and Finance, Labor and Industries Building, Salem, Oregon 97310; and the Office of State Programs, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Avenue NW., Washington DC 20210.

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 of the following reasons:

1. The standard is identical to the Federal standard which was promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standard was adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective April 18, 1989.

(Section 16, Pub. L. 91-596, Stat. (29 U.S.C. 667))

Signed at Seattle, Washington this 22nd day of February, 1989.

James W. Lake,

Regional Administrator.

[FR Doc. 89-9239 Filed 4-17-89; 8:45 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-317 and 50-318]

Baltimore Gas and Electric Co.; Withdrawal of Applications for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the March 29, 1989 request of the Baltimore Gas and Electric Company (the licensee) for withdrawal of Change No. 2a of the licensee's request for amendments, dated October 17, 1986 and modified on November 25, 1987, to Facility Operating License Nos. DPR-53 and DPR-69, issued to the Baltimore Gas and Electric Company (BG&E, the licensee) for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

The proposed amendments would change the Units 1 and 2 Technical Specifications (TS) as follows:

1. Modify the steam generator tube inservice inspection interval of TS 4.4.5.3.a by extending it from 12-24 months to a new interval of at least once per refueling interval, where a refueling interval would be defined as 24 months. In addition, the provisions of TS 4.0.2.a would now be applicable, thus permitting a maximum allowable interval extension of 25% (6 months) beyond the normally required 24-month period.

2. Delete the interval reduction to 20 months currently required by TS 4.4.5.3.b for C-3 results during third sample inspections.

3. Eliminate the interval extension to 40 months permitted by TS 4.4.5.3.a, for C-1 results in two consecutive steam generator tube inspections.

The Commission issued a "Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Prior Hearing" which was published in the **Federal Register** (52 FR 10179) on March 30, 1987. No requests for hearing were filed regarding this Notice.

By letter dated March 29, 1989, the licensee withdrew its applications for the proposed amendments.

For further details with respect to this action, see (1) the application for amendment dated October 17, 1986, (2) the application supplemental information letter dated November 25, 1987, and (3) the licensee's letter of March 29, 1989, withdrawing the applications for amendments which are available for public inspection at the Commission's Public Document Room,

2120 L Street, NW., Washington, DC, and at the Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 10th day of April 1989.

For the Nuclear Regulatory Commission.

Scott Alexander McNeil,

Project Manager, Project Directorate I-1, Division of Reactor Projects I/II.

[FR Doc. 89-9201 Filed 4-17-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-286]

Power Authority of the State of New York; Withdrawal of Applications for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of the Power Authority of the State of New York (the licensee) to withdraw its March 6, 1987 and October 13, 1987 (the part related to containment temperature) amendment applications for the Indian Point Nuclear Generating Unit No. 3 (IP-3), located in Westchester County, New York. The proposed amendments would have revised the Technical Specifications to include a provision related to a containment ambient temperature of 130 °F. The basis for the licensee's request for withdrawal is that a reanalysis is being performed of the containment integrity and a revised submittal will be provided.

The Commission issued a Notice of Consideration of Issuance of the Amendments in the **Federal Register** on April 22, 1987 (52 FR 13346) and March 9, 1988 (53 FR 7599). By letter dated March 6, 1989, the licensee requested, pursuant to 10 CFR 2.107, permission to withdraw its applications for the proposed amendments. The Commission has considered that licensee's March 6, 1989 request and determined that permission to withdraw the applications for amendment should be granted.

For further details with respect to this action, see (1) the applications for amendments dated March 6, 1987 and October 13, 1987; (2) the licensee's letter dated March 6, 1989, requesting withdrawal of the application for license amendment; and (3) our letter dated March 31, 1989. All of the above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 31st day of March 1989.

Joseph D. Neighbors,

Senior Project Manager, Project Directorate I-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-9202 Filed 4-17-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-361]

Southern California Edison Co., et al., Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 70 to Facility Operating License No. NPF-10 issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and The City of Anaheim, California (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Unit 2, located in San Diego County, California.

The amendment was effective as of the date of issuance.

This amendment revised Technical Specifications 3/4.4.8.1, "Pressure/Temperature Limits;" 3.4.1.4.1, "Cold Shutdown-Loops Filled;" 3.4.1.3, "Hot Shutdown;" 3.4.8.3.1, "Overpressure Protection System, RCS Temperature less than or equal to 235°F;" and 3.4.8.3.2, "Overpressure Protection System, RCS Temperature greater than 235°F." These changes revised the pressure/temperature and low temperature overpressure protection limits for operation through 8 effective full power years. The amendment was issued in response to an application for an amendment designated as PCN-278.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on February 24, 1989 (54 FR 8039). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of the amendment will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated November 7, 1988, and subsequent submittals dated December 29, 1988 and February 23, 1989, (2) Amendment No. 70 to License No. NPF-10, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 11th day of April, 1989.

For the Nuclear Regulatory Commission.

D. E. Hickman,

Project Manager, Project Directorate V, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-9203 Filed 4-17-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-03196; License No. 37-13651-01; EA 88-298]

St. Agnes Medical Center; Order Imposing Civil Monetary Penalty

I

St. Agnes Medical Center, Philadelphia, Pennsylvania 19145 (the "licensee") is the holder of License No. 37-13651-01 (the "license") issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") which authorizes the medical use of byproduct material by the license. The license was issued on May 14, 1970, was most recently renewed on December 9, 1986, and is due to expire on November 30, 1991.

II

An NRC Safety inspection of the licensee's activities under the license was conducted on August 10 and November 2, 1988. During the inspection, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon

the licensee by letter dated February 2, 1989. The Notice states the nature of the violations, the provisions of the Nuclear Regulatory Commission's requirements that the licensee had violated, and the civil penalty amount for each of the violations. A response, dated February 23, 1989, to the Notice was received from the licensee. In its response, the licensee did not deny the violations, but requested mitigation or waiver of the civil penalty.

III

Upon consideration of the answer received, the statement of facts, explanations, and argument for remission or mitigation of the proposed civil penalty contained therein, and as set forth in the Appendix to this Order, the Deputy Executive Director for Materials Safety, Safeguards and Operations Support has determined that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, *It is hereby ordered that:*

The licensee pay a civil penalty in the amount of Two Thousand Five Hundred Dollars ($2,500) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may, within thirty days of the date of this order, request a hearing. A request for a hearing shall be clearly marked as a "Request for Hearing" and shall be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Assistant General Counsel for Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and the Regional Administrator, USNRC Region 1, 471 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within thirty days of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether, on the basis of the violations, this Order should be sustained.

Dated at Rockville, Maryland this 10th day of April 1989.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Material Safety, Safeguards and Operations Support.

Appendix

Evaluation and Conclusion

On February 2, 1989, a Notice of Violation and Proposed Imposition of Civil Penalty was issued for violations of a license issued to St. Agnes Medical Center. The licensee responded to the Notice on February 23, 1989, did not deny the violations, but requested waiver or mitigation of the Civil Penalty. The NRC's evaluation and conclusion regarding the licensee's response are as follows:

I. Restatement of Violations

A. 10 CFR 35.50(b)(1) requires that licensees check each dose calibrator for constancy at the beginning of each day of use.

Condition 15 of License No. 37-13651-01 requires that the licensee possess and use licensed radioactive material in accordance with the statements, representations, and procedures contained in the radioactive material license application dated December 31, 1985, and in letters dated September 19, 1986, October 31, 1986, and October 24, 1988.

Item 10 of the application dated December 31, 1985, Section I, page 3 requires that the dose calibrator be tested for constancy on each day that the instrument is used for the assay of radiopharmaceuticals.

Contrary to the above, on August 2 and 3, 1988, the dose calibrator was used for the assay of radiopharmaceuticals which were subsequently administered to patients, and the dose calibrator was not tested for constancy at the beginning of each day.

B. 10 CFR 35.70(a) requires that licensees survey with a radiation detection survey instrument at the end of each day of use all areas where radiopharmaceuticals are routinely prepared for use or administered.

Condition 15 of License No. 37-13651-01 requires that the licensee possess and use licensed radioactive material in accordance with the statements, representations, and procedures contained in the radioactive material license application dated December 31, 1985, and in letters dated September 19, 1986, October 31, 1986, and October 24, 1988.

Item 17.A of the application dated December 31, 1985, requires that all radiopharmaceutical preparation and elution areas be surveyed daily.

Contrary to the above, between July 18 and July 29, 1988, the radiopharmaceutical preparation, use, and administration areas were not surveyed.

This is a repeat violation.

C. 10 CFR 35.70(b) requires that licensees survey with a radiation detection survey instrument at least once a week all areas where radiopharmaceuticals or radiopharmaceutical waste is stored.

10 CFR 35.70(e) requires that licensees survey for removable contamination once each week all areas where radiopharmaceuticals are routinely prepared for use. administered, or stored.

Condition 15 of License No. 37-13651-01 requires that the licensee possess and use licensed radioactive material in accordance with the statements, representations, and procedures contained in the radioactive material license application dated December 31, 1985, and in letters dated September 19, 1986, October 31, 1986, and October 24, 1988.

Item 17.C of the application dated December 31, 1985, requires that areas in which licensed radioactive material, other than where any quantities less than 200 mircrocuries are used, be surveyed weekly.

Contrary to the above, between July 17 and July 30, 1988, areas in which licensed radioactive material, in quantities greater than 200 microcuries were used, were not surveyed.

This is a repeat violation.

D. Condition 15 of License No. 37-13651-01 requires that the licensee possess and use licensed radioactive material in accordance with the statements, representations, and procedures contained in the radioactive material license application dated December 31, 1985, and in letters dated September 19, 1986, October 31, 1986, and October 24, 1988.

1. Item 14 of the application dated December 31, 1985, requires that each incoming package containing

radioactive material be surveyed as soon as practicable after receipt.

Contrary to the above, between July 18 and July 29, 1988, incoming packages containing radioactive material were not surveyed as soon as practicable after receipt.

This is a repeat violation.

2. Item 10 of the application dated December 31, 1985, section IV, requires that a test for instrument linearity be performed quarterly. If a deviation of greater than ±5 percent is found between the instrument reading and the decay corrected value at any point on the range of administered values, the instrument will be repaired.

Contrary to the above, on August 8–10, 1988, the results of a linearity test of the dose calibrator indicated a deviation of greater than ± 5 percent between the instrument reading and the decay corrected value at certain points on the range of administered values. The instrument was not repaired and the licensee continued to use the instrument to assay patient doses until mid-September, 1988.

These violations have been categorized in the aggregate as a Severity Level III Problem. (Supplement VI)

Cumulative Penalty—$2,500 (assessed equally among the violations)

II. Summary of Licensee Response

The licensee, in its response, did not deny the occurrence of the violations. However, the licensee requests that the NRC waive or mitigate the $2,500 civil penalty because the problems were first identified and corrected by them, were not willful, and current performance is consistent with license conditions.

The licensee sets forth additional circumstances it feels are relevant to support mitigation of the civil penalty, including: (1) The technologist involved in the violations is no longer employed by the licensee; (2) there was a lack of communication between the licensee and its consultant; and (3) the Radiology Administrator position was vacant at the time of the violations.

III. NRC Evaluation of Licensee Response

The licensee's identification and correction of a violation may provide a basis for at least partial mitigation of the civil penalty. However, these considerations were offset by the fact that certain of the violations were identified in previous NRC inspections in 1984 and again in 1987 and the corrective actions taken to prevent recurrence were not effective. In addition, the licensee submitted no information regarding the corrective actions taken or planned to permit an evaluation of their adequacy. Further, while the existence of a willful violation may result in an increase in the severity level and consequent escalation of a civil penalty, the fact that a violation was not willful does not form a basis for mitigation. Finally, since compliance with all license conditions and regulatory requirements is expected at all times, the licensee's current compliance with regulatory requirements is not a basis for mitigation of the civil penalty.

The repetitive nature of certain of the violations, as identified above, is reflective of a programmatic problem in the licensee's management and control of its licensed activities. Therefore, even though the technologist involved in the violations is no longer employed by the licensee, that fact does not warrant mitigation of the civil penalty. Furthermore, rather than providing a basis for mitigation, the communication problem between the licensee and its consultant and the vacancy in the Radiology Administrator's position is merely additional evidence that the licensee failed to maintain an adequate program to ensure that licensed activities were carried out in conformance with license conditions and regulatory requirements.

IV. NRC Conclusion

The licensee did not provide a sufficient basis for mitigation of the amount of the civil penalty. Therefore, the NRC concludes the proposed civil penalty in the amount of § 2,500 should be imposed.

[FR Doc. 89-9204 Filed 4-17-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-259, 50-260 and 50-296]

Tennessee Valley Authority; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-33, DPR-52 and DPR-68 issued to Tennessee Valley Authority (TVA or the licensee), for the operation of the Browns Ferry Nuclear Plant located in Limestone County, Alabama.

In accordance with the licensee's application for amendment dated February 14, 1989, the amendment would temporarily revise the limiting conditions for operation (LCO) requirements 3.7.E.1 and 3.7.E.3. The changes to these LCOs involve annotating these sections to note that the Control Room Emergency Ventilation System (CREVS) is considered to be inoperable because it does not meet its design basis for zero unfiltered inleakage of outside air. The proposed temporary changes to the technical specifications would permit power operation and the subsequent defueling, refueling, and subcritical functional testing until the start-up of Unit 2 from its next refueling cycle The licensee will provide a permanent resolution to this condition and implement it during this interval.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By May 18, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by the proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been

admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions should be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisficies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washigton, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Suzanne C. Black: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

Nontimely filings of the petition for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 14, 1989, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, Washington, DC, 20555, and at the Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Rockville, Maryland, this 12th day of April 1989.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Assistant Director for Projects, TVA Projects Division, Office of Nuclear Reactor Regulation.

[FR Doc. 89-9205 Filed 4-17-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-271-OLA]

Atomic Safety and Licensing Appeal Board; Vermont Yankee Nuclear Power Corp; Oral Argument

In the Matter of Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station) (Spent Fuel Pool Amendment)

Notice is hereby given that, in accordance with the Appeal Board's order of April 11, 1989, oral argument on the ruling referred to us by the Licensing Board in its February 2, 1989, memorandum and order (LBP-89-6) will be heard at 1:30 pm. on Wednesday, May 3, 1989, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

For the Appeal Board.

Dated April 12, 1989.

Barbara A. Tompkins,

Secretary to the Appeal Board.

[FR Doc. 89-9264 Filed 4-17-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by the Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street NW., Washington, DC 20549

New

Leverage Buyout Employment Effects Questionnaire

File No. 270-327

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance a leverage buyout employment effects questionnaire. The questionnaire requests information on levels of employment and wages at facilities acquired from corporations that have undergone leveraged buyouts.

The estimated average burden hours to comply with these requests is two hours for each of the approximately 150 respondents.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative survey or study.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street NW., Washington, DC 20549-6006, and Gary Waxman, Clearance Officer, Office of Management and Budget. Paperwork Reduction Act Project (3235-040A), Room 3208 New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

April 12, 1989.

[FR Doc. 89-9230 Filed 4-17-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26705; File No. SR-DTC-89-5]

Self-Regulatory Organizations; Depository Trust Co.; Filing and Immediate Effectiveness of Proposed Rule Change Modifying Put Option Processing Procedures

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on March 2, 1989, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change. The proposal modifies DTC's processing procedures in situations where a partial redemption of

an issue occurs at the same time a DTC participant exercises a put option on securities in the issue. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposal will clarify DTC's procedures to improve the coordination of its processing of a concurrent put option expiration and partial redemption. When the expiration of a put option [1] occurs concurrently with the processing of a call, DTC will, in giving participants put option information, alert participants to the concurrent processing of a call lottery.[2] In the event that notification of a call is received so late that the lottery cannot be completed prior to the second business day before the expiration date for the put exercise, DTC will not process the lottery, due to the likelihood that one or more participants with positions may be driven short (*i.e.*, will end up owing securities to DTC) and the very limited time available to make a decision whether to exercise the put. Rather, DTC will allocate the called bonds against tender instructions it has received. The circumstances under which this approach may be followed are: (1) That the put payment date and the redemption date are the same, and (2) that the proceeds (*i.e.*, principal and interest) to be paid under the put or the call are identical in total and in each part (*i.e.*, the same amount of principal payable and the same amount of interest payable). If either of these conditions is *not* present, however, DTC will process the lottery (because there would be a difference in the economic effect of the put and the call).

[1] Many municipal bonds and other DTC-eligible securities contain put option provisions either in the indenture, or as a dealer-issued enhancement, where by the holder may redeem the bond prior to maturity date. Depending upon the provision in the indenture, the put option may be exercised as frequently as daily, periodically, or once before the bond's maturity date. A participant with a bond deposited at DTC may exercise the put through DTC. Upon instruction of the participant, DTC will tender the bond to the tender agent. When DTC receives payment from the tender agent, DTC allocates that payment to the tendering participant.

[2] Bond issuers on their agents sometimes call for the return of bonds to the issuer prior to maturity. The call may be for a full redemption (*i.e.* the return of the entire issue) or a partial redemption (*i.e.* the return of a portion of the issue). An issuer that makes a partial call will run a random lottery of all outstanding certificates to determine which certificates, or portions thereof, it will redeem. DTC, as a depository for many of these issues, holds for its participants a significant percentage of most called securities issues. Once DTC receives notice of a partial call, DTC must run its own lottery to allocate, among participants with deposits in the called securities issue, called certificates registered in DTC's nominee name. DTC then redeems the called bonds on the day of redemption on behalf of the participants.

In its filing, DTC explains that in most instances in which a DTC-eligible issue contains a put option provision and is subject to a redemption call, the put expiration date and the redemption date are far enough apart to avoid confusion. Occasionally, however, the two events occur on the same day, potentially causing several problems. First, a concurrent put and redemption can make it difficult for a DTC participant (or its customer) to know its exact securities position. This interferes in the process of making an informed decision on whether or not it will have enough securities to exercise the put option. Second, a participant may have part of a position that it has already tendered under the put option called in the lottery on the redemption, resulting in a short position in the participant's account. Finally, DTC, in extreme cases, may not have in inventory a sufficient quantity of uncalled securities to satisfy put option tender instructions after it has processed the call. This could occur if a large number of participants submit put option tender instructions just prior to the processing of the call lottery. DTC believes that the proposed rule change will decrease the chance of occurrence of these problems.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views, and arguments concerning the submission within 21 days after date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. SR-DTC-89-5.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of the filing (SR-DTC-89-5) and of any subsequent amendments also will be available for inspection and copying at DTC's principal office.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 10, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-9147 Filed 4-17-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26654; File No. SR-GSCC-89-1]

Self-Regulatory Organizations; Government Securities Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change Regarding Trade Comparison Operations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 9, 1989, GSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify GSCC's Rules and Procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to permit implementation of

certain enhancements to the comparison system:

(i) In the present comparison system, both parties to a trade are required to submit matching data on the same day for the trade to compare. The proposed rule change would provide for the addition of a "pending file" that would permit data on uncompared trades to pend in the comparison system until compared or deleted; deletion of the data generally will occur during the processing cycle before settlement day. This "pending" feature would enable Members' forward settling and when-issued trades ultimately to be compared even if the parties to the trades do not submit matching trade data on the same day. It is contemplated that, when the netting system is implemented, the compared trade file will be the source of trade data input into the netting system.

(ii) The proposed rule change would provide an "as-of" feature that will enable Members to submit for comparison trade data on or after the settlement date for the underlying transactions. This feature would afford a Member the ability to confirm settled trades, and would provide an improved audit trail for such trades.

(b) The proposed rule change will promote the prompt and accurate clearance of securities transactions for which GSCC is responsible and is, therefore, consistent with the requirements of the 1934 Act, as amended, and the rules and regulations thereunder applicable to self-regulatory organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the rule change and comments will be solicited by an Important Notice. GSCC will notify the Securities and Exchange Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)A of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the GSCC–89–1 and should be submitted by May 9, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 21, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–9235 Filed 4–17–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26713; File No. SR-OCC-88-02]

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Rule Change Providing for the Issuance, Clearance, and Settlement of Index Participations

I. Introduction

On March 3, 1988, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change (File No. SR–OCC–88–02) under section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder.[2] The proposal would enable OCC to issue, clear, and settle a new product known as Index Participations ("IPs") whose value is determined by reference to the value of an underlying stock index. The Commission published notice of the proposal in the **Federal Register** on April 4, 1988.[3] OCC amended the proposed rule change on June 3, 1988,[4] December 19, 1988,[5] January 27, 1989, and March 16, 1989.[6] The Commission received four comment letters opposing the proposed rule change.[7] For the reasons discussed below, the Commission has determined to approve the proposed rule change.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 25529 (March 29, 1988), 53 FR 10960. As originally proposed, the rules referred to IPs as Cash Index Participations ("CIPs"). CIPs initially were proposed by, and would be listed and traded on, the Philadelphia Stock Exchange, Inc. ("Phlx"). *See* Securities Exchange Act Release No. 25495 (March 23, 1988), 53 FR 10311, providing notice of proposed rule change by Phlx that would enable Phlx to list and trade CIPs based on two stock market indexes.

[4] Securities Exchange Act Release No. 25867 (June 29, 1988), 53 FR 25560. Because the American Stock Exchange, Inc. ("Amex") proposed to list and trade Equity Index Participations ("EIPs") pursuant to rules then similar to those proposed by Phlx for CIPs [*see* Securities Exchange Act Release No. 25664 (May 5, 1988), 53 FR 16805], the amendment, among other things, changed the name of the product in OCC's proposed rules from CIPs to IPs so that the rules may apply generally to IPs. Subsequently, the Chicago Board Options Exchange, Inc. ("CBOE") submitted proposed rule changes to list for trading Value of Index Participations ("VIPs") [*see* Securities Exchange Act Release No. 25799 (June 13, 1988), 53 FR 22754].

[5] *See* Securities Exchange Act Release No. 26388 (December 22, 1988), 53 FR 52901. This amendment conforms OCC's proposed IP rules to the proposed rules, as amended, filed by the exchanges.

[6] Because these amendments contain no new concepts but merely modify rules previously proposed by OCC, the amendments have not been published for comment in the **Federal Register**. The amendments make OCC's proposed rules more precise and respond to various comments on the proposed rules that OCC had received.

[7] *See* letter from Thomas R. Donovan, President, Chicago Board of Trade, to Jonathan G. Katz, Secretary, SEC, dated April 28, 1988; letter from Philip L. Stern, Freeman, Freeman & Salzman, P.C., on behalf of the Chicago Mercantile Exchange ("CME"), to Jonathan G. Katz, Secretary, SEC, dated April 29, 1988; letter from Philip L. Stern, Freeman, Freeman & Salzman, P.C., on behalf of the CME, to Jonathan G. Katz, Secretary, SEC, dated August 2, 1988; and letter from Jerrold E. Salzman, Freeman, Freeman & Salzman, P.C., on behalf of the CME, to Jonathan G. Katz, Secretary, SEC, dated January 11, 1989. These commentators opposed the OCC filing for the same reasons set forth in comment letters opposing the parallel exchange rule filings. Accordingly, these comments are discussed in Securities Exchange Act Release No. 26709 (April 11, 1989), ("Exchange approval order"). *See* note 37, *infra*.

[8] The Commission also has approved the related exchange rule filings (SR–Phlx–88–07, SR–Amex–88–10, and SR–CBOE–88–09) enabling the exchanges to list and trade a variety of IP products. *See* Exchange approval order, *id.*

II. Description of the Proposal

The proposal amends OCC By-Laws and Rules to provide for the issuance, clearance, and settlement of IPs. An IP is a product whose value is determined by reference to the value of an underlying stock index.[9] IPs were designed to place the holder of an IP in an economic position substantially equivalent to that of a purchaser of a portfolio or basket of stocks comprising the underlying index. A holder of an IP would be entitled to receive, and the writer of an IP would be obligated to pay, a quarterly dividend equivalent. The dividend equivalent would equal the regular cash dividends accrued over the quarter which the owner of a basket of stocks described above would be entitled to receive; it would not include stock dividends or extraordinary cash dividends. An IP would exist until the holder or writer extinguishes the IP by entering into an offsetting writing or purchasing transaction, or exercises a "cash-out privilege" that is available, depending on the IP, on a daily, quarterly or semi-annual basis.

The cash-out privilege provides for a payment in cash based upon the current value of the component stocks of the underlying index at the time specified by each exchange during which the privilege is available.[10] For example, Phlx's proposed IP rules provide that the cash-out privilege would be available to holders of IPs on any business day. Pursuant to the proposed Phlx rules, however, exercise of the cash-out privilege would entitle an exercising holder to an "aggregate cash-out value" [11] computed in a different manner depending on the day of exercise. If the CIP holder exercises on the business day before an IP dividend equivalent day, the aggregate cash-out value would be based on the opening values of the stocks in the underlying index on the IP dividend equivalent day. If the CIP holder exercises on any other business day, the aggregate cash-out value would be based on the closing index value on the business day following the exercise, reduced by one-half of one percent.

For CBOE VIPs, each writer as well as each holder would be entitled to a cash-out privilege on a semi-annual basis. These IPs therefore are referred to in OCC's proposed rules as "two-way IPs." The writer's cash-out privilege would entitle the writer to extinguish the short position and pay the cash-out value. Holders of two-way IPs would have a corresponding obligation, upon assignment of a writer's exercise notice, to extinguish long IP positions in exchange for payment of the cash-out value.

On the Amex, EIP holders would be entitled to exercise either the cash-out privilege or a delivery privilege on a quarterly basis. EIP holders could receive either the cash-out value or, under certain circumstances, physical delivery of shares of the component stocks of the S&P 500 Index or the Major Market Index. EIPs for which the delivery privilege has been exercised are referred to as "physical IPs" in OCC Rules. Specifically, the holder of one or more delivery units[12] that has not chosen to exercise the cash-out privilege has the right to obtain on each delivery time, which coincides with the quarterly cash-out time, the physical delivery of a proportionate number of shares of each stock comprising the underlying index, subject to certain conditions. A delivery fee established by the Amex would be charged to the EIP holder taking physical delivery of the component stocks.

Exercise notices requesting physical delivery of one or more delivery units will be assigned first, on a random basis, to those short EIP positions that have notified OCC of a desire to make physical delivery ("physical assignment volunteers"). If the number of delivery units for which holders have requested physical delivery exceeds the number of units made available for delivery by persons with short EIP positions, an Amex-designated "delivery facilitator" would assume responsibility for delivering the physical shares for such excess number of units.[13]

In proposing rules that would provide for the issuance, clearance, and settlement of IPs, OCC has, where appropriate, paralleled its existing rules and procedures. The proposal consists of a new Chapter XIX to OCC Rules applicable to IPs; amendments to Chapter VI dealing with margin; amendments to Chapter X to provide for a clearing fund contribution for IPs; revisions to the close-out provisions in Chapter XI; and conforming changes to Rules 207, 401, and 402 dealing with records and trade reporting. In addition, the proposal amends a number of OCC By-Laws and adds a new Article XVIII dealing exclusively with IPs.

A. Processing of IPs

OCS would process IP transactions in accordance with procedures that are substantially similar to OCC's well-established system for processing equity and non-equity option ("NEO") transactions. As discussed in more detail below, OCC would receive compared trade data from the exchanges, issue and (in the case of closing transactions) cancel the appropriate contracts. OCC would make appropriate book entries to clearing members' accounts representing the long and short positions in each account.[14] IP transactions would settle through OCC's existing systems on a next-day basis in same-day funds.[15] OCC would collect margin on short IP positions. As discussed below, CIPs, VIPs, and certain EIPs are cash-settled. Therefore, OCC would process exercises and assignments according to procedures similar to those for NEO securities. On the other hand, certain EIPs provide the holder the right to physical delivery of the securities that comprise the index.

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[9] The Phlx has designated two indexes for CIP trading: the Blue Chip Index, a price-weighted index composed of 25 highly capitalized listed common stock issues representing primarily industrial corporations which is designed to reflect the performance of the Dow Jones Industrial Average ("DJIA"), and the Standard & Poors 500 ("S&P" 500) Index. The Amex EIPs will be based on the Major Market Index ("XMI") and the S&P 500 Index. CBOE VIPs will be based on the capitalization-weighted CBOE 50 and CBOE 250 indexes developed and maintained by the Exchange, and the S&P 500 Index. All IPs covering the same index group and having identical contract terms constitute a "class of IPs."

[10] The days on which the cash-out privilege is available for IPs traded on each Exchange are stated in Interpretations added to OCC's Rules. Generally, the cash-out time for each quarterly or semi-annual period, depending on the IP, will be determined and made public by each Exchange before the beginning of such period. Amex has determined that its cash-out time will coincide with "dividend equivalent day"—the third Friday of March, June, September and December. *See* Rule 1903, Interpretations and policies .02, .03 and .04.

[11] Aggregate cash-out value is equal to the settlement index value times the index multiplier times the minimum trading unit. The Exchanges have determined that the minimum unit of trading in IPs shall be 100 IPs, unless otherwise designated by the Exchange. OCC By-Laws, Article XVIII, Section 1.

[12] The term "delivery unit" regarding any class of physical IPs means the unit, consisting of the minimum number of trading units of such IPs specified by the Exchange, for which the delivery privilege may be exercised. the Amex has established the delivery unit as 500 minimum trading units for the S&P 500 Index and 250 minimum trading units for the XMI. OCC By-Laws, Article XVIII, section 1. *See* Securities Exchange Act Release Nos. 26243 (November 2, 1988), 53 FR 45407, and 26355 (December 13, 1988), 53 FR 51181, for a detailed discussion of the physical delivery aspect of Amex's proposal.

[13] The delivery facilitator would be an OCC clearing member that is a member organization of the exchange. OCC By-Laws, Article XVIII, Section I. Initially, the Amex contemplates designating only one facilitator per EIP class and notes that the facilitator may be the specialist unit for that class of EIPs. *See* Securities Exchange Act Release No. 26355 (December 13, 1988), 53 FR 51181.

[14] IPs would be uncertificated securities.

[15] The proposed IP rules provide that OCC reserves the right to pay clearing members by issuance of an uncertified check for the net settlement amount.

Settlement of exercises and assignments regarding these physical IPs would be effected through designated stock clearing corporations.

For example, OCC's proposed system for processing exercises and assignments of the IP cash-out privilege generally parallels the system for processing exercises and assignments of NEO and equity securities. Specifically, clearing members exercising the cash-out privilege would tender exercise notices to OCC between 10:00 a.m. and 8:00 p.m. (Eastern Time) [16] on any day such exercises are permitted. In accordance with its existing procedures, OCC would accept all properly tendered exercise notices on the date of tender ("T") and would assign, pursuant to its procedures for random selection,[17] exercise notices in connection with the cash-out privilege submitted by exercising IP holders (or writers, in the case of two-day IPs) to clearing members with short positions (or long positions, in the case of two-way IPs) in that class of IP.

OCC would calculate the aggregate cash-out value[18] for each class of IPs on T+2 ("exercise settlement date") and would net the exercise settlement amounts to be paid by the clearing member against the exercise settlement amounts to be paid to the clearing member to obtain a single net settlement amount for IP exercises and assignments for each account of each clearing member. Prior to 8:00 a.m. on exercise settlement date, OCC would issue a report to clearing members advising them of their cash delivery and receive obligations. OCC would be authorized to draft clearing members' bank accounts at or before 10:00 a.m., and would be obligated to credit clearing members' bank accounts at or before 11:00 a.m., as appropriate, is satisfaction of net settlement amounts.

With respect to a feature of Amex EIPs, however, a holder could exercise the delivery privilege, instead of the cash-out privilege, by tendering an exercise notice to OCC between 10:00 a.m. and 8:00 p.m. on any day such exercises are permitted. Additionally, an EIP writing clearing member desiring to become, or acting on behalf of an EIP writer that desires to become, a physical assignment volunteer would tender to OCC a physical assignment volunteer notice between 10:00 a.m. and 8:00 p.m. on any day which exercises are permitted regarding such IPs. Again, OCC would accept all properly tendered exercise notices and would accept properly tendered physical assignment volunteer notices to the extent they equal or are exceeded by the number of delivery units to which physical delivery exercise notices have been accepted by OCC. If the number of delivery units for which physical assignment volunteer notices were submitted was smaller than the number of physical delivery exercise notices tendered to OCC, OCC would randomly assign a sufficient number of exercise notices in connection with the delivery privilege to non-volunteering physical IP writers to make up the imbalance. These writers would be required to pay to OCC the aggregate cash-out value on T+2. OCC then would notify the delivery facilitator,[19] before the opening of trading on the next business day, of the amount of the imbalance and it would buy the necessary shares to make up the baskets of deliverable stock in the opening transactions on the relevant markets.[20]

Delivery privilege exercises and assignment of delivery privilege exercises to physical assignment volunteers would be settled through the facilities of designated clearing corporations. Following the close of trading on the business day following the day on which delivery privilege exercise notices have been accepted by OCC, OCC would report the net amount of deliverable stock to be received or delivered to the designated clearing corporation of each clearing member. Clearing members making delivery would pay to OCC, and OCC would pay to the clearing member entitled to receive delivery, the entire "aggregate delivery value" [21] of each delivery unit on the morning of the sixth business day following the day on which a delivery privilege exercise notice is properly tendered to OCC ("T+6" or "exercise settlement date"). Under this method, each clearing member entitled to receive delivery would then pay its designated clearing corporation the appropriate price for each component stock on T+6.[22]

OCC has designed a new rule to deal with a feature unique to IPs—the dividend equivalent. Proposed Rule 1902 provides that the exchange notify OCC on each day prior to an IP dividend equivalent day the amount of the dividend equivalent to be received by IP holders and paid by IP writers on dividend equivalent day. The amount of the dividend equivalent is determined by the exchange on which the IP is traded based upon the regular cash dividends paid on stocks comprising the underlying index through the quarterly period. OCC, in turn, would notify clearing members prior to 8:00 a.m. on dividend equivalent day of their obligation to pay to OCC or to receive from OCC the net IP dividend equivalent.[23] The procedures for payments of dividend equivalents would conform to other settlement procedure provisions in OCC Rules, as discussed above.

B. Margin

As the issuer of IPs, OCC guarantees the performance of clearing member IP writers and holders. To collateralize this guarantee in the event a clearing member defaults, OCC requires writing clearing members to, among other things, deposit margin with OCC.[24]

[16] All times referred to herein are Eastern Time.

[17] *See* Securities Exchange Act Release No. 21899 (March 27, 1985), 50 FR 13444, approving OCC's revised random asssignment procedures.

[18] Aggregate cash-out value is equal to the settlement index value (based on the opening trades of the index's component stocks on T+1) as reported by the exchange or the reporting service designated by the exchange, times the index multiplier times the minimum trading unit. If the settlement index value is not reported to OCC in a timely manner, OCC would be authorized to suspend settlement regarding that class of IPs and to fix a new exercise settlement date. The settlement index value as initially reported would be presumed to be accurate and would be final for purposes of calculating the aggregate cash-out value.

[19] In the event that the agreement of a delivery facilitator to act as such, or the delivery facilitator's status as an OCC clearing member is terminated or suspended prior to the opening of trading on the trading day following the day on which an IP is exercised for delivery of stock, OCC would have the right to pay the cash-out value in lieu of stock to the extent that the exercise was assigned to the delivery facilitator rather than a volunteer writer.

[20] The delivery facilitator would buy at the opening because the aggregate cash-out value paid by non-volunteering physical IP writers would be based on the value of the underlying index calculated using opening values.

[21] Aggregate delivery regarding a delivery unit of IPs refers to the value of such delivery unit, equal to the aggregate cash-value times the delivery unit.

[22] Settlement at stock clearing corporations generally is by payment of certified check in clearinghouse (*i.e*, next-day) funds.

[23] OCC would be obligated to pay clearing members that are entitled to dividend equivalents even if OCC does not receive a payment from a clearing member that owes OCC dividend equivalents. OCC would use the defaulting clearing member's margin deposits and clearing fund contribution to pay the amount of the dividend equivalent to the clearing member entitled to receive it. If a defaulting clearing member's margin deposit and clearing fund contribution are inadequate, OCC would assess pro rata all clearing members' clearing fund contributions to the NEO clearing fund.

[24] OCC's margin requirements apply only to OCC clearing members and should not be confused with the minimum margin that must be maintained in customer accounts as set by the exchanges in accordance with Regulation T of the Federal Reserve Board ("FRB").

OCC generally would calculate clearing member margin requirements for short IP positions in a manner similar to that used for OCC's NEO margin system.[25] The NEO margin system has two components—premium margin, which can be a requirement or a credit, and additional margin. The term "premium margin" used in respect of IPs means the number of minimum trading units times the current highest asked price (or, in the case of exercised or assigned IP positions, times the aggregate current index value). "Additional margin" is calculated by determining assumed maximum one-day price movements in the underlying assets and projecting the effect of such movements on the liquidating value of the position on the basis of options pricing models.

Because IPs do not have an exercise price or expiration date, the "series" concept for option contracts would not apply. OCC would not differentiate among IPs based on the same underlying index, and a class group, *i.e.*, IPs based on the same underlying index, would include only one class of IPs. The proposal also would extend the product group concept to IPs, so that a class group consisting of a class of IPs may be margined on a combined basis with other class groups of IPs or index options, where OCC has determined that their respective underlying indexes exhibit sufficient price correlation to warrant such margin treatment. For example, a class group consisting of the XMI EIP could be combined with a class group consisting of the S&P 500 EIP, CIP and VIP for margin calculations because they both belong to the broad-based indexes product group.[26] Moreover, these class groups could be combined with index options such as the XMI option traded on the Amex, and the S&P 100 and S&P 500 Index options traded on the CBOE, because these, too, belong to the broad-based indexes product group.[27]

When writers assigned exercises of the cash-out privilege pay OCC the aggregate cash-out value on exercise settlement date on T+2, OCC would release margin held in respect of those positions. OCC would continue to require margin from clearing members with the obligation to deliver stock until exercise settlement day for physical delivery on T+6. The delivery facilitator, however, would be required only to post additional margin (*i.e.*, margin to cover OOC's exposure to an adverse market move during the day on which it was required to buy deliverable stock), and not premium margin because the assigned writers would be obligated to OCC for that amount, and that obligation would be secured by the margin deposits of those writers.[28] Because IPs would be margined under OCC's NEO margin system, the proposal provides that each clearing member's contribution to the NEO clearing fund would be calculated on the basis of margin requirements for IPs as well as NEOs.[29]

The proposal also would extend OCC's Pledge Program to IPs thereby allowing clearing members to obtain financing by pledging long IPs as collateral to support loans from banks or other clearing members. Additionally, IPs would be eligible to be pledged from segregated (customer) accounts. In this regard, Phlx and Amex requested an interpretation from the FRB [30] that IPs be treated as equity securities for purposes of the relevant provisions of Regulation T.[31] Thus, the exchanges proposed that IPs be margined like common stock.[32] Accordingly, the FRB staff issued a letter not objecting to the commencement of IPs trading employing the proposed initial and maintenance margin for IPs.[33] Therefore, long IP positions in a customer account that constitute customer margin securities would be able to be pledged to secure obligations of the carrying broker to the same extent as common stock.[34] Amendment No. 3 makes explicit that IPs could be transferred into and out of pledge accounts only in multiples of minimum trading units.

C. Suspension of an IP Clearing Member

The proposal would amend existing OCC Rules dealing with suspension of a clearing member to incorporate references to IPs. Because failure to pay a dividend equivalent or to meet settlement obligations with respect to IPs is necessarily a failure to meet a daily money obligation to OCC, OCC's proposed rules would provide for the application of its existing suspension rules and the disposition of settlement obligations through the Liquidating Settlement Account.[35] OCC would close out short IP positions [36] of a suspended clearing member, like uncovered short option positions, in the most orderly manner practicable. Any dividend equivalents that may be owed regarding short IP positions of a suspended clearing member would be withdrawn from the Liquidating Settlement Account. Proposed rule 1908 expressly would state that the suspension of a clearing member in the course of cash-out privilege exercise settlement would not affect the settlement procedures applicable to other clearing members.

Proposed Rule 1908 would provide close-out procedures in the event a clearing member that is obligated to deliver stock fails to perform, or a clearing member that is entitled to receive deliverable stock is suspended before its designated clearing corporation becomes obligated to make settlement for the deliverable stock. In the former case, OCC would direct clearing members entitled to receive

[25] OCC's NEO margin system employs a portfolio evaluation methodology using options price theory to project the cost of liquidating a portfolio of positions in the event of an assumed "worst case" change in the price of the underlying interests. *See* Securities Exchange Act Release No. 23167 (April 22, 1986), 51 FR 16127, in which the Commission approved OCC's NEO margin system.

[26] A haircut would be applied to additional margin credits to account for the lack of perfect correlation between class groups.

[27] OCC would not provide margin credit for unsegregated long physical IP positions in a clearing member's customer's account as to which the delivery privilege has been exercised, on and after the second business day after tender of the exercise notice, because OCC would not be able to control the long value of the position on and after that day.

[28] In effect, the delivery facilitator would receive a margin credit equal to the sum of the aggregate cash-out values paid to OCC in connection with assignments of physical delivery exercises, because OCC would be holding that amount pending settlement with the delivery facilitator on exercise settlement day.

[29] Delivery facilitators would not be required to contribute to OCC's NEO clearing fund on account of their facilitating activities unless they otherwise carry IP or NEO positions.

[30] *See* letters to Laura Homer, Securities Credit Officer, FRB, from Richard T. Chase, Executive Vice President, Phlx, dated February 3, 1988, and from Gordon L. Nash, Senior Executive Vice President, Legal and Regulatory Affairs, Amex, dated March 8, 1989.

[31] *See* 12 C.F.R. 220.5(c) and 220.18 (a), (c), and (f) (1988).

[32] *See* Exchange approval order at 65–66.

[33] *See* letter from Laura Homer, Securities Credit Officer, FRB, to Richard Ketchum, Director, Division of Market Regulation, SEC, dated March 20, 1989.

[34] OCC's proposed rules require the clearing member to represent that all IPs pledged from customer accounts constitute margin securities. *See* OCC Rule 611.

[35] *See* OCC Rule 1104. The Liquidating Settlement Account is a special account created upon the suspension of an OCC clearing member. The account consists of the suspended clearing member's assets on deposit with OCC, including margin deposits, securities held in bulk, and that member's OCc clearing fund contributions. OCC closes out a suspended clearing member's outstanding obligations to OCC through transactions in this account.

[36] Currently, there are no "covered short IP positions" and the provisions of the rules that address these positions would have no effect. OCC has filed a separate rule change that would set out the requirements for IP escrow receipts. *See* Securities Exchange Act Release No. 26435 (January 10, 1989), 54 FR 1832. The Commission currently is reviewing this proposal.

deliverable stock, *i.e.*, the clearing member matched against the non-performing clearing member in the stock trades reported to the stock clearing corporations, to buy in the stock for the account and liability of OCC, and settle the buy-in as quickly as possible after it occurred. In the latter case, OCC would direct delivering clearing members to sell out the deliverable stock and pay the proceeds of the sale to OCC.

The proposal also would amend OCC's By-Laws. Among other things, a new Article dealing with IPs provides definitions applicable to IPs, most of which parallel the definitions used regarding index options. The proposed Article also would set out the general rights and obligations of IP holders and writers. Additionally, in this Article OCC would reserve the right, on 30 days' notice, to exercise the cash-out privilege on behalf of all holders of a class of IPs, and thereby close out the market in that class, under certain extraordinary circumstances, *e.g.*, when there is a lack of regular trading activity in such class.

The proposal also would amend various OCC By-Laws to accommodate IPs. Among these changes, Article I would define "cleared security" to include IPs and would clarify that the terms "exercise" and "Exercising Clearing Member" can refer to exercise of the cash-out privilege in connection with IP transactions.

III. OCC's Rationale for the Proposed Rule Change

OCC believes the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because it would provide for the prompt and accurate clearance and settlement of transactions in IPs. OCC states in its filing that the proposed rule applies to IPs rules and procedures substantially similar to those that have been used in the clearance and settlement of transactions in equity and non-equity options. Moreover, OCC believes that the proposed rule change provides for the safeguarding of securities and funds in OCC's custody or control or for which OCC is responsible, in that it would apply to IPs a system of safeguards which is substantially the same as the system OCC currently uses for options.

IV. Discussion

For the reasons discussed below, the Commission is approving OCC's proposal. The Commission believes that OCC's proposal is consistent with Section 17A of the Act and OCC's obligation to promote the prompt and accurate clearance and settlement of securities transactions and to safeguard securities and funds in OCC's custody and control.[37]

Since the October 1987 market-break, a number of studies have recommended creating a market basket product.[38] These studies suggest that such a product could, among other things, ameliorate the volatility and steep price declines expeienced during and since October 1987. These studies also focus on clearance and settlement of equities, options and futures, and the need to develop safe and efficient clearance and settlement systems both within and between markets. The latter focus is the subject of this filing and order.[39]

The Commission is satisfied that the proposed system for processing IP transactions is substantially similar to OCC's well-established system for processing NEO transactions. The Commission believes that use of that system is well designed to promote the prompt and accurate clearance and settlement of transactions in IPs consistent with section 17A(b)(3) of the Act. With certain exceptions for physical IPs and IP dividend equivalent payments that will be discussed below (as well as the characteristics pertaining to the potential perpetual existence of IPs), the proposed system is identical to OCC's system for processing NEO transactions. For example, exchanges will use existing systems to report opening and closing trades in IPs to OCC. Additionally, OCC will maintain records and process opening and closing transactions,[40] will process exercise notices in connection with the cash-out privilege, and will assign those exercises to OCC clearing members with IP positions on the other side of the market in accordance with existing procedures. Finally, OCC will effect net settlement each day with its clearing members for all IP and option transactions, including amounts owed in connection with dividend equivalents, pursuant to its well-established settlement procedures.

At least one market break report[41] noted that efforts to monitor clearing firm risk more effectively are critical to reducing risk and increasing confidence in the markets. In connection with this, the report emphasized the need for market participants to have access on a timely basis to information concerning the specific size and nature of their payment obligations so that they can make appropriate arrangements to fulfill them. In this regard, the Commission is concerned that clearing members know their IP dividend equivalent payment obligation in sufficient time to collect the payment from their customers or to arrange financing to meet that obligation. The Commission notes that although many of the indexes underlying IPs are well-established and widely disseminated, there are no arrangements for separately quoting the value of the dividend equivalent at this time. The Commission recognizes that the formulas for calculating the different index values will be set out in exchange rules and, therefore, a clearing member could compute the amount due with respect to each IP trading unit from published reports of dividends paid before dividend equivalent day. Nevertheless, the Commission urges OCC, in the months after IP trading commences, to monitor the ability of clearing members to meet their dividend equivalent obligations and to discuss with clearing members and the exchanges whether there is a need for earlier dissemination of IP dividend equivalent values.[42]

The Commission agrees with OCC that is is appropriate to include IPs in OCC's existing NEO margin system for OCC clearing members. Like NEOs, IPs generally are cash-settled.[43] In

[37] Several commentators expressed the belief that IPs are stock index futures, not securities. That issue is discussed in detail in the order approving the exchanges' proposal to trade IPs and, therefore, is not addressed in this order. This order incorporates the exchanges' approval order rationale for concluding that IPs are securities. *See* note 7, *supra*.

[38] *See, e.g.*, N. Katzenbach, *An Overview of Program Trading and Its Impact on Current Market Practices* (December 21, 1987) and Division of Market Regulation, *The October 1987 Market Break* (February 1988) ("Staff Report"). *See also* Report of the Presidential Task Force on Market Mechanisms (January 1988) and the Interim Report of the Working Group on Financial Markets (May 1988) ("Working Group Report") for other recommendations arising out of the October 1987 market break.

[39] *See* Exchange approval order, *supra*, note 7, for a discussion of the benefits of a market basket product.

[40] Unlike NEOs where OCC collects the premium from IP purchasers and requires writers to post as margin the premium plus an additional margin amount, OCC would collect from IP purchasers the aggregate index value and IP writers would be required to post (in the form of cash or other adequate collateral) the highest asked price or, for exercised or assigned IPs, the aggregate index value, plus an additional margin amount.

[41] *See* Working Group Report, *supra*, note 37.

[42] Based on experience regarding the actual settlement of IP dividend equivalent obligations, the Commission will review whether the exchanges should make available, on a routine basis, information regarding estimated or accrued dividend equivalents.

[43] Physical IPs, which are settled by delivery of the component stocks in the underlying index, are discussed below.

approving the NEO margin system,[44] the Commission determined that it provided a refined methodology for calculating margin, resulting in increased protection to OCC against adverse price movements in underlying assets. Additionally, recognizing that no margin system is designed to protect against the most extreme market moves, the Staff Report issued in connection with the October market break generally concluded that OCC's NEO margin system is a reliable method of risk measurement. Nevertheless, the Commission expects OCC to review and reassess periodically the NEO margin system and to make modifications, where appropriate, to deal safely with more volatile markets.[45]

The proposal also extends OCC's Pledge Program to proprietary and market maker IP positions. Thus, clearing members will be able to pledge IP positions maintained in proprietary and market maker accounts to lenders.[46] Additionally, because the FRB has determined that IPs may be treated as margin securities under Regulation T, the proposal would extend OCC's Pledge Program to IP positions in customer accounts.[47] The Commission supports this extension of the Pledge Program because it provides clearing members the ability to obtain additional financing through the pledge of customer IP positions maintained in margin accounts. Moreover, the Commission believes that use of OCC facilities to conduct this pledge activity should provide greater certainty to banks financing clearing member, broker-dealer, and customer IP positions.

The Commission notes that, unlike OCC rules dealing with NEOs, the proposed IP rules provide OCC the authority to exercise the cash-out privilege for an entire class of IPs on thirty days' notice to IP holders and writers in certain limited, extraordinary circumstances. For example, such circumstances would include, but are not limited to, a lack of regular trading activity in a class of IPs or the impending termination of business on the part of OCC or the exchange on which that class of IPs is traded. The Commission agrees with OCC that it should have the ability to terminate a class of IPs under extraordinary circumstances because, unlike options which expire at a pre-established time, IPs are of unlimited duration. The Commission recognizes that in certain circumstances OCC may want to act expeditiously to close out a class of IPs. Nevertheless, the Commission notes that OCC's By-Laws authorize OCC to exercise the cash-out privilege on a *minimum* of thirty days' notice. The Commission believes this period provides sufficient notice to allow market participants to make any needed adjustments to other related securities or futures positions. Nevertheless, given the extraordinary nature of a mandatory cash-out, the Commission expects OCC to make every effort to provide more than thirty days' notice where possible.

The Amex EIP provides holders exercising the delivery privilege the ability to obtain the basket of securities underlying either the XMI or the S&P 500 Index, thus creating a mechanism for the delivery of a standardized portfolio of equity securities. An EIP holder exercising the delivery privilege could obtain shares in as many as 500 companies. To otherwise establish such a portfolio would require the purchase of 500 different securities.

OCC will process exercises of the delivery privilege in a manner similar to that used for individual equity options with some modifications to reflect the unique characteristics of EIPs. For example, OCC will report EIP matched trade information to the designated clearing corporation reflecting the right of the exercising clearing member to receive shares in each of the component stocks underlying the EIP index and the obligation of either the delivery facilitator or a volunteering writing clearing member, as contra party to the exercising clearing member, to deliver an equal amount of shares in each of the component stocks. Because matched EIP trades will be processed in the designated clearing corporation's continuous net settlement ("CNS") system,[48] the designated clearing corporation will step between the exercising clearing member and the contra party and, in place of OCC, will guarantee those deliveries. Thus, clearing members will be able to net deliver and receive obligations in connection with physical EIP exercises with other activity in the underlying component stocks. Nevertheless, because the designated clearing corporations' CNS systems require clearing members to pay market value for securities delivered to them and pays to delivering clearing members the market value of securities they deliver (in satisfaction of their CNS delivery obligations), OCC must provide funds to the clearing member who will receive securities from the designated clearing corporation (*i.e.*, the exercising clearing member) so that the exercising clearing member can pay the designated clearing corporation and the designted clearing corporation can pay the delivering clearing member (*i.e.*, either the delivery facilitator or a volunteering EIP writer). Because the clearing member exercising the EIP physical delivery privilege previously paid the full value of the index for the right to receive the components stocks, OCC and the designated clearing corporations have converted a free delivery obligation into a delivery against payment or receipt against payment obligation.

The Commission believes it is appropriate to settle exercises of physical EIPs in this manner because it is consistent with one-account settlement.[49] The conversion of a free delivery obligation into a delivery against payment obligation, however, raises two concerns about cash flows. The proposed process for settling EIP delivery privilege exercises requires coordinated funds flow among many parties. The Commission notes that, in such a system, there is a risk of default by persons holding funds pending completion of the delivery process.[50]

[44] *See, supra*, note 25.

[45] OCC recently completed a review of its margin system. *See* OCC, The Backup System: A Special Study by the Margin Committee Subcommittee (August 31, 1988). The subcommittee's report contains a number of recommendations concerning OCC's margin policies and practices. The Commission understands that OCC's Board of Directors is considering those recommendations and will implement many in the near future.

[46] OCC's Pledge Program is a convenient mechanism for processing pledge loans to clearing members because OCC will recognize the pledgee's interest in pledge positions. *See* Securities Exchange Act Release Nos. 24171 (March 4, 1987), 52 FR 7724; 22276 (July 30, 1985), 50 FR 31804; 20994 (May 25, 1984), 49 FR 23132; and 19956 (July 19, 1983), 48 FR 33956.

[47] Long option positions, although they can be paired with short options to reduce margin requirements, currently have no loan value for purposes of Regulation T.

[48] CNS uses the system price (usually the previous days' reported closing price) to price members' payment obligations. Delivery and receive obligations are adjusted on a daily basis by a mark-to-the-market. Thus, by paying a mark-to-the-market, a clearing member with a right to receive can use that long position to offset a delivery obligation that will arise tomorrow. In CNS, every right to receive carries the obligation to pay, and every obligation to deliver carries the right to receive the system price.

[49] Section 17A requires the Commission to facilitate the development of a national clearance and settlement system. One feature of such a system is one-account settlement, *i.e.*, the ability to clear and settle through one entity all securities trades, regardless of the location of the other party to the trade or the market in which the trade is executed.

[50] For example, generally only broker-dealers hold memberships in OCC and designated clearing corporations, *e.g.*, National Securities Clearing Corporation ("NSCC"). Therefore, a large institution that maintains EIP positions must rely on the creditworthiness of a broker-dealer in converting its

Continued

The Commission acknowledges OCC's representations[51] that discussions are underway with the designated clearing corporations to develop a more simple process for settling exercises of physical EIPs. Nevertheless, the Commission believes it is imperative, within the months after IP trading commences, for OCC and the designated clearing corporations to design a system through which OCC can pay directly to the designated clearing corporation cash that would otherwise be paid to the exercising clearing member (perhaps using the margin deposits posted by the assigned EIP holders) on behalf of the exercising clearing member, which would entitle the exercising clearing member to receive securities, subject to daily marks-to-the-market, without payment on delivery.[52]

On the basis of the foregoing, the Commission finds that OCC's proposed rule change is consistent with the Act and, in particular, with section 17A of the Act.

Accordingly, *It Is Therefore Ordered*, under section 19(b)(2) of the Act, that the proposal (File No. SR–OCC–88–02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 11, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–9231 Filed 4–17–89; 8:45 am]

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EIP positions to a portfolio of the underlying securities. If the broker-dealer clearing member fails while processing EIP exercises on behalf of the institutional customer and losses exceed Securities Investor Protection Corporation ("SIPC") insurance limits, that institution may suffer financial loss. Instead of having an identifiable interest in the underlying securities or the EIPs, the institution may share pro rata with all other customers in the pool of customer property maintained by the broker-dealer.

[51] Telephone conversation between Judith Poppalardo, Attorney, SEC, and James R. McDaniel, Schiff Hardin & Waite, on February 3, 1989.

[52] Such a system exists today at at least one designated clearing corporation albeit for different purposes. *See* Securities Exchange Act Release No. 25107 (October 1, 1987), 52 FR 43959 (approving a recent NSCC rule change that would allow an NSCC-Depository Trust Company ("DTC") member to instruct NSCC to charge the member's settlement account for 130% of the value of securities the member anticipated borrowing, but, in fact, did not receive. NSCC would segregate these funds in a fully paid-for account. This protects an NSCC–DTC member who makes a security delivery in anticipation of borrowing stock from being out of compliance with Rule 15c3-3 under the Act [the customer protection rule], if the stock is not borrowed).

SECURITIES AND EXCHANGE COMMMISSION

[Release No. 34–26714; File No. SR-Phlx-89–16]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc.; Relating To Disqualification of Specialists From Receiving New Allocations Following Removal of Listings

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice hereby is given that on March 23, 1989, the Philadelphia Stock Exchange, Inc. ('PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b–4 under the Act, hereby submits as a proposed rule change supplementary material to its Rule 506, which Rule delineates the application process for an equity book or options class in connection with an allocation or reallocation by the PHLX Allocation, Evaluation and Securities Committee. The proposed supplementary material provision would prohibit a specialist from applying for any new listings for up to a year after a security was taken away from the specialist in: (1) A reallocation proceeding, or (2) a disciplinary proceeding. The text of the proposed commentary is as follows (new text is italicized):

Rule 506. (a) through (e) No change.

* * * Supplementary Material.

.01 A specialist may not apply for any new listings for a six (6) month period after a stock or option was taken away from the specialist in: (i) an involuntary reallocation proceeding; or (ii) a disciplinary proceeding. Such specialist is also prohibited from applying for any new listings for a second six month period unless the Exchange is satisfied that adequate corrective actions have been undertaken by the specialist.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

Although the proposed restriction is presented as supplementary material to PHLX Rule 506, its effect and intent would be to complement the provisions of PHLX Rules 511 and 515. Rule 511(C) allows the Exchange to reallocate an equity book or options class if the specialist unit is found to have performed below minimum standards. Rule 515 and the supplementary material thereto delineate the format for specialist evaluations by the Exchange. These rules do not specifically restrict a specialist unit's ability to receive new allocations following the reassignment of a book or class due to a reallocation or disciplinary action.

It would be inappropriate for a specialist unit to obtain a new listing during a period of time immediately subsequent to its loss of a listing. The PHLX Allocation Committee would probably not award new books during such period. It would strengthen the PHLX allocations rules, however, to specifically codify that result. It would also provide specialists notice of definite repercussions for substandard performance with respect to their specialist responsibilities or being subject to serious disciplinary findings.

It should be noted that the proposed rule change would not constitute a permanent bar to obtaining new listings. Rather, the prohibition would be merely long enough to grant a specialist sufficient time to remedy the deficiencies which lead to the reallocation of its listing(s). In this regard, it should be further noted that a second six (6) month prohibition would only be imposed if the Exchange is not satisfied that adequate corrective actions have been undertaken by the specialist which gave rise initially to specialist books being removed from the unit initially.

The proposed rule change is consistent with Section 6(b) of the Act in that it will enhance the PHLX's ability to ensure the fair allocation of securities to specialist units and to prevent the allocation of securities to specialist units whose performance is below acceptable standards. Further, it is

consistent with investor protection, the public interest and the maintenance of fair and orderly markets to impose temporary allocation restrictions on specialists who have had a security reallocated due to substandard performance and/or disciplinary actions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will: (A) By order approve such proposed rule change, or, (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Stret NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 9, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 11, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-9232 Filed 4-17-89; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16908; (812-7123)]

EuroPacific Growth Fund; Notice of Application

April 10, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: EuroPacific Growth Fund.

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) and Rule 22c-1 thereunder.

Summary of Application: Applicant seeks an order amending a prior order (Investment Company Act Release No. 14195, October 15, 1984) ("Prior Order") which permits the assessment and waiver of a contingent deferred sales load ("CDSL"). The amended order would permit the waiver of the CDSL in certain additional situations, and would provide a credit for any CDSL paid in connection with the redemption of any shares followed by a reinvestment effected within 30 days of such redemption.

Filing Dates: The application was filed on September 12, 1988, and amended on February 13 and March 15, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on May 5, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personnally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, c/o Michael J. Downer, Esq. Capitol Research and Management Company, 333 South Hope Street, Los Angeles, CA 90071.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst, (202) 272-3420, or Brion R. Thompson, Branch Chief, (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch in person, or the SEC's commercial copier, (800) 231-3282 (in Maryland, (301) 258-4300).

Applicant's Representations

1. Applicant is registered under the 1940 Act as an open-end, diversified management investment company. Applicant's shares are offered to the public through broker-dealers that have dealer agreements with American Funds Distributors, Inc., Applicant's pricipal underwriter. Applicant offers its shares for sale at net asset value plus a traditional sales charge on transactions involving less than $1,000,000. For purchases of $1,000,000 or more, Applicant imposes no front-end sales charge, thereby enabling such purchasers to have the proceeds of their purchase payments fully invested at the time the investments are made.

2. The Prior Order, which was issued on behalf of Applicant and other funds in the American Funds Group of Funds ("American Funds") permits the imposition of a CDSL on certain redemptions of shares with an initial price of $1,000,000 or more. The amount of the CDSL payable upon redemption is equal to 1% of the lesser of the net asset value of Applicant's shares at the time of purchase or the net asset value of the shares at the time of redemption. The maximum amount of any CDSL or any combination of CDSL and sales load payable at the time Applicant's shares are purchased, does not exceed the maximum sales charge that could have been imposed at the time the shares were purchased under Article III, section 26(d) of the Rules of Fair Practice promulgated by the National Association of Securities Dealers. No amount is charged to shareholders or to the Applicant that is intended as payment of interest or any similar charge related to a CDSL.

3. In addition, no CDSL is imposed when the investor redeems on: (1) Amounts derived from increases in the value of the account above the total cost of shares being redeemed due to increases in the net asset value per

share of Applicant; (2) shares acquired through reinvestment of dividend income and capital gains distributions; or (3) shares held for more than 12 months. In determining whether a CDSL is payable, it is assumed that shares held the longest are the first to be redeemed.

4. Applicant currently waives the CDSL on: (i) An exchange of shares offered by Applicant for shares of the Other Funds in the American Funds Group, and (ii) redemptions in connection with distributions from retirement plans qualified under the Internal Revenue Code ("Code") section 401(a) when such redemptions are necessary to make distributions to plan participants.

5. Applicant proposes to amend the Prior Order to permit additional waivers of the CDSL on redemptions in connection with (i) Distributions from a Custodial Account under Code Section 403(b)(7) ("403(b) plan") or an IRA due to death, disability or attainment of age 59½, (ii) a tax-free return of an excess contribution to an IRA, (iii) distributions by other employee benefit plans to pay benefits, and (iv) distributions from a retirement plan qualified under Code section 401(a) due to death. Applicant also proposes to amend the Prior Order to provide a credit for any CDSL paid in connection with a redemption of shares followed by a reinvestment of the proceeds of the redemption effected within 30 days of the redemption.

6. The Applicant's Board of Trustees will consider, among other items, the amount of revenue generated by the CDSL and paid to Applicant's distributor during their annual review of the Applicant's distribution plan adopted under Rule 12b-1 under the 1940 Act.

Applicant's Legal Analysis

1. Applicant asserts that the requested waiver of the CDSL for retirement plan distributions is justified on basic considerations of fairness. In each situation in which the CDSL would be waived, the redeeming shareholder is a member of a class of sharholders favored under the tax laws and in fairness such redeeming shareholder should not be penalized by a sales charge. Also, the requested waiver benefits remaining shareholders by encouraging retriement plan investments. These large investments considerably increase the Applicant's asset base and average account size, thereby reducing Applicant's operating expenses.

2. Applicant further asserts that the proposed waiver of the CDSL on redemptions in connection with the IRAs, 403(b) plans and other employee benefit plans reflects the Code's granting of favorable tax treatment to accumulations under such plans and imposing additional taxes on early retirement plan distributions. Similarly, waiving the charge on redemptions for distributions from retirement plans qualified under Code section 401(a) due to death is appropriate for policy reasons, as it is consistent with the Code's waiver of the early distribution penalty for distributions due to the participant's death.

3. Applicant submits that the proposed credit of the CDSL for redemptions and subsequent reinvestments within 30 days also serves shareholder interests. Consistent with the provisions of Rule 22d-1, Applicant permits redeemed shareholders to reinvest the proceeds of the redemption within 30 days without paying an initial sales charge, thereby allowing investors to avoid the sales load if they erroneously redeemed or had second thoughts about the redemption.

Applicant's Conditions

If the request to amend the Prior Order is granted, Applicant agrees to the following conditions:

1. Applicant will comply with the provisions of Rule 12b-1 under the 1940 Act both currently and as that rule may be modified by the SEC in the future.

2. Applicant will comply with the provisions of Rule 22d-1 under the 1940 Act.

3. Applicant will comply with the provisions of proposed Rule 6c-10 under the 1940 Act as currently stated and as it is adopted.

4. Applicant agrees that the exemptive relief requested does not cover any person, or any affiliated person of such person (or any affiliated person of such affiliated person) who holds Applicant out to the public, or who, directly or indirectly, causes Applicant to be held out to the public as being "No Load" or uses, or who, directly or indirectly, causes the use of terminology that, given the context and presentation, is likely to convey to investors the impression that no charges for sales or promotional expenses are imposed on shares issued by Applicant.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-9233 Filed 4-17-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[PUBLIC NOTICE CM-8/1279]

National Committee of the U.S. Organization for the International Radio Consultative Committee; Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on April 26, 1989 at the Department of State, 2201 C Street NW., Washington, DC. The meeting is planned for all day, convening in Room 1205 at 9:30 in the morning and Room 1912 at 1:30 in the afternoon. An escort will be at the main entrance to the building (22nd and C Streets) during the periods 9:15-9:35 a.m. and 1:15-1:35 p.m. to facilitate entry.

The purpose of the United States Organization is to assist and advise the Department on matters concerning participation in the international CCIR activities. It is charged with promoting the best interests of the United States, providing advice on matters of policy and positions in preparation for Study Group meetings, and recommending the disposition of proposed U.S. contributions to the international CCIR which are submitted to the Committee for consideration. The National Committee constitutes a steering body, and as such has purview of the work of the national study groups and other activities.

The main purposes of the meeting will be to:

1. Report on preparations for the CCIR Final Study Group Meetings to be held in the Fall of 1989;

2. Identification of major upcoming CCIR issues;

3. Consideration of future activities; (the following items will be taken up after 1:30 p.m.)

4. Report on preparations for the CCIR Extraordinary Study Group 11 Meeting on high definition television (HDTV) to be held May 10-16, 1989 in Geneva;

5. Other business and next meeting.

Members of the general public may attend the meeting and join in discussions subject to instructions of the Chairman. Admittance of public members is limited to available seating. All persons wishing to attend the meeting must contact the office of Richard Shrum, Department of State, Washington, DC; phone (202) 647-2592, telefax (202) 647-5957. Entrance to the State Department building is controlled, and attendees must use the C Street entrance.

Date: April 7, 1989.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 89-9176 Filed 4-17-89; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended April 7, 1989

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 application, or motion 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 No. 46230

Date filed: April 4, 1989.

Due date for answers, conforming applications, or motion to modify scope: May 1, 1989.

Description: Application of Air Alliance Inc. pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign (a) scheduled air transportation of persons, property, and mail between Boston, Massachusetts and Montreal, Canada, and (b) charter air transportation of persons, property, and mail between points in Canada and points in the United States.

Docket No. 46234

Date filed: April 4, 1989.

Due date for answers, conforming applications, or motion to modify scope: May 2, 1989.

Description: Application of Eagle Air, Ltd., pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit to engage in charter foreign air transportation of property and mail between a point or points in The Turks and Caicos Islands and a point or points in the United States of North America, with blind sector traffic rights.

Docket No. 46236

Date filed: April 4, 1989.

Due date for answers, conforming applications, or motion to modify scope: May 2, 1989.

Description: Application of Continental Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, requests a certificate of public convenience and necessity which will authorize Continental to provide scheduled foreign air transportation of persons, property and mail between Honolulu, Hawaii, on the one hand, and Nagoya, Japan, on the other hand.

Docket No. 45637

Date filed: March 27, 1989.

Description: Amendment to the Application of Continental Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations to request a certificate of public convenience and necessity authorizing foreign air transportation of persons, property and mail as follows; Between the terminal point Los Angeles, California, and the coterminal points San Jose Del Cabo (Los Cabos), La Paz, Loreto, and Huatulco, Mexico.

Docket No. 45783

Date filed: March 27, 1989.

Description: Amendment to the Application of Continental Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations to add the following new subparagraph to Paragraph 3; (5) Between the terminal point San Diego, California and the terminal point Mexico City/Toluca, Mexico.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-9156 Filed 4-17-89; 8:45 am]

BILLING CODE 4910-62-M

Maritime Administration

Eligibility of Vessels To Carry Preference Cargoes Under the Food Security Act of 1985; Policy Determination

Notice is hereby given that the Maritime Administration (MARAD) has determined, as a matter of policy, that the 3-year rule, given in section 901(b)(1) of the Merchant Marine Act, 1936, as amended (Act), applies to cargoes specified in section 901b. Accordingly, the Chief Counsel's advisory letter of July 11, 1988 is hereby withdrawn. This determination maintains the historical *status quo*, thus providing an opportunity for the Congress, if desired, to address the ambiguity created by the absence of the 3-year wait requirement in section 910k. The background and basis for this determination follow.

On July 11, 1988, the MARAD Chief Counsel responded to a written request for interpretive advice regarding certain eligibility criteria for U.S.-flag vessels to transport agricultural preference cargoes under amendments to the Act, contained in the Food Security Act of 1985 ("the Food Security Act"). The Chief counsel's July 11, 1988 letter advised that vessels newly documented under U.S. registry that meet the national security and age criteria specified in section 901k of the Act, as eligible to carry the incremental 25 percent of agricultural preference cargo under provisions of the Food Security Act (contained in section 901b(a)(1) of the Act), and that such vessels are not subject to the 3-year waiting period after U.S. documentation imposed on a eligibility of "privately owned United States-flag commercial vessels" built or rebuilt outside the United States or documented under any foreign registry pursuant to section 901(b)(1) of the Act.

On December 21, 1988, MARAD was petitioned by a U.S.-flag operator (Petitioner) engaged in the carriage of preference cargoes. Petitioner requested MARAD to withdraw the July 11, 1988 Chief Counsel advisory letter, pending reconsideration. On January 4, 1989, Petitioner was notified that MARAD would reconsider the advisory letter and notice was concurrently published in the Federal Register (54 FR 223), inviting public comment. In addition to a supplemental submission from Petitioner, 28 timely comments were received, 10 in support of the Chief Counsel's position and 18 in accord with Petitioner's view that the advisory letter was erroneous and should be withdrawn. Both legal arguments and policy issues concerning the Chief Counsel's advice were raised in several of these submissions.

MARAD undertook review and analysis of all submissions including later filed comments. The record indicates that the constructions of the pertinent sections of the Act by both the Petitioner and the Chief Counsel are reasonable legal interpretations. It is further noted that the language of section 901b(c)(1), when considered in conjunction with section 901k, leaves room for honest difference of opinion concerning the applicability of the 3-year rule, as the record indicates. Therefore, MARAD will maintain the *status quo* by interpreting the statute to require the 3-year waiting period, reflecting traditional interpretation and recognizing the repeated failures of recent legislative initiative to remove it entirely.

MARAD has a broad charter under the Act, which includes the policy aspects of statutory implementation. Given more than one reasonable interpretation of the statutory provisions at issue and the lack of any clear statement in the legislative history on point, MARAD must look to the policy considerations involved. To the extent that the inapplicability of the 3-year rule to the carriage of the incremental 25 percent would result in the addition to the U.S.-flag fleet of vessels that can satisfy the age and national-security utility criteria of section 910k, it would be consistent with much of the policy mandate in section 101(d) of the Act. However, it is inconsistent with the clause "constructed in the United States" in that section. Furthermore, because of the potentially adverse impact of such reflagging on existing U.S.-flag vessels the result could be no net increase in the cargo carrying capacity of the U.S.-flag fleet.

In addition, based on filings in the reconsideration Docket No. P-002, MARAD is cognizant that three members of Congress who were intimately involved in the process of developing the agriculture/maritime compromise in the Food Security Act have submitted comments stating their firm recollection that section 901k was intended to supplement, rather than supplant, the 3-year rule for vessels eligible to carry the incremental cargoes. Given these considerations, MARAD's policy mandate requires the Chief Counsel's advisory letter of July 11, 1988 be withdrawn.

Sec. 204(b) Merchant Marine Act of 1936, as amended (46 U.S.C. 1114(b)); 49 CFR 1.66.

Dated: April 13, 1989.

James E. Saari,

Secretary.

[FR Doc. 89-9299 Filed 4-17-89; 8:45 am]

BILLING CODE 4910-81-M

Research and Special Programs Administration

Office of Hazardous Materials Transportation; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before May 18, 1989.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	*Applicant*	*Regulation(s) affected*	*Nature of exemption thereof*
10145-N	Automatic Sprinkler Corporation of America, Cleveland, OH.	49 CFR 173.304(a)(2), 173.34(d)	To manufacture, mark and sell DOT Specification cylinders equipped with a fusible safety relief device to be used as a fire extinguisher and charged with a nonflammable liquefied compressed gas. (Mode 1)
10146-N	L'Air Liquide Sassenage, FR	49 CFR 173.315(a)	To manufacture, mark, and sell a non-DOT specification insulated portable tank with vacuum plus gas helium shield designed and constructed in accordance with Section VIII of the ASME code for transportation of Helium, refrigerated liquid, classed as a nonflammable gas. (Modes 1, 3)
10147-N	E F I Corporation San Jose, CA	49 CFR 173.302(a)(1), 173.304(a)(1), 175.5.	To manufacture, mark and sell a non-DOT specification filament—wound reinforced plastic—fiberglass high pressure cylinder having an aluminum liner for shipment of certain non-flammable and flammable compressed gases. (Modes 1, 2, 3, 4, 5)
10148-N	Pro-Tech-Tube Inc. Kansas City, MO	49 CFR 173.387(b)(2)(iii)	To authorize shipment of a viable microoraganism classed as an etiologic agent in an inner container surrounded with an absorbent material impregnated with a germicidal pesticidal substance overpacked in a metal tube. (Modes 1, 2, 3, 4, 5)
10149-N	Union Carbide Industrial Gases, Inc. Danbury, CT.	49 CFR 173.31(c)(13)(iv)	To authorize use of DOT Specification 113A60W cryogenic liquid cars which have not had the frangible discs located in or on the external casing or jacket replaced on an annual basis. (Mode 2)
10150-N	Morton Thiokol, Inc. Brigham City, UT	49 CFR 173.91(a)(2)	To authorize shipment of Special Fireworks, Class B explosives in non-DOT specification wooden boxes constructed in accordance with M I L-B-2427, Type II, Grade A. (Modes 1, 3)
10151-N	Sigri Corporation Somerville, NJ	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34.	To manufacture, mark and sell a non-DOT specification full removable head salvage cylinder of 45 gallon capacity for over packing damaged or leaking packages of pressurized and non-pressurized hazardous materials. (Mode 1)
10152-N	Asahi Seisakusho Co., Ltd Saitama-Japan.	49 CFR 173.301(h), 173.302(a)(1), 173.305(a), 34(a)(1).	To authorize manufacture marking and sale of a non-DOT cylinder similar to the 3T cylinder for transporting high pressure air, oxygen, helium oxygen and helium mixture (50% oxygen maximum) classed as nonflammable gases. (Modes 1, 2, 3, 4)
10153-N	American Cyanamid Company Wayne, NJ.	49 CFR 173.377(h)	To authorize shipment of organic phosphate compound mixture, dry, classed as a poison B in flexible intermediate bulk containers containing 1102.3 pounds of product. (Mode 1)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10154-N	Olin Corporation East Alton, IL	49 CFR 172.300, 173.10(c)(g), 173.107(c), (g).	To authorize shipment, in bulk, of scrap small arms primers and flash tubes which are contained in a velostat bag placed in 2 polyethylene bags placed in a ½ gallon round cardboard container covered with No. 2 fuel oil with up to 3 of the ½ gallon containers in a wooden box. (Mode 1)
10155-N	Walpole, Inc. Mt. Holly NJ	49 CFR 173.182, 173.217, 173.245b, 173.365, 173.366, 173.368.	To manufacture mark and sell a non-DOT specification collapsible, flexible, woven polypropylene bulk bag with a capacity of approximately 2,000 lbs. for use in transporting various solid oxidizers, corrosive materials, and class B poisons. (Modes 1, 2, 3)
10156-N	Van Leer Containers, Inc. Chicago, IL	49 CFR Part 173, Subpart F	To manufacture, mark and sell a non-DOT specification 30 litre capacity non-resuable composite container consisting of a blow molded polyethylene inner container with a steel overpack for transportation of various corrosive liquids. (Modes 1, 2, 3, 4)
10157-N	Now Technologies, Inc. Bloomington, MN.	49 CFR 173.268, 173.272	To manufacture, mark, and sell a non-DOT high desity polyethylene bottle with an inner teflon pouch liner and a capacity not to exceed 10 liters packed up to 6 in a fiberboard box for shipment of nitric acid, not over 72%, classed as an oxidizer; and sulfuric acid, classed as a corrosive material. (Mode 1)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on April 10, 1989.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89-9144 Filed 4-17-89; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Transportation; Applications for Renewal or Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of applications have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before May 3, 1989.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
2582-X	Air Products and Chemicals, Inc. Allentown, PA	2582
2582-X	Solkatronic Chemicals, Inc., Fairfield, NJ	2582
2582-X	Matheson Gas Products, Inc., Secaucus, NJ	2582
4291-X	United Technologies Corp./Chemical Systems Div., San Jose, CA	4291
4453-X	El Dorado Chemical Company, St. Louis, MO	4453
4453-X	Pacco, Inc., Olympia, WA	4453
4453-X	Alamo Explosives Company, Inc., Houston, TX	4453
4453-X	Strawn Explosives, Inc., Dallas, TX	4453
4453-X	IRECO, Incorporated, Salt Lake City, UT	4453
4453-X	Austin Powder Company, Cleveland, OH	4453
4453-X	Wampum Hardware Company, New Galilee, PA	4453
4453-X	A.M. Contracting Grove City, PA	4453
5243-X	Austin Powder Company, Cleveland, OH	5243
5895-X	Explosive Technology, Inc., Fairfield, CA	5895
6626-X	National Welders Supply Company, Inc., Charlotte, NC	6626
6712-X	Air Products and Chemicals, Inc., Allentown, PA	6712
6974-X	Department of the Army, Falls Church, VA	6974
7023-X	Texas Instruments, Inc., Dallas, TX	7023
7051-X	Aldrich Chemical Company, Inc., Milwaukee, WI	7051
7051-X	Ozark-Mahoning Company, Tulsa, OK	7051
7052-X	Perfco Wireline, Inc., Houma, LA	7052
7060-X	Central Skyport Inc., Columbus, OH	7060
7282-X	MarChem Corporation, Maryland Heights, MO	7282
7440-X	Revlon Professional Products Group, Jacksonville, FL (see footnote 1)	7440

Application No.	Applicant	Renewal of exemption
7546-X	National Aeronautics and Space Administration, Washington, DC	7546
7555-X	Provost Cartage, Incorporated, Ville d'Anjou, Quebec, CN	7555
7616-X	Wisconsin Central, Ltd., Rosemont, IL	7616
7835-X	AGA Gas, Inc., Cleveland, OH	7835
8059-X	EFI Corporation, San Jose, CA (see footnote 2)	8059
8131-X	National Aeronautics and Space Administration, Washington, DC	8131
8195-X	McDonnell Douglas Corporation, Saint Louis, MO	8195
8214-X	Morton Thiokol, Inc./Automotive Products Div., Ogden, UT (see footnote 3)	8214
8215-X	Olin Corporation/Winchester Group, East Alton, IL (see footnote 4)	8215
8225-X	Hoover Group, Inc., Beatirce, NE	8225
8230-X	J.T. Baker Inc., Phillipsburg, NJ	8230
8249-X	LPS Industries Inc., Newark, NJ	8249
8255-X	Applied Companies, San Fernando, CA	8255
8256-X	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE	8256
8273-X	TRW Company, Romeo, MI (see footnote 5)	8273
8516-X	Austin Powder Company, Cleveland, OH	8516
8518-X	Ecology Control Industries, Ventura, CA	8518
8518-X	International Technology Corporation, Martinez, CA	8518
8518-X	Denver Truck Sales, Commerce City, CO	8518
8518-X	Central Pumping Company, Inc., La Habra, CA	8518
8579-X	Austin Powder Company, Cleveland, OH	8579
8579-X	ETI Explosives Technologies International Inc., Wilmington, DE	8579
8621-X	I.T.O. Corporation, Gulfport, MS	8621
8645-X	A.M. Contracting, Grove City, PA	8645
8667-X	Federal Emergency Management Agency, Washington, DC	8667
8678-X	Eurotainer, S.A., Paris, France	8678
8678-X	E.I. du Pont du Nemours & Company, Inc., Wilmington, DE	8678
8684-X	Great Lakes Chemical Corporation, El Dorado, AR	8684
8689-X	Schlumgerger Well Services, Houston, TX	8689
8706-X	International Technology Corporation, Martinez, CA	8706
8710-X	Akzo Chemicals Inc., formerly Akzo Chemie America, Chicago, IL	8710
8723-X	Winchester Building Supply Co., Inc., Winchester, VA	8723
8723-X	Cherokee Explosives, Inc., Plainville, CT	8723
8723-X	Wampum Hardward Co., New Galilee, PA	8723
8751-X	Delta Tech Service, Inc., Martinez, CA	8751
8839-X	Poly Processing Company, Monroe, LA (see footnote 6)	8839
8965-X	Pressed Steel Tank Company, Inc., Milwaukee, WI	8965
8977-X	Eurotainer, S.A., Paris, France	8977
8988-X	GOEX, Inc., Cleburne, TX	8988
8999-X	Scott Aviation Div. of Figgie International, Inc., Lancaster, NY	8999
9026-X	Sonoco Fibre Drum, Inc., Lombard, IL	9026
9040-X	Sonoco Fibre Drum, Inc., Lombard, IL	9040
9048-X	Brooks Instrument Div./Emerson Electric Co., Statesboro, GA	9048
9061-X	SSI Group, Ltd., Fairdale, KY	9061
9064-X	Preussag Pure Metals GMBH, Goslar, West Germany	9064
9064-X	Corning Glass Works, Corning, NY	9064
9064-X	Amalgamet Canada—Division of Premetalco, Inc., Toronto, Ontario, Canada	9064
9077-X	Central Vermont Railway, Inc., St. Albans, VT	9077
9108-X	The Ensign-Bickford Company and Distributors, Simsbury, CT	9108
9110-X	Kemanord, Inc., Columbus, MS	9110
9141-X	Bristol Flare Corporation, Bristol, PA	9141
9142-X	EVA Eisenbahn-Verkehrsmittel GmbH, Dusseldorf, West Germany	9142
9275-X	McCormick & Company, Inc., Hunt Valley, MD	9275
9371-X	Ronson Aviation Incorporated, Trenton, NJ	9371
9416-X	Platte Chemical Company, Fremont, NE	9416
9418-X	West Texas Fabrication, Odessa, TX	9418
9601-X	Trical, Inc., Hollister, CA	9601
9623-X	Ireco Incorporated, Salt Lake City, UT (see footnote 7)	9623
9645-X	Bonar Plastics Ltd., Lindsay, Ontario, CN (see footnote 8)	9645
9663-X	Siepe GmbH, Federal Republic Germany	9663
9666-X	Akzo Chemicals Inc., Chicago, IL	9666
9701-X	Trimeg Holdings Ltd., Calgary, Alberta, CN	9701
9741-X	Overseas Trading Co., Inc., McAdoo, PA	9741
9742-X	Bromine Compounds Ltd., Beer-Sheva, Israel	9742
9746-X	Air Products and Chemicals, Inc., Allentown, PA	9746
9750-X	Atlas Powder Company, Dallas, TX	9750
9750-X	Austin Powder Company, Cleveland, OH	9750
9763-X	Air Products and Chemicals, Inc., Allentown, PA	9763
9765-X	3M/Transportation, St. Paul, MN	9765
9775-X	Essex Environmental Industries, Inc., Hurst, TX	9775
9781-X	The Chlorine Institute, Inc., Washington, DC (see footnote 9)	9781
9797-X	LTV Missiles and Electronics Group, Dallas, TX	9797
9806-X	Stone Container Corporation/Bag Division, Schaumburg, IL (see footnote 10)	9806
9952-X	Grief Bros. Corporation, Springfield, NJ (see footnote 11)	9952
9977-X	Hercules Aerospace Company/Aerospace Prod. Group, Magna, UT (see footnote 12)	9977
10018-X	CIBA-GEIGY Corportaion, Hawthorne, NY (see footnote 13)	10018
10028-X	E.I. du Pont de Nemours & Company, Wilmington, DE (see footnote 14)	10028

(1) To renew and decrease the aerosol container from 58 cubic inches (32 fl. oz.) to 43 cubic inches (24 fl. oz.) while maintainng a maximum of 40 PSI internal pressure.

(2) To increase air with not greater than 39 percent by volume oxygen content to 60 percent content and modify paragraph 8 to provide for percentage increase.

(3) To provide for a new design bulk shipping container to hold up to 112 modules, classed as flammable solids.
(4) To renew and authorize a plastic bucket of approximately 4 gallons capacity with a lid to be used for this shipment of certain Class A, B and C explosive materials.
(5) To authorize an increase in weight limitations from 65 pounds gross weight to 1000 pounds per package to include 90 modules, classed as flammable solids, in each container.
(6) To authorize use of a metal frame to contain polyethylene portable tanks for shipment of certain corrosive liquids, flammable liquids and an oxidizer.
(7) To authorize an additional type trailer equipped with a dromedary compartment (storage box) for shipment of explosives.
(8) To renew and authorize a design change in the polyethylene tanks to provide for a full drainage feature and modification to the ball value feature.
(9) To renew and modify special provision 8e so salavage cylinders are not limited to use for leaks that cannot beg contained by using the Chlorine Institute's Kit A.
(10) To authorize flammable solids as an additional commodity, for shipment in non-DOT specification bulk bags.
(11) To authorize an additional plastic cover or lid for metal drum containing those materials presently authorized in DOT specification 37A Steel drums.

Application No.	Applicant	Parties to exemption
4338-P	Akzo Chemicals Inc., Chicago, IL	4338
4575-P	Linde Gases of the Great Lakes, Inc., Cleveland, OH	4575
4884-P	Linde Gases of the Great Lakes, Inc., Cleveland, OH	4884
5643-P	Linde Gases of the Great Lakes, Inc., Cleveland, OH	5643
6349-P	Linde Gases of the Great Lakes, Inc., Cleveland, OH	6349
6418-P	Maui Pineapple Co., Ltd., Haliimaile, HI	6418
6765-P	Linde Gases of the Great Lakes, Inc., Cleveland, OH	6765
6805-P	Linde Gases of the Southeast, Inc., Wilmington, NC	6805
7052-P	Valvcon Corporation, Milford, NJ	7052
7052-P	Geomar International, Inc., Missouri City, TX	7052
7052-P	SAIC Technology, San Diego, CA	7052
7052-P	Medtronic, Inc./Promeon Division, Brooklyn Center, MN	7052
7052-P	Telecommunication Devices, Inc. (TDI), Downers Grove, IL	7052
7052-P	Oceanstar Systems Incorporated, Cataumet, MA	7052
7607-P	Layne-Western Company, Inc., Shawnee Mission, KS	7607
7835-P	The Rinchem Co., Inc., Phoenix, AZ	7835
8156-P	Linde Gases of the Southeast, Inc., Wilmington, NC	8156
8230-P	Strem Chemicals, Inc., Newburyport, MA	8230
8451-P	DIVEX, Inc., Columbia, SC	8451
8518-P	Speed's Oil Tool Service, Inc., Santa Maria, CA	8518
8554-P	Minnesota Explosives Company, Biwabik, MN	8554
8556-P	Linde Gases of the Southeast, Inc., Wilmington, NC	8556
8556-P	Linde Gases of the Great Lakes, Inc., Cleveland, OH	8556
8723-P	CONA, Inc.—Ireco Explosives, Tahlequah, OK	8723
8723-P	Minnesota Explosives Company, Biwabik, MN	8723
8988-P	Jet Research Center, Inc., Arlington, TX	8988
9066-P	Automotive Systems Laboratory, Inc. (ASL), Farmington, MI	9066
9281-P	Western Atlas International, Inc., Houston, TX	9281
9377-P	Austin Powder Company, Cleveland, OH	9377
9381-P	Environmental Audit, Inc., Placentia, CA	9381
9414-P	Linde Gases of the Great Lakes, Inc., Cleveland, OH	9414
9623-P	Ireco Incorporated, Salt Lake City, UT	9623
9676-P	J.T. Baker Inc., Phillipsburg, NJ	9676
9711-P	Konica U.S.A., Inc., Englewood Cliffs, NJ	9711
9723-P	BD Technology, Inc., Arcadia, CA	9723
9745-P	Whitmire Research Laboratories, Inc., Saint Louis, MO	9745
9785-P	Crowley Towing and Transportation Co., Pennsauken, NJ	9785
9785-P	Crowley Caribbean Transport, Pennsauken, NJ	9785
9785-P	Trailer Marine Transport Corp., Pennsauken, NJ	9785
9785-P	American Transport Lines, Inc., Pennsauken, NJ	9785
9785-P	Euro-Gulf International, Inc., Houston, TX	9785
9785-P	Australia-New Zealand Direct Line, Long Beach, CA	9785
9946-P	Linde Gases of the Great Lakes, Inc., Cleveland, OH	9946
9971-P	J.T. Baker Inc., Phillipsburg, NJ	9971
10006-P	Sheldon Oil Company, Suisun, CA	10006
10032-P	MCM, Management Control & Maintenance, S.A., Geneva, Switzerland	10032
10091-P	Allergan Optical, Irvine, CA	10091
10108-P	Moses Lake Industries, Moses Lake, WA	10108

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on April 11, 1989.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89-9145 Filed 4-17-89; 8:45 am]

BILLING CODE 4910-60-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held April 19, 1989 in Room 600, 301 4th Street, SW., Washington, DC from 10:45 a.m. to 11:30 a.m.

The Commission will meet with Mr. Stanley Silverman, Comptroller, USIA, for a discussion of USIA's budget and Congressional relations. The Commission will also meet with Mr. Greg Guroff, Coordinator for the President's U.S.-Soviet Exchange Initiative for a discussion of U.S.-Soviet exchanges.

Please call Gloria Kalamets, (202) 485-2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: April 11, 1989.

Ledra L. Dildy,

Staff Assistant, Federal Register Liaison.

[FR Doc. 89-9168 Filed 4-17-89; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 73
Tuesday, April 18, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, April 24, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 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 items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: April 14, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-9428 Filed 4-14-89; 3:39 pm]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 17, 24, May 1, and 8, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Week of April 17

Monday, April 17

10:00 a.m.
Discussion of Shoreham Full Power Operating License (Public Meeting).
2:00 p.m.
Discussion/Possible Vote on Peach Bottom Restart (Public Meeting).

Thursday, April 20

2:00 p.m.
Briefing on Status of TMI-2 Cleanup Activities (Public Meeting).
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of April 24—Tentative

Tuesday, April 25

10:00 a.m.
Briefing on the Status of Generic Issues (Public Meeting).

Thursday, April 27

10:00 a.m.
Periodic Briefing by Advisory Committee on Nuclear Waste (ACNW) (Public Meeting).
3:30 p.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed).

Week of May 1—Tentative

Tuesday, May 2

10:00 a.m.
Briefing on Severe Accident Research Plan (Public Meeting).
2:00 p.m.
Briefing on Results of Maintenance Team Inspections (Public Meeting).

Wednesday, May 3

10:00 a.m.
Briefing on the Status of NUREG-1150 (Public Meeting).
2:00 p.m.
Periodic Briefing by Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting).
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of May 8—Tentative

Wednesday, May 10

10:00 a.m.
Annual Briefing on the State of the Nuclear Industry (Public Meeting).
2:00 p.m.
Briefing on Status of Operator Licensing Activities in the Area of Requalification Exams (Public Meeting).
3:30 p.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed).

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,

Office of the Secretary.

April 13, 1989.

[FR Doc. 89-9499 Filed 4-14-89; 2:49 pm]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

TIME AND DATE: 2:00 p.m., Wednesday, May 3, 1989.

PLACE: Hearing Room, 1333 H Street, NW., Washington, DC 20268.

STATUS: Open.

MATTERS TO BE CONSIDERED: To discuss the petition of Warshawsky to conduct a rulemaking proceeding on data requirements for third-class mail in Docket No. RM89-1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 89-9432 Filed 4-14-89; 3:40 pm]

BILLING CODE 7715-01-M

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published April 17, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m. e.d.t. Wednesday, April 19, 1989.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA Knoxville Office Complex 400 West Summit Hill Drive, Knoxville, Tennessee.

CORRECTION OF A TYPOGRAPHICAL ERROR IN THE NOTICE OF MEETING: In Item E 1., "Monroe County" should read "Moore County."

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager, Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call 615-632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-479-4412.

William L. Osteen, Jr.,

Assistant Secretary to the Board.

[FR Doc. 89-9332 Filed 4-14-89; 10:17 am]

BILLING CODE 8120-01-M

Corrections

Federal Register
Vol. 54, No. 73
Tuesday, April 18, 1989

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 AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-029]

U.S. Veterinary Biological Product and Establishment Licenses Issued, Suspended, Revoked, or Terminated

Correction

In notice document 89-6356 appearing on page 11255 in the issue of Friday, March 17, 1989, make the following corrections in the table:

1. Under "Establishment", in the second, third, and seventh entries, "SmithKline" was misspelled.

2. Under "Product',' in the sixth entry, in the first line, "Bron-Chiseptica-Escherichia" should read "Bronchiseptica-Escherichia".

3. Also under "Product", in the seventh entry, in the second line, "Icterohaemorrhagiae" was misspelled.

4. Under "Establishment license No.", the seventh entry was omitted and should read "189".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3539-2]

Ocean Dumping; Site Designation; Gulf of Mexico; Pensacola, FL

Correction

In rule document 89-6303 beginning on page 11189 in the issue of Friday, March 17, 1989, make the following correction:

On page 11189, in the first column, under **SUMMARY**, in the second paragraph, in the last line, "> 10%" should read "< 10%".

BILLING CODE 1505-01-D

federal register

Tuesday,
April 18, 1989

Part II

Reader Aids

List of Libraries That Have Announced Availability of Federal Register and Code of Federal Regulations

LIST OF LIBRARIES THAT HAVE ANNOUNCED AVAILABILITY OF FEDERAL REGISTER AND CODE OF FEDERAL REGULATIONS

In order to better serve the public the Office of the Federal Register is publishing a list of libraries where the *Federal Register* and *Code of Federal Regulations* are available for examination free of charge. This list contains only those Government depository libraries and other libraries that specifically have chosen to be included. A complete listing of *Government Depository Libraries* is available without charge from The Library, U.S. Government Printing Office, 5236 Eisenhower Avenue, Alexandria, VA 22304.

The Office of the Federal Register's list will be updated annually unless public interest requires more frequent publication. Any library that maintains these publications, makes them available to the public, and wishes to be included on future lists should write to the Director of the Federal Register, National Archives and Records Administration, Washington, DC 20408, or phone (202) 523-5227 giving the name and address of the library. (*FR only. †CFR only.)

ALABAMA

Birmingham:
Government Documents Department
Birmingham Public Library
2020 Park Place
Birmingham, AL 35203
(205) 254-2551

Gadsden:
Gadsden Public Library
254 College Street
Gadsden, AL 35901
(205) 547-1611

Mobile:
Governmental Information Division
Mobile Public Library
564 Davis Avenue
Mobile, AL 36603
(205) 438-7092

Government Documents Department
University of South Alabama Library
Mobile, AL 36688
(205) 460-7024

Montgomery:
Alabama Public Library Service
6030 Monticello Drive
Montgomery, AL 36130
(205) 277-7330

Tuscaloosa:
University of Alabama Library
Reference Department
Box S
University, AL 35486
(205) 348-6046

ALASKA

Anchorage:
Alaska Resources Library
U.S. Department of the Interior
701 C Street, Box 36
Anchorage, AK 85513

Office of the Solicitor, Law Library
U.S. Department of the Interior
701 C Street, Box 34
Mod. G, Room 1126
Anchorage, AK 99513

Fairbanks:
Bureau of Land Management
Library
Fairbanks District Office
P.O. Box 1150
North Post of Ft. Waynewright
Fairbanks, AK 99707

Rasmuson Library
Government Documents Section
University of Alaska
Fairbanks, AK 99701

Juneau:
Alaska State Library
8th Floor, New State Office Bldg.
Pouch G
Juneau, AK 99751
(907) 465-2920

ARIZONA

Flagstaff:
Government Documents Department
Northern Arizona University Library
Flagstaff, AZ 86011
(602) 523-2171

Glendale:
Velma Teague Library
7010 N. 58th Avenue
Glendale, AZ 85301
(602) 931-5576

Phoenix:
Federal Documents
Department of Library, Archives and Public Records
1700 W. Washington, State Capitol
Phoenix, AZ 85007
(602) 255-4121

Phoenix Public Library
Business, Science & Technology—Documents
12 E. McDowell Road
Phoenix, AZ 85004
(602) 262-6451

Tempe:
Arizona State University
College of Law Library
Government Documents
Tempe, AZ 85275

Government Documents Department
Arizona State University Library
Tempe, AZ 85275

Tucson:
Tucson Public Library
200 S. 6 Avenue
Tucson, AZ 85726
(602) 791-4010

ARKANSAS

Little Rock
Government Documents Department
UALR Library
University of Arkansas at Little Rock
33rd and University Avenue
Little Rock, AR 72204
(501) 569-3120

Searcy:
Beaumont Memorial Library
Harding University
P.O. Box 928
Searcy, AR 72143
(501) 268-6161

CALIFORNIA

Anaheim:
Anaheim Public Library
500 W. Broadway Avenue
Anaheim, CA 92805
(714) 999-1880

Arcata:
Documents Department
The Library
Humboldt State University
Arcata, CA 95521

Burlingame:
The San Mateo Foundation*
1204 Burlingame Avenue
P.O. Box 627
Burlingame, CA 94010
(415) 342-2477

Carson:
Carson Library
151 East Carson Street
Carson, CA 90745
(213) 830-0901

Compton:
Compton Library
240 West Compton Boulevard
Compton, CA 90220
(213) 637-0202, ext. 25

Culver City:
Culver City Library
4975 Overland Avenue
Culver City, CA 90230
(213) 559-1676

Gardena:
Gardena Library
1731 West Gardena Boulevard
Gardena, CA 90247
(213) 323-6363

Glendale:
City of Glendale
Glendale Public Library
222 East Harvard Street
Glendale, CA 91205

Huntington Park:
Huntington Park Library
6518 Miles Avenue
Huntington Park, CA 90255
(213) 583-1461

CALIFORNIA—Continued

Inglewood:
Inglewood Public Library
101 West Manchester Blvd.
Inglewood, CA 90301
(213) 649-7397

La Jolla:
Government Documents, Maps, Microforms Department
Central University Library C-075-P
University of California, San Diego
La Jolla, CA 92093
(714) 452-3338

Lakewood:
Angelo M. Iacoboni Library
4990 Clark Avenue
Lakewood, CA 90712
(213) 866-1777

Lancaster:
Lancaster Regional Library
1150 West Avenue J
Lancaster, CA 93534
(805) 948-5029

Long Beach:
Government Publications
Long Beach Public Library and Information Center
101 Pacific Avenue
Long Beach, CA 90802
(213) 437-2949, ext. 40

Long Beach Safety Council Library
121 Linden Avenue
Long Beach, CA 90802

Menlo Park:
U.S. Geological Survey Library
345 Middlefield Road
Menlo Park, CA 94025

Montebello:
Montebello Library
1550 Beverly Boulevard
Montebello, CA 90640
(213) 722-6551

Norwalk:
Norwalk Library
12350 Imperial Highway
Norwalk, CA 90650
(213) 868-0775

Oakland:
Holy Names College Library
3500 Mountain Blvd.
Oakland, CA 94619

Orange:
Thurmond Clarke Memorial Library
Chapman College
333 North Glassell Street
Orange, CA 92666

Pasadena:
City of Pasadena
Pasadena Public Library
285 E. Walnut Street
Pasadena, CA 91101
(213) 577-4054

Pleasant Hill:
Contra Costa County Library
Documents Section
1750 Oak Park Boulevard
Pleasant Hill, CA 94523
(415) 944-3423

Redding:
Shasta County Library
1855 Shasta Street
Redding, CA 96001
(916) 225-5754

Redwood City:
Redwood City Public Library
875 Jefferson Avenue
Redwood City, CA 94063
(415) 369-6251, ext. 288

San Mateo County Superintendent of Schools Office
Educational Resources Center
333 Main Street
Redwood City, CA 94063
(415) 364-5600

Richmond:
Richmond Public Library
Civic Center Plaza
Richmond, CA 94804

Riverside:
Riverside City and County Public Library
(Current CFR only)
3575 Seventh Street
P.O. Box 468
Riverside, CA 92502
(714) 787-7203

Sacramento:
Law Library
California State Library
P.O. Box 2037
Sacramento, CA 95809
(916) 445-8833

San Bernardino:
San Bernardino County Library
104 West Fourth Street
San Bernardino, CA 92415

San Diego:
Western State University
College of Law
1333 Front Street
San Diego, CA 92101
(714) 231-0300

San Francisco:
University of California
Hastings College of the Law
Library
198 McAllister Street
San Francisco, CA 94102

San Rafael:
Marin County Free Library
Civic Center Administration Building
San Rafael, CA 94903
(415) 499-6051

Valencia:
Valencia Regional Library
23743 Valencia Boulevard
Valencia, CA 91355
(805) 259-8942

Vallejo:
California Maritime Academy*
P.O. Box 1392
Vallejo, CA 94590
(707) 644-5601

West Covina:
West Covina Regional Library
1601 West Covina Parkway
West Covina, CA 91790
(758) 962-3541, ext. 16

COLORADO

Denver:
Bureau of Land Management
Denver Service Center Library
Building 50
Denver Federal Center
Denver, CO 80225

Bureau of Reclamation Library
Engineering and Research Center
P.O. Box 25007, Denver Federal Center
Denver, CO 80225

Colorado State Library
1362 Lincoln Street
Denver, CO 80203

Regional Solicitor, Law Library
U.S. Department of the Interior
Room 1400, Bldg. 67, Denver Federal Center
P.O. Box 25007
Denver, CO 80225

Rocky Mountain Regional Office Library
National Park Service
655 Parfect Street
P.O. Box 25287
Denver, CO 80225

Fort Collins:
Documents Department
The Libraries
Colorado State University
Fort Collins, CO 80523

Greeley:
James A. Michener Library
Government Publications Service
University of Northern Colorado
Greeley, CO 80639

Lakewood:
Villa Library*
455 South Pierce Street
Lakewood, CO 80226
(303) 936-7407

Pueblo:
Pueblo Regional Planning Commission Library*
No. 1 City Hall Place
Pueblo, CO 75003
(303) 543-6006

CONNECTICUT

Bloomfield:
Prosser Public Library
1 Tunxis Avenue
Bloomfield, CT 06002

Danielson:
Quinebaug Valley Community College
P.O. Box 59
Danielson, CT 06239
774-1130

East Haven:
Hagaman Memorial Library*
227 Main Street
East Haven, CT 06512
(203) 468-3223

CONNECTICUT—Continued

Fairfield:
Nyselius Library
Fairfield University
North Benson Road
Fairfield, CT 06430
(203) 255–5411, Ext. 2451

Hartford:
The Stanley Osborne Library*
Third Floor
The Connecticut State Department of Health Services
79 Elm Street
Hartford, CT 06115
(203) 566–2198

Middletown:
Olin Library
Wesleyan University
Middletown, CT 06457

New Haven:
Yale University
Government Documents Center
Seeley G. Mudd Library
38 Mansfield Street
P.O. Box 2491 Yale Station
New Haven, CT 06520
(203) 432–3209

Stamford:
Ferguson Library
96 Broad Street
Stamford, CT 06901

Storrs:
Government Publications Department
University of Connecticut Library
University of Connecticut
Storrs, CT 06268

Waterbury:
Silas Bronson Public Library
Business, Industry & Technology Department
267 Grand Street
Waterbury, CT 06702

Wethersfield:
Wethersfield Public Library
515 Silas Deane Highway
Wethersfield, CT 06109

DELAWARE

Wilmington:
The Delaware Law School Library
Widener University
P.O. Box 7475 Concord Pike
Wilmington, DE 19803
(302) 478–5280
Ext. 247

DISTRICT OF COLUMBIA

Natural Resources Library
U.S. Department of the Interior
Washington, DC 20240

Office of the Federal Register
1100 L Street, N.W.
Room 8201
Washington, DC 20408
(202) 523–5240

FLORIDA

Clearwater:
Clearwater Public Library
100 North Osceola Avenue
Clearwater, FL 33515

Daytona Beach:
Volusia County Library Center
City Island
Daytona Beach, FL 32014
(904) 255–3765

Fort Lauderdale:
Broward County Main Library
100 S. Andrews Avenue
Fort Lauderdale, FL 33301
(305) 357–7444

Melbourne:
Government Documents Department
Florida Institute of Technology Library
50 W. University Blvd.
Melbourne, FL 32901
(407) 768–8000, ext. 7531

Miami:
Social Science Department
Miami Dade Public Library
101 West Flagler Street
Miami, FL 33130
(305) 375–2665

North Miami Beach:
North Miami Beach Library
1601 N.E. 164 Street
North Miami Beach, FL 33162
(305) 948–2970

Orlando:
Orange County Library System
General Information Department
10 N. Rosalind Avenue
Orlando, FL 32801
(305) 425–4694

Sarasota:
Selby Public Library
1001 Boulevard of the Arts
Sarasota, FL 33577
(753) 951–5501

The University of Sarasota
2080 Ringling Blvd.
Sarasota, FL 33577
(753) 955–4228

Tallahassee:
Documents Section
State Library of Florida
R. A. Gray Building
Tallahassee, FL 32301
(904) 487–2651

Tampa:
Tampa–Hillsborough County Public Library
900 North Ashley Street
Tampa, FL 33602
(753) 223–8969

GEORGIA

Athens:
University of Georgia Libraries
Government Reference Department
Athens, GA 30602

Atlanta:
Documents Center
Robert W. Woodruff Library
Emory University
Atlanta, GA 30322
(404) 727–6880

Office of the Regional Solicitor, Law Library
U.S. Department of the Interior
148 Cain Street, N.E., Suite 405
Atlanta, GA 30303

Dublin:
Laurens County Library
801 Bellevue Ave.
Dublin, GA 31021

Elberton:
Southeastern Power Administration
Law Library
U.S. Department of Energy
Samuel Elbert Building
Elberton, GA 30635

Savannah:
Chatham–Effingham–Liberty Regional Library
2002 Bull Street
Savannah, GA 31499
(912) 234–5127

IDAHO

Boise:
Field Solicitor, Law Library
U.S. Department of the Interior
Federal Building, U.S. Courthouse
Box 20
Boise, ID 83724

Pocatello:
The Library
Idaho State University
Pocatello, ID 83209

ILLINOIS

Bloomington:
Illinois Wesleyan University Library
Bloomington, IL 61701

Chicago:
Government Publications Department
Chicago Public Library
425 N. Michigan Avenue
Chicago, IL 60611
(312) 269–3002

University of Chicago Law Library
1121 East 60th Street
Chicago, IL 60637

Documents Department
University of Illinois at Chicago Circle
The Library, P.O. Box 7598
Chicago, IL 60680
(312) 996–2716/996–2738

Dekalb:
Government Publications Department
Northern Illinois University
Founders Library
Dekalb, IL 60115
(755) 753–1932

Evanston:
Northwestern University Library
Government Publications Department
Evanston, IL 60201
(312) 491–3130

Lake Forest:
Lake Forest College Library
Lake Forest, IL 60045
(312) 234–3100, ext. 410

ILLINOIS—Continued

Lockport:
Lewis University
Route 53
Lockport, IL 60441
(755) 838-0500

Macomb:
Government Publications and Legal Reference Library
Western Illinois University
Macomb, IL 61455
(309) 298-2411

Niles:
Niles Public Library District
6960 Oakton Street
Niles, IL 60648
(312) 967-8554

Normal:
Milner Library
Illinois State University
Normal, IL 61761

Oak Park:
Oak Park Public Library
834 Lake Street
Oak Park, IL 60301
(312) 383-8200

Rockford:
Rockford Public Library
215 North Wyman Street
Rockford, IL 61101
(755) 965-6731

Springfield:
Energy Information Library*
Illinois Institute of Natural Resources, Room 300
325 W. Adams Street
Springfield, IL 62706

Illinois State Library
Reference Section
Centennial Building, Room 350
Springfield, IL 62756
(217) 782-5430

Streamwood:
Government Documents Department
Poplar Creek Public Library
1405 S. Park Blvd.
Streamwood, IL 60103
(312) 837-6800

Waukegan:
County of Lake
Law Library
18 North County Street
Waukegan, IL 60085
(312) 689-6654

INDIANA

Fort Wayne:
The Public Library of
Fort Wayne and Allen County
900 Webster Street
Fort Wayne, IN 46802
(219) 424-7241

Indianapolis:
Reference and Loan Division
Indiana State Library
140 N. Senate Ave.
Indianapolis, IN 46204
(317) 232-3675

Muncie:
Ball State University Library
Government Publications Service
Muncie, IN 47305
(317) 285-6195

South Bend:
Indiana University at South Bend
1700 Mishawaka Avenue
South Bend, IN 46615
(219) 237-4440

IOWA

Ames:
Library—Government Publications Department
Iowa State University
Ames, IA 50010
(515) 294-3642

Council Bluffs:
Free Public Library
200 Pearl Street
Council Bluffs, IA 51503
(712) 323-7553

Des Moines:
State Library Commission of Iowa
Law Library
Capitol Building
Des Moines, IA 50319
(515) 275-5125

State Library Commission of Iowa
Historical Building
East 12th & Grand
Des Moines, IA 50319

Dubuque:
Carnegie-Stout Public Library
Eleventh and Bluff Streets
Dubuque, IA 52001
(319) 583-9197

Wahlert Memorial Library
Loras College
1450 Alta Vista
Dubuque, IA 52001

Sioux City:
Sioux City Public Library
705 Sixth Street
Sioux City, IA 51105
(712) 279-6179

KANSAS

Colby:
H. F. Davis Memorial Library
Colby Community College
1255 South Range
Colby, KS 67701
(913) 462-3984

Emporia:
William Allen White Library
Emporia State University
Emporia, KS 66801
(316) 343-1200

Hutchinson:
Hutchinson Public Library
901 N. Main
Hutchinson, KS 67501
(316) 663-5441

Lawrence:
University of Kansas Law Library
Green Hall
Lawrence, KS 66045
(913) 864-3025

Manhattan:
Farrell Library
Kansas State University
Manhattan, KS 66506
(913) 532-7449

Pittsburg:
Leonard H. Axe Library
Pittsburg State University
Pittsburg, KS 66762
(316) 231-7000, ext. 4889

Salina:
Memorial Library
Kansas Wesleyan
100 East Claflin
Salina, KS 67401-6196
(913) 827-5541, ext. 298

Topeka:
Kansas State Library
Third Floor
State House
Topeka, KS 66612
(913) 296-3296

Washburn University of Topeka
School of Law Library
Topeka, KS 66621
(913) 295-6660

KENTUCKY

Bowling Green:
Western Kentucky University
Helm-Cravens Library
Bowling Green, KY 42101

Frankfort:
Government Document Section
State Library Division
Kentucky Department of Library & Archives
Berry Hill
Frankfort, KY 40602
(502) 564-2480

Highland Heights
Northern Kentucky University
Library
Government Documents Department
Highland Heights, KY 41076

Lexington:
University of Kentucky Libraries
Government Publications Department
Lexington, KY 40506

Law Library
University of Kentucky
Lexington, KY 40506

Louisville:
University of Louisville
The Library
Louisville, KY 40208

Government Publications Department
Law School Library
Belknap Campus
University of Louisville
Louisville, KY 40292
(502) 588-6392

Pikeville:
CITAC Library
Pikeville College
Armington Science Center
Pikeville, KY 41501
(606) 432-9396

LOUISIANA

Baton Rouge:
Library, Department of Urban & Community Affairs
5790 Florida Boulevard
Baton Rouge, LA 70806

Louisiana State Library
P.O. Box 131
760 N. Riverside Mall
Baton Rouge, LA 70821
(504) 389-6651

Lafayette:
University of Southwestern Louisiana
University Libraries
Lafayette, LA 70501

New Orleans:
New Orleans Public Library
Business and Science Division
219 Loyola Avenue
New Orleans, LA 70140
(504) 596-2580

U.S. Court of Appeals Library
5th Circuit
600 Camp Street
Room 106
New Orleans, LA 70130
(504) 589-6510

MAINE

Lewiston:
George and Helen Ladd Library
Bates College
Lewiston, ME 04240

Portland:
Donald L. Garbrecht Law Library
246 Deering Avenue
Portland, ME 04102
(207) 780-4350

MARYLAND

Aberdeen:
Department of the Army
U.S. Army Environmental Hygiene Agency
ATTN: Librarian, Bldg. E-2100
Aberdeen Proving Ground, MD 21010

Annapolis:
Maryland State Law Library
Courts of Appeal Building
361 Rowe Boulevard
Annapolis, MD 21401

Baltimore:
Enoch Pratt Free Library
400 Cathedral Street
Baltimore, MD 21201

Cumberland:
Allegany Community College Library
Willow Brook Road
P.O. Box 1695
Cumberland, MD 21502
(301) 724-7700, ext. 36

Oakland:
Garrett County Planning Office*
323 East Oak Street
Oakland, MD 21550
(301) 334-4200

Rockville:
Medical Library
Food & Drug Administration
5600 Fishers Lane
Room 11B40
Rockville, MD 20857

Department of Public Libraries
Montgomery County
99 Maryland Avenue
Rockville, MD 20850
(301) 217-3800

MASSACHUSETTS

Boston:
Government Documents Department
Boston Public Library
Copley Square
Boston, MA 02117

Gloucester:
Gloucester Lyceum and Sawyer Free Library*
General Reference Section
2 Dale Avenue
Gloucester, MA 01930
(617) 283-0376

Newton Corner:
Office of the Regional Solicitor, Law Library
Suite 612
1 Gateway Center
Newton Corner, MA 02158
(617) 965-5100, ext. 258

Springfield:
The City Library
Central Library
220 State Street
Springfield, MA 01103

Woburn:
Commonwealth of Massachusetts
Trial Court of the Commonwealth
District Court Department
Fourth Eastern Middlesex Division
Woburn, MA 01801
(617) 935-4000

MICHIGAN

Ann Arbor:
Documents Center
Hatcher Graduate Library
University of Michigan
Ann Arbor, MI 47509
(313) 764-0410

Washtenaw Community College
4800 East Huron River Drive
Ann Arbor, MI 47506
(313) 973-3300

Detroit:
Downtown Library*
Detroit Public Library
121 Gratiot
Detroit, MI 48226

Detroit Public Library
5201 Woodward Avenue
Detroit, MI 48202

Municipal Reference Library
Detroit Public Library
1004 City-County Building
Detroit, MI 48226

Arthur Neef Law Library
Wayne State University
468 W. Ferry Mall
Detroit, MI 48202
(313) 577-3925

East Lansing:
Documents Department
Michigan State University Library
East Lansing, MI 48824

Flint:
Flint Public Library
General Reference Department
1026 E. Kearsley Street
Flint, MI 48502
(313) 232-7111

Kalamazoo:
Government Documents Department
Waldo Library
Western Michigan University
Kalamazoo, MI 49008
(616) 387-5208

Lansing:
Thomas M. Cooley Law School Library
U.S. Documents Collection
217 South Capitol Avenue
Lansing, MI 48901
(517) 371-5140

Marquette:
Government Documents Department
Olson Library
Northern Michigan University
Marquette, MI 49855
(906) 227-2112

Mount Clemens:
Macomb County Library
16480 Hall Road
Mount Clemens, MI 48044
469-5300

Mt. Pleasant:
Library - Documents Department
Central Michigan University
Mt. Pleasant, MI 48859
(517) 774-3414

Pontiac:
Adams-Pratt Oakland County Law Library
1200 N. Telegraph Road
Pontiac, MI 48053

Oakland Schools Library*
2100 Pontiac Lake Road
Pontiac, MI 48054

Rochester:
Kresge Library
Documents Department
Oakland University
Squirrel/Walton
Rochester, MI 48063
(313) 377-2476

Saginaw:
Public Libraries of Saginaw
505 Janes
Saginaw, MI 48605
(517) 755-0904

Traverse City:
Mark Osterlin Library
Documents Department
Northwestern Michigan College
1701 East Front Street
Traverse City, MI 49684
(616) 946-5650, ext. 540

MICHIGAN—Continued

University Center:
Learning Resources Center
Delta College
University Center, MI 48710

MINNESOTA

Bemidji:
Documents Section
A. C. Clark Library
Bemidji State University
Bemidji, MN 56601
(218) 755–2958

Blaine:
Anoka County Library
707 Highway 10
Blaine, MN 55434

Cambridge:
East Central Regional Library*
Cambridge, MN 55008

Duluth:
Duluth Public Library
520 W. Superior Street
Duluth, MN 55802
(218) 723–3804

Edina:
Southdale–Hennepin Area Library
7001 York Avenue South
Edina, MN 55435
(612) 830–4900

Mankato:
Memorial Library
Mankato State University
Box 19
Mankato, MN 56001
(507) 389–6201

Minneapolis:
Minnesota Hospital Association Library
2333 University Ave. S.E.
Minneapolis, MN 55414
(612) 331–5571

Government Publications Division
409 Wilson Library
University of Minnesota
Minneapolis, MN 55455
(612) 373–7753

St. Paul:
Minnesota State Law Library
117 University Avenue
St. Paul, MN 55155
(612) 296–2775

Government Publications Office
St. Paul Public Library
90 West Fourth Street
St. Paul, MN 55102
292–6178

Stillwater:
Stillwater Public Library
223 North Fourth Street
Stillwater, MN 55082
439–1675

Twin Cities:
Field Solicitor, Law Library
U.S. Department of the Interior
686 Federal Building, Fort Snelling
Twin Cities, MN 55111

Winona:
Maxwell Library
Government Documents
Winona State University
Winona, MN 55987
(507) 457–5148

MISSISSIPPI

Gulfport:
Harrison County Law Library
1st Judicial Courthouse
1801 23rd Avenue
Gulfport, MS 39501
(601) 864–5161 ext. 336

Jackson:
H. T. Sampson Library
Jackson State University
Jackson, MS 39217

MISSOURI

Cape Girardeau:
Kent Library
Southeast Missouri State University
Cape Girardeau, MO 63701
(314) 651–2000

Columbia:
Ellis Library
University of Missouri–Columbia
Columbia, MO 65201
(314) 882–6733

University of Missouri–Columbia
Law Library
Tate Hall
Columbia, MO 65211
(314) 882–4597

Fulton:
Reeves Library
Westminster College
Fulton, MO 65251
(314) 642–3361

Independence:
Mid-Continent Public Library
North Independence Branch
24 Highway and Spring
Independence, MO 64050
(756) 252–0950

Jefferson City:
Missouri State Library
308 E. High Street
P.O. Box 387
Jefferson City, MO 65102
(314) 751–4552

Joplin:
Spiva Library
Missouri Southern State College
Newman & Duquesne Roads
Joplin, MO 64801
(417) 625–9386

Kansas City:
Kansas City Public Library
311 East 12th Street
Kansas City, MO 64106
(756) 221–2685

Government Documents Department
General Library
University of Missouri–Kansas City
5100 Rockhill Road
Kansas City, MO 64110
(756) 276–1536

Law Library
University of Missouri–Kansas City
5100 Rockhill Road
Kansas City, MO 64110
(756) 276–1650

Kirksville:
Pickler Memorial Library
Northeast Missouri State University
Kirksville, MO 63501
(756) 785–4534

Liberty:
Charles F. Curry Library
Government Documents
William Jewell College
Liberty, MO 64068
(756) 775–3806, ext. 293

Maryville:
B. D. Owens Library
Northwest Missouri State University
Maryville, MO 64468

Rolla:
Curtis Laws Wilson Library
University of Missouri–Rolla
Rolla, MO 65401
(314) 341–4227

St. Charles:
Butler Library
Lindenwood College
St. Charles, MO 63301
(314) 946–6912, ext. 329

St. Joseph:
St. Joseph Public Library
Tenth and Felix Streets
St. Joseph, MO 64501
(756) 232–7729

St. Louis:
Maryville College Library
Government Documents
13550 Conway Rd.
St. Louis, MO 63141
(314) 576–9300

Missouri Botanical Garden*
(back issues held 1 year)
2345 Tower Grove Avenue
St. Louis, MO 63110
(314) 772–7600

St. Louis County Library
1640 S. Lindbergh Blvd.
St. Louis, MO 63131
(314) 994–3300

Documents Department
St. Louis Public Library
1301 Olive Street
St. Louis, MO 63103
(314) 241–2288, ext. 375

Documents Department
Pius XII Memorial Library
St. Louis University
3655 West Pine Boulevard
St. Louis, MO 63108
(314) 658–3105

Thomas Jefferson Library
University of Missouri–St. Louis
8001 Natural Bridge Road
St. Louis, MO 63144
(314) 453–5954

MISSOURI—Continued

Washington University Law Library
Documents Department
Campus Box 1120
St. Louis, MO 63130
(314) 889-6484

Sedalia:
State Fair Community College Library
1900 Clarendon Road
Sedalia, MO 65301

Springfield:
Walker Library
Drury College
Springfield, MO 65802

Southwest Missouri State University
The Library
Springfield, MO 65802
(417) 831-1561

Warrensburg:
Ward Edwards Library
Central Missouri State University
Warrensburg, MO 64093
(756) 429-4149

MONTANA

Billings:
Bureau of Land Management
Library
P.O. Box 30157
Billings, MT 59107

Field Solicitor, Law Library
U.S. Department of the Interior
P.O. Box 1538
Billings, MT 59103

NEBRASKA

Kearney:
Calvin T. Ryan Library
Kearney State College
Kearney, NE 68847

Lincoln:
Nebraska Library Commission
1420 P Street
Lincoln, NE 68508
(402) 471-2045

University of Nebraska-Lincoln
Libraries
Lincoln, NE 68588

Norfolk:
Northeast Technical Community
College
801 E. Benjamin Avenue
Norfolk, NE 68701
(402) 371-2020

Omaha
Creighton University Law Library
25th and California Streets
Omaha, NE 67578
(402) 280-2875

Omaha Public Library
Business, Science, and Technology
Department
215 S. Fifteenth Street
Omaha, NE 67502
(402) 444-4755

University of Nebraska at Omaha
Library
60th and Dodge Streets
Omaha, NE 67582
(402) 554-2661

Wayne
U. S. Conn Library
Wayne State College
Wayne, NE 68787
(402) 375-2200, ext. 213

NEVADA

Carson City:
Nevada State Library
Capitol Complex
Carson City, NV 89710
(702) 885-5160

Reno:
Government Publications Department
University of Nevada Library
Reno, NV 89557
(702) 784-6579

NEW HAMPSHIRE

Concord:
Law Division, State Library
Supreme Court Building
Loudon Road
Concord, NH 03301
(603) 271-3777

New London:
Fernald Library
Colby-Sawyer College
New London, NH 03257

NEW JERSEY

Bloomfield:
Bloomfield Public Library
90 Broad Street
Bloomfield, NJ 07003
(201) 429-9292

Bridgeton:
Cumberland County Library
800 East Commerce Street
Bridgeton, NJ 08302

East Orange:
East Orange Public Library
21 South Arlington Avenue
East Orange, NJ 07018

Elmer:
Arthur P. Schalick High School
Elmer-Centerton Road
R.D. 1
Elmer, NJ 08318

Hackensack:
Johnson Free Public Library
Hackensack Area Reference Library
275 Moore Street
Hackensack, NJ 07601

Jersey City:
Hudson Health Systems Agency
Library
871 Berger Avenue
Jersey City, NJ 07306

Lawrenceville:
Franklin F. Moore Library
Rider College
Lawrenceville, NJ 08648
(609) 896-5115

Mahwah:
Ramapo College Library
505 Ramapo Valley Road
Mahwah, NJ 07430

Montclair:
Montclair Public Library
50 S. Fullerton Avenue
Montclair, NJ 07042
(201) 744-0500

Newark:
Newark Public Library
5 Washington Street
P.O. Box 630
Newark, NJ 07101
(201) 733-7782

Paterson:
Paterson Free Public Library
250 Broadway
Paterson, NJ 07501
(201) 875-3750

Pomona:
Stockton State College
Pomona, NJ 08240
(609) 652-1776, ext. 266

Toms River:
Ocean County College
Learning Resources Center
College Drive
Toms River, NJ 08753
(201) 255-4000 ext. 385

Trenton:
New Jersey State Law Library
185 West State Street
P.O. Box 1898
Trenton, NJ 08625
(609) 292-6230

Voorhees:
Camden County Library
Echelon Urban Center
Laurel Road
Voorhees, NJ 08043
(609) 772-1636

Wayne:
Wayne Public Library
475 Valley Road
Wayne, NJ 07470
(201) 694-4272

NEW MEXICO

Albuquerque:

The University of New Mexico
General Library
Albuquerque, NM 87131
(505) 277-4241 and 277-5441

The University of New Mexico
School of Law Library
1117 Stanford NE
Albuquerque, NM 87131
(505) 277-6236

Las Vegas:
New Mexico Highlands University
Donnelly Library
Las Vegas, NM 87701

Portales:
Golden Library
Documents Department
Eastern New Mexico University
Portales, NM 87530

NEW MEXICO—Continued

Santa Fe:
New Mexico State Library
300 Don Gaspar
Santa Fe, NM 87503
(505) 827-2033

Office of the Solicitor, Law Library
U.S. Department of the Interior
U.S. Courthouse, Room 224
P.O. Box 1042
Santa Fe, NM 87501

Silver City:
Miller Library
Western New Mexico University
Silver City, NM 88061

NEW YORK

Albany:
The New York State Library
The State Education Department
Cultural Education Center
Empire State Plaza
Albany, NY 12230
(518) 474-5943

Brooklyn:
Brooklyn Public Library
Business Library
280 Cadman Plaza West
Brooklyn, NY 11201
(212) 780-7800

Corning:
The Arthur A. Houghton, Jr. Library
Corning Community College
Corning, NY 14830
(607) 962-9251

Garden City:
Adelphi University
Swirbul Library
South Avenue
Garden City, NY 11530
(516) 294-8700 ext. 7345

Geneseo:
State University of New York at Geneseo
Milne Library
Government Documents
Geneseo, NY 14454

Greenvale:
C. W. Post Center—Long Island University
B. Davis Schwartz Memorial Library
Greenvale, NY 11548

Mount Vernon:
Mount Vernon Public Library
28 South First Avenue
Mount Vernon, NY 10550
(914) 668-1840

New Paltz:
Government Documents Department
Sojourner Truth Library
State University College
New Paltz, NY 12561
(914) 257-2252

Niagara Falls:
Niagara Falls Public Library
1425 Main Street
Niagara Falls, NY 14305
(716) 278-7513

Oswego:
State University of New York at Oswego
Oswego, NY 13126
(315) 341-4267

Rochester:
Rochester Public Library
Business and Social Science Division
115 South Avenue
Rochester, NY 14604
(716) 428-7342

Schenectady:
Schenectady County Public Library
Liberty and Clinton Streets
Schenectady, NY 12305

Syracuse:
Onondaga County Public Library
The Galleries
447 South Salina Street
Syracuse, NY 13205-2494
(315) 448-INFO

Uniondale:
Nassau Library System
900 Jerusalem Avenue
Uniondale, NY 11553
(516) 292-8920

Yonkers:
Yonkers Public Library
Getty Square Branch
7 Main Street
Yonkers, NY 10701
(914) 337-1500

NORTH CAROLINA

Asheboro:
Asheboro Public Library
201 Worth Street
Asheboro, NC 27203
(919) 629-3329

Asheville:
Asheville-Buncombe Public Library
67 Haywood Street
Asheville, NC 28801
(704) 252-8701

D. Hiden Ramsey Library
University of North Carolina at Asheville
1 University Heights
Asheville, NC 28804
(704) 251-6434

Boone:
Regional Information Center
Region D Council of Governments
P.O. Box 1820
Boone, NC 28607

Chapel Hill:
University of North Carolina
Law Library
Van Hecke-Wettach Building 064-A
Chapel Hill, NC 27514
(919) 962-1194)

Charlotte:
Public Librarty of Charlotte and Mecklenburg County
310 N. Tryon Street
Charlotte, NC 28202
(704) 374-2540

Durham:
William Perkins Library
Public Documents Department
Duke University
Durham, NC 27706
(919) 684-2380

Gastonia:
Gaston County Public Library*
Headquarters: Gaston-Lincoln Regional Library
1555 East Garrison Boulevard
Gastonia, NC 28052
(704) 865-3418

Greenville:
J. Y. Joyner Library
East Carolina University
Greenville, NC 27834

Greensboro:
Greensboro Public Library
201 N. Green Street
Greensboro, NC 27401
(919) 373-2471

Raleigh:
Documents Department
The D. H. Hill Library
North Carolina State University
Box 5007
Raleigh, NC 27650

North Carolina Department of Cultural Resources
Division of State Library
Documents Branch
109 East Jones Street
Raleigh, NC 27611
(919) 733-3343

North Carolina Supreme Court Library
2 East Morgan Street
P.O. Box 28006
Raleigh, NC 27611
(919) 733-3425

Winston-Salem:
Forsyth County Public Library
660 West Fifth Street
Winston-Salem, NC 27101
(919) 727-2220

NORTH DAKOTA

Bismarck:
Bismarck Junior College*
Schafer Heights
Bismarck, ND 58501

North Dakota State Library
Highway 83 North
Bismarck, ND 58505
224-2490

Office of Program Planning*
All Nations Circle - Bldg. 35
United Tribes Educational Technical Center
3315 South Airport Road
Bismarck, ND 58501

OHIO

Athens:
Government Documents Department
Ohio University Library
Athens, OH 45701
(614) 594-5604

OHIO—Continued

Cincinnati:
Municipal Reference Library
224 City Hall
Cincinnati, OH 45202

National Institute for Occupational Safety and Health
Division of Technical Services
Robert A. Taft Laboratories
4676 Columbia Parkway
Cincinnati, OH 45226

Cleveland:
Cleveland Public Library
325 Superior Avenue
Cleveland, OH 44114

Cleveland Regional Sewer District*
Library
Administrative Offices
801 Rockwell Avenue
Cleveland, OH 44114
(216) 775-6600 ext. 219

Cleveland Heights:
Cleveland Heights—University Heights Public Library
2345 Lee Road
Cleveland Heights, OH 44118
(216) 932-3600

Columbus
The State Library of Ohio
65 South Front Street
Columbus, OH 43215
(614) 466-2694

Dayton:
University Library
Wright State University
Dayton, OH 45435

Findlay:
Marathon Oil Company
Law Library, Room 854-M
539 South Main Street
Findlay, OH 45840
(419) 422-2121 ext. 3376

Shafer Library
Findlay College
1000 N. Main Street
Findlay, OH 45840
(419) 422-8313

Marion:
Marion Public Library*
445 E. Church Street
Marion, OH 43302
(614) 387-0992

Toledo:
Toledo-Lucas County Public Library
Social Science Department
325 Michigan Street
Toledo, OH 43624
(419) 255-7055 ext. 221

Wooster:
Andrews Library
The College of Wooster
Wooster, OH 44691

OKLAHOMA

Aradarko:
Field Solicitor, Law Library
U.S. Department of the Interior
P.O. Box 397
Aradarko, OK 73005

Norman:
Law Library
University of Oklahoma
300 Timberdell
Norman, OK 73019

Oklahoma City:
Metropolitan Library System
Main Library
131 Dean A. McGee Avenue
Oklahoma City, OK 73102
(405) 631-1149

Oklahoma Department of Libraries
U.S. Documents Regional Depository
200 N.E. 18th Street
Oklahoma City, OK 73105
(405) 521-2502

Pawhuska:
Field Solicitor, Law Library
U.S. Department of the Interior
c/o Osage Agency
Pawhuska, OK 74056

Stillwater:
Documents Department
Edmon Low Library
Oklahoma State University
Stillwater, OK 74074
(405) 624-6546

Tulsa:
Office of the Regional Solicitor, Law Library
U.S. Department of the Interior
P.O. Box 3156
Tulsa, OK 74101

OREGON

Eugene:
University of Oregon Library
Government Documents Section
Eugene, OR 97403
(503) 686-3070

Portland:
Library Association of Portland
(Multnomah County Library)
801 S.W. 10th Avenue
Portland, OR 97205
223-7201

Salem:
Oregon State Library
State Library Building
Salem, OR 97310
(503) 378-4276

PENNSYLVANIA

Aliquippa:
B.F. Jones Memorial Library*
Aliquippa District Center
663 Franklin Avenue
Aliquippa, PA 15001
(412) 375-7174

Allentown:
The John A. W. Haas Library
Muhlenberg College
Allentown, PA 17504

Dallas:
Library
College Misericordia
Dallas, PA 18612

Harmony:
Library
Seneca Valley Senior High School*
Southwest Butler County School District
R.D. 2
Harmony, PA 16037

Harrisburg:
State Library of Pennsylvania
Box 1601
Harrisburg, PA 17126
(717) 787-7343

Hazleton:
Hazleton Area Public Library
Church and Maple Streets
Hazleton, PA 18201
454-2961/454-0244

Johnstown:
Cambria County Library System
248 Main Street
Johnstown, PA 15901
(754) 536-5131

Lancaster:
Fackenthal Library
Franklin and Marshall College
P.O. Box 3003
Lancaster, PA 17604
(717) 291-4210

Loretto:
Pius XII Memorial Library
Saint Francis College
Loretto, PA 15940

Millersville:
Millersville State College
Millersville, PA 17551

Vein
Stayer R & L Center
Millersville State College
Millersville, PA 17551
(717) 872-5411 ext. 552, 542

Newtown:
The Library
Bucks County Community College
Newtown, PA 18940

Philadelphia:
Government Publications Department
Free Library of Philadelphia
Logan Square
Philadelphia, PA 19103

Documents Unit
Paley Library
Temple University
Philadelphia, PA 19122

Pittsburgh:
Baldwin Borough Public Library
3344 Churchview Avenue
Pittsburgh, PA 15227

U.S. Bureau of Mines
Library
4800 Forbes Avenue
Pittsburgh, PA 15213

Reading:
Reading Public Library
5th and Franklin Streets
Reading, PA 19602
(215) 374-4548

PENNSYLVANIA—Continued

Shippensburg:
Ezra Lehman Memorial Library
Shippensburg State College
Shippensburg, PA 17257

Somerset:
Somerset State Hospital Library
Box 631
Somerset, PA 15501
(754) 445-6501, ext. 216

Swarthmore:
The Swarthmore College Library
The McCabe Library
Swarthmore, PA 19075
(215) KI 4-7900

Warren:
Warren Library Association
205 Market Street
Warren, PA 16365

Washington:
Washington County Law Library
Courthouse
Washington, PA 15301
(412) 228-6747

West Chester:
Francis Harvey Green Library*
West Chester State College
West Chester, PA 19380
(215) 436-2869

Wilkes-Barre:
Institute of Regional Affairs*
Wilkes College
Wilkes-Barre, PA 18703

RHODE ISLAND

Kingston:
Government Publications Office
University of Rhode Island
Library
Kingston, RI 02875
(401) 792-2602

Providence:
Brown University Library
Documents Department
Providence, RI 02912
(401) 863-2522

Providence Public Library
150 Empire Street
Providence, RI 02903
(401) 521-7722

Rhode Island College
James P. Adams Library
Documents Department
600 Mt. Pleasant Avenue
Providence, RI 02908
(401) 274-4900 ext. 331

Warwick:
Warwick Public Library
600 Sandy Lane
Warwick, RI 02886
(401) 739-5440

SOUTH CAROLINA

Charleston:
Baptist College of Charleston
P. O. Box 10087
Charleston, SC 29411

Charleston County Library
404 King Street
Charleston, SC 29403

Citadel
Charleston, SC 29409

College of Charleston
66 George Street
Charleston, SC 29401

Clemson:
Clemson University
Clemson, SC 29631

Columbia:
Benedict College
Blanding & Harden Streets
Columbia, SC 29204

Richland County Public Library
1400 Sumter Street
Columbia, SC 29201

South Carolina State Library
1500 Senate Street
Columbia, SC 29201

University of South Carolina
Columbia, SC 29208

Conway:
Coastal Carolina (of University of SC)
Route 6
Conway, SC 29526

Due West:
Erskine College*
Due West, SC 29639

Florence:
Florence County Library
319 S. Irby Street
Florence, SC 29501

Francis Marion College
Florence, SC 29501

Greenville:
Furman University
Greenville, SC 29613

Greenville County Library
300 College Street
Greenville, SC 29601

Greenwood:
Larry A. Jackson Library
Lander College
Greenwood, SC 29646

Orangeburg:
South Carolina State College
College Avenue
Orangeburg, SC 29117

Rock Hill:
Winthrop College
Rock Hill, SC 29733

Spartanburg:
Spartanburg County Library
P. O. Box 2409
333 S. Pine Street
Spartanburg, SC 29304

Sumter:
Sumter County Library
111 North Harvin Street
Sumter, SC 29150
773-7273

SOUTH DAKOTA

Brookings:
H. M. Briggs Library
South Dakota State University
Brookings, SD 57007
(605) 688-5106

Rapid City:
Devereaux Library
South Dakota School of Mines & Technology
Rapid City, SD 57701
(605) 394-2418

Sioux Falls:
Sioux Falls Public Library
201 N. Main Avenue
Sioux Falls, SD 57101

TENNESSEE

Chattanooga:
Hamilton County Bicentennial Library
Business, Science and Technology Department
1001 Broad Street
Chattanooga, TN 37402
(615) 757-5312

Clarksville:
Woodward Library
Austin Peay State University
Clarksville, TN 37040
(615) 648-7346

Martin:
Paul Meek Library
University of Tennessee at Martin
Martin, TN 38238
(901) 587-7065

Nashville:
Documents Unit
Joint University Libraries
Nashville, TN 37203

Tennessee State Library
Tennessee State Library and Archives
403 Seventh Avenue North
Nashville, TN 37219
(615) 741-2451

TEXAS

Amarillo:
Amarillo Public Library*
City of Amarillo
P.O. Box 2171
413 E. 4th
Amarillo, TX 79189

Field Solicitor
U.S. Department of the Interior
P.O. Box H-4393, Herring Plaza
Amarillo, TX 79101

Austin:
The State Law Library
Supreme Court Building
P.O. Box 12367, Capitol Station
Austin, TX 78711
(512) 475-3807

College Station:
Documents Division
University Libraries
Texas A & M University
College Station, TX 77843

TEXAS—Continued

Dallas:
Dallas County Law Library
Government Center
Dallas, TX 75202
749-8475

U.S. Environmental Protection Agency
Region VI
1201 Elm Street
Dallas, TX 75270

Denton:
Texas Woman's University Library
Box 23715, TWU Station
Denton, TX 76204
(757) 566-6415

El Paso:
El Paso Public Library
Documents Section
501 North Oregon Street
El Paso, TX 79901
(915) 543-3808

Hurst:
Hurst Public Library
901 Precinct Line Road
Hurst, TX 76053
(757) 485-5320

Killeen:
Oveta Culp Hobby Library
American Educational Complex
U.S. Hwy 190 W.
Killeen, TX 76541
(757) 526-1237

Lubbock:
School of Law Library
Texas Tech University
Lubbock, TX 79409

Victoria:
Documents Department
VC/UHVC Library
2602 N. Ben Jordan
Victoria, TX 77901
(512) 576-3151, ext. 201
(512) 573-3291

UTAH

Cedar City:
Southern Utah State College Library
Cedar City, UT 84720

Ephraim:
Lucy A. Phillips Library
Snow College
Ephraim, UT 84627

Logan:
Documents Department
Merrill Library, UMC 30
Utah State University
Logan, UT 84322

Ogden:
Weber State College Library
Ogden, UT 84403

Provo:
Harold B. Lee Library
Documents and Maps Section
Brigham Young University
Provo, UT 84602

Law Library
Brigham Young University
Provo, UT 84602

Salt Lake City:
Regional Solicitor
U.S. Department of the Interior
Suite 6201, Federal Building
125 South State Street
Salt Lake City, UT 84138

Supreme Court Library
State Capitol
Salt Lake City, UT 84114

College of Law Library
University of Utah
Salt Lake City, UT 84112

Government Documents
Eccles Health Sciences Library
University of Utah, Bldg. 89
Salt Lake City, UT 84112

Government Documents Division
Marriott Library
University of Utah
Salt Lake City, UT 84112

Utah State Library Commission
2150 South 300 West, Suite 16
Salt Lake City, UT 84115

VERMONT

Burlington:
Bailey/Howe Library
Documents Department
University of Vermont
Burlington, VT 05405

Middlebury:
Egbert Starr Library
Government Documents Department
Middlebury College
Middlebury, VT 05753

South Royalton:
Law Library
Vermont Law School
South Royalton, VT 05068
(802) 763-8303

VIRGINIA

Alexandria:
Alexandria Library*
717 Queen Street
Alexandria, Va. 22314
(703) 838-4555

Arlington:
Office of Hearings and Appeals Library
U.S. Department of the Interior
4015 Wilson Boulevard
Arlington, VA 22203

Chesapeake:
Chesapeake Public Library
300 Cedar Road
Chesapeake, VA 23320
(804) 547-6591

Danville:
Danville Community College Library
1009 Bonner Avenue
Danville, VA 24541
(804) 797-3553

Fairfax:
Fairfax City Central Library
3915 Chain Bridge Road
Fairfax, VA 22030
(703) 691-2741

Fenwick Library
George Mason University
4400 University Drive
Fairfax, VA 22030

Lynchburg
The Library
Lynchburg College
Lynchburg, VA 24501

Norfolk:
Norfolk Public Library System
301 East City Hall Avenue
Norfolk, VA 23510

Reston:
U.S. Geological Survey
Library
National Center, Mail Stop 950
Reston, VA 22092

Richmond:
Learning Resources Center
Parham Road Campus
J. Sargeant Reynolds Community College
P.O. Box 12084
Richmond, VA 23241
(804) 264-3220

Municipal Library
County of Henrico
Hungary Springs & Parham Roads
Richmond, VA 23228

Virginia State Library
11th & Capitol Streets
Richmond, VA 23219

Roanoke:
Roanoke Law Library
210 Campbell Avenue, SW
Roanoke, VA 24011

Virginia Beach:
Public Law Library
Municipal Center
City of Virginia Beach
Virginia Beach, VA 23456

Williamsburg:
Documents Department
Earl Gregg Swem Library
College of William and Mary
Williamsburg, VA 23185

WASHINGTON

Bellingham:
Documents Division, Wilson Library
Western Washington University
516 High Street
Bellingham, WA 98225
(206) 676-3075

Cheney:
Eastern Washington University
The Library
Cheney, WA 99004
(509) 359-2475

Everett:
Everett Public Library
2702 Hoyt Avenue
Everett, WA 98201
(206) 259-8857

Snohomish County Law Library
County Courthouse
Everett, WA 98201
(206) 259-5326

WASHINGTON—Continued

Midway:
Highline Community College
Library 25–2
Midway, WA 98032
(206) 878–3710, ext. 232

Olympia:
Washington State Law Library
Temple of Justice
Olympia, WA 98504

Washington State Library
Document Section
Olympia, WA 98504
(206) 753–4027

Port Angeles:
North Olympic Library System
207 So. Lincoln
Port Angeles, WA 98362

Spokane:
Gonzaga University Law Library
E. 600 Sharp Avenue
P.O. Box 3528
Spokane, WA 99220

Spokane Public Library
West 906 Main Avenue
Spokane, WA 99201
(509) 838–3361

WEST VIRGINIA

Beckley:
National Mine Health and Safety Academy
Learning Resources Center
P.O. Box 1166
Beckley, WV 25801

Charleston:
Kanawha County Public Library
123 Capitol Street
Charleston, WV 25301
(304) 343–4646

Montgomery:
Vining Library
West Virginia Institute of Technology
Montgomery, WV 25136

Weirton:
Mary H. Weir Public Library
3442 Main Street
Weirton, WV 26062
(304) 748–7070

WISCONSIN

Appleton:
Appleton Public Library
121 South Oneida Street
Appleton, WI 54911
734–7171

Green Bay:
University of Wisconsin—Green Bay
Library Learning Center
Government Publications
Green Bay, WI 54302

Kenosha:
Library/Learning Center
University of Wisconsin–Parkside
Wood Road

Kenosha, WI 53141

Ladysmith:
Mount Senario College Library
Ladysmith, WI 54848

Madison:
Madison Public Library
201 W. Mifflin Street
Madison, WI 53703
(608) 266–6363

Milwaukee:
Milwaukee County
Law Library
Courthouse, Room 307
901 North 9th Street
Milwaukee, WI 53233
278–4900

WYOMING

Gillette:
George Amos Memorial Library
412 S. Gillette Avenue
Gillette, WY 82716
(307) 682–3223

Laramie:
Coe Library---Documents Division
University of Wyoming
Box 3334, University Station
Laramie, WY 82071
(307) 766–2174

federal register

Tuesday,
April 18, 1989

Part III

Environmental Protection Agency

40 CFR Part 763

Toxic and Hazardous Substances Control; Asbestos; Notice and Final Rule

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-62073; FRL-3557-5]

Asbestos; Requirement to Submit Information to EPA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Federal Register notice explains how, when, and where former and current manufacturers and processors of certain asbestos products are to submit information identifying their products to EPA.

EFFECTIVE DATE: The information collection requirements contained in this notice have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them. EPA will publish a notice in the future establishing an effective date for the information collection requirements.

ADDRESS: Send all submissions, identified by the docket control number (OPTS-62073), in triplicate to:

ATLIS Federal Services Inc., ATTN: EPA/AIA Clearinghouse, 6011 Executive Blvd., Rockville, MD 20852.

For information regarding submissions containing confidential business information, see unit II.B. of this notice.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M St. SW., Washington, DC 20460, (202) 382-3790, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

On October 31, 1988, the President signed into law the Asbestos Information Act of 1988, Pub. L. 100-577 (the Act), which requires manufacturers and processors of certain asbestos-containing materials to submit information to EPA within 90 days of enactment, that is, by January 29, 1989.

Section 3 of the Act requires EPA, within 30 days of enactment, to publish a notice in the **Federal Register** that explains how, when, and where the information specified in section 2 is to be submitted. Although EPA did not issue a notice with the time period specified in the Act, this notice now explains how, when, and where the information specified in section 2 is to be submitted.

Section 3 also requires EPA to receive and organize the information submitted and, within 180 days of enactment of the Act, to publish the information. EPA may not review the information for accuracy or analyze the information to determine whether it is reasonably necessary to identify or distinguish the particular asbestos or asbestos-containing material.

II. Provisions

A. Reporting Requirements

The information required by section 2 of the Act is to be submitted to the address specified in the **ADDRESS** section above. The information may be submitted prior to the effective date if the submitter chooses to do so. To facilitate EPA's organization of this information, the submission should also include a summary of the information required by section 2 of the Act. The information in the summary should be presented in the order listed below:

1. The name and address of the manufacturer or processor of the asbestos or asbestos-containing material and the name and address of any applicable corporate predecessor who manufactured or processed such material.

2. Years of manufacture of the asbestos or asbestos-containing material.

3. Types or classes of products.

4. To the extent available, other identifying characteristics reasonably necessary to identify or distinguish the asbestos or asbestos-containing material.

5. [*Optional*] Protocols for samples of the asbestos and asbestos-containing material.

B. Conclusion

Since section 2 of the Act specifically prohibits EPA from reviewing or analyzing the necessity or accuracy of the information submitted, the Agency is not attempting to interpret the scope of that section. This notice, therefore, is limited to notifying persons subject to reporting of the manner, place, and time of reporting.

III. Other Regulatory Requirements

Paperwork Reduction Act

The information collection requirement in this notice has been submitted for approval to the Office of Management and Budget (OMB), 44 U.S.C. 3501 *et seq.* This requirement is not effective until OMB approves it and a notice to that effect is published in the **Federal Register.**

The public reporting burden to prepare a summary of the information required by section 2 of the Act is estimated to average 1.5 hours. This estimate does not account for the burden involved in reporting the information required by section 2, because that requirement results directly from the Act itself. The paperwork burden imposed by EPA is limited to a request for a summary of the information required by section 2 and is reflected in the estimate above. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

Dated April 6, 1989.

William K. Reilly,

Administrator.

[FR Doc. 89-9216 Filed 4-17-89; 8:45 am]

Billing Code 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-62067A; FRL-3557-4]

Asbestos-Containing Materials in Schools; State Requests for Waivers From Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision on requested waivers.

SUMMARY: EPA is issuing a final decision which approves the requests of Connecticut and Rhode Island for a waiver from the requirements of 40 CFR Part 763, Subpart E, Asbestos-Containing Materials in Schools.

ADDRESSES: Copies of the complete waiver applications submitted by the States and public comments on the requests are available from the TSCA Public Docket Office. Copies of the waiver applications are also on file and may be reviewed at the EPA Region I office in Boston, Massachusetts.

TSCA Public Docket Office (TS-793), TSCA Docket Officer, Room NE-G004, 401 M Street, SW., Washington, DC 20460.

EPA, Region I (APT-2311), John F. Kennedy Federal Building, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street, SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This notice is issued under the authority of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2641, *et seq.* TSCA Title II was enacted as part of the Asbestos Hazard Emergency Response Act 1986 (AHERA), Pub. L. 99-519. AHERA is the abbreviation commonly used to refer to the statutory authority for EPA's rules affecting asbestos in schools and will be used in this notice. EPA issued a final rule in the **Federal Register** of October 30, 1987 (52 FR 41846), the Asbestos-Containing Materials in Schools Rule (the Schools Rule, 40 CFR Part 763, Subpart E), which requires all Local Educational Agencies (LEAs) to identify asbestos-containing building materials (ACBM) in their school buildings and to take appropriate actions to control the release of asbestos fibers.

Under section 203 of AHERA, EPA may, upon request by a State Governor and after notice and comment and opportunity for a public hearing in the State, waive in whole or in part the requirements of the Schools Rule, if the State has established and is implementing or intends to implement an ongoing program of asbestos inspection and management which is at least as stringent as the requirements of the rule. Section 763.98 (40 CFR 763.98) sets forth the procedures to implement this statutory provision. The School Rule requires that specific information be included in the waiver request submitted to EPA, establishes a process for reviewing waiver requests, and sets forth procedures for oversight and recission of waivers granted to States. The Agency encourages States to establish and manage their own school regulatory programs under the AHERA waiver provision.

EPA issued a notice in the **Federal Register** of October 3, 1988 (53 FR 38838), which announced the receipt of waiver requests from the States of Connecticut, Rhode Island, Illinois, and New Jersey, and solicited comments from the public. The notice also discussed the key program elements of each State program, listed differences between each State program and the AHERA requirements, and provided EPA's preliminary response to the four States on the differences identified.

Four comments were received during the 60-day comment period. The States of Illinois and Rhode Island submitted comments on their respective waiver requests by responding to the major differences discussed in the October 3, 1988, **Federal Register**. Two other comments addressed the New Jersey program: One comment was supportive, and the other expressed concerns regarding the program's stringency. No request for a public hearing was received on any of the four waiver requests. Consequently, no hearings were held.

EPA is required to issue a notice in the **Federal Register** announcing its decision to grant or deny a request for a waiver within 30 days after the close of the comment period. The comment period for this docket closed December 3, 1988. The 30-day review period may be extended if mutually agreed upon by EPA and the State. EPA will not publish final decisions on the New Jersey and Illinois waiver requests at this time. The State of New Jersey is in the process of completing its proposed asbestos regulations. EPA has agreed with the State to extend the 30-day review of its application. At present, EPA and the State of Illinois are continuing discussions on that State's waiver request. However, EPA and the State have agreed that the exclusion provisions of AHERA (40 CFR 763.99) offer the appropriate relief for the approximately 1,300 previous inspections conducted by the State, if these inspections were conducted in a manner acceptable under AHERA. EPA will issue a notice in the **Federal Register** giving its reasons for granting or denying each State's application when a final decision is made. The remainder of this notice deals only with the waiver requests from Connecticut and Rhode Island. EPA, in letters dated December 16, 1988, agreed with both Connecticut and Rhode Island to extend the 30-day review of their applications. This allowed the States time to provide additional information requested by EPA to assure that the States would incorporate certain AHERA requirements into their asbestos inspection and management programs.

During the 60-day comment period the State of Rhode Island submitted comments on its waiver request by responding to the major differences discussed in the October 3, 1988, **Federal Register**; the Rhode Island submission is discussed more fully in Unit II of this notice.

The remainder of this notice is divided into three units. The first two units discuss, respectively, the Connecticut and Rhode Island programs and set forth the reasons and rationale for EPA's decision on each State's waiver request. Each of these units is further sub-divided into three sections. Section A discusses key elements of the State's program at the time the waiver request was submitted. Section B enumerates the differences between the State's program and the AHERA requirements as discussed in the October 3, 1988, **Federal Register** notice and the response to those differences which EPA subsequently received from the State. Section C gives EPA's final approval of the waiver request based on the State's response. The third unit of this notice discusses statutory requirements of the Paperwork Reduction Act.

I. The Connecticut Program

A. Program Elements

In June 1985, sections 10-292a and 10-292b of the Connecticut General Statutes, as amended by Public Act 86-65, became effective. The statute mandated that each public LEA in Connecticut inspect its school facilities for asbestos-containing materials (ACM) and develop asbestos management plans for each facility. LEAs responsible for Connecticut public schools

constructed prior to January 1, 1979, submitted Asbestos Management Plans to the State Department of Education (CTDOE) prior to January 1, 1987. The State Department of Health Services (CTDHS) reviewed the plans and made recommendations regarding approval to DOE. Forms provided by CTDOE were used for inspection reports. CTDHS developed a detailed asbestos decision protocol for the identification and assessment of ACM, including recommended response actions, and an asbestos management program and remediation options guidelines to be used by public LEAs. Regulations promulgated pursuant to this statute require:

1. Inspection of all public schools constructed prior to January 1, 1979, for the identification of friable and nonfriable ACM.

2. Inspections to be conducted by a qualified inspector, defined as an individual who has attended an EPA-sponsored program or its equivalent and has demonstrated to the Department of Health Services an ability to sample and identify ACM.

3. An asbestos management plan to be developed and prepared by a qualified individual when asbestos is identified. This individual must have attended an EPA-sponsored course in asbestos management or its equivalent as determined by CTDHS.

4. The asbestos management plan addresses monitoring of ACM, education of building staff, procedures to minimize asbestos fiber release, annual reviews, and a time schedule for implementing actions specified in the plan.

5. Annual updates of the management plan.

6. Periodic visual inspections every 2 months.

7. Each LEA to have a designated person to oversee the LEA's asbestos program.

8. Each school to keep a copy of the asbestos management plan in its administrative office.

B. Resolution of Differences Between State and AHERA

Requirements

In the October 3, 1988, **Federal Register** notice, EPA gave its preliminary response to differences identified between Connecticut and AHERA requirements. EPA's responses were divided into two groups: those which need to be addressed by the State before May 9, 1989, and those which need to be addressed prior to the statutory date specific to the particular requirement. In a letter dated January 10, 1989, to Mr. John Coroso, Director, Division of Management and Budget, Connecticut Department of Education, who was designated by the Governor of Connecticut as the person with legal authority to carry out the requirements related to the waiver request, EPA indicated those items from the October 3, 1988, notice requiring official assurance that AHERA requirements will be incorporated into the State's asbestos inspection and management program. The letter also listed those items for which satisfactory assurances were already received in the State's original waiver request signed by the Governor. The remaining assurances were subsequently received in an official letter dated January 20, 1989, from Mr. Coroso to EPA. These four assurances which follow were contained in the State's original waiver request:

1. All public school buildings which are covered under the EPA rules but not under the State regulations (i.e., schools constructed after January 1, 1979) must be inspected and have management plans developed.

CTDOE Response: In order to comply with this more stringent Federal requirement, CTDOE will require that these public school facilities be inspected for the presence of asbestos according to established Connecticut regulations, decision protocols and remediation options. Asbestos management plans will be submitted for these facilities.

2. LEAs will provide yearly notification regarding asbestos activities to workers and building occupants or their legal guardians and that management plans will be made available for public inspection.

CTDOE Response: Section 763.84(c) of the AHERA regulations requires the LEA to ensure that workers, students, parents, teachers and other building occupants are notified about the availability and locations of asbestos management plans on an annual basis. To comply with this more stringent Federal requirement, CTDOE will require LEAs to annually inform workers and building occupants, or their legal guardians, about inspections, response actions and post-response action activities, including periodic reinspection and surveillance activities that are planned or in progress.

3. All custodial and maintenance employees will be trained as required by EPA rules.

CTDOE Response: Section 763.92 of the AHERA regulations requires the LEA to ensure that its maintenance and custodial staff who work in a building that contains ACM receive training of at least 2 hours. The section also requires the LEA to ensure that its maintenance and custodial staff, who conduct any activities that result in the disturbance of ACM, receive an additional 14 hours of training. To comply with this more stringent Federal requirement, CTDOE will require LEAs to train their maintenance and custodial staff in, at least, the following areas:

(a) Information regarding asbestos and its various uses and forms.

(b) Information on the health effects associated with asbestos exposure.

(c) Locations of ACM identified throughout each school building in which they work.

(d) Recognition of damage, deterioration and delamination of ACM.

(e) Name and telephone number of the Asbestos Program Coordinator designated to carry out general local education agency responsibilities and the availability and location of the management plan.

The additional 14 hours of training for staff conducting activities which may result in the disturbance of ACM will include:

(a) Descriptions of the proper methods of handling ACM.

(b) Information on the use of respiratory protection as contained in the EPA/NIOSH Guide to Respiratory Protection for the Asbestos Abatement Industry, September 1987 (EPA 560/OPTS-86-001) and other personal protection measures.

(c) The provisions of AHERA §§ 763.91 and 763.92, Appendices A, B, C, D, of Subpart E of Part 763, EPA regulations contained in 40 CFR Part 763, Subpart G, and in 40 CFR Part 61, Subpart M, and OSHA regulations contained in 29 CFR 1926.58.

(d) Hands-on training in the use of respiratory protection, other personal protection measures, and good work practices.

4. Warning labels will be posted in routine maintenance areas where ACBM is located.

CTDOE Response: Section 763.95 of the AHERA regulations requires the LEA to attach a warning label immediately adjacent to any friable and nonfriable ACM and suspected materials assumed to be ACM located in routine maintenances areas (such as boiler rooms) at each school building. This warning label should read, in print which is readily visible because of large size or bright color, as follows: CAUTION: ASBESTOS, HAZARDOUS, DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT.

To comply with this more stringent Federal requirement, the CTDOE will

require public LEAs to attach warning labels to:

(a) Friable ACM that was responded to by a means other than removal.

(b) ACM for which no response action was carried out.

(c) All labels shall be prominently displayed in readily visible locations and shall remain posted until the ACM that is labeled is removed.

Remaining assurances were subsequently received in an official letter dated January 20, 1989, from Mr. Coroso to EPA. Following is a list of those items noted in EPA's January 10, 1989, letter; after each item or group of items is a summary of the CTDOE response.

For the first five items EPA required that the State incorporate requirements into its program for public schools by May 9, 1989:

1. Until the Connecticut accreditation programs are approved by EPA, only properly accredited asbestos professionals who have received accreditation from an EPA-approved program will be used by LEAs for inspections, management plan development, abatement project design, and implementation.

2. Management plans will be developed for schools found not to contain asbestos and the plans will be submitted to the State.

3. The recordkeeping requirements of the EPA rules will be implemented by LEAs.

4. Provisions will be made for bringing schools, built after 1979 (which were not covered by State regulation), into the system of asbestos inspection and management; buildings brought into the school system after the initial inspection will be subject to the AHERA requirements.

5. The State will require, either administratively or through new regulations, that LEAs use the EPA criteria governing clearance sampling and use of transmission electron microscopy to determine the adequacy and completeness of response actions.

CTDOE Response: In its letter of January 20, 1989, the State assured EPA that it would incorporate all five of these requirements into its program for public schools by May 9, 1989.

EPA required that in responding to Items 6 and 7 the State describe specific action it proposes to take to ensure conformance with AHERA, and provide a time schedule for incorporating each action into the State's program.

6. Implement a plan which provides for reinspection of public schools at least every 3 years.

CTDOE Response: Public LEAs will be notified by February 15, 1989, of this requirement [letter is available in Docket]. The State will require asbestos management plans to be submitted as a result of the reinspections. The plans will be scheduled for submission 3 years after the approval of the initial plans. The State provided for the docket a listing of public school districts, school facility addresses, date of asbestos management plan approval, and reinspection due date.

7. Upgrade the Connecticut enforcement program by implementing a routine inspection program to insure that LEAs are complying with the State's requirements.

CTDOE Response: Beginning on January 1, 1990, at least 100 public school facilities will be inspected annually by CTDOE or CTDHS. These compliance inspections will include a review of the following:

a. That an asbestos management plan is on file as required by § 763.94 of AHERA regulations.

b. That warning labels are attached as required by § 763.95 of AHERA regulations.

c. That an operations and maintenance program is implemented as described in § 763.91 of AHERA regulations.

A report of all annual compliance reviews will be kept on file with CTDOE.

Any public school district found not to be in compliance with the provisions of Connecticut General Statute section 19a–3332d *et seq.* will be reported to the CTDHS, which may enforce compliance through Connecticut General Statute section 19a–332d and corresponding regulations. This section of the Connecticut statute allows for penalties of up to $5,000, or up to 1-year imprisonment or both, for violations related to standards for asbestos abatement.

8. Bulk sampling schemes will be upgraded to AHERA standards for all future reinspections.

CTDOE Response: Bulk sampling schemes will be so upgraded.

9. If the State identifies any deficiencies in the types of materials inspected during previous inspections, these deficiencies will be resolved during the next scheduled reinspection.

CTDOE Response: Identified deficiencies will be so resolved.

With one exception, the above assurances from Connecticut respond to all of the items contained in EPA's October 3, 1988, **Federal Register** notice. The exception regarded the need for a determination by the State before May 9, 1989, whether or not past inspections were done in "substantial compliance" with current EPA regulations.

Upon further review, the Agency has decided that determination of substantial compliance with respect to past inspections under 40 CFR 763.99 (Exclusions) is not a condition for a waiver under 40 CFR 763.98. Under 40 CFR 763.99(a)(4), the substantial compliance decision is included in the management plan. Whether a State lead agency has properly made this "substantial compliance" decision arises during enforcement of the regulations against a school which claims it does not have to conduct an AHERA inspection. It is, therefore, an issue to be decided among those State offices with responsibility for deciding and advising on enforcement matters. In addition, during any oversight of State programs under 40 CFR 763.98(h), EPA may examine State compliance with 40 CFR 763.99(a)(4) in making these substantial compliance decisions. As noted in item 9 above, however, deficiencies other than those affecting the substantial compliance decision may be resolved during the next scheduled reinspection.

C. EPA'S Decision on Connecticut's Request for Waiver

EPA has received formal assurances from the Governor and from the lead agency (CTDOE) having the legal authority to carry out the requirements relating to the waiver request that Connecticut will incorporate into its asbestos inspection and management program by the statutory dates all of the applicable requirements contained in EPA's October 3, 1988, **Federal Register** notice. Accordingly, EPA grants the State of Connecticut request for waiver from the requirements of 40 CFR Part 763, Subpart E. This waiver is applicable to public schools only. EPA retains AHERA jurisdiction for private schools in Connecticut. This waiver is subject to rescission under 40 CFR 763.98(j) based on periodic EPA oversight evaluation and conference with the State in accordance with 40 CFR 763.98(h) and 763.98(i), effective May 9, 1989. Federal jurisdiction shall be in effect in the period between the date of publication of this notice and May 9. This will assure that the State has sufficient time to prepare to assume its new responsibilities. It will also assure the public that no gap in authority occurs, and gives the public sufficient notice of the transfer of duties from EPA to the State of Connecticut.

II. The Rhode Island Program

A. Program Elements

In July 1985, Chapter 23–24.5 of the General Laws of Rhode Island became

effective. The statute required that the Rhode Island Department of Health (RIDOH) undertake inspections of high priority group buildings, which included public and private school buildings. All Rhode Island public and private schools were inspected by RIDOH personnel by September 1987. RIDOH used a numerical algorithm to rate the hazard posed by a particular type of ACM in a given area. The ratings assigned to each area were intended to be used as a basis for allocating State abatement funds. RIDOH did not establish recommended or required abatement actions based on the numerical ratings. Pursuant to the statutory authority, RIDOH promulgated regulations (January 1986 and August 1986) which require:

1. The submission of an asbestos abatement plan by the building owner if the RIDOH inspection identifies material containing equal to or greater than 1 percent asbestos. Upon RIDOH notice, the building owner has 120 days to submit the asbestos abatement plan.

2. The asbestos abatement plan includes: bulk and air sampling information; blueprints or floor plans; an operations and maintenance program which addresses the monitoring of ACM; the education of maintenance staff; actions to minimize fiber release and the potential of human exposure to asbestos; and a description of abatement actions.

B. Resolution of Differences Between State and AHERA

Requirements

In the October 3, 1988, **Federal Register** notice, EPA gave its preliminary response to differences identified between Rhode Island and AHERA requirements. EPA's responses were divided into two groups: those which need to be addressed by the State before May 9, 1989, and those which need to be addressed prior to the statutory date specific to the particular requirement. In a letter dated January 17, 1989, to Mr. James E. Hickey, CIH, Chief, Division of Occupational and Radiological Health, Rhode Island Department of Health, who was designated by the Governor of Rhode Island as the person with legal authority to carry out the requirements related to the waiver request, EPA indicated those items from the October 3, 1988, notice requiring official assurance that AHERA requirements will be incorporated into the State's asbestos inspection and management program. The required assurances were subsequently received in an official letter dated January 25, 1987, from Mr. Hickey to EPA. Following is a list of those items noted in EPA's January 17, 1989 letter. Following each item is a summary of the RIDOH response.

1. Until Rhode Island accreditation programs are approved by EPA, only properly accredited asbestos professionals who have received accreditation from an EPA-approved program will be used by LEAs for inspections, management plan development, abatement project design, and implementation.

RIDOH Response: EPA has previously (May 27, 1988) approved Rhode Island's Asbestos Contractor, Site Supervisor and Worker accreditation programs under the EPA Model Contractor Accreditation Plan (52 FR 15875). The State's current regulations for consultant certification are identical to those contained in the EPA Model Plan. In addition, the State resubmitted a request for EPA approval of this accreditation program for inspectors, management planners, and abatement project designers on November 25, 1988, and is awaiting action on this request. Under current State regulations, RIDOH cannot certify a consultant who has not received training from a program approved under the EPA Model Plan and will only accept LEA management/abatement plans from State-certified consultants.

2. In addition to the current yearly notifications LEAs already provide regarding asbestos activities to workers and building occupants, the State of Rhode Island will require that LEAs also provide notice to parents or legal guardians.

RIDOH Response: LEAs will be notified by letter that the notification requirements of State regulations also include appropriate annual notifications to parents or legal guardians.

3. LEAs will make management plans available for public inspection.

RIDOH Response: Access to abatement/management plans is guaranteed by section 23-24.5-11(a) of the General Laws (asbestos program enabling legislation). However, RIDOH will request that LEAs include a notice of availability in the annual notifications referenced in Item 2 above.

4. Recordkeeping requirements of the EPA rules will be implemented by LEAs.

RIDOH Response: LEAs will be informed in writing of the requirements of maintaining all AHERA-mandated records. AHERA recordkeeping requirements are addressed, at least in part, by current RIDOH regulations. RIDOH will review the remaining requirements with State legal counsel to determine if this administrative notification to LEAs must also be supplemented by additional amendments to State regulations.

5. Schools which have no ACM will submit management plans and follow notification requirements.

RIDOH Response: RIDOH will advise LEAs with schools previously identified as "containing no asbestos" that they are subject to the requirements of the initial AHERA inspection and plan submittal process outlined in 40 CFR 763.93. These LEAs will also be advised of the annual notification requirements referenced in items 1 and 2 above.

6. All LEA custodial and maintenance employees will be trained as required by EPA rules, including a 2-hour awareness training.

RIDOH Response: The 14-hour training for maintenance and custodial employees mandated by 40 CFR 763.92(a)(2) has been addressed by modifying the Competent Person training requirements in the State's regulations. LEAs will be advised in writing that the training for maintenance and custodial employees mandated by the State's regulations must include at least the 2 hours mandated by 40 CFR 763.92(a)(1).

7. LEAs will meet the requirement to have a designated person in charge of the LEA asbestos program.

RIDOH Response: This is an essential element of all AHERA management plans and RIDOH will also remind each LEA in writing of this requirement.

For the following Items 8, 9, and 10, EPA required that the State provide specific actions it proposes to take to ensure conformance with AHERA; and provide a time schedule for incorporating each action into the State's program.

8. Asbestos abatement clearance air sampling will be done in accordance with EPA requirements.

RIDOH Response: Rhode Island will propose appropriate amendments to its regulations for all buildings subject to the AHERA rules. The timeframe for regulation amendments can vary from 1 to 6 months. Rhode Island's Administrative Procedures Act provides for both "emergency" and routine promulgation of regulations. RIDOH will review these items with State legal counsel to determine the appropriate rulemaking option. In any case, RIDOH does not foresee any complications which would put the implementation date of these amendments later than July 1989. The school districts will be informed of the applicability of the regulations, and RIDOH assures that these regulations will be in force by the effective date of the waiver.

9. Provisions for phasing in transmission electron microscopy (TEM) requirements for asbestos abatement clearance sampling will be done in accordance with EPA requirements.

RIDOH *Response:* RIDOH's response is identical to that contained in Item 8 above.

10. Past management plans will be updated to conform with the provisions for assessing ACM.

RIDOH Response: All of the reports of inspections previously conducted by RIDOH have already been sent to each LEA. These reports should have provided enough information for the LEA to perform an assessment of each area in accordance with 40 CFR 763.88. However, some of this information is several years old and the physical condition of the ACM may have changed to the point that an assessment based solely on this information could be totally inaccurate. Consequently, RIDOH will advise the LEAs that these areas should be formally assessed only after additional review by LEA personnel with AHERA training and/or AHERA-certified consultants hired by the LEA. The majority of the LEAs in Rhode Island have filed deferral requests in accordance with TSCA section 205. Consequently, it is RIDOH's understanding that these assessments must be completed and appropriate management plans submitted to RIDOH on or before May 9, 1989. Unless contrary information is received from EPA, RIDOH will so advise the LEAs.

For Items 11 and 12, EPA required that the stated AHERA requirements be in place on or before the date required by law.

11. If Rhode Island identifies deficiencies in the types of materials inspected during previous inspections, these deficiencies will be resolved during the next scheduled reinspection.

RIDOH Response: The majority of Rhode Island's initial inspections were done between January 1986 and July 1987, with essentially all inspections of buildings subject to AHERA completed by December 1987. As noted in item 10 above, the results of these inspections will be reviewed by the LEAs prior to submittal of their management plans. All of the buildings previously inspected by RIDOH will be subject to the 3-year reinspection requirement between January 1989 and December 1990. Consequently, all deficiencies should also be resolved by the end of this reinspection period.

12. All LEAs which have buildings with ACM must be required to implement a program of periodic surveillance every 6 months or the State must provide sufficient justification to show that its current program is "as stringent" as AHERA.

RIDOH Response: State regulations require that management/abatement plans include a schedule for periodic monitoring and documentation of the results of surveillance. Management plan reviewers evaluate proposed surveillance intervals to determine if they are appropriate under the circumstances. Items which are considered include the type, condition, accessibility and potential for significant damage of the ACM, traffic and/or activity levels, as well as present and proposed use(s) of the area. RIDOH review criteria recognize that some areas (e.g., main corridors, gymasiums, veritcal risers, and stairwells) will usually require surveillance at intervals more frequent than every 6 months. Conversely, RIDOH does not believe that low-activity areas which are otherwise secured and/or unused (e.g., crawl spaces) need to be entered every 6 months solely for the purpose of such surveillance, particularly when the management plan also includes procedures which limit access to these areas to individuals with proper training and equipment. RIDOH requires that this surveillance be performed by an individual certified as a "competent person." The above criteria have been in place since RIDOH promulgated detailed abatement/management plan submittal requirements in January 1986.

With one exception, the above assurances from Rhode Island respond to all of the items contained in EPA's October 3, 1988, **Federal Register** notice. The exception regarded the need for a determination by the State before May 9, 1989, whether or not past inspections were done in "substantial compliance" with current EPA regulations.

Upon further review, the Agency has decided that determination of substantial compliance with respect to past inspections under 40 CFR 763.99 (Exclusions) is not a condition for a waiver under 40 CFR 763.98. Under 40 CFR 763.99(a)(4), the substantial compliance decision is included in the management plan. Whether a State lead agency has properly made this "substantial compliance" decision arises during enforcement of the regulations against a school which claims it does not have to conduct an AHERA inspection. It is, therefore, an issue to be decided among those State offices with responsibility for deciding and advising on enforcement matters. In addition, during any oversight of State programs under 40 CFR 763.98(h), EPA may examine State compliance with 40 CFR 763.99(a)(4) in making these substantial compliance decisions. As noted in item 11 above, however, deficiencies other than those affecting the substantial compliance decision may be resolved during the next scheduled reinspection.

C. EPA's Decision of Rhode Island's Request for Waiver

EPA has received formal assurances from the lead Rhode Island agency (RIDOH) having the legal authority to carry out the requirements relating to the waiver request that Rhode Island will incorporate into its asbestos inspection and management program, by the statutory dates, all of the applicable requirements contained in EPA's October 3, 1988, **Federal Register** notice. Accordingly, EPA grants the State of Rhode Island a waiver from the requirements of 40 CFR Part 763, Subpart E, effective May 9, 1989. Federal jurisdiction shall be in effect in the period between the date of publication of this notice and that date. This will assure that the State has sufficient time to prepare to assume its new responsibilities. It will also assure the public that no gap in authority occurs, and gives the public sufficient notice of the transfer of duties from EPA to the State of Rhode Island. As requested, this waiver is applicable to all schools covered by AHERA in the State. This waiver is subject to rescission under 40 CFR 763.98(j) based on periodic EPA oversight evaluation and conference with the State in accordance with 40 CFR 763.98(h) and 763.98(i).

III. Other Statutory Requirements

Paperwork Reduction Act

The reporting and recordkeeping provisions relating to State waivers from the requirements of the Asbestos-Containing Materials in Schools Rule (40 CFR Part 763) have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and have been assigned OMB control number 2070-0091

Dated: April 7, 1989.

William K. Reilly,

Administrator.

[FR Doc. 89-9212 Filed 4-17-89; 8:45 am]

BILLING CODE 6560-50-M

federal register

Tuesday
April 18, 1989

Part IV

Department of the Treasury

Customs Service

19 CFR Part 101

Field Organization; Houston-Galveston District, Texas, et al; Final Rule

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 89-47]

Customs Service Field Organization; Houston-Galveston District, Texas, et al.

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations governing the Customs field organization by changing the boundaries of the Houston-Galveston, Laredo, Dallas/Fort Worth, and Port Arthur Districts, which lie within the Southwest Region. The purpose of the changes is to place all of the Texas interior ports within the Dallas/Fort Worth District; to move supervision of the port of San Antonio, Texas, and the user-fee airport at Midland, Texas, from the Laredo District to the Dallas/Fort Worth District; and to make minor alterations to the Port Arthur and Houston-Galveston Districts for simplification of administrative functions. As a result of these changes, ports with similar types of operations will be situated in the same districts. The public and importers will thereby be better served and Customs personnel and resources more efficiently used.

EFFECTIVE DATE: May 18, 1989.

FOR FURTHER INFORMATION CONTACT: Linda Walfish, Office of Workforce Effectiveness and Development, Office of Inspection and Control, U.S. Customs Service (202) 566-9425.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the public, Customs is amending § 101.3, Customs Regulations (19 CFR 101.3), by realigning the boundaries of several districts in the Southwest Region. This will place all of the current Texas interior ports of entry within the Dallas/Fort Worth District. It will move supervision of the port of San Antonio, Texas, and the user-fee airport at Midland, Texas, from the Laredo District to the Dallas/Fort Worth District. San Antonio, an inland port/airport operation, is functionally similar to the Dallas/Fort Worth operation and is more easily accessible to the Dallas/Fort Worth District than it is to the Laredo District due to better air transportation. The user-fee operations at Midland have more in common with Dallas/Fort Worth's ports than with Laredo's. User fee airports are those which, while not qualifying for designation as an international or landing rights airport, have been approved by the Commissioner to receive the services of Customs officers for processing aircraft entering the U.S. With this change, Laredo will have supervision of functionally similar border ports. These ports are sufficiently large and spread out over such a large geographical area as to require the full attention of the district director. Other alterations in boundaries are minor and for the purpose of simplification of administrative functions.

The revised district boundaries are as follows:

Houston-Galveston District

That part of the State of Texas south of 32 degrees north latitude, east of 97 degrees west longitude, and west of the Neches River except Jefferson County; and the territory included in the port limits of Corpus Christi, Texas. Ports would include: Houston-Galveston, Corpus Christi, Port Lavaca-Point Comfort, and Freeport (all in Texas).

Note: The only changes are to transfer to the Port Arthur District a narrow strip east of the Neches River running along 32 degrees north latitude and to transfer from the Port Arthur District a small portion of Chambers County. This simplifies the boundaries of both districts.

Laredo District

That part of the State of Texas east of the Pecos River, south of 31 degrees north latitude and west of 99 degrees west longitude and that part of the State of Texas south of 28 degrees 30 minutes north latitude and west of 97 degrees west longitude, except the territory within the port limits of Corpus Christi, Texas. Ports would include: Laredo, Brownsville, Del Rio, Eagle Pass, Hidalgo, Progresso, Rio Grande City, and Roma (all inTexas).

Dallas/Fort Worth District

The State of Oklahoma; that part of the State of Texas north of 32 degrees north latitude; that part of the State of Texas which is north of 28 degrees 30 minutes north latitude and between 97 and 99 degrees west longitude; and that part of the State of Texas which is north of 31 degrees north latitude and between the Pecos River and 99 degrees west longitude. Ports would include: Dallas/Fort Worth, San Antonio, Amarillo, Austin and Lubbock, all in Texas; and Oklahoma City and Tulsa in Oklahoma.

Port Arthur District

That part of the State of Texas south of 32 degrees north latitude and east of the Neches River; and the territory included in Jefferson County. Ports would include the consolidated port of Beaumont, Orange, Port Arthur and Sabine, Texas.

Note: The only changes are to raise the northern boundary to 32 degrees and to include all of Chambers County in the Houston-Galveston District. This simplifies boundaries for both districts. No ports are affected.

Comments

Notice of the proposed amendment was published in the **Federal Register** on November 18, 1988 (53 FR 46623). Comments on the proposed realignment of the boundaries were sought from members of the public. No comments have been received in response to the Notice.

Authority

This amendment is effected under the authority vested in the President by § 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp. Ch II) and pursuant to authority provided by Treasury Department Order No. 101-5, dated February 17, 1987 (52 FR 6282).

Executive Order 12291 and Regulatory Flexibility Act

Because this document relates to agency organization it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and the review prescribed by that E.O. are not required. For the same reason, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organizations and functions (Government agencies).

PART 101—[AMENDED]

1. The authority citation for Part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

§ 101.3 [Amended]

2. The list of Customs regions, districts and ports of entry in § 101.3(b) is amended in the following manner:

a. In the South West Region under the column headed "Area", directly opposite "Houston-Galveston, Texas" the description would be revised to read as follows: "That part of the State of Texas south of 32 degrees north latitude, east of 97 degrees west longitude, and west of the Neches River except Jefferson County; and the territory included in the port limits of Corpus Christi, Texas."

b. In the South West Region under the column headed "Area", directly opposite "Laredo, Texas" the description is revised to read as follows: "That part of the State of Texas east of the Pecos River, south of 31 degrees north latitude and west of 99 degrees west longitude and that part of the State of Texas south of 28 degrees 30 minutes north latitude and west of 97 degrees west longitude, except the territory within the port limits of Corpous Christi, Texas." Under the column headed "Ports of entry", the listing of San Antonio is deleted.

c. In the South West Region under the column headed "Area", directly opposite "Dallas/Fort Worth, Texas" the description is revised to read as follows: "The State of Oklahoma; that part of the State of Texas north of 32 degrees north latitude; that part of the State of Texas which is north of 28 degrees 30 minutes north latitude and between 97 and 99 degrees west longitude; and that part of the State of Texas which is north of 31 degrees north latitude and between the Pecos River and 99 degrees west longitude." Under the column headed "Ports of entry", San Antonio is added.

d. In the South West Region under the column headed "Area", directly opposite "Port Arthur, Texas" the description is revised to read as follows: "That part of the State of Texas south of 32 degrees north latitude and east of the Neches River; and the territory included in Jefferson County."

William von Raab,

Commissioner of Customs.

Approved: April 11, 1989.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-9218 Filed 4-17-89; 8:45 am]

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federal register

Tuesday,
April 18, 1989

Part V

Department of Transportation

Urban Mass Transportation Administration

Urban Mass Transportation Programs; Legal Opinions Summary; Notice

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Summary of Legal Opinion and Decision in Administrative Complaint Issued by the Urban Mass Transportation Administration Regarding Private Enterprise Participation Requirements

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice.

SUMMARY: Consistent with an audit recommendation by the United States General Accounting Office, the Urban Mass Transportation Administration (UMTA) publishes from time to time its legal opinions and administrative decisions to help make UMTA recipients, private transit operators, and other interested parties better informed of UMTA's interpretation of the laws and regulations which affect UMTA's programs. This notice reports one such decision, wherein it has been determined that when an UMTA grant recipient bids to provide mass transportation service to another party, it should bid on the basis of its fully allocated costs.

FOR FURTHER INFORMATION CONTACT: Ms. Rita Daguillard, Attorney-Advisor, Urban Mass Transportation Administration, Office of the Chief Counsel, 400 7th Street, SW., Room 9316, Washington, DC 20590, (202) 366-1936.

SUPPLEMENTARY INFORMATION: The United States General Accounting Office (GAO) in its audit report entitled "UMTA Needs Better Assurance that Grantees Comply with Selected Federal Requirements," dated February 19, 1985, found that grant recipients often were not aware of UMTA's interpretations and decisions and, as a result, were not complying with legal and regulatory requirements.

UMTA has decided that one way to better inform the public of its legal opinions and administrative decisions is to publish summaries of them from time to time in the **Federal Register.** The following interpretation of the private enterprise participation requirements is provided to assist our grantees in complying with UMTA's requirements as well as to assist interested parties in enforcing these requirements.

Private Enterprise Participation Requirements

Urban Mass Transportation Act of 1964, as amended [UMT ACT], sections 3(e) and 8(e)

Decision Summary

Yellow Cab Co. v. JAUNT, Inc., 6/30/1988

Yellow Cab Co. (Yellow) alleged that JAUNT, Inc. (JAUNT), a public recipient of UMTA funds, had not complied with provisions in the UMT Act and implementing guidance concerning participation of private enterprise in the provision of UMTA assisted mass transportation when it bid on bus service in response to a request to bid from the University of Virginia to shuttle university employees between two branches of its hospitals. UMTA found that local decisionmakers erred in their interpretation and application of UMTA's guidance.

More specifically, UMTA held that: (1) In a contract situation, any rebidding for existing service is considered new or restructured service and is thus subject to the UMTA private sector guidance. (2) When a recipient of UMTA funds bids on service requested by third parties, the recipient must bid its fully allocated costs if the provision of that service will involve the use of UMTA assistance. (3) Only the bids of public agencies and non-profit agencies must reflect fully allocated costs. UMTA does not intend that a private operator fully allocate its costs or bid this figure in a procurement. The price bid by the private operator is the figure against which a recipient's or a non-profit agency's fully allocated cost is compared.

Issued on: April 13, 1989.

Alfred A. DelliBovi,

Administrator.

[FR Doc. 89-9250 Filed 4-17-89; 8:45 am]

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Tuesday
April 18, 1989

Part VI

Department of Health and Human Services

Family Support Administration

45 CFR Part 205 et al.

Aid to Families With Dependent Children; Job Opportunities and Basic Skills Training (JOBS) Program, Child Care and Supportive Services, and Conforming Changes to Existing Regulations; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Parts 205, 224, 233, 234, 238, 239, 240, 250, 255 and 256

RIN: 0970-AA68

Aid to Families With Dependent Children; Job Opportunities and Basic Skills Training (JOBS) Program, Child Care and Supportive Services, and Conforming Changes to Existing Regulations

AGENCY: Family Support Administration (FSA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements title II of the Family Support Act of 1988 (the Statute), Pub. L. 100-485, which creates the Job Opportunities and Basic Skills Training (JOBS) Program for recipients of Aid to Families with Dependent Children (AFDC). The JOBS program is designed to assist recipients to become self-sufficient by providing needed employment-related activities and support services.

This proposed rule also implements sections 301 and 302 of the Statute. Section 301 guarantees child care and other supportive services for JOBS participants, recipients in other approved educational and training activities, and those who are working. Section 302 guarantees child care for twelve months for certain individuals who have lost AFDC eligibility due to increased earnings, increased hours of work, or loss of the earned income disregard.

DATES: Interested persons and agencies are invited to submit written comments concerning these regulations no later than June 19, 1989.

ADDRESSES: Comments should be submitted in writing to the Assistant Secretary for Family Support, Attention: Mark Ragan, OFA/WRTG, Fifth Floor 370 L'Enfant Promenade, SW., Washington, DC 20447, or delivered to the Family Support Administration, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during the same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Mark Ragan, Family Support Administration, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 252-5137.

SUPPLEMENTARY INFORMATION:

Background

Studies indicate that the average length of time an AFDC family receives assistance is about 2 years. Included in that average are many families who remain on assistance for a protracted period of time. Often, the parent (or parents) in these families lacks the necessary skills or basic education to find employment and become self-sufficient. In many cases, the parent began to receive assistance as a teenager, never finished high school, and has never developed the skills needed to find and keep employment.

Current Federal law and implementing regulations provide for a number of work and training programs for AFDC recipients—the Work Incentive (WIN) program, the Work Incentive Demonstration (WIN Demo) program, the community work experience program (CWEP), the job search program, and the work supplementation program. However, since most of these work programs are optional, and State support for the programs have varied, implementation of work and training programs has been uneven among the States. A number of studies of possible factors fostering welfare dependence cite the need for reliable and affordable child care in order to obtain and maintain employment. Lack of other support services, such as transportation, has also been mentioned as hindering employment.

On October 13, 1988, the President signed the Family Support Act (the Statute), Pub. L. 100-485. Title II of the Statute establishes the Job Opportunities and Basic Skills Training (JOBS) program under title IV-F of the Social Security Act (the Act). The purpose of JOBS is to assure that needy families with children obtain the education, training, and employment that will help them avoid long-term welfare dependence. Title III provides child care and other services in support of employment and education and training activities.

Because the Statute affects programs administered by a number of Departments, we have actively sought suggestions and comments from the Departments of Education, Interior, and Labor. We have also considered letters received in the mail and comments at numerous meetings held with representatives of State IV-A agencies, Indian Tribes, welfare rights organizations, and other interested parties.

Discussion of the Proposed Regulations

This discussion is divided into three parts. The first addresses all aspects of the JOBS program; the second addresses provisions regarding child care and certain other supportive services; and the third part describes changes to the existing regulations in the title IV-A program. The changes are effective July 1, 1989, or a subsequent date, as determined by each State, but must be implemented by October 1, 1990, unless otherwise specified.

Provisions contained in title II of the Statute regarding workers' issues, such as working conditions, tort claims protection, workers' compensation, and displacement are included in a separate regulatory package developed jointly by the Department of Health and Human Services and the Department of Labor. Likewise, several related amendments affecting the AFDC program contained in the Statute, as well as changes to the title IV-D program, are included in separate regulations packages. Section 303, which provides for the extension of Medical Assistance under title XIX of the Social Security Act when a family loses AFDC eligibility, will be implemented under separate regulations to be published by the Health Care Financing Administration.

JOBS

Pub. L. 100-485 requires State IV-A agencies to have a JOBS program under a plan approved by the Secretary of HHS no later than October 1, 1990, or, at State option, as early as July 1, 1989. It further requires each State IV-A agency to make the program available in each subdivision of the State where it is feasible to do so by October 1, 1992. At least every 2 years, the State IV-A agency must review and update its JOBS plan and submit the updated plan to the Secretary for approval.

Section 201(b) of the Statute (which adds section 482(a)(1)(D)(i) to the Act) provides for the repeal of the current WIN and WIN Demonstration programs upon State implementation of the JOBS program, which may be no later than October 1, 1990. JOBS program authority will be under the new title IV-F of the Act.

Child Care and other Supportive Services

Under the Statute, at the time that a State IV-A agency implements the JOBS program, the State IV-A agency must provide funding for child care, or provide child care, if the State IV-A agency determines such are necessary to enable participation in JOBS or to participate in an approved education or

training program. It also requires that participants be assisted with transportation and other work-related expenses. Under section 302, effective April 1, 1990, twelve months of child care (transitional child care) is guaranteed for former recipients who were receiving AFDC in 3 of the 6 months prior to the loss of AFDC as the result of increased hours of work, increased earnings, or the loss of the earned income disregards. Child care fees (to partially offset the costs) must be charged on a sliding scale based on family income and size. The transitional child care provision is in effect until September 30, 1998.

Technical and Conforming Amendments

Section 202 of the Statute amends certain sections of title IV-A of the Act and repeals title IV-C. These changes are necessitated by the creation of the JOBS program and the close-out of the WIN and WIN Demo programs. They include, among others, the repeal of the community work experience, employment search and work supplementation programs as of October 1, 1990, unless the State IV-A agency is operating under an approved JOBS plan prior to that date.

Regulatory Procedures

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major rule." A major rule is one that:

—Has an annual effect on the national economy of $100 million or more;
—Results in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic region;
—Has significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The increased expenditures authorized for JOBS and child care and other supportive services under the Statute are expected to have an annual effect on the national economy of over $100 million in each of the first five years of operation. The calculations for expenditures under the Statute are based on the anticipation of increased expenditures in work, training and education programs, and related supportive services (particularly child care), which will be partially offset by payment of child care fees by parents as well as reduced welfare costs in the long run. It is envisioned that required funding levels will decrease over time as a result of the impact of the JOBS program on long-term dependency and the number of families on AFDC.

We have determined that any economic impact in excess of $100 million per year is the result of section 201 of Pub. L. 100-485 (the Statute). The implementing regulations will not significantly affect expenditures. For this reason, an extensive analysis of the economic impact of this rule is not required.

There may be increased administrative costs for State IV-A agencies due to the expansion of work programs and related support services. While a portion of these costs is reimbursable, they are not mandated by these rules. State IV-A agency decisions concerning work programs and support services will affect administrative costs. Some increase in costs may be necessary because the Statute requires a minimum number of programs.

There is no evidence that competition, employment, investment, productivity, innovation or the United States' competitiveness will be affected adversely, as a result of this rule.

Paperwork Reduction Act

Certain sections of these proposed regulations contain information collection requirements which are subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980. The Department will submit these requirements to the Office of Management and Budget for its review and approval. Other organizations and individuals desiring to submit comments on the information collection requirements are requested to send them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building—Room 3208, Washington, DC 20502, ATTENTION: Desk Officer for the Office of the Assistant Secretary for Family Support, Department of Health and Human Services.

Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. 605(b), enacted by Pub. L. 96-354, the Regulatory Flexibility Act, that this regulation, if promulgated, will not result in a significant impact on a substantial number of small entities because it primarily affects State governments and individuals. Certain small entities, such as providers of child care services, could receive a positive benefit from this program, but regulatory flexibility analyses are required for adverse impacts only.

Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required. This regulation is issued under the authority of section 1102 of the Social Security Act.

Federalism and Family Effects

We certify that this action has been assessed using the criteria and principles set forth in Executive Orders 12606 and 12612.

Analysis Required by Executive Order 12612 on Federalism

If a policy leads to Federal control over traditional State responsibilities or decreases the ability of States to make policy decisions with respect to its own functions, that policy is determined to have a significant federalism effect.

The Statute requires that all State IV-A agencies implement a JOBS program by October 1, 1990. In addressing the problems of welfare dependency, which are national in scope, the Statute mandates certain JOBS activities, and requires State IV-A agencies to choose to implement two of four optional program activities (job search, on-the-job training, work supplementation, and community work experience programs).

Previously, State IV-A agencies were required to participate in a Work Incentive (WIN) or WIN Demonstration program and could opt to provide other work programs. Under the work program option, the State IV-A agency chose which type of work programs to implement.

The Family Support Act is more specific than prior work program authorities regarding the activities which may be offered by State IV-A agencies and the population they are to serve under the various program authorities. However, within these limitations, the proposed rules are drafted to allow the State IV-A agencies considerable flexibility in the design and operation of their JOBS program. Moreover, title II of the Statute provides authority to Indian Tribes to operate autonomous programs.

HHS has consulted with State IV-A Directors, other State, County, Tribal and local representatives, as well as welfare rights advocacy groups, labor unions, and similar organizations for their comments and suggestions in those areas of the program where options are available such as assessment, educational activities, and maintenance of effort. These proposed regulations reflect the consideration of those comments and suggestions.

The Statute mandates Federal support and technical assistance from the Departments of Health and Human Services and Labor in enhancing the flexibility and information resources of each State. Federal assistance is also required to be available to State IV-A agencies upon request for program assessment and to ensure that State IV-A agencies have adequate information both to carry out the program and to develop programs specifically fashioned for their individual demographic requirements.

The Statute calls for the development of performance standards by October 13, 1991. The Department is directed to do so in consultation with the Secretary of Labor, Governors, State and local program administrators, community-based organizations, and similar groups. This permits participation by States through the entire development process. In its rulemaking, the Department has made a conscious effort to refrain from prematurely establishing standards but proposes, based on section 606 of the Statute, to establish certain uniform reporting requirements. We expect no State laws to be preempted.

Analysis Required by Executive Order 12606 on the Family

The JOBS program is expected to have an overall beneficial family impact. This analysis discusses this impact in terms of the criteria in the Executive Order.

(a) The objectives of the JOBS program, to provide training, education, job placement, and employment to end welfare dependency, will result in more secure and stable family units. For two-parent families, the Statute provides State options for spousal participation, thus enlisting both parents in the drive toward independence. The potential danger to family self-image, stability and marital commitment posed by welfare dependency increases as a family remains on welfare. The decrease in dependency and increase in self-sufficiency which the Statute is designed to achieve will help strengthen families and ameliorate the erosive effects of poverty.

(b) The Statute provides significant support for the nurture and supervision of children in the form of guaranteed child care, which will enable parents to work to achieve self-sufficiency and increase their earnings.

Parents will continue to have supervision of their children as they would have in any working family, with options for choosing sources of child care. Federal financial support for child care services in no way changes the nature of that care, which may continue to be provided by siblings, relatives, friends and neighbors without State intrusion, except insofar as States and localities have already chosen or may in the future choose to regulate or license family day care providers.

Some families may feel that their control over their own destiny is diminished by mandatory requirements established by Congress to continue their education or seek employment while placing their children in child care. This is true in a limited sense, but it represents a positive compromise by a family in which a tradeoff is made between immediate autonomy and a better future through cooperation with the requirements under the JOBS program.

(c) The JOBS program does not substitute governmental activity for any of the functions of the family. It will help the family perform its nurturing functions. It will also provide support while the family attains economic independence.

(d) The JOBS program is specifically directed at increasing family earnings. Enhanced earned income disregards, support services, transitional child care and other benefits lasting beyond the period of AFDC eligibility will guarantee that earnings are not wholly offset by reductions of grants or loss of associated benefits.

(e) The JOBS options and services are to be designed and delivered by the non-Federal levels of government, i.e., States, localities, and Indian Tribes. The Federal government will not intrude upon family autonomy or decisions.

(f) The provisions in the Statute regarding the JOBS training program and the related child care and other supportive services emphasize that a strong family structure is critical for the nation's economic strength, and is an important source of values that promote the work ethic. Targeting families in economic crisis with support services and active help towards gaining (or regaining) strength and self-sufficiency, sends the message that all levels of government are getting involved in assisting families.

(g) Finally, the emphasis on achievement in the JOBS program should send the right message to young people about the rewards of self-reliance and the direct connection between responsible behavior and their own economic success.

Objectives of the Family Support Act and These Regulations

The Family Support Act embodies a new consensus that the well-being of children depends not only on meeting their material needs, but also on the parent's ability to become economically self-sufficient. The Statute assumes that self-sufficiency and family responsibility are necessary and achievable goals and makes education, training, and child care available to allow individuals to reach that goal. The Statute further recognizes the mutual obligations of parents, who are currently dependent, to work toward self-sufficiency through private employment, and of the government to support that effort.

These proposed regulations have been drafted to implement the objectives of the Statute and of the Administration of President Bush. Several key principles have guided their development:

—That the value of the Aid to Families with Dependent Children program should be measured not just by its ability to meet the income needs of individuals served, but also by its ability to help these individuals achieve independence;

—That parents have the primary responsibility for the support and welfare of their children and that programs should be designed to help parents meet these responsibilities;

—That women and their children represent the overwhelming proportion of AFDC recipients; that within this group the most dependent are never-married mothers who did not complete high school and who had their first child at a young age; and that programs designed to reduce overall dependency must necessarily address this group;

—That consistent with individual responsibility is choice, and that parents be given a wide range of options for child care while participating in the program;

—That basic education (such as literacy and high-school equivalency) is one of the most important tools an individual needs to achieve full citizenship and independence, and that this should be an important JOBS component;

—That basic skills training can be an important element in an individual's reaching self-sufficiency;

—That JOBS programs be designed to prepare participants for private employment in jobs they can realistically be expected to obtain;

—That resources be maximized through the coordination of existing programs at all levels of government and in concert with community-based volunteer and business organizations; and

—That States be given maximum flexibility to design program components within the JOBS

provisions of the Statute in order to tailor programs to meet local needs.

In the sections below, we discuss our overall plan for program implementation, and provide in-depth discussions of each section of the proposed regulations. In these discussions, we refer to the Family Support Act of 1988 as "the Statute", and the Social Security Act as "the Act". We also use the pronoun "she" when referring to applicants, recipients, and participants. Unless otherwise specified, "she" is a generic term meaning both she and he. This choice of terminology is appropriate because the great majority of adult caretakers in the AFDC program are women.

Overview of JOBS Program Implementation

Section 204 of the Family Support Act of 1988 permits State IV-A agencies to implement a JOBS program as of July 1, 1989, regardless of the publication of implementing regulations. Many States intend to do so. As a consequence, we provided instructions to States in January of 1989 (FSA-IM-89-3). This Information Memorandum described the process for submitting JOBS and Supportive Services plans to the Department for review until final regulations are published.

The more detailed requirements proposed in this Notice of Proposed Rulemaking will only be effective upon publication of the final rule. The process and guidelines described in FSA-IM-89-3 continue to apply until the final rule is published.

We expect to provide preprints for JOBS and Supportive Services plans simultaneously with or immediately following publication of the final regulations. These preprints will contain a detailed description of the design and operation of States' JOBS programs and associated supportive services.

For the purposes of the following discussion, we use the terms "interim plans" and "initial plans". Interim plans are plans submitted by a State IV-A agency in a format other than the preprints for JOBS and Supportive Services plans. Initial plans are the first plans submitted by a State IV-A agency, and can be either an interim plan or a preprinted plan, depending on when the plans are submitted. State IV-A agencies must submit initial JOBS and Supportive Services plans 45 days before planned implementation. When the plan preprint is made available, States which are operating a JOBS program under interim plans will be given 60 days to resubmit plans in the required format.

Federal financial participation (FFP) will not be available for expenditures incurred before the date that initial JOBS and Supportive Services plans are approved. More information regarding this issue, as well as the proposed State JOBS and Supportive Services plan review process, is provided below.

The preamble discussion generally follows the sequence of the proposed rules, with the exception that the description of conforming changes to the existing regulations is last, whereas the conforming changes precede the JOBS and Supportive Services sections in the proposed regulations.

Part 250—Job Opportunities and Basic Skills Training Program

Subpart A—Purpose and Definitions

Purpose (§ 250.0 of the Proposed Regulations)

This section of the proposed regulations contains the goals of the JOBS program and the regulatory objectives of Part 250.

Definitions (§ 250.1 of the Proposed Regulations)

We propose to include a number of definitions in order to facilitate understanding of the regulations. These definitions are discussed below.

Terms Related to the JOBS Program. The term "adult recipient" is defined in accordance with section 403(k)(4) of the Social Security Act. The term "caretaker relative" is used in several places in the Act. However, we have not provided a definition in this regulation. Traditionally, States have established procedures for determining who the caretaker relative is for each assistance unit, and we intend to continue this practice. The term "target population" is defined to meet the requirements of sections 403(l)(2)(B) and 403(l)(2)(C) of the Act. The definition includes provision for any State to adjust the particular target populations if it satisfactorily justifies the change to the Secretary.

For purposes of convenient reference in the body of the regulation, we define a number of words and acronyms. These include standard references such as "Secretary" and "Department"; thus, any reference to the Departments of, or the Secretaries of, Education, Interior, or Labor is made specific. We define "component" as including all services and activities that a State may make available under §§ 250.44 through 250.48. We define a number of acronyms common to work and welfare programs, such as "CWEP," "OJT," and "UP." We include "FFP" for Federal financial participation. We include a definition of "MSA" since we propose the use of defined Metropolitan Statistical Areas in assessing issues related to statewideness requirements in the legislation. We add several acronyms that are specific to JOBS, such as the "JOBS" acronym itself, and "JAS" as the reference for the JOBS Automated System for recordkeeping and reporting purposes.

Terms Related to Educational Programs, Services or Activities. The Family Support Act provides for extensive educational services, and sets certain requirements, such as that participants make "satisfactory progress" or be in "good standing." Since the relevant terms are well understood by the Federal and State education establishment, we have defined these terms in accordance with those understandings. For example, the definition of the term "institution of higher education" derives from the corresponding definition of the term found in section 481(a) and section 1201(a) of the Higher Education Act of 1965, as amended (20 U.S.C. 1088 and 1141).

The term "postsecondary education" is defined to include a program of postsecondary instruction in the institutions captured in the definition of "institution of higher education," and a program of instruction in other institutions referenced by section 435(b) and section 435(c) of the Higher Education Act (20 U.S.C. 1085) as well as in any public institutions in the State that may not be covered by the Higher Education Act. The definition of postsecondary education: (1) Allows a State to exercise a wide choice among educational activities, (2) includes private postsecondary schools among the institutions that the State might utilize to meet the educational needs of JOBS participants, (3) provides the protections concerning educational quality that are built into the Higher Education Act, and (4) permits States to select training from among any public postsecondary institutions that might not meet the definitions in the Higher Education Act.

We wish to avoid uncertainty in applying the terms found in the Higher Education Act to the educational activities used in the JOBS program. Therefore, our definitions provide that the State IV-A agency use the determinations that are available in the course of the Secretary of Education's process for certifying institutional eligibility to apply for the Higher Education Act student financial assistance programs. This provision does not appear to be burdensome, nor

is it an unrealistic way of securing a decision regarding a postsecondary institution's compliance with the definition, since we anticipate that welfare recipients who enroll in postsecondary education or activities will have the benefit of Federal student financial aid, such as Pell Grants and Guaranteed Student Loans.

The definitions of "limited English proficiency" and "basic literacy level" are consistent with the manner in which the Department of Education's Office of Vocational and Adult Education uses these terms. We propose that the objective of "education to achieve a basic literacy level" is to provide an individual with the equivalent of successful completion of eighth grade. This involves instruction designed for a participant who has minimal competence in reading, writing and computation, and therefore is not sufficiently prepared to meet the educational requirements of everyday life in the United States. However, this does not mean that a State IV-A agency must provide English as a second language if such instruction would not be necessary for an individual to become self-sufficient (e.g., where an employer does not require English proficiency.)

Since the term "remedial" appears within the clause, "basic and remedial education to achieve a basic literacy level," in section 482(d)(1)(A)(i) of the Act, we believe that this term refers to repetition of education previously given for the purpose of achieving a "basic literacy level," as we have defined that term. We have defined "basic education" in § 250.44 of these regulations as referring to such education given for the first time. We invite comment as to whether this can be expected to be an operationally useful distinction.

Terms Related to Making Good or Satisfactory Progress in Educational Activities. Our proposed definition of "make good progress" and "making satisfactory progress" is consistent with the *Federal Student Financial Aid Handbook* of the U.S. Department of Education, which is available in most schools and public libraries. The proposed definition would require that a standard include both a qualitative element (e.g., grade point average) and a quantitative element (e.g., time limit for completion of the program or course of study). The proposed rule would permit the standard to provide that a participant may be considered to be making satisfactory progress during a probationary period or due to mitigating circumstances.

Operationally, we propose that an institution's current standard be used, with the mutual agreement of the State IV-A agency and the State education agency. We see such mutual agreement as serving several purposes. First, we believe the source of the standard should be the institution offering the program, because of variances among educational programs. Second, the practice is compatible with Department of Education student financial assistance guidelines. Third, State IV-A agencies are required by the Act to permit or support educational activities only if the participant is "making good progress" and the education relates to the participant's employment goal.

The rule would require another source of expertise regarding good or satisfactory progress to be taken into account when available. If the school or program attended by the JOBS participant is accredited by an accrediting body that is listed as recognized by the Secretary of Education and that has an established policy relating to satisfactory progress, then that policy shall apply. This provision will ensure the compatibility of this aspect of the JOBS program with Department of Education policies. In order to assure that participation in these types of education components is meaningful and productive, we are considering including time standards where the educational activity is not part of an established educational program, such as high school. Examples are average hours per week or limits on the time period permitted to make specified educational gains. Comments are specifically requested on the establishment of such limits.

The definition of "make good progress" and "making satisfactory progress" contained in the proposed rule will at a minimum apply in two places. First, in section 402(a)(19)(E) of the Social Security Act, a State welfare agency may require an 18 or 19 year old custodial parent who lacks a high school diploma or its equivalent to accept a job or training—instead of enrolling in an educational program leading to a high school diploma or its equivalent —if the participant "fails to make good progress in successfully completing such educational activities." Second, in section 402(a)(19)(F) of the Act, a State IV-A agency may accept, as satisfactory participation in the JOBS program, a participant's attendance in good standing in an "institution of higher education," or in a "school or course of vocational or technical training," if the participant is "making satisfactory progress."

We believe that the intent of the Family Support Act in establishing a standard of "good" or "satisfactory" progress in educational activities is to make it clear that an individual may be permitted to obtain education that may enhance her ability to become self-sufficient, but that ineffective attendance in educational activities will not do so.

Making Good or Satisfactory Progress in Training Programs. The Family Support Act does not include a qualitative measure of making good or satisfactory progress for training programs under JOBS, such as OJT and skills training. However, after consultation with the Department of Labor, we propose to expand the definition of making good or satisfactory progress to apply to OJT and skills training. We do so to assure that training offered through JOBS results in an increase in participants' skills and competencies, and that such progress be monitored by the State IV-A agency.

Operationally, this will require that qualitative measures be developed. If such measures already exist for a training program, then they can be applied with the agreement of the State IV-A agency. If they do not exist, the State IV-A agency will be required to develop appropriate measures as a condition of including such training in a JOBS component. We propose to allow State flexibility in defining measures of good or satisfactory progress because there will be a great deal of variation in the types of training programs which States will choose to offer. However, we strongly urge the State IV-A agency to consult with the appropriate State employment and training agency in developing such measures.

The measure of good or satisfactory progress should be used by the State IV-A agency to determine whether a participant should continue in a course of training and whether to continue to provide supportive services, pursuant to § 255.2 of the proposed rule.

We considered whether to apply the concept of making satisfactory progress in measuring participation rates for OJT and skills training. We did include qualitative measures in the standard for participation rates for educational components because such standards have common meanings that are generally understood and used by educational institutions. However, we are concerned that including such measures in training components for purposes of the participation standards could discourage States from setting meaningful standards, if such standards

would affect their ability to meet the participation rates.

We also considered precluding FFP for the costs of training activities for individuals not making good or satisfactory progress. However, we are concerned that this might discourage States from including training components in their JOBS programs.

Because we believe that qualitative measures for training components are important for the successful and efficient operation of the JOBS program, we invite comment on the approach we propose. We also invite comments regarding the alternatives described above, as well as other options.

Terms Related to Participation. The rule proposes a definition of "participation" that relates only to the question of determining what minimum activity levels in each component a State may count towards meeting the participation rate requirements for enhanced Federal matching set out in section 403(1)(3)(A) of the Act. This proposed definition does not preclude FFP for JOBS activities which do not count in determining participation rates. The proposed definition stems from several statements in the conference report that participation is intended to be significant. We received requests from numerous States to permit the definitions of participation in each of the components to be set individually by the States. We did not do so because we believe that Congress intended to offer flexibility to the States in deciding how to design successful programs, but that the measurement of participation rates be consistent among States.

For example, under the proposed rule, an individual would be participating if: (1) Her specified activity level for work supplementation or OJT is full-time; (2) her specified activity level is not less than the equivalent of 20 hours per week in job skills training, job readiness activities, CWEP, or group job search; or (3) she is making satisfactory progress in an educational activity. A State IV-A agency may prescribe greater participation requirements and may count partial participation in several components whenever the individual so assigned meets the average hours requirement of the assigned components.

We propose a definition of participation for purposes of the UP work requirement that follows the legislation. A parent's activity level must meet the 16-hour work requirement in work supplementation, CWEP, OJT, or a State-designed work program approved by the Secretary. An alternative is provided for parents under age 25 who do not have a high school diploma or its equivalent: In such case the State IV-A agency may require the parent to make satisfactory progress towards high school completion, or towards another basic education objective.

Thus, for a UP parent, it is possible to be participating in any component at its specified level, and contribute towards the State meeting the overall participation requirement. Likewise, such a parent would contribute to both participation requirements if she is active in one of the four work components at the higher specified levels. However, if the activity was at least 16 hours per week, but less than the higher specified levels, in any of the four work components, she would only contribute to the UP participation requirement.

We exclude two principal items from this definition of participation. An individual assigned to job development and placement would not count for participation, since our proposed definition of this required component would make it principally an agency activity rather than a client activity. The rule proposes that individuals whose only active involvement in JOBS is assessment or orientation, or receiving supportive services, would not count as participating for this purpose.

Our proposed definition of participation, required for purposes of § 250.74, is not meant to preclude a State from assigning an individual to an amount of required activity in a component that is less than the specified minimum if it is appropriate for the individual. For example, an individual might be required to be engaged in ten hours of individual job search per week. This level of activity would satisfy the requirements of the individual's employability plan but would not meet the minimum Federal definition of participation (for purposes of the participation rate requirement).

In addition, we believe that States should apply a qualitative measure in determining an individual's progress in a training component. We therefore propose that in measuring progress in reaching the goals set in an individual's employability plan, the State IV-A agency must incorporate qualitative measures for training components.

We considered how to treat sanctioned individuals in determining a State's participation rate. One suggestion was that they be counted as participants, since the State IV-A agency had taken all steps necessary to encourage self-sufficiency. However, it is possible that such a policy could be viewed as an incentive for States to sanction individuals and to extend sanctions. Another suggestion was that sanctioned individuals be excluded from the denominator used in calculating participation rates. We chose this option since it protected States from being penalized when they took appropriate actions to sanction recipients, but it does not treat sanctioning as comparable to actual participation. We welcome comments on this approach.

The rule provides a definition of "intensive job search," for the purpose of calculating participation rates for the Unemployed Parent work requirement, that conforms to the standards for participation in individual job search.

We also considered and discussed with States the option of determining participation rates based on an average of the number of hours of participation by all recipients. However, this option was rejected because of State concerns about the administrative burden of this approach. We would welcome any additional comments on this approach and any other methods for determining participation standards.

Subpart B-Administration

State IV-A Agency Administration (§ 250.10 of the Proposed Regulations)

Section 482(a)(2) of the Social Security Act identifies the State IV-A agency as the State agency responsible for the administration or supervision of the JOBS program. Similar provisions apply to the AFDC and Adult Assistance programs (see sections 2(a)(3), 402(a)(3), 1002(a)(3), 1402(a)(3), and 1602(a)(3) (Aid to Aged, Blind, and Disabled) of the Social Security Act). Longstanding Federal policy construing these latter requirements has interpreted them to mean that the State IV-A agency must maintain overall responsibility for the design and operation of the program and may not delegate to other than its own officials functions involving discretion in the administration or supervision of the program (see § 205.100). Accordingly, we believe that the same policy should apply to the State IV-A agency in its administration or supervision of the JOBS program. This means that the State IV-A agency may not delegate the entire JOBS program to another entity.

However, it does permit the State IV-A agency broad contracting authority as described in proposed § 250.13 and related preamble. For example, the State IV-A agency may delegate a wide range of activities—such as orientation, literacy testing, and JOBS activities and services. However, it may not delegate functions such as exemption and priority determinations or dispute

resolution and hearings since these involve discretionary judgments.

We believe that State IV-A agencies should have maximum flexibility to administer their programs within the requirements of the Act. We recognize that in many States, other agencies—such as Job Training Partnership Act (JTPA) agencies, the State education agency, the State employment security agency and community-based organizations—have been effectively performing a range of educational, training and employment related functions for welfare recipients. Thus, rather than requiring State IV-A agencies to train or expand in-house staff to perform similar JOBS functions which do not directly involve discretionary judgments, we propose to provide State IV-A agencies the flexibility of determining how they can most effectively use all potential State resources. However, before a State IV-A agency contracts for any JOBS service or activity, it must ensure that such service or activity is not otherwise available to JOBS participants on a non-reimbursable basis. This requirement is discussed in detail in proposed § 250.13 and related preamble on contracting and in proposed § 250.72 and related preamble concerning maintenance of effort provisions.

We do not intend either to encourage or discourage State IV-A agencies from contracting out JOBS functions, but propose to provide State IV-A agencies with the latitude to determine how best to administer their programs. No matter how extensively a State IV-A agency uses its contracting authority, the entity to which a function is delegated must follow the policies, rules, and regulations issued by the State IV-A agency and must not be empowered to review, change, or disapprove any administrative decision of the State IV-A agency.

Requirement for a Statewide Program (§ 250.11 of the Proposed Regulations)

Section 482(a)(1)(D) of the Social Security Act requires that by no later than October 1, 1992, a State IV-A agency must make the JOBS program available in each subdivision of the State where it is feasible to do so, taking into account the number of prospective participants, the local economy, and other relevant factors. If the State IV-A agency determines that the program will not be made available in all political subdivisions, it must provide appropriate justification to the Secretary in its JOBS plan. If the justification is not adequate, the Secretary may disapprove the plan.

It is expected that the State IV-A agencies will make a serious and determined effort to implement programs throughout all local jurisdictions to the maximum extent possible, so that eligible families will have an opportunity to benefit from the new services that are authorized under the legislation.

In determining how specific to be in the regulations, we considered the statements in the Conference Report (H. R. Rep. No. 100-998, 100th Cong., 2d Sess. 112 (1988)). The conferees intended that the program be provided to as many recipients as possible. Specifically, section 482(d)(1)(A)(i)(I) of the Act requires that the State JOBS plan include educational activities, such as high school or equivalent education, and basic literacy and English proficiency training. The conferees noted (H. R. Rep. No. 100-998, I00th Cong., 2d Sess. 141 (1988)) that there would be those for whom enrollment in regular school programs would be inappropriate, and consequently suitable alternatives would have to be identified or developed. We believe that at least some of these educational activities are available in the majority of political subdivisions in all States, and they, therefore, should be made available, as appropriate, to AFDC recipients.

However, State resources may not permit the inclusion of other components, such as the optional components in section 482(d)(1)(A)(ii) of the Act, in all political subdivisions. To allow maximum State flexibility in designing State JOBS programs, we propose the following.

State IV-A agencies will not be required to implement all mandatory and optional components in all political subdivisions in which they operate a JOBS program. Further, differences in the level of component availability will be permissible.

In order to determine whether a State IV-A agency should submit appropriate justification for less than statewide operation, we propose to apply the criteria described below. If a State meets these criteria, then no justification will be required.

First, a "minimal" JOBS program should be available to most adult recipients in a State. A minimal program includes high school or equivalent education, as specified at section 482(d)(1)(A)(i)(I) of the Act, one optional component from among those specified at section 482(d)(1)(A)(ii) of the Act, and information and referral to non-JOBS employment services. In determining statewideness, we propose that a minimal program be available in a number of political subdivisions sufficient to serve 95 percent of adult recipients.

With few exceptions, high school is available in all political subdivisions of a State. At least one of the optional components, job search, is relatively inexpensive to operate. Referral to public employment services is a simple method for directing recipients to potential employment.

Second, a "complete" JOBS program should be available to a large proportion of adult recipients. A complete program includes, but is not limited to, all mandatory and any two optional components, pursuant to section 482(d)(1)(A) of the Act. In determining statewideness, we propose that a complete program be available in all Metropolitan Statistical Areas (MSAs) in the State, as well as in a number of political subdivisions sufficient to serve 75 percent of adult recipients in the State.

The use of MSA boundaries is a nationally recognized system for distinguishing among economically different areas of States. We propose to add the 75 percent requirement because the number of adult recipients living in MSAs is relatively low in many rural States.

We considered requiring justification for less than statewide program operation in all cases. However, we believe that this would be a great administrative burden, both for State IV-A agencies and for Federal reviewers. The strategy described above is an attempt to meet congressional intent and statutory requirements in a practical manner. These criteria should not be considered to be guidelines for planning a JOBS program. Rather, they provide only a basis for Federal review of the statewideness requirement. We invite comments on this strategy.

Section 250.11(c) of the proposed rule will provide the basis for our review of the statewideness requirement. If a State JOBS program will not be available in the number of political subdivisions sufficient to meet the criteria of that section, the justification to the Secretary for excluding any portion of the State from the JOBS program will include the information identified in § 250.11(c)(2).

The factors listed in this section expand on the items identified in section 482(a)(1)(D) of the Act. That section specifies two factors—i.e., the prospective participants and the local economy. We propose to add one additional item: whether a State IV-A agency will, even with the proposed areas excluded, fully expend all JOBS

funds available to it for the period covered by the plan. This additional information will help in determining whether a State IV-A agency is proposing to concentrate services on specific geographic areas identified as particularly critical to reducing long-term dependency, and as a consequence, is unable to implement a statewide program.

We do not believe that depressed local market conditions would necessarily make a JOBS program infeasible. For example, even in areas of high unemployment, there are generally job opportunities because of job turnover and segmented job markets. However, in a rural area where the sole employer has recently closed its plant, a State IV-A agency might be justified in not operating a JOBS program, or in operating a minimal program. A State IV-A agency should consider these types of distinctions, and include this information in the justification for less than statewide operation.

In designing a State JOBS program that will be less than statewide, a State should assure that political subdivisions not be excluded on the basis of ethnic, racial or religious characteristics.

Because the statewideness requirement is not effective until October 1, 1992, phased implementation of the program will be permitted. As a consequence, an initial State JOBS plan may not reflect a level of component availability sufficient to meet the statewideness requirement. We would therefore expect that, no later than the first biennial review, for the plan period beginning October 1, 1992, the State JOBS plan and the State Supportive Services plan (pursuant to § 255.1) will be updated to reflect either sufficient program availability to meet this requirement, or a justification for less than statewide implementation.

Coordination and Consultation (§ 250.12 of the Proposed Regulations)

Section 402(g) and section 483 of the Social Security Act contain a number of provisions designed to assure coordination of the JOBS program, including child care pursuant to § 255.3(h) of the proposed regulations, with other education, training, and employment programs available in a State. The purpose of this coordination is to provide comprehensive, quality services to meet the multifaceted needs of welfare recipients in the most effective and efficient manner.

At the Federal level, the Department is working closely with the Departments of Labor, Education, and Interior, and expects State and local IV-A agencies to promote coordination among their counterpart agencies. The JOBS program should be coordinated with providers such as Job Training Partnership Act (JTPA) agencies, the Employment Service, vocational education, adult basic education, Headstart and preschool programs under chapter I of the Education, Consolidation and Improvement Act of 1981, school and nonprofit child care programs and other human development programs.

Congress intended that agencies identify existing resources to prevent duplication of services and to assure that other program services are available to JOBS participants. Such coordination is necessary to assure that costs for services for which welfare recipients have been eligible are not shifted to the JOBS program. The proposed regulations preclude such shifts in costs, as described in the maintenance of effort provisions in § 250.72.

Section 483 of the Act requires coordination with JTPA agencies, since one of JTPA's major goals is reducing welfare dependency. The JTPA requires that AFDC recipients be served in at least equal proportion to their incidence within the eligible population. Twenty-three percent of current participants under JTPA are AFDC recipients.

At the State level, the JOBS plan must be consistent with JTPA coordination criteria and must be reviewed by the State job training coordinating council (SJTCC) prior to submission to the Secretary. We strongly encourage the State IV-A agency to meet regularly with the SJTCC regarding the planning and implementation of the JOBS program to identify common JOBS-JTPA activities and services, and to develop an integrated strategy which ensures that eligible AFDC recipients receive training and employment services in an effective, non-duplicative manner.

At the local level, the welfare agency must consult with private industry councils (PICs) on the development of arrangements and contracts under JOBS and to identify and obtain advice on the types of jobs that are available, or are likely to become available, in the area. These provisions reflect congressional concern that JOBS resources not be used inefficiently, i.e., provided to ineffective service providers or expended on training for jobs which are not available to participants.

The local relationship between the welfare agency and the PIC is crucial to assure that welfare recipients receive the JTPA services for which they are eligible. Thus, we strongly urge local welfare administrators to be represented on the PIC or, at a minimum, to become actively involved in PIC meetings, as appropriate.

Initial and ongoing coordination with the State IV-A agency and local educational systems will enable State IV-A agencies to access needed expertise in this new area of welfare agency involvement, to avoid duplication of welfare services and to assure that welfare recipients receive the necessary educational services for which they are eligible. Welfare agencies should meet regularly with their State or local educational counterparts to ensure that educational providers are involved in the planning and delivery of the JOBS program at all levels.

Section 250.21 of the proposed regulations requires State IV-A agencies to describe in the JOBS plans efforts to coordinate with JTPA, basic and adult education programs, programs under the Carl D. Perkins Vocational Education Act and other vocational services, and other human development programs.

Furthermore, the proposed regulations in § 250.20 specifically provide that State IV-A agencies make the proposed JOBS plan available to members of federally recognized Indian Tribes and Alaska Native organizations during the public comment period. This segment of the population is highlighted essentially to assure that a Tribal entity eligible to operate a separate JOBS program, pursuant to § 250.91 of the regulations, has sufficient opportunity to coordinate with the State in the planning of JOBS.

Coordination is necessary whether the Tribe or organization decides to operate an independent program or receive services from the State, but is particularly important if a Tribal entity does operate a separate program. While a Tribal grantee will have responsibility for JOBS, the State IV-A agency will maintain responsibility for the basic AFDC program and for child care services, including transitional child care services. Given this interrelationship, §§ 250.12 and 250.93(b)(1) of the proposed regulations require that the State IV-A agency and the Tribal applicant exchange all available information on adult Tribal AFDC recipients necessary to determine a Tribe's or organization's JOBS funding level. In addition, the requirements in § 250.94 concerning Tribal JOBS administration and in § 250.95 regarding child care elaborate on the need for the State and Tribal grantee to develop mutually agreed upon procedures and methodologies to assure that Tribal participants receive equitable treatment under the AFDC and JOBS programs.

Contracting Authority (§ 250.13 of the Proposed Regulations)

Section 485 of the Social Security Act grants State IV-A agencies broad contracting authority, which is reflected in § 250.13 of the proposed regulations. At the same time, however, the Act requires administration of the JOBS program by the single State IV-A agency, therefore limiting contracts to those activities which do not involve discretion. Further clarification of this limitation is provided in proposed § 250.10 and the accompanying preamble language.

Section 250.13 incorporates the requirements of section 485 of the Act regarding the factors which must be taken into consideration in selecting service providers and the prohibition against contracts for services which are otherwise available on a non-reimbursable basis. Regarding the issue of provider selection, the requirement for consultation with private industry councils is described in the proposed § 250.12 on coordination and consultation. The statutory prohibition against contracts for services which would be otherwise available reflects congressional concern that costs of services for which welfare recipients have been eligible not be shifted to the JOBS program. Since it is so closely connected to the provisions on maintenance of effort (section 482(a)(3) of the Act), we elaborate on its interpretation in § 250.72 of the proposed regulation and preamble.

Before States contract for services under JOBS, we expect that they will carefully identify those services which have traditionally been available to welfare recipients at no cost as well as community-based or volunteer programs that may provide competent services at minimal or no cost. The statutory language clearly intends that State IV-A agencies fully utilize all resources otherwise available to serve JOBS participants on a non-reimbursable basis. For instance, other programs have paid for many educational services provided to AFDC recipients, including those available under the Adult Education Act (20 U.S.C. 1201 *et seq.*), the Higher Education Act (20 U.S.C. 2301 *et seq.*) and the Carl D. Perkins Vocational Education Act (20 U.S.C. 1001 *et seq.*) Similarly, through JTPA, the State employment security agency, State employment and training programs and the Community Services Block Grant program, extensive employment and training services—such as job counseling, job development and placement, job skills training, and on-the-job training—have been offered to eligible low income individuals, many of whom are AFDC recipients.

We also have included in this section a provision which specifies that for the purposes of FFP, State IV-A agencies must segregate costs according to applicable matching rates, as defined at § 250.73(b)(1), in any contract or arrangement under the JOBS program. This means that contracted services will qualify for Federal matching funds at the same rate as those services which the State IV-A agency provides directly. This provision is included to assure that State IV-A agency decisions on contracting will be based upon the efficient administration of the program and that consistent Federal matching will be available to the State IV-A agency regardless of the method used to provide services.

In addition to the specific contracting requirements included in this section, contracted services under JOBS are subject to the requirements of Part 92 with the following exception. We propose to exclude the provisions under § 92.30(d)(4). These provisions, which require prior Federal approval of contracts, appear to be inconsistent with congressional intent since they would severely limit a State IV-A agency's contracting authority under section 485 of the Act.

State IV-A agencies should be aware that they are subject to the procurement requirements of only paragraph (a) of § 92.36. This means that State IV-A agencies are required to assure that JOBS contracts follow State and local laws, regulations, and procedures regarding procurement. Indian Tribes and Alaska Native organizations, however, are subject to the Federal procurement requirements of § 92.36 (b) through (i). This is consistent with longstanding Federal policy.

Subpart C-State Jobs Plan Requirements and Content

Requirement for a State JOBS Plan (§ 250.20 of the Proposed Regulation)

The JOBS provisions are found in title II of the Family Support Act, which includes changes to Part A and creates Part F in Title IV of the Social Security Act. State implementation of these provisions will be covered under a new State plan for JOBS (the JOBS plan). The requirements for that plan and the procedures for its submission are discussed below. Title III of the Statute also requires that States provide child care and other necessary supportive services. These services will be covered under a Supportive Services plan, to be developed and submitted with the JOBS plan. A discussion of the Supportive Services plan and related requirements is at § 255.1.

We believe that it is appropriate to include the new statutory requirements in section 402(a)(19) of the Social Security Act as well as all requirements of Title IV-F in a separate JOBS plan. This position is supported by the language of section 482(a)(1)(A) of the Social Security Act, which requires the JOBS plan to meet "all of the requirements of this part and section 402(a)(19)."

Section 482(a)(2) of the Act provides that the State IV-A agency will be responsible for the administration or supervision of the State's JOBS program. Based on this provision, we propose that the State IV-A agency be responsible for the submission of the State JOBS and Supportive Service plans, after completion of all coordination requirements and review by the Governor.

Plan Approval Prior to Implementation. In FSA-IM-89-3 ("Preliminary Information for States Interested in Implementing JOBS * * *", January 19, 1989) as well as in § 250.20(a)(2) of these proposed rules, we request that States submit the initial JOBS and Supportive Services plans for approval 45 days prior to implementation.

The Family Support Act does not directly address the question of whether a State's JOBS plan must be submitted and approved prior to a State's implementation of the program. However, the statutory language best supports the position that the JOBS plan should be approved prior to a State's implementation. In several places the Statute references JOBS programs operated and funded under approved plans; the implication is that programs could not be operated and funded unless a JOBS plan had been approved. Specifically, the statutory language includes the following: (1) Section 482(a)(1)(A) of the Social Security Act states, "As a condition of its participation in the program of aid to families with dependent children under Part A, each State shall establish and operate a job opportunities and basic skills training program * * * under a plan *approved by the Secretary* * * *"; (2) Section 403(k)(1) provides that "Each State *with a plan approved under Part F* shall be entitled to payments * * *"; and (3) Section 403(l)(1)(A) provides, "In lieu of any payment under subsection (a), the Secretary shall pay to each State *with a plan approved under section 482(a)* * * *." (emphasis added).

Submission of Initial JOBS Plans 45 Days Before Anticipated Implementation. This timeframe is not found in the Family Support Act. In § 250.20(e)(1) we propose a 90-day period for Federal review of the biennial update of JOBS plans. We are proposing a 45-day period for the initial submission in recognition of the fact that many States intend to implement JOBS in the earliest possible quarter, and there will be fewer Federal requirements since final rules will not have been published. Under the circumstances we believe this will provide a reasonable period of time within which to conduct an orderly and responsible review of a State's submission.

Interim Plans. Initial State JOBS and Supportive Service plans submitted prior to the issuance of plan preprints will be approved as interim plans. States with interim plans will be required to submit new JOBS and Supportive Service plans 60 days after the issuance of a preprint form by the Secretary. An approved interim plan shall remain in force until action is taken by the Secretary to approve or disapprove the preprint. Although described as a new plan, the JOBS plan preprint will not be subject to the requirement for review by the SJTCC before submission to the Secretary, unless substantial changes have been made.

In an effort to ease the administrative burden on States and to establish a uniform schedule for submission of subsequent State plans that coincides with the Federal fiscal year, we propose the following. All plans submitted between the issuance of the preprints and October 1, 1990, (whether resubmission of interim plans or initial plans), if approvable, shall remain in force until action is taken by the Secretary to approve or disapprove the first biennial update, described below. This timeframe is appropriate because States are required to have statewide JOBS programs (unless satisfactory justification for less than statewide operation has been provided to the Secretary) during the period covered by the first biennial update.

Amendments. States may submit amendments to approved plans, if necessary, prior to the required resubmission described below. The current process for submission and review of amendments, as described at § 201.3(f) and § 201.3(g), will apply. Submission of plan amendments does not relieve the State of the obligation to resubmit its plan to the Secretary for approval every two years.

Resubmission of State Plans: Biennial Update. Section 482(a)(1)(A) of the Act requires that the State submit its State plan not less often than every two years to the Secretary for approval. We propose to consider the biennial update a new plan, which must be submitted for approval 90 days prior to the date it is to become effective. The biennial update must be available for public review and comment in accordance with the provisions of § 250.20(c). To ease the administrative burden, we propose to establish October 1, 1992 as the effective date for the first resubmission of all State plans. Therefore, we propose that all State plans be resubmitted by July 1, 1992 to be effective October 1, 1992.

We recognize that this process is very different from existing title IV–A plan amendment procedures. However, we believe that there are several compelling reasons to treat the biennial update as a new plan for which approval by the Secretary is required: (1) The specific requirement that it be resubmitted (not less than every two years) distinguishes it from the regular title IV–A plan amendment process at § 201.3, which requires only that plan amendments be submitted by the end of the calendar quarter of implementation; (2) the requirements for coordination and consultation, including the requirement that the State plan be submitted to the SJTCC for review and comment, would be significantly lessened if it were only required once prior to JOBS implementation and never thereafter; and (3) the nature of the information that section 482 of the Act requires be in the State plan makes it an "operational plan." Much of it is specific to the period which the plan covers, such as the number of persons to be served and the extent to which other services will be available by provider and type of service. Such information must be updated for each new period in order to make the plan a useful document.

However, we do not propose to put an undue burden on States in the submission of State plan updates. Therefore, we propose that the State plan update consist of four parts: (1) Assurances regarding those parts of the State JOBS plan and Supportive Services plan that remain unchanged; (2) a description of any changes in program operations, including but not limited to, changes in the mix of components or target populations to be served; (3) specific information for the period of the update regarding estimates of persons to be served and the availability of services provided by the State IV–A agency as well as other providers; and (4) an assurance that the State JOBS plan is consistent with the coordination criteria specified in the current Governor's Coordination and Special Services Plan required under section 121 of the JTPA. The State plan preprint shall be the vehicle for the update.

Public and Inter-Agency Review of State JOBS Plans. The Act requires that the State agency submit its JOBS plan to the State Job Training Coordinating Council (SJTCC) 60 days before submission to the Secretary. We propose to expand this requirement in several ways. We propose to require submission of the proposed plan to the State education agency, based on the extensive required and optional education activities under JOBS, and the general coordination requirements in section 483 of the Act related to State and local education agencies.

In accordance with section 483(a)(1) of the Act, we propose to require the content of the plan, where it relates to job training and work preparation, to be consistent with the coordination criteria specified in the Governor's coordination and special services plan required by section 121 of the Job Training Partnership Act.

The Statute also requires that the State JOBS plan be made available for public review and comment 60 days prior to submission to the Secretary. In response to the concerns of State IV–A agency directors, we propose that all public and State agency comments on the plan be resolved at the State level. It was noted that if this were not made clear, the State efforts to resolve disagreements could become a problem, since commenters might choose to press their view at the Federal level rather than at the appropriate State level.

State Plan Content (§ 250.21 of the Proposed Regulation)

Proposed § 250.21 lists the information we propose to require in the JOBS plan. We will provide a preprint similar to the current Streamlined State Plan for the IV–A program which will elicit all necessary information in a standardized format. The preprint will guide States in submitting the JOBS plan, and will expedite review. It will also provide a basis for comparison of State programs.

In § 250.21 of the proposed rule we have listed all information that we expect to include in the JOBS plan preprint. This list does not include all JOBS program requirements. These other requirements are included, as appropriate, in other sections of the proposed rules.

Subpart D—Participation Requirements, Exemptions and Sanctions

Requirements for Individual Participation and Exemptions (§ 250.30 of the Proposed Regulations)

Under current law, all applicants for and recipients of AFDC are required to register and participate in WIN or WIN Demonstration program activities unless they are exempt. For example, an individual is exempt if she is the parent or other caretaker relative of a child under age 6 and is personally providing care for the child with only very brief and infrequent absences. Section 402(a)(19)(C) of the Act provides for exemptions from participation in JOBS that are similar to those that existed under WIN. The exemptions are contained at § 250.30 and are discussed below.

Child under 16. A child who is under 16 or is attending full-time an elementary, secondary, vocational or technical school is exempt. However, the exemption does not apply to a custodial parent even if she is also a dependent child. We make this interpretation to be consistent with the definition of "adult recipient" in section 403(k) of the Act which specifically includes a child who is the custodial parent of another dependent child in the definition of "adult recipient" for the purpose of determining a State's allocation under JOBS.

Advanced Age. We propose to define "advanced age" for the purposes of this exemption to mean over 60 years of age. This is consistent with the upper age exemption in the Food Stamp Program and should ease the administrative burden on State agencies.

Remoteness. Section 402(a)(19)(C)(vii) of the Act also provides an exemption for remoteness. This exemption is for the individual who lives in a political subdivision that has a JOBS program, but who resides so far away from a JOBS activity that participation is not feasible.

Working more than 30 hours per week. Section 402(a)(19)(C)(iv) of the Act retains the exemption for working 30 hours or more per week.

Currently, under WIN, § 224.20 provides a Federal standard for this exemption: the job has to be unsubsidized and expected to last at least 30 days. The Federal standard was designed to insure that the employment is bona fide and likely to lead to self-sufficiency for the family. However, in consultation with States, we have heard that the Federal definition does not provide States with enough flexibility to require participation by individuals who are working sporadically at very low wages.

We, therefore, propose to allow State IV-A agencies to establish their own standards for the type of "work" that qualifies for this exemption. For example, such a standard might require that the job pay at least minimum wage. The standards must be included in the State JOBS plan as provided at § 250.20.

Pregnancy. Currently, a pregnant woman in her third trimester is exempt based on the pregnancy. Section 402(a)(19)(C)(vi) of the Act exempts pregnant women during the second and third trimesters based on the pregnancy.

However, we would strongly encourage States to urge pregnant women to volunteer to participate in the program, particularly those who are not yet 20 years of age and without a high school education. Since these women will be required to participate soon after their children are born, pursuant to § 250.32(a), it would be a much smoother transition and a more effective process if they do not drop out of the educational system during their pregnancy.

Age of the Youngest Child. Section 402(a)(19)(C)(iii) of the Act provides that a parent or other relative of a child under 3 (or an age less than 3, but not less than 1, if the State plan so provides) is exempt if the parent or relative is personally caring for the child. It also provides that the parent or relative of a child under 6 is exempt if personally caring for the child unless the State IV-A agency assures the necessary child care and that participation in the program will not be required for more than 20 hours per week. However, both of these exemptions are superseded by the requirement at section 402(a)(19)(E) of the Act that custodial parents under age 20 attend educational activities if they have not finished high school and child care is otherwise available. A more complete discussion of this requirement is contained in the preamble for § 250.32.

We propose to limit the child care exemption to one parent or caretaker relative per case. This is consistent with section 402(a)(19)(D) of the Act which specifically allows only one such exemption in a two-parent unemployed parent case. We believe that by analogy it is a reasonable interpretation to apply the same requirement in an AFDC case and, therefore, where there is more than one person who can qualify for the exemption, only one person may be exempt. We also believe that this policy is consistent with the language that the individual must be "personally providing care."

Exemptions in Unemployed Parent (UP) Cases. Section 402(a)(19) of the Act does not exempt a parent in an AFDC-UP family from JOBS participation due to the other parent's participation in JOBS. Accordingly, the State IV-A agency may require the second parent to participate unless he or she meets another exemption criterion such as caring for a young child. However, section 402(a)(19)(D) of the Act also allows States to require both parents to participate, notwithstanding the exemption for having a young child, if child care is guaranteed in accordance with section 402(g) of the Act.

If the State IV-A agency does not elect this option, section 402(a)(19)(D) of the Act provides that only one parent may be exempt for personally caring for a young child. We propose to allow a State to establish policy on whether the principal earner is eligible for the exemption for caring for a child under age 3.

Other Exemptions. Other exemptions provided in section 402(a)(19)(C) of the Act, including the incapacity, illness, and caring for another ill or incapacitated individual in the household, are implemented in the proposed regulations and follow the language of the current WIN regulations, which implement identical exemptions. We do encourage State IV-A agencies not to automatically exempt someone as incapacitated if the individual could be served or employed if reasonable accommodation for the incapacity were made.

The proposed regulation requires that State IV-A agencies regularly review the appropriateness of exemptions, especially those of a temporary nature. Such review must occur, at a minimum, at each redetermination for AFDC.

Volunteers (§ 250.31 of the Proposed Regulations)

Section 402(a)(19)(B)(i)(II) of the Act contains a general requirement that State IV-A agencies must allow applicants for and recipients of AFDC who are exempt under section 402(a)(19)(C) to participate in JOBS on a voluntary basis if the program is available in their area and State resources otherwise permit.

However, section 402(a)(19)(B)(ii) of the Act contains a specific requirement that in determining priority of participation within the target groups defined in section 403(1)(2)(B), the State IV-A agency shall give first consideration to applicants and recipients who volunteer. We interpret the use of the term "volunteer" to include both mandatory and exempt

applicants and recipients so that a State may elect to prioritize among volunteers and, if appropriate, give priority to non-exempt volunteers.

The statutory priority given to volunteers in target groups does not usurp the State IV-A agency's authority to determine the type of program it will offer. Several factors may affect a State's decision on priority services including (1) goals of the State program, (2) availability of resources, and (3) the effect of selection of individuals to participate on the States's ability to meet participation rate standards. Section 402(a)(19)(B)(iv) of the Act specifically provides that a State IV-A agency need not allow or require participation of an individual if such participation would affect the State's rate of reimbursement pursuant to Section 403(1)(2) because the State could not expend 55 percent of its funds on individuals in the target groups. This provision is incorporated in the proposed regulation at § 250.74(a)(3).

The proposed regulation at § 250.31(b) describes the consequences for volunteers who stop participating in JOBS. For exempt individuals who stop participating in the program without good cause, their priority status to participate in the program is lost as long as other individuals are actively seeking to participate. For individuals who are not exempt but enter the program voluntarily, the regulation provides that if such an individual stops participating without good cause, the individual is subject to sanction as described in § 250.34. We believe that this approach provides fair and equitable treatment for all non-exempt participants and avoids the situation in which a non-exempt (mandatory) participant could avoid participating in JOBS by volunteering first and then dropping out without good cause. If the rule about volunteers losing priority status were applied in that situation, the mandatory individual would become part of the group served after all others thereby avoiding her obligation to participate.

Participation Requirements for Education (§ 250.32 of the Proposed Regulations)

Congress recognized the importance of education to the achievement of long-term self-sufficiency, especially for young parents, and it addressed it in two ways in the Family Support Act. First, the Act requires State IV-A agencies to make available a range of educational activities which are described in the proposed regulations at § 250.44. Second, the Act requires that to the extent educational services are available and State resources permit, the State must (subject to certain exceptions described below) require the custodial parent under 20 who has not finished high school (or its equivalent) to participate in an appropriate educational activity.

Congress thought it important enough to specifically provide that a young parent under 20 years of age is not exempt from educational activities even if she has a child under 3 and to give State IV-A agencies the option to require that she attend full-time if it is in the pursuit of a high school diploma or its equivalent. This is a very important step in insuring that young parents are encouraged and helped to remain in school and not ignored until their youngest child turns 3. In addition, in section 403(l)(2)(B)(iii) of the Act, Congress designated custodial parents under 24 who have not completed high school and who are not enrolled in high school (or a high school equivalency course) at the time they apply for aid, one of the four populations specifically targeted for services.

Section 402(a)(19)(E) of the Act provides State IV-A agencies with several options for young custodial parents. The State may establish criteria for excusing custodial parents under age 18 from the high school attendance requirements described above. We believe, however, that excusing custodial parents from high school attendance should be rare. We propose that in such cases State IV-A agencies must provide for assignment to available educational alternatives and that all determinations be made based on an assessment of the individual's circumstances. The proposed regulation further provides that the State agency's criteria may not excuse anyone from high school who is subject to the State's compulsory attendance requirements. We also propose that the State may not categorically excuse someone because of the grade level she has completed. For example, it is not sufficient to say that a 17-year-old who has only finished 8th grade is automatically excused.

For custodial parents who are age 18 or 19, the State IV-A agency may require participation in training or work activities in lieu of educational activities if the individual is not making good progress in completing educational activities or, if an educational assessment, prior to assignment, determines that such educational activities are inappropriate for the individual.

The statutory reference to "custodial parent" in section 402(a)(19)(E) has prompted some to question whether 16- to 18-year-olds who are not parents are eligible for JOBS services. We want to be clear that they are. If they are not in school, they are mandatory participants because they do not meet the exemption criteria. In addition, if the individual is a member of a family in which the youngest child will lose eligibility within two years because of age, she is a member of one of the target groups described at § 250.1 earmarked for services. We believe that, like their counterparts who are parents, 16- to 18-year-olds should be encouraged and helped to remain in school or to participate in other educational activities.

For individuals 20 years of age or over, if they have not earned a high school diploma (or its equivalent), section 482(d)(2) of the Act provides that if the State IV-A agency requires such an individual to participate, it must include educational activities consistent with her employment goals as a component in her employability plan. There are two exceptions: (1) If the individual demonstrates a basic literacy level, or (2) if the long-term employment goal identified in the individual's employability plan does not require a high school diploma (or its equivalent).

Participation Requirements for Unemployed Parents (§ 250.33 of the Proposed Regulations)

Section 403(1)(4)(A)(i) of the Act provides that a State IV-A agency must require at least one parent in a family eligible for AFDC due to the unemployment of the principal earner in the family to participate for at least 16 hours a week in one of the following components of the JOBS program: work supplementation program, a community work experience program or other work experience program, on-the-job training, or a State-designed work program approved by the Secretary.

If a parent is under age 25 and has not completed high school or an equivalent course of education, section 403(1)(4)(A)(i) of the Act permits the State IV-A agency to require the parent to participate in educational activities directed at attaining a high school diploma (or equivalent) or in another basic education program. The Act does not specifically define minimum levels of participation for individuals in this category. However, we have defined a minimum level of participation in educational activities for the purpose of determining the general participation rate, and we propose to adopt the same standard for this part of the UP participation requirements. That standard is "making satisfactory progress", as defined at § 250.1.

Section 403(1)(4)(A)(ii) of the Act provides that in the case of a parent participating in a community work experience program for the maximum number of hours as provided in § 250.63, such participation shall meet the requirements of this section even if it is less than 16 hours per week. On the other hand, nothing in this section relieves the parent of the obligation under § 250.63(d) to participate in CWEP for the maximum number of hours even if it exceeds the 16 hours per week provided in this section.

Sections 403(1)(4)(B) and (C) of the Act provide that, by FY 1994, each State IV-A agency must have 40 percent of its Unemployed Parent caseload participating at least 16 hours per week in a work component described in this section. This requirement increases by steps to 75 percent in FY 1997. The consequences of not meeting these rates are contained at § 250.74(c) and discussed further in the preamble to that section. We believe that it would be prudent for State IV-A agencies to incorporate programs designed to meet these requirements at the time that they implement JOBS (or as soon as they have a UP program). Early implementation of this provision will allow States to increase the coverage of their programs on an incremental basis so that they can be at 40 percent by FY 1994. In addition, by implementing concurrently with JOBS, the State IV-A agency will maintain a consistent approach to serving unemployed parents.

In addition, we have read this provision together with the technical amendments that section 202 of the Statute makes to the Unemployed Parent program. These amendments impose additional requirements on States to require early participation by principal earners, and on principal earners to participate or apply for participation in JOBS within 30 days of receipt of aid. These provisions are discussed more fully in the preamble to the technical and conforming amendments. By establishing a work program in accordance with this section, the State IV-A agency would have in place a program to which it could promptly and easily assign principal earners.

Sanctions (§ 250.34 of the Proposed Regulations)

Section 402(a)(19)(G) of the Act provides for sanctions if an individual who is required to participate in JOBS fails to participate in the program or refuses to accept employment without good cause.

Length of Sanctions. The length of sanctions for the Work Incentive Program was established in a joint regulation issued by the Secretaries of HHS and Labor. There are set periods of 3 payment months for the first failure to participate and 6 payment months for any subsequent failure. The length of sanction for WIN Demonstration and CWEP programs follows WIN regulations. The length of sanction for employment search also follows WIN regulations unless a State has adopted a lesser sanction period in its IV-A plan. Participation in work supplementation is voluntary.

Section 402(a)(19)(G)(ii) of the Act sets forth the length of sanction periods for JOBS purposes. For the first failure to participate or accept employment, the sanction lasts until the failure to comply ceases. For the second failure, the sanction lasts until the failure to comply ceases or 3 months whichever is longer. For any subsequent failure, the sanction lasts until the failure to comply ceases or 6 months whichever is longer.

We have heard from some States that it may be difficult to determine when a "failure to comply ceases". Accordingly, we propose a definition of this concept that we believe allows the State IV-A agency to determine that the individual has actually demonstrated a willingness to participate in the program and, therefore, has ceased her non-compliance. We propose that a State may require an individual to engage in either the activity to which she was previously assigned, or in some other activity designed by the State to lead to full participation, for a period of up to two weeks in order to demonstrate willingness to participate. If the individual successfully participates in such activities, the sanction will cease as of the day she agreed to participate. If the State IV-A agency has no activity to which it can assign the individual, the sanction will cease on the day she agrees to participate.

For instance, if a sanctioned individual says on Monday that she wants to participate, the State may require her to come in and develop an employability plan or attend a pre-employment orientation. If she successfully completes the assigned activity, her sanction shall be considered to have ended on Monday.

Nature of Sanction. If a parent or other caretaker relative in a one-adult AFDC family failed or refused to participate in the WIN program or accept employment, her needs were not taken into account in determining the family's need for assistance and the amount of the assistance payment. In addition, aid had to be paid to a third party in the form of protective or vendor payments unless the agency was unable to arrange such payments. Further, if the only dependent child in a family failed or refused to participate, the entire family would be ineligible for AFDC. Finally, if the parent who was designated as the principal earner, for purposes of section 407, failed or refused to participate, the entire family was sanctioned.

Section 402(a)(19)(G) of the Act makes several changes to the way the sanction is applied to the parent (or caretaker) and her family. The general rule is that the needs of the individual are not taken into account in determining need for assistance and the amount of the assistance payment. The provision that aid is denied to a family if the only dependent child fails to participate is not carried over so the general rule applies to such a family. Despite the child's failure to participate, she is still considered a "dependent child" for the purpose of determining the eligibility of the family.

Section 402(a)(19)(G)(i)(I) of the Act retains the requirement for protective or vendor payments if the sanctioned individual is the parent or other caretaker relative, and the State can make such an arrangement. This applies to both one-parent and two-parent families. We have amended § 234.60(a)(12) to incorporate this change.

Section 402(a)(19)(G)(i)(I) of the Act revises the sanctions for two-parent families who are eligible under section 407 of the Act. In addition to applying the general rule to the individual who failed or refused to participate, the Act provides that the needs of his or her spouse will also not be taken into account in determining the family's needs for assistance and the amount of its assistance payment if the spouse is not participating in the JOBS Program. The rest of the family will have their eligibility determined without inclusion of the needs of the sanctioned parent (and spouse, if such spouse is not participating in JOBS).

3-Month Notice. Section 402(a)(19)(G)(ii) of the Act also requires the State IV-A agency to notify an individual whose failure or refusal has continued for 3 months of the individual's option to end the sanction by terminating the failure. The proposed regulation clarifies that, in the case of the third and all subsequent sanctions, the notice must be sent after 3 months, but it must say that the individual cannot terminate the sanction until the full 6-month sanction has elapsed.

Good Cause (§ 250.35 of the Proposed Regulations)

Sections 402(a)(19)(G) and (H) of the Act provide that a sanction may only be imposed if the individual does not have good cause for failing to participate in JOBS or refusing to accept employment. The concept of "having good cause" covers a broad range of circumstances. Sometimes situations arise where an individual is unable to participate for a day or several days because of such things as illness or a breakdown in child care arrangements or transportation. These are often short-term situations resulting from events beyond her control. There are other circumstances in which good cause will give the individual an on-going reason for not participating (lack of available child care). Between these two, there will be circumstances in which an individual will have "good cause" for turning down a specific job or assignment ("net loss of cash income") but will be required to continue to participate.

Under the WIN program "good cause" was defined in the Federal WIN Handbook. Existing regulations for CWEP and employment search require the State to define good cause in the State IV-A plan. There are several specific provisions that give an individual "good cause" for failing or refusing to participate or to accept employment. We have incorporated them in the proposed regulations at § 250.35 and describe them as follows.

(1) If the individual is a parent or other relative personally providing care for a child under age 6 and the employment would require such individual to work more than 20 hours per week, the participant shall have good cause.

(2) For all individuals, good cause exists if child care (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to accept employment or enter or continue in the program and such care is not available and the State agency fails to provide the care. In judging whether good cause exists in these circumstances, the State IV-A agency should determine whether there are any other individuals in the home who are capable of providing the necessary care.

(3) If accepting a job would result in a net loss of cash income for an assistance unit pursuant to section 402(a)(19)(H) of the Act, good cause exists. However, if the State IV-A agency elects to make a supplemental payment to the family so that it does not experience a net loss of cash income, good cause does not exist.

(4) Finally, the State IV-A agency may define other reasons for good cause. These could include such events as inclement weather, breakdown of transportation and/or child care arrangements, short-term illness not requiring a doctor's care, or a family emergency.

While we believe that each State is in the best position to establish its own definition of other reasons for "good cause," we expect that States will develop standards that will insure the integrity of the JOBS program.

Calculating Net Loss of Cash Income. "Net loss of cash income" means that work-related expenses which would otherwise not be incurred must be subtracted from the gross income to determine whether the resulting net income is at least equal to the cash assistance received at the time the employment is offered. We propose that "gross income" includes, but is not limited to, earnings, unearned income, and cash assistance. The calculation of the amount of cash assistance to be counted in "gross income" must be based on current determination including the application of the appropriate earned income disregards. The need for and amount of a "supplemental payment" must be computed each month and include application of the appropriate earned income disregard.

Certain categories of expenses would logically be deducted from the gross salary, e.g., mandatory payroll deductions. However, other necessary expenses related directly to work must also be deducted. We considered two methods of measuring these other work expenses: (1) A reasonable allowance, similar to the $75 work expense deduction ($90 as of October 1, 1989) at § 233.20(a)(11)(B) or (2) actual, reasonable work-related expenses. In this regulation, we propose that State IV-A agencies use actual, reasonable work-related expenses in determining whether a "net loss of cash income" will occur. This calculation should be figured on an individual basis.

The use of actual expenses best serves the legislative purpose of ensuring that a participant who is required to accept a job is not penalized by having less income than was available while she was receiving assistance. The use of a "reasonable allowance" seems to duplicate the disregard requirement of section 402(a)(8) of the Act. If Congress had intended to add mandatory payroll deductions to the disregards of section 402(a)(8), such language could have been included.

Treatment of Supplemental Payments. Supplemental payments are treated as AFDC expenditures under sections 403(a) (1) or (2) of the Act. Families receiving such payments shall not be considered categorically eligible for AFDC and are not eligible for Medicaid as AFDC recipients.

Eligibility for extended Medicaid (or transitional benefits after April 1, 1990) will be determined as of the month the family becomes ineligible for AFDC due to the acceptance of the offer of employment.

Application to UP Cases. This definition does not supersede the 100-hour rule as applied to unemployed parents (UPs). Since the Act does not allow for AFDC payments to families where deprivation does not exist (two-parent families where neither is incapacitated and in which the principal earner is working more than 100 hours per month), it follows that a supplemental cash payment cannot be made to a UP family if the parent who is the principal earner is working more than 100 hours per month. Congress did recognize that the current definition of "unemployment" for the purposes of qualifying for aid under section 407 of the Act should be studied and authorized several demonstrations where alternative definitions to the 100-hour rule could be tested.

Conciliation and Fair Hearings (§ 250.36 of the Proposed Regulations)

Prior to the Family Support Act, there was no statutory requirement for a conciliation process. However, Federal regulations at §§ 224.60, 224.62, and 224.63 outline procedures for dispute resolution and conciliation in the WIN Program.

Section 482(h) of the Act requires that a State IV-A agency establish a conciliation procedure for the resolution of disputes involving an individual's participation in the JOBS program. We do not propose to describe specific procedures that all States must adopt. However, we believe that it was Congress' intent that States have a conciliation procedure that is neither so short as to be meaningless nor so long as to undermine the mandatory nature of the program and the imposition of sanctions.

An effective conciliation process can resolve misunderstandings or disagreements before they get to the point of resulting in a sanction. For example, a conciliation process could be used to resolve disagreements over the employability plan. It could also be used when a participant's attendance at an assigned activity has been irregular but

not yet sanctionable. Even if it appears that the failure to participate or refusal to accept employment is clear, the conciliation process can prevent the need to go to a full hearing.

We believe that an effective conciliation process has the following features. Either the recipient or the agency can request conciliation. At some point in the conciliation, the individual's rights and responsibilities under the program should be clearly explained, and she should be informed of the consequences of continued failure to participate. The conciliation should be time-limited, and the individual should be made aware of this. We recommend that the period be no more than 30 calendar days. The agency should attempt to schedule at least one face-to-face meeting between the individual and a representative of the agency. It may be appropriate for a disinterested third-party to participate in such a meeting. If the agency initiates the conciliation process and, after reasonable efforts to schedule and hold a conciliation meeting, the individual does not appear for such meeting, the agency may end the conciliation process. The State's efforts at conciliation should be well-documented in the case file.

Fair Hearings. Under WIN the fair hearing process is complicated by the joint administration of the program. The WIN sponsor (the employment agency) is responsible for resolving disputes and providing for a hearing procedure on issues related to the individual's participation in WIN activities. An individual has a right to appeal through the State employment agency to the National Review Panel at the U.S. Department of Labor. An individual who exhausts all her appeals through the Department of Labor is "deregistered." The deregistration notice is sent to the State IV-A agency which then institutes its procedures to reduce or close the grant based on failure to be registered with WIN. Proper notice has to be sent to the individual, and she has a right to a hearing under § 205.10. Such a hearing can only address issues related to the amount of the reduction or closure of the grant. It cannot review the employment agency's determination of failure or refusal to participate. This two-tiered system often means that enforcing participation requirements in WIN is difficult and time-consuming.

For the WIN Demonstration program, community work experience program, work supplementation program, and employment search, the State IV-A agency is required to follow the hearing and notice procedures in § 205.10.

Under section 482(h) of the Act, the State IV-A agency must provide a hearing when the conciliation process does not resolve a dispute. The Act provides States with two options. The State may follow the hearing and notice procedures of § 205.10. As an alternative, the State may establish a separate hearing system. However, the State IV-A agency may not contract out the responsibility for providing a hearing to any other agency. An alternative hearing system could provide for a hearing only on the issues associated with JOBS disputes. It should be noted, however, that before an individual's grant could be reduced, suspended, discontinued, or terminated, she must be afforded an opportunity for a hearing that meets the standards of *Goldberg* v. *Kelly*, 397 U.S. 254 (1970).

Subpart E—Operation of State Jobs Programs/Program Components

Providing Program Information to AFDC Applicants and Recipients (§ 250.40 of the Proposed Regulations)

Section 482(c) of the Social Security Act requires the State IV-A agency to provide all AFDC applicants and recipients with information on the JOBS program including education, training, and employment opportunities; available supportive services including child care and transitional child care for which they are eligible; the State IV-A agency's obligations; and the participant's responsibilities.

Although the Act only requires that this information cover the JOBS program, the conference report indicates that it is also important that the information cover child support responsibilities. Thus, this section of the proposed regulations requires that the State IV-A agency provide information on securing child support and establishing paternity as well as related requirements.

The purpose of providing program information on JOBS and child support is to ensure that all applicants and recipients are encouraged, assisted and required to fulfill their responsibilities to support their children by preparing for and obtaining employment and by ensuring their cooperation in the establishment of paternity and enforcement of child support obligations.

To provide a State IV-A agency with the flexibility to administer their programs to accommodate variations in local resources and needs, the proposed regulations permit a State IV-A agency to develop the processes, methods of delivery, and timeframes for providing this information. These must be described in the JOBS plan pursuant to § 250.21(g)(5). A State IV-A agency may provide this program information as the JOBS program is phased in by district office or target groups, as long as it is provided in a timely manner. We propose that a State IV-A agency provide this program information to applicants at the time of application and to recipients at the time of the first redetermination after the State IV-A agency's implementation of JOBS.

According to section 482(c)(5) of the Social Security Act, after the State IV-A agency provides a recipient with the information described above, it must, within one month, notify the recipient of the opportunity to indicate her desire to participate in JOBS. The agency must provide a clear description of how to enter the program. The Act does not, however, provide specifics regarding this notification process. To allow the State IV-A agency latitude in providing such notification to applicants, except those assigned to job search, this proposed section permits the State IV-A agency to make such notification within one month of eligibility determination. Thus the State IV-A agency does not have to provide information to all applicants, many of whom may never become eligible. Following the language of the conference report, the regulations indicate that such notification must be in writing. H.R. Rep. No. 998, 100th Cong., 2nd Sess. 132(1988).

Because the idea of participant preference can be confusing as it applies to non-exempt recipients, the proposed regulations clarify that an indication by a non-exempt individual that she does not want to participate does not prevent a State IV-A agency from requiring that individual to participate. Alternately, consistent with other due process guarantees, a State IV-A agency may not interpret a lack of response or indication of a preference not to participate in JOBS by a non-exempt individual to constitute, by itself, failure to participate. Also, a State IV-A agency must inform a non-exempt participant before she decides to voluntarily enter the program that she would be subject to sanction if she stopped participating in the program without good cause.

Initial Assessment and Employability Plan (§ 250.41 of the Proposed Regulations)

Initial Assessment. We are proposing that the State IV-A agency must conduct an initial assessment of each participant's employability based on: (1) Educational, child care and other supportive services needs; (2) the participant's proficiencies, skills,

deficiencies, and prior work experience; and (3) a review of the family circumstances, which may include the needs of any child of the participant.

The proposed regulations further provide that the initial assessment can be conducted through various methods including interviews, testing, counseling, and self-assessment instruments. Self-assessment instruments generally include check-off lists or survey forms designed to help the individual identify supportive service needs such as child care and transportation, and accomplishments such as educational level completed, prior work experience and skills acquired through employment or hobbies.

Appropriate assessment methodologies may vary among State IV-A and local programs due to differences in caseload size, program resources, and program philosophies. A State IV-A agency may also use different assessment methodologies to address individual recipient needs. For example, a State IV-A agency may find it cost-effective to do a limited, initial assessment for recipients, followed by a more in-depth assessment only as participant needs dictate. Since the Act does not provide specific details about assessment services and the conference report eliminated the requirement for testing literacy and reading skills, we believe Congress intended to give a State IV-A agency broad flexibility in this area.

We recommend that, where appropriate, State IV-A agencies use nationally recognized, standardized, and industry-developed tests to determine reading and literacy levels and aptitude skills before assigning participants to specific educational and vocational training programs. Such testing may help the State IV-A agency assure that limited resources are used effectively and that participants are not placed in activities that are inappropriate for them. The proposed regulations permit a State IV-A agency to use a wide variety of assessment methods.

The proposed regulations do not set forth timeframes (except for those individuals in job search pursuant to § 250.60) or establish a process for conducting the initial assessment. However, the proposed rule provides that a State IV-A agency must conduct the initial assessment within a reasonable timeframe prior to participation. The assessment process must be described in the State JOBS plan, as provided at § 250.21.

Employability Plan. Section 482(b) of the Act requires that the State IV-A agency develop an employability plan in consultation with the JOBS participant based on the initial assessment. It further specifies that the employability plan must contain an employment goal, describe the supportive services to be provided and the JOBS activities to be undertaken. The proposed regulation follows the requirements of the Act as to the basic content of the employability plan but leaves design and administration of the actual employability plan to the State IV-A agency.

Congress was particularly concerned that employability plans reflect the availability of jobs in the local job market so that JOBS resources would be expended efficiently. This concern is discussed in more detail in the preamble to proposed § 250.12 on coordination.

As appropriate, the employability plan may identify services to be provided to address the needs of a participant's child, such as drug education or life skills planning courses. Many services for children are generally available to low-income community residents at no cost through local educational programs or volunteer services.

The employability plan should reflect a direct path to available employment. States might consider including a schedule of activities that would lead to employment by a specified date to achieve this goal. The employability plan should include activities which are selected to achieve self-sufficiency in an expeditious manner.

Section 482(b)(1)(B) provides that the employability plan must also take into account participant preferences as much as possible within the limits of the State's JOBS program. We interpret this to mean that in developing an individual's employability plan, the State IV-A agency must consider the needs and preferences of the participant in the context of agency goals and constraints (including program resources, available services and local employment opportunities). The proposed regulation specifies that final approval of the employability plan rests with the State IV-A agency. This approval provision is particularly important in establishing the State IV-A agency's authority to determine the appropriateness of self-initiated activities as provided in proposed § 250.48.

In developing employment goals and establishing appropriate participation requirements, the State IV-A agency should not limit a participant's options based upon traditional views of appropriate male and female roles. Such limitations would be inconsistent with the requirements on non-discrimination at section 484(a)(3) of the Social Security Act, and could contravene the self-sufficiency goals of the program.

Agency-Participant Agreement (§ 250.42 of the Proposed Regulations)

Section 482(b)(2) of the Social Security Act provides that, following the initial assessment and the development of the employability plan, the State IV-A agency may require the JOBS participant (or the adult caretaker in the family of which the participant is a member) to negotiate and enter into an agreement with the State IV-A agency.

This is not a new concept. Currently, some State IV-A agencies require WIN/WIN Demonstration participants to sign a written agreement or contract with the welfare agency. Usually, this agreement is included as part of the employability plan and specifies the actions the recipient will take to implement the plan and the agency services and resources to be made available to the recipient. Generally, the agreement or contract includes well-defined time lines and benchmarks for progress for both the recipient and the agency. Thus, the agency-participant agreement is viewed as the basic tool for outlining the mutual responsibilities, expectations and specific tasks of both the recipient and the agency.

The proposed regulations follow the conference report and permit a State IV-A agency to consider the agreement a contract. H.R. Rep. No. 998, 100th Cong., 2nd Sess. 129 (1988). Such contract is subject to applicable State laws and regulations.

This section of the proposed regulations provides that the option need not be statewide. However, the State IV-A agency will be required to describe in its JOBS plan the purpose and content of such agreements or contracts and the types of participants for whom it will be used. Proposed § 250.21 contains the State JOBS plan content requirements.

Case Management (§ 250.43 of the Proposed Regulations)

Generally, a case management system is designed to support and strengthen the participant's capacity to become self-supporting and to help assure that participants and their families have access to the resources and opportunities required for self-support. Case management may be advocated on the grounds that the activities and services a recipient may need to progress to self-support are so scattered among programs and agencies that a case manager is needed so that progress is not delayed and frustrated.

Under the proposed regulations, a State IV–A agency that chooses to establish a case management system is given flexibility to design its case management services and procedures. Case management does not have to be offered in all political subdivisions that have a JOBS program. Proposed § 250.21 provides that State IV–A agencies must describe their case management approach covering the scope of services offered, the political subdivisions included, and the types of recipients and percent of caseload served in their State JOBS plan.

Mandatory Components (§ 250.44 of the Proposed Regulations)

Education. Section 482(d)(1)(A)(i) of the Act provides that the required educational activities are: (1) High school education or its equivalent; (2) basic and remedial education to achieve a basic literacy level (we propose a definition that is discussed in § 250.1); and (3) education in English as a second language. The conference report (H.R. Rep. No. 998, 100th Cong., 2nd Sess. 142 (1988)) states that where enrollment in regular high school programs is deemed inappropriate, the State IV–A agency is expected to identify or develop alternative education activities to meet the needs of JOBS participants.

The proposed regulation provides at § 250.32(b) that if a State requires participation in JOBS of an individual age 20 or over who has not completed high school, it must include educational activities consistent with her employment goal. There are two exceptions: if the individual demonstrates a "basic literacy level," or if her long-term employment goal does not require a high school level of education. We propose elsewhere, on advice from the Department of Education, to define "basic literacy level" as successful completion of the eighth grade. In responding to these two requirements in the Act, we note that levels of education between "basic" education and "high school" are not explicitly specified. Nonetheless, they are clearly allowable as JOBS educational activities. Section 250.44(a) provides that the educational activity may include any activity below the postsecondary level, which means that an intermediate educational goal between basic education and high school is acceptable if the State IV–A agency concludes that it corresponds to the individual's long-term employment goal.

The Family Support Act provides no definition for the required work and training programs. It does, however, require reporting of activity and costs related to each selected program or activity. We, therefore, propose to regulate functional definitions for the three remaining mandatory components of "job skills training," "job readiness activities," and "job development and placement."

We sought available definitions of these terms from the Department of Labor, principally with reference to definitions used by the State employment security agencies and the Job Training Partnership Act programs. Not all programs required by the Family Support Act are defined in DOL programs, such as "job readiness activities." Other programs or activities are defined differently, such as "job development" and "job placement", which are established in the Act as a single, combined, required program activity, but which are each defined differently by JTPA and the Employment Service.

In a two-day meeting with selected State welfare agency directors and their work program directors, strong opinion was voiced that wherever possible, definitions of employment and training terms correspond with existing definitions used by the State agencies from whom State welfare agencies would often be seeking both contracted and non-reimbursed services. While we have endeavored to be responsive to these State concerns in this regard, we had to choose between or combine definitions. We invite comment on the operational usefulness of the distinctions we propose for such purposes as program design and data maintenance in case records.

Job Readiness Activities. Under the proposed rule, "job readiness" centers on pre-employment preparation, and would exclude activities that would readily fit within the scope of other defined components, such as vocational skills training. The Department of Labor advised us that "job readiness activities" are not defined by the Employment Service. However, employment security agencies define several closely related terms. Thus, a "non-job-ready" person is one who is deficient in work attitudes, behaviors or skills and is therefore unable to get and keep a job; a "job ready individual" is one who, among other things, has no physical, mental or job skill barriers that preclude employment; and "employability" is defined as, among other things, work behavior and attitudes that are necessary to compete successfully in the labor market. We agree with the Department of Labor observation, and propose in the rule, that an activity related to removing such barriers would be defined as a job readiness activity.

Job Skills Training. We propose to adhere to what we believe is the commonly understood meaning of the term—pre-employment training in technical job skills. It would, for example, correspond approximately to what was understood in the WIN and WIN Demonstration programs as institutional training.

In order to assure that skills training offered through JOBS results in an increase in participants' skills and competencies, and that progress can be monitored by the State IV–A agency, we propose to require that qualitative measures for progress be developed for all skills training that is included as a JOBS component. This is discussed in more detail in the definition of making good or satisfactory progress in a training component in § 250.1.

Job Development and Job Placement. The proposed rule would define "job development and job placement" as agency activity on behalf of participants to create or discover openings, and to market participants for them. This is consistent with a longstanding approach in employment programs. We have followed that historical pattern as a means of distinguishing agency activity that is relatively intense on behalf of a participant, from a participant's intense activity in Job Search. Based on this distinction, we propose to exclude this component from the definition of "participation" found in § 250.1.

We also do not intend that this component should have any connection with the longstanding concept in employment security agencies of a "placement" as an outcome. The specialized meaning of this outcome measure for employment security agencies does not correspond to the requirements or expectations of JOBS.

Optional Components (§ 250.45 of the Proposed Regulations)

In addition to the four required components, the State IV–A agency must also offer at least two of the following four activities in its JOBS program:

(1) Group and individual job search;
(2) On-the-job training;
(3) Work supplementation; and
(4) Community work experience, or other approved work experience program.

Except for on-the-job training, these optional components are generally based on existing law and program regulation. The Act provides for a few changes to programmatic aspects of these components which are discussed

in the following sections. Otherwise, we have adopted as much of the existing regulations as possible. Since the Act establishes common sanctions, eligibility criteria, FFP guidelines, target populations and service area coverage for the JOBS program, the regulations governing the optional components will no longer have specific language addressing these areas as there was when they were discrete IV-A work programs.

Like the required components, the optional components need not be operated uniformly throughout the State. However, the additional State options do provide an opportunity for the State IV-A agency to develop a program meeting specific needs of individuals while recognizing State economic and environmental factors. Congressional conferees (H.R. Rep. No. 100-998, 100th Cong., 2d Sess. 141 (1988)) stressed the desirability of programs that respond to varying circumstances, including changes in the unemployment rate and different needs that exist in rural and urban areas. Our regulations seek to reflect this congressional intent.

Postsecondary Education (§ 250.46 of the Proposed Regulations)

We have defined postsecondary education in § 250.1. We interpret the language of section 482(d)(1)(B)(i) of the Act to mean that the offering of postsecondary education is an entirely optional matter for the State IV-A agency to address in its JOBS plan, except that we have limited such education to that which is directly related to the fulfillment of an individual's employment goal, i.e., to obtain useful employment in a recognized occupation. Within this occupational limitation, the State IV-A agency must set forth the bases upon which it will determine whether postsecondary education is appropriate.

We believe that the proposed restriction of postsecondary education to education related to the goal of obtaining useful employment in a recognized occupation is consistent with the intent of the JOBS program. The program's aim to reduce long-term welfare dependence would not be served by permitting a JOBS participant to embrace the broader, more general educational goals that also fall within postsecondary education but that have a less well-defined occupational connection.

While we cannot prohibit the use of JOBS funds for this activity, we are extremely concerned about the potential cost. We strongly urge States to use other available resources for postsecondary education and concentrate JOBS funds on short-term activities which lead to employment. A State must consider the wide range of other components which must be included in their JOBS program when determining whether to fund postsecondary education. We will monitor State expenditures in this area carefully.

We propose to exclude the costs of such education, including tuition, books and fees, from coverage as special needs under § 233.20(a)(2)(v). Since the Act now provides funding for this activity and places a specific cap on the overall JOBS funding, we would be circumventing the Statute were we to allow additional funding under special needs.

Other Education, Training, and Employment Activities (§ 250.47 of the Proposed Regulations)

Section 482(d)(1)(B)(ii) of the Act provides that the Secretary may approve additional components not specified in the Act. Because, in the course of the conference, public service employment was specifically considered as a potential optional component and finally rejected by the conferees, we have expressly excluded public service employment from the acceptable possibilities. By public service employment we mean what that term meant under the WIN and CETA programs: a fully subsidized job in a public agency that is not expected to convert to unsubsidized employment.

Self-Initiated Education or Training (§ 250.48 of the Proposed Regulations)

This section describes State options regarding individuals already engaged in education or training at the time they are otherwise required to begin participation in JOBS. Section 402(a)(19)(F) of the Act gives the State IV-A agency the option to allow such individuals to continue attendance at an institution of higher education or in a school or course of vocational or technical training if certain conditions are met. The proposed rule requires that a participant: (1) Attend the educational activity at least half-time; (2) make "satisfactory progress in such institution, school, or course"; and (3) be enrolled in a course of study that is consistent with her employment goals.

While the wording of the Act could lead to an interpretation that the half-time attendance provision pertains only to the school or course of vocational or technical training, this would leave a question as to the amount of time the participant would have to be in attendance at an institution of higher education. We see no reason to distinguish an "institution of higher education" from a "school or course of vocational or technical training" in applying a minimum attendance requirement. Rather, we see the proposal to have the half-time attendance requirement apply to higher education as serving three beneficial purposes. First, it provides guidance as to minimal expectations of participation. Second, it serves as an indicator associated with making satisfactory progress in the institution, as defined in § 250.1. Third, the proposed half-time requirement is consistent with such requirements for half-time attendance contained in certain student financial aid programs operated under the Higher Education Act. For example, the Guaranteed Student Loan Program requires a student to be enrolled at least half-time in order to receive aid from that program.

The proposed meaning of the term "vocational or technical training" is incorporated into § 250.48 of the proposed rule. In this context, it is included within the meaning of "postsecondary education," as defined in these regulations, but limited to education that both leads to useful employment in a recognized occupation and results in other than a baccalaureate or advanced degree. This limitation is compatible with definitions contained in the Higher Education Act and the Carl D. Perkins Vocational Education Act. Such a limitation also fits with the more fundamental purpose of the Family Support Act to reduce welfare dependency. We do not believe the JOBS program was intended to foster the acquisition of postsecondary education in the broad sense of the programs found in the Higher Education Act, under which long-term educational activities clearly are supported.

In supplying definitional information, the Department of Education stated that one of its primary concerns was "whether welfare recipients who are enrolled in postsecondary schools have the ability to benefit from the programs in which they are enrolled. The Division of Adult Education believes that the State should perform an educational assessment of the ability to benefit of any JOBS participant * * * before enrollment is considered 'satisfactory participation * * *.'"

Other commenters asserted that there is potential for abuse by the institutions cited in section 402(a)(19)(F) that would enroll welfare recipients as a means of securing indirect funding by means of student aid under the Higher Education Act.

We believe that, in the case of self-initiated training which the State IV-A agency might find to be satisfactory for participation in the JOBS program, an educational assessment of the participant and adherence to benchmarks of satisfactory progress are crucial to the protection of both the participating student and Federal funds. Therefore, the proposed rule requires an assessment and development of an employability plan, before the agency determines the appropriateness of her pre-existing education or training activity to a defined employment goal.

The proposed rule provides that the State IV-A agency may place restrictions upon the self-initiated postsecondary education that may be accepted as meeting JOBS participation requirements. For example, the State IV-A agency might restrict such postsecondary education to a maximum of two years. Further, a State IV-A agency might choose to permit an individual who is within two years of completing a four-year program to complete it if the requirements of this section otherwise are fulfilled. We would encourage States in delineating restrictions to be mindful that the goal of self-initiated training should be to move the participant from welfare dependence within a reasonable time. Therefore, shorter programs leading to specific occupational goals are preferable to longer educational programs that may have far less specific employment goals.

The proposed rule prohibits the use of Federal JOBS funds to pay self-initiated postsecondary education that the State may consider to constitute satisfactory participation in the program, pursuant to § 250.48. In the case of self-initiated postsecondary education, section 402(a)(19)(F) of the Act specifically states that such costs shall not constitute federally reimbursable expenses under JOBS.

The remaining proposed provisions of § 250.48 largely repeat provisions found in section 402(a)(19)(F) of the Act. The rule proposes that, consistent with the Act, the State IV-A agency must not permit other JOBS activities to interfere with State-approved self-initiated training. Also, while the costs of self-initiated postsecondary education will not be reimbursable under JOBS, the costs of child care, transportation, and other supportive services that the State IV-A agency determines are necessary for attendance are eligible for Federal reimbursement.

Subpart G—Optional Components of State JOBS Programs

Job Search Program (§ 250.60 of the Proposed Regulations)

Section 482(g) of the Act provides for group and individual job search as an optional component under JOBS. Although we describe all mandatory and optional components in separate sections, we recognize that it will be appropriate for States to combine them for certain clients. Job search is an excellent example. While job search by itself is an appropriate activity for the job ready who have basic workplace skills, for those who are skills deficient, job search should be coupled with other education and training activities.

The Act generally retains the provisions of the current law at section 402(a)(35) of the Act with some modifications. The first change is that Congress expressed its intent that job search be "intensive". We interpret this to mean that, in order to qualify as an optional component in which participation counts for the purposes of calculating participation rates pursuant to § 250.74, a job search program must be well-structured and include specific activities to be undertaken by the participant or the agency on behalf of the participant. Such activities must be defined in the State JOBS plan.

Current law provides that a State IV-A agency may require an initial period of up to 8 consecutive weeks of job search which may begin at the time of application for aid. Some States have used this initial period to do a preliminary screening of the individual's employability prior to assessment and development of the employability plan. The Act amends this provision to provide that the State IV-A agency may not require an individual to participate in job search for longer than 3 weeks without performing an assessment as defined at § 250.41. The 3 weeks of job search prior to assessment count as part of the 16 weeks that are allowable during the application period and first year.

The Act also permits an additional 8 weeks of job search in any subsequent period of 12 consecutive months. We propose to adopt the existing interpretation of "an additional 8 weeks" to mean 8 weeks or its equivalent. For example, an equivalent would be one week a month for 8 months. We point out, however, that if a State IV-A agency adopts a definition of "equivalent to 8 weeks" that stretches out the length of job search, without combining it with other activities, such job search may not meet the proposed standards for job search for the purposes of computing participation rates. Those standards are found at § 250.1.

The Act also provides that a State IV-A agency may require additional job search only in conjunction with some other education, training or employment activity which is designed to enhance the individual's employment prospects. For example, if a State IV-A agency requires an 8-week period of job search for a recipient and then assigns the individual to skills training, it is permissible to require her to engage in job search at the end of the training as part of the training.

However, participation in job search is not an allowable activity for FFP or participation rates under the JOBS program if an individual has participated for more than 4 months out of the 12 preceding months. We interpret "4 months" to be 4 months or its equivalent. Therefore, job search for one week a month for 8 months (after the initial 8 weeks), as described above, would be within the allowable activities.

On-The-Job Training (§ 250.61 of the Proposed Regulations)

Section 482(d)(1)(A)(ii)(II) of the Act provides for on-the-job training (OJT) as one of the four optional components in JOBS. Section 250.61 contains the regulations for OJT.

Our definition of OJT is based on the definition contained in WIN regulations at § 224.42(a) and information provided by the Department of Labor. JTPA regulations do not define OJT, although it is an allowable activity. There are a few basic principles that govern OJT. The participant is hired first by the employer. While engaged in productive work, she is provided training which gives her the knowledge or skills essential to the full and adequate performance of that job. She is compensated at a rate (including benefits) comparable to that of other employees performing the same or similar jobs, and the employer is reimbursed by the State IV-A agency or its agent for the extraordinary costs of training and the additional supervision that is required. At the end of the OJT, the participant is retained as a regular employee.

In order to assure that OJT assignments offered through JOBS result in an increase in participants' skills and competencies, and that progress can be monitored by the State IV-A agency, we propose to require that qualitative measures for progress be developed for all OJT assignments that are included under JOBS. This is discussed in more detail in the definition of making good or

satisfactory progress in a training component in § 250.1.

Rate of Reimbursement and Duration of OJT. We propose to limit the rate of reimbursement to employers to no more than an average of 50 percent of the wages paid by the employer to the participant during the period of the OJT. The operational experience of the six federally-funded grant diversion demonstration projects in which subsidy levels ranged from 25 percent to 83 percent did not suggest that higher rates significantly increased job opportunities. Furthermore this limitation is consistent with JTPA, WIN, and employment security policy. We, therefore, believe that by adopting a comparable policy, we avoid fostering competition among programs as to the wage subsidies they offer. Section 250.61(b) contains this provision.

We also considered whether to regulate the length of OJT. We have decided against setting limits in regulation because we believe that States should have the flexibility to design the program that both meets the needs of the State and the individuals they plan to serve, especially if they use OJT for target populations. While we permit State flexibility, we strongly recommend that State IV-A agencies use the guidance that is available, such as the Dictionary of Occupational Titles, in determining the appropriate length of training and that State IV-A agencies assure that training is only for as long as is reasonable to learn the necessary skills.

Eligibility for Services during Participation. Wages from OJT are considered to be earned income for any purpose of the law, which is consistent with current AFDC policy. A person who loses eligibility for AFDC because of earned income in accordance with § 233.20 or because of the application of the 100-hour rule in the case of the principal earner in a Unemployed Parent case will continue to be considered a participant in JOBS for the duration of the OJT. This will allow the agency to make payments to the employer through the completion of the OJT. This is comparable to the WIN regulations at § 224.42 which provide that a person in an OJT is considered to be a WIN registrant for the duration of the OJT even if she is no longer receiving AFDC. It also means that the participant may be eligible for the supportive services available to other participants in JOBS even though she is not receiving an AFDC grant. However, since the participant will have earned income, we believe that the State IV-A agency, in determining the need for supportive services, should treat the participant as it would treat an individual who finds unsubsidized employment.

As a participant in JOBS, the individual will be eligible for child care as determined by the State IV-A agency to be necessary for participation for the duration of the OJT. We have considered how to handle child care once the OJT ends. We propose the following approach in the regulation. Since the individual was not in receipt of AFDC in the previous month, she is not eligible for the twelve months of transitional child care when the OJT ends. However, if she would have been eligible for transitional care at the time that she lost eligibility for AFDC due to going into the OJT, she can get transitional care for the number of months left in the 12-month eligibility period.

For example, an individual who goes into OJT loses eligibility for AFDC in January. The OJT continues until April during which time she receives child care as a participant. If she would have been eligible for transitional child care under Part 256 in February, she is eligible for the remaining 9 months (from May to January). She would, of course, have to meet the requirements of eligibility and would have to contribute to the cost of the child care in accordance with the State's sliding fee scale. Alternatively, a State IV-A agency may simply provide child care as transitional child care from the time that the individual becomes ineligible for AFDC due to income from the OJT if she would otherwise qualify. This approach has the advantage of being fairly simple although it would disadvantage an individual who would not qualify for transitional benefits because she did not meet the other eligibility criteria (for example, was not in receipt of AFDC for 3 of 6 preceding months). We believe that our approach of providing up to 12 months of transitional child care to OJT participants assures that individuals who enter employment are treated equitably whether the employment is unsubsidized or subsidized.

Eligibility for Medicaid extensions is determined at the time the individual loses eligibility for AFDC. In other words, there is no provision, as there is under work supplementation, which allows OJT participants who are no longer AFDC recipients to be eligible for Medicaid based solely on their status as participants.

Differences between OJT and Work Supplementation. Under JOBS, OJT and work supplementation are two of the four programs from which a State must choose its optional components. We carefully considered the differences between OJT and work supplementation under the Act. Since the Deficit Reduction Act of 1984 broadened the kinds of jobs that could be filled under work supplementation to include jobs in the private sector, many State IV-A agencies have used the existing work supplementation program authority to run what is essentially an OJT program. The diverted grants are used to pay the subsidy to the employer.

There have been many recommendations to make OJT and work supplementation as compatible as possible in our regulations so as to allow States maximum flexibility in program design. We have carefully considered all the arguments and conclude that OJT and work supplementation must be considered separate components. We have two major reasons for reaching this conclusion.

The first is a new provision (section 484(c) of the Act) which specifically bars any participant in a work supplementation component from being assigned to "fill any established, unfilled position vacancy." The same prohibition has always existed in CWEP and is carried over to CWEP by the Statute. However, it is a new provision as it applies to work supplementation and, if we assume that it has the same meaning as it has under CWEP, it appears to limit the use of the work supplementation component to jobs that did not previously exist.

The second reason is that the Act allows State IV-A agencies to apply special rules to participants in work supplementation jobs that are not available to persons in OJT. The State IV-A agency may reduce or extend earned income disregards as they apply to work supplementation participants (section 482(e)(2)(G)). The State IV-A agency may exempt work supplementation participants from retrospective budgeting requirements (section 482(e)(3)(D)). In addition, the State IV-A agency must extend Medicaid coverage to participants in work supplementation (section 482(e)(6)). There is no basis for extending any of these special rules to OJT participants and, if we did not make any distinction, there would be no way to determine which rules should apply to a given participant.

Furthermore, there is no compelling reason in OJT to invoke the special rules which are necessary to divert grants to a wage pool in work supplementation. Since JOBS funds are used to reimburse the training costs of the employer, the State IV-A agency, in its planning

process, should calculate how many OJT training opportunities the State will develop and proceed accordingly.

For States which are concerned that diverted grants will not provide an adequate wage pool for their work supplementation component, we point out that they may earmark JOBS program monies at any time to add to the diverted grant money in the wage pool to ensure that sufficient funds are available for subsidy. This money could be unused OJT money, or any other JOBS program money. However, it is not permissible to use diverted AFDC grants in the OJT component.

Work Supplementation Program (§ 250.62 of the Proposed Regulations)

Section 482(e) of the Act provides for a work supplementation program (WSP) as an optional component under the JOBS program. This component allows the State IV-A agency to pay, or "divert," all or part of the AFDC grant to an employer to cover part of the costs of the wages paid to an AFDC recipient who is participating in the program. The Act adopted most of the existing law. However, there were a few changes made to the work supplementation program by the Statute which are discussed below.

Currently, only those individuals who would have been eligible for AFDC under a State IV-A Plan as it was in effect in May 1981, or as modified thereafter as required by Federal law, can participate in work supplementation. The Act does not carry over this provision to the JOBS program.

Currently, participation in the work supplementation program is voluntary, i.e., the AFDC recipient can elect to participate in work supplementation by accepting an offer of work. However, once the individual enters the program, she can be considered a mandatory participant. This is necessary to insure the integrity of the program and to carry out the agreements with employers. Under the Act, the State IV-A agency may require an individual who is not exempt to participate in any appropriate component, including work supplementation.

Retrospective Budgeting/Monthly Reporting. The Deficit Reduction Act of 1984 and interim final rules at § 233.36, published September 10, 1984, provide that State IV-A agencies must require monthly reports from those assistance units with earned income or recent work histories. Additionally, § 233.31(a) provides that all assistance units required to file monthly reports must have the amounts of their assistance payments determined retrospectively. Because work supplementation program participants have earned income, they have been subject to monthly reporting and retrospective budgeting rules. The States, however, had the option to request waivers to exempt such participants from these two requirements.

The proposed regulation at § 250.62(g) permits State IV-A agencies to exempt individuals who are participating in work supplementation from retrospective budgeting requirements and to determine their monthly payments prospectively. This means the amount of assistance payable to the participant's family for any month will be based on the income and other relevant circumstances in that month.

While the legislation does not specifically address the monthly reporting issue, we propose that State IV-A agencies be permitted to exempt participants in supplemented jobs from monthly reporting without seeking a waiver. This policy is consistent with past practice. Furthermore, exemption from monthly reporting will allow the States to have one policy for all recipients whose payments are computed prospectively.

Calculating the Diverted Grant. The regulation at § 250.62(f) allows the State IV-A agency to "freeze" a participant's AFDC grant (residual payment) as an alternative to monthly recomputations. Under this procedure, upon taking a supplemented job the participant's AFDC base grant is recalculated considering her earnings from the job and any other sources. If her earnings and other income drop her base grant to zero, the entire amount of the grant is "diverted" to a wage pool from which the employer is paid. If the earnings and other income do not cause the complete loss of the base grant, she receives a "residual" payment. The difference between the base grant and residual payment is diverted to a wage pool.

A wage pool is a mechanism which allows States to pool (divert) AFDC grants not paid to the WSP participant and pay employers a standardized amount for all WSP participants' wages. From the Federal perspective, the pool is an account or listing for accumulating and tracking the diverted amounts so that FFP can be claimed when payments are made to employers.

The following example illustrates: The potential participant is a parent in a regular AFDC case receiving a monthly grant of $450. A full-time supplemented job is found which would pay $720 per month. The individual is currently eligible for the $30 and ⅓ and standard earned income disregards, has no other income, child care is being provided at no cost and no changes are foreseen in the family's needs, income, or resources.

Countable Income=$720−$90 (work expense after 10/1/89)−$30=$600
$600−(⅓ of $600)=$400

Residual Payment=$450 (AFDC grant)−$400 (countable income)=$50

Diverted Grant=$450 (AFDC grant)−$50 (residual payment)=$400

If a State elects to "freeze" a participant's residual payment, the State IV-A agency must determine at the time of placement what payment amount, if any, the participant will be eligible for given the hours of work, wages and other circumstances while participating in a supplemented job. Once this initial payment is determined, the amount is "frozen", and the participant, if otherwise eligible, receives the same amount (residual payment) for each month of participation regardless of changes which occur during the participation. Even though a participant may be otherwise ineligible for AFDC benefits, she can continue to participate, and the State can continue to receive FFP.

Although the basic concept of "frozen" grants is attractive, States may be concerned about their ability to make adjustments in certain limited circumstances (for example, when the household size changes). Therefore, State IV-A agencies are permitted to make limited adjustments to a participant's residual payment within a "frozen" grant policy. Under such a "partial" freeze, for example, one State might make adjustments only in cases where the State's need or payment standards change. Another State might make adjustments not only under those circumstances, but also where the family size changes. If a State chooses a partially frozen grant policy, it must be consistently applied. That is, if a State IV-A agency provides adjustments for factors which would increase the payment amount, it must also make downward adjustments if changes in those same factors would cause a decrease in payment amounts.

The use of the terms "frozen" and "partially frozen" grants is not new. This policy is retained from the previous work supplementation program because States feel that freezing grants eases administration of the program. It is also consistent with § 250.62(b)(2) which gives State IV-A agencies broad discretion in establishing the terms and conditions under which jobs, payments, wages, and the conditions of participation are defined.

If a participant becomes ineligible for AFDC for any reason other than earnings from the supplemented job, the individual will not be eligible for a residual payment. However, she may continue in the supplemented job. Since she is not due a residual payment, the entire basic grant amount is diverted to the wage pool. For example, if a family becomes ineligible because of the receipt of a lump sum payment, the family would no longer receive a residual payment, but participation in the supplemented job could continue.

Wage Pool Sampling. Section 482(e)(2)(F) of the Act allows the States to use a sampling methodology to determine the amount of money available for the wage pool. By selecting a sample of work supplementation cases to determine available monies for the wage pool, State IV-A agencies will not need to track all grants diverted on an individual basis. Reconciliation of the wage pool for each participant served is eliminated. Reconciliation is still required based on the results of the sample.

The State IV-A agencies will need to develop a method to select an unbiased sample of work supplementation cases of sufficient size to produce statistically valid results when applying this method across the universe of work supplementation participants. The method used by the State IV-A agency must be described in its JOBS plan.

Medicaid Eligibility. Currently, States have the option to provide Medicaid to the participant and her family if they are otherwise eligible. Section 482(e)(6) of the Act requires that States provide Medicaid coverage to the participant and family members who would be otherwise eligible for AFDC if not participating in work supplementation. The Health Care Financing Administration (HCFA) is responsible for issuing regulations to implement this section of the Statute.

Child Care Eligibility. In § 250.62(h) we propose to allow State IV-A agencies to provide child care to work supplementation participants according to the same policy that we apply to OJT participants. A more complete explanation of this policy is contained in the preamble to § 250.61 on OJT.

Community Work Experience Program (§ 250.63 of the Proposed Regulations)

Section 482(f) of the Act provides for a community work experience program (CWEP). The new program generally retains the provisions in the current law, with modifications. The Act allows for training along with actual experience as ways to improve the employability of participants. We interpret this to mean that a State IV-A agency can include an element of training in a work experience position.

Under current law, section 409(a)(1) of the Act, the maximum number of hours in any month that a participant may be required to work is that number which equals the amount of financial assistance payable to the assistance unit divided by the greater of the Federal or the applicable State minimum wage. The Statute modifies this calculation to clarify that the State IV-A agency must deduct any child support collected (except the $50 pass-through) in making the calculation of maximum hours.

Section 482(f)(2) of the Act provides that after 6 months of an individual's participation in CWEP and at the conclusion of each work and/or training assignment, the State IV-A agency must provide a reassessment and revision, as appropriate, of the individual's employability plan.

Section 482(f)(1)(B)(ii) of the Act provides that after an individual is assigned to CWEP for 9 months, she may not be required to continue in the assignment unless the maximum number of hours of participation is no greater than the amount of the assistance payment (excluding child support collected but not the $50 pass-through) divided by the highest of: (a) The Federal minimum wage; (b) the applicable State minimum wage; or (c) the rate of pay of individuals employed in the same or similar occupations by the same employer at the same site.

The provision requiring a State IV-A agency to exclude the amount of aid for which it is reimbursed by a child support collection from the calculation of the maximum hours an individual must participate is new, although several States have done so under current law. Since the reimbursement from the child support collection will often not occur in the month for which the calculation of hours is being made, we welcome suggestions, particularly from States which have such calculations, on ways to implement this provision that would meet the intent of Congress but would not be overly burdensome to States to apply.

We propose to incorporate the provisions of the Food Security Act of 1985 (Pub. L. 99-198) regarding the addition of food stamp benefits into the calculation of CWEP hours. The Food Security Act provides that recipients are exempt from Food Stamp work registration if they are participating in an AFDC CWEP program. The Food Security Act gives States the option of adding food stamp benefits to the AFDC grant in the computation of CWEP hours in these cases. The maximum number of hours that a Food Stamp recipient, who is exempt from Food Stamp work requirements because of participation in CWEP, can be required to participate in CWEP is 120 hours a month. Since the Statute makes minimum changes to CWEP in incorporating its basic provisions into JOBS, we propose to consider JOBS CWEP to be the same as AFDC CWEP for the purposes of this provision.

The Act allows States to have other work experience programs. States may offer such programs if they are described in the State JOBS plan and approved by the Secretary. An alternative work experience program could be modeled after the WIN work experience program in which a participant is assigned to a full-time, temporary position for a limited number of weeks. Such a program gives the participant the experience of working full-time and learning what the demands of full-time employment are, both on the job and at home. Alternative work experience programs offer States the opportunity to be more creative and may be less burdensome administratively. Any alternative work program is subject to the FFP limitations at § 250.63(j) and the general program standards contained in section 484 of the Act.

Subpart H—Funding

JOBS Allocation Entitlement (§ 250.70 of the Proposed Regulations)

Federal funding for JOBS is provided as a capped entitlement. The amount of funds available to a State with an approved JOBS plan under title IV-F is determined by the formula provided in the proposed regulation at § 250.70(b). Unlike funds authorized under title IV-A, which is an open-ended entitlement program, funds not obligated by the end of the fiscal year cannot be carried over, as stated in the proposed regulation at § 250.70(c).

States will be required to liquidate all obligations incurred during a fiscal year within one year after the end of that fiscal year. The liquidation period for grant programs subject to the regulations at Part 92 is normally 90 days (§ 92.23(b)). However, we are proposing to permit one year for liquidation in the regulation at § 250.70(d) for the JOBS program because we recognize that States may need more flexibility in administering the program.

Allotment of JOBS Limit of Entitlement (§ 250.71 of the Proposed Regulations)

All States are required to have an operating JOBS program effective October 1, 1990. However, States may begin operating a JOBS program before that date. At the earliest, States may begin their JOBS programs on July 1, 1989. Funding proportional to the quarters the program is in operation in the State in a given fiscal year will be provided as described in the proposed regulation at § 250.71(a).

JOBS funding for Puerto Rico, Guam, the Virgin Islands, and American Samoa is not subject to the funding restrictions at section 1108 of the Social Security Act (see the proposed regulation at § 250.71(c)(1)). For these jurisdictions, the costs related to the provision of child care under Part 255 are subject to the JOBS limit of entitlement. This includes the costs of child care services and related administrative costs (see the proposed regulations at § 250.71(c)(2)). For these same jurisdictions, the costs related to the provision of transitional child care services under Part 256, which includes the cost of the services and the related administrative costs, are available for matching under title IV-A (see the proposed regulations at § 250.71(c)(3)).

The JOBS program provides direct funding to Indian Tribal and Alaska Native organizations. The Federal funds available to Tribes and organizations constitute a reduction to the allotment of the State in which the Tribe or organization is located. The proposed regulations at § 250.90 provide the specific requirements for Indian Tribal and Alaska Native organization participation in the JOBS program.

Maintenance of Effort (§ 250.72 of the Proposed Regulations)

Funding for the JOBS program is not intended to refinance existing programs, but to add to the effort of assisting individuals to avoid long-term dependency. We interpret this purpose to mean that JOBS funds are not to be used to replace non-Federal funds to pay for education, training, and employment activities which were already in existence prior to a State's implementation of the JOBS program. The proposed regulation at § 250.72(a) defines "non-Federal" funds.

State and local funding for the purposes of the JOBS program must not be less than State and local expenditures incurred in fiscal year 1986 for education, training, and employment activities dedicated to assist AFDC individuals in becoming self-sufficient, as provided in the proposed regulation at § 250.72(b). Examples of types of expenditures included in this fiscal year 1986 "maintenance of effort" provision are: A State's share of costs incurred in operating the title IV-A work programs and the WIN, or WIN Demonstration, program, as appropriate; a State's costs for a GED program operated in behalf of welfare recipients and applicants; a State's share of costs incurred in operating a State education, training, or work program for welfare recipients including AFDC recipients; a State's costs for work-related supportive services, such as child care, also incurred in this effort.

The proposed regulations at § 250.72 (c) and (d) establish the conditions under which FFP will be provided for expenditures certified for activities that are not otherwise available to the JOBS participant. We are proposing that FFP will not be provided for activities and services that are otherwise available to an AFDC recipient on a non-reimbursable basis. Thus, it would not be permissible to begin claiming the costs of AFDC recipients' high school attendance as an expenditure for JOBS. Nor would it be permissible to claim subsidy costs where the State has had a program in effect to subsidize an activity for low-income residents; however, under JOBS a State could pay for the portion that was not previously subsidized. On the other hand, it would be a permissible JOBS expenditure to pay for an additional education program established solely for AFDC recipients.

Matching Rates (§ 250.73 of the Proposed Regulations)

JOBS program activities are subject to three different rates of FFP. The FFP rate for that part of the total JOBS funds comprised of the States' WIN or WIN Demonstration allotment for FY 1987 is 90 percent. This rate may be applied toward any allowable cost of the JOBS program. A State's 10 percent share may be in the form of cash or in the form of in-kind contributions. Section 403(1)(1)(B) of the Act does not provide a definition of "in-kind"; it states only that it be fairly evaluated. Therefore, in order to provide States flexibility in this area, we are proposing to permit a State's share of in-kind to be State in-kind or third party in-kind contributions. This is currently the practice for the WIN program and we propose to incorporate this practice in the JOBS program but only for this portion of the funding for JOBS.

Costs Matched at the FMAP Rate with a 60 Percent Floor. Federal matching under the JOBS program is also available at a State's Medicaid matching rate (the FMAP) for certain costs of the program that exceed a State's WIN or WIN Demonstration allotment. In this category, for the purposes of the JOBS program, the minimum matching rate is 60 percent.

Expenditures which may be claimed in this category are the personnel costs (defined throughout the preamble and proposed regulations as salary and benefits only) of full-time staff involved in any capacity of the JOBS program, whether programmatically or administratively. Full-time staff are those individuals employed for a normal work week according to a State's definition of full-time. We propose that States cannot count part-time staff as full time with a full-time equivalency measure.

The Act provides the same match rate for those full-time JOBS employees who will be involved in administrative functions such as: assessing the needs of JOBS participants and developing appropriate employability plans; accounting; systems operation; and supervision. The assessment of child care needs and referral to appropriate services for JOBS participants can be matched at this rate when performed by a full-time JOBS employee.

The match rate also applies to costs associated with a JOBS participant's involvement in a component of the program. This includes program costs, such as OJT payments to an employer or tuition and fees for GED classes, if not precluded by the proposed regulations at § 250.48. It also includes the personnel costs of staff and first-line supervisors directly providing component services to participants on less than a full-time basis.

The costs of equipment, supplies, and materials that are used by a JOBS participant while she is actively participating in a JOBS component are available at the FMAP rate (with a minimum of 60 percent). However, indirect costs are not matchable at this rate.

Costs Matched at 50 Percent. The FFP rate of 50 percent for the JOBS program includes the costs of general administrative activities. This includes personnel costs of staff administering the program on less than a full-time basis and all other non-staff costs not matchable at the program matching rate. Administrative costs include, for example, personnel costs for case managers and program planners not employed full-time for the JOBS program. FFP at 50 percent is available within the JOBS cap funding limit for both direct and indirect costs, such as utilities and space. (See OMB Circular No. A-87.)

A State's share of costs at the program matching rate or at the administrative matching rate must be in cash. In-kind contributions, whether State in-kind or third party in-kind, cannot be used as the State's share.

State agencies are encouraged to seek financial support from private sources to develop and enhance JOBS program activities and other activities which help individuals to become self-sufficient. Funds donated from private sources for the JOBS program may be considered as a portion of a State's share of matching costs if such funds meet the criteria of § 235.66.

Reduced Matching Rate (§ 250.74 of the Proposed Regulation)

Target Groups. For the JOBS program, the Act provides certain safeguards to assure that the increased Federal funding intended to assist individuals in avoiding long-term dependency is directed largely towards those individuals who are most in need of assistance. The proposed regulation at § 250.74(a) provides that if, in any fiscal year, a State fails to expend 55 percent of its JOBS allotment on members of the State's target population as defined in proposed § 250.1, the Federal matching rate for all JOBS expenditures for that same year will be reduced to 50 percent. The Secretary, however, may waive this reduction if a State can satisfactorily demonstrate that the characteristics of the caseload in that State make it infeasible to meet the requirements of the proposed regulation at § 250.74(a) and that the State is targeting other long-term or potential long-term recipients.

Participation Rates. To ensure that States effectively serve the purpose of the JOBS program, section 403(1)(3)(A) of the Act establishes participation rates that States should meet for fiscal years 1990 through 1995. The proposed regulation at § 250.30 and its accompanying preamble describe participation requirements under the JOBS program. The term "participation" is defined in the proposed regulations at § 250.1.

Failure to meet the participation rates, which are defined in the proposed regulation at § 250.74(b), will reduce the matching rate for all JOBS expenditures to 50 percent. The participation rate for fiscal year 1990 is 7 percent; however, States are not subject to a reduction in the Federal matching rate to 50 percent in the following fiscal year. Fiscal year 1992 is the first year in which States will become liable for reduction of FFP for failure to meet the participation rates (for failure to meet the fiscal year 1991 standard). Methods for determining participation rates are included in the proposed regulations at § 250.74(b) (2) and (3).

The Secretary may waive in full or in part any penalties applicable to a State for not meeting these participation rates. The proposed regulations at § 250.74(b)(4) provide the conditions under which a full or partial waiver may be granted.

AFDC-UP Participation Rates. JOBS participation rates for the AFDC-unemployed parent (AFDC-UP) program have also been established by the Act and appear in the proposed regulations at § 250.74(c)(1). AFDC-UP participation rate requirements go into effect in fiscal year 1994, and the first penalty would be imposed in fiscal year 1995.

While the statutory language refers to waiving the penalty for not meeting the participation rates, and sets the waiver criteria, the actual penalty is not defined in the Act. We believe it is appropriate that the penalty for failure to meet the AFDC-UP participation rates be a reduction to 50 percent in FFP. This penalty is identical to the penalty established in the Act for failure to meet the general participation rates. It is also consistent with the penalty established for failure to expend 55 percent of JOBS funds on targeted groups.

As an alternative, we considered applying the penalties cited under section 404 of the Act for failure to substantially comply with the provisions of section 402(a). The appropriate penalties under this section include the withholding of all AFDC grant funds to a State or the withholding of certain funds limited to specific categories. However, we concluded that this penalty would be too harsh.

The Secretary may waive in full or in part any penalties applied to a State for not meeting the participation rates for the AFDC-UP program. The proposed regulations at § 250.74(c)(3) provide the conditions under which a full or partial waiver may be applied.

Activities Excluded from FFP (§ 250.75 of the Proposed Regulations)

There are certain activities for which Federal matching under the JOBS program is not available under any circumstance. These are identified in the proposed regulations at § 250.75. In addition, there are certain costs unallowable for FFP that apply only to the community work experience program and alternative work experience programs included in an approved JOBS plan. The proposed regulations pertaining to these unallowable costs are located at § 250.63(j).

Financial Reports, Records, Statements and Audits (§ 250.76 of the Proposed Regulations)

Grants provided under the JOBS program of title IV-F are subject to the grant management regulations at Part 92. These regulations apply to federally-assisted programs that are not funded as open-ended entitlement programs, such as the AFDC program. (For the AFDC program, the grant regulations at Part 74 continue to apply.) The following provisions of Part 74 also apply to grants subject to Part 92: §§ 74.62(a), 74.173, 74.174(b), 74.304, 74.710, and 74.715.

With respect to these regulations, States are reminded that all claims for Federal reimbursement must be supported by appropriate documentation. JOBS funds under title IV-F are subject to audit and financial and programmatic review. Claims for improper costs under the JOBS program will be subject to disallowance. Comments are specifically requested on a standard sampling procedure (within the guidelines found in § 250.80) to determine such disallowances. Disallowance procedures for JOBS funds will be similar to the disallowance procedures for the AFDC program. Where appropriate, expenditures of the JOBS program are subject to the cost allocation provisions at Part 95, Subpart E.

Costs Matchable as AFDC Payments (§ 250.77 of the Proposed Regulations)

Section 402(a)(19)(H) of the Act specifies that costs incurred by the State for supplemental payments to families so that they do not experience a net loss of cash income, pursuant to § 250.35, shall be treated as title IV-A costs. However, they are not considered AFDC benefit payments for any purpose.

Payments to employers in the work supplementation program include part or all of an AFDC grant that has been diverted to cover part of the wages paid to an AFDC recipient participating in this program (see proposed regulations at § 250.62(1)). Because these payments are AFDC benefit payments, they are available for Federal matching under the AFDC program.

Subpart I—Uniform Data Collection Requirements

Uniform Data Collection Requirements (§ 250.80 of the Proposed Regulations)

The Family Support Act imposes substantial reporting requirements related to the JOBS program and its attendant child care provisions. Section 487(b) of the Social Security Act contains a minimal set of uniform

reporting requirements that may be augmented as the Secretary determines. Section 403(e), among other data elements, requires a State to provide information on the use of child care by AFDC recipients.

The Act also implicitly establishes reporting requirements by conditioning enhanced FFP on meeting requirements for certain levels of participation and for a minimum expenditure level for certain target groups.

In order to meet the above reporting requirements, we are proposing that States be required to submit electronically on an ongoing basis a sample of unaggregated case records of JOBS participants in each month with a minimal set of data elements as prescribed in § 250.82. The case records would be identified by a State-supplied substitute for the Social Security Number. The sample in a State would have to be of sufficient size to provide accurate data at the State level, plus or minus one percentage point, at a 95 percent confidence level, for all data elements necessary to determine whether a State qualifies for enhanced FFP under any of the provisions of § 250.74.

In addition to this sample, States would submit aggregate reports on a quarterly basis of the number of non-exempt AFDC recipients. Finally, in lieu of a cost tracking system that would identify all funds spent on each individual member of the State's target population, we propose that a State develop a table of average total unit cost per component and service made available by the State. The table would be updated annually. We propose to use activity data submitted in the State's sample of unaggregated case record data, as discussed above, in conjunction with the State's table of costs, to determine whether the State has met the 55 percent requirement.

We are offering the above described approach as an alternative to requiring periodic aggregate, hard-copy reporting. We propose this sample in lieu of aggregate reporting because we believe it will meet statutory reporting requirements, provide more useful information to the Federal government, and be less burdensome to States. Very few of the data elements are not directly involved in meeting an explicit or implicit statutory reporting requirement.

On the other hand, we foresee the possibility that a sample-based reporting requirement may introduce levels of complexity for States. We also anticipate that in States with relatively smaller numbers of AFDC cases, a State may find it less burdensome to submit the universe of their case records, rather than develop a sample that might need to approach the universe in order to achieve the required levels of accuracy. The rule would allow universe reporting in lieu of a sample.

The above described method of reporting would place a more substantial burden on the Department than simply handling input of hard-copy report forms from the States. Nonetheless, the overall approach may be of sufficient value both to States and the Department, that the additional complexities and burdens would be worth the effort. We invite comment, particularly with regard to operational implications for the States.

Given the substantial data reporting requirements mandated statutorily, we have attempted to keep additional reporting requirements to a minimum. However, many individuals and organizations with whom we have consulted have urged us to collect outcome information such as job entries, welfare grant reductions, case closures and retained employment for JOBS participants. We realize that such information is frequently requested by legislative bodies and by the public, and that some States might want to compare themselves to others with respect to the measures cited above. Others have commented that the interpretation of these data is ambiguous and that there is an additional burden that collecting them would place on States. We have not included outcome measures or other types of measures, such as receipt of transition services, in these proposed regulations, but we may include such reporting requirements in the Final Rule. We invite comment with respect to the utility and the data collection burden of outcome measure reporting.

State Data Systems Options (§ 250.81 of the Proposed Regulation)

Given the large number of individuals who may participate in the JOBS program and the detailed nature of the subcategories of data required by the Statute, we believe it is unlikely that a State can either operate its program effectively or meet the minimum requirements in the Statute without an automated client-based information system. To these ends, we propose in § 250.81 to permit various rates of FFP for different parts of the system needed to operate the JOBS program effectively. For the sake of distinguishing this subsystem from all others in a State's welfare data system, we refer here and in the definitions in § 250.1, to a State's JOBS Automated System, or JAS.

We propose that all requirements of § 95.611, and of § 205.37, be met with regard to any funding for a State's JAS.

We propose three JAS funding arrangements be available to the States. Title IV-F funding at 50 percent FFP would be available for a State's JAS. Title IV-A funding, also at 50 percent FFP, would be available for the interface between a State's IV-A system and its JAS, if the State's IV-A system is a non-FAMIS system. For the interface between a State's JAS and a FAMIS IV-A system, title IV-A FFP would be available at 90 percent.

We propose the interface of an automated JOBS program with the title IV-A FAMIS system, for verification of eligibility and reconciliation of data, would include planning, development and implementation of title IV-A subsystems to: (1) Manage information on eligibility factors or target group membership; (2) effect notifications and referrals including non-cooperation; (3) check records of applicants and recipients on a periodic basis with other agencies to verify continued eligibility; and (4) notify appropriate officials when a recipient ceases to be eligible.

Required Case Record Data (§ 250.82 of the Proposed Regulation)

In this section we propose a minimum content for the case record that will permit our derivation of all reportable data required by the several parts of the Statute and the Act noted with regard to § 250.80 above. We specify this minimum, in part, in support of the proposed submission of a sample of unaggregated case record data. However, we believe this approach also enables States to record the minimum data necessary to operate the JOBS program effectively. We particularly seek comment on States' views as to whether some or all of the minimal case record data should be required for all JOBS participants, or only for the sample of cases the State would be required to submit to the Department.

Subpart J-Operation of Jobs Programs by Indian Tribes and Alaska Native Organizations

Scope and Purpose (§ 250.90 of the Proposed Regulations)

The Statute provides that Indian Tribes and Alaska Native organizations may apply to the Secretary by April 13, 1989 for direct funding to conduct a JOBS program. Tribal (refers to both Indian Tribes and Alaska Native organizations) groups had to apply by this date in order to receive direct JOBS funding in any future year.

The Department issued initial application guidelines (FSA-AT-89-11) on February 24, 1989, to officials of

federally recognized Indian Tribes and Alaska Native organizations. Based on comments received from Tribal leaders, requesting that the April 13, 1989 application not be treated as a final document, and on the fact that we were still developing Federal policy at the time these guidelines were issued, we advised Tribal applicants that we would not disapprove their applications based on their initial submittal. We also advised applicants that we would issue further guidance after April 13, 1989.

Eligible Indian Tribe and Alaska Native Organization Grantees (§ 250.91 of the Proposed Regulations)

The proposed regulations clarify the general eligibility requirements of the Act concerning Indian Tribes. They reflect congressional intent that an Indian Tribe must be recognized by the Federal government as eligible to receive services from the Bureau of Indian Affairs in order to be eligible for the JOBS program. Specifically, Report 100-37 of the Senate Committee on Finance (p. 39) states that " * * * an Indian tribe is any tribe, band, nation, or other organized group or community of Indians * * * that is recognized by the Federal government as eligible for services from the Bureau of Indian Affairs and is located on a reservation * * *."

In addition, consortia or Tribal organizations representing eligible Tribes may operate a JOBS program if they meet certain conditions. These conditions provide that such consortia or organizations have the managerial and administrative capacity to operate the program and have received documented authority from the participating Tribes to conduct the program on their behalf.

Selection Criteria for Eligible Alaska Native Organizations (§ 250.92 of the Proposed Regulations)

The Act is very specific about the program eligibility of Alaska Native organizations. It limits Departmental approval to only one application from an Alaska Native organization for each of the 12 geographical regions. The proposed rules establish criteria which the Department will use to designate the Alaskan Native organization grantee. The criteria are very similar to those used by JTPA in designating Native American grantees for its program. However, since under the JOBS program the Alaska Native grantee must serve all eligible Native Alaskans residing in the region in which the grantee is located, we have specifically required that the grantee demonstrate either that it has previous experience in operating regionwide programs or that it can establish the capability to effectively administer the program throughout the region.

Funding Formula (§ 250.93 of the Proposed Regulations)

The Act specifies that JOBS funding for an Indian Tribe is based on the number of adult members of the Tribe receiving AFDC compared to the total number of adult AFDC recipients in the State. The formula for Alaska Native organizations is based on the number of adult Alaska Natives receiving AFDC who reside within the boundaries of the region which the Alaska Native organization represents compared to the total number of adult AFDC recipients in the State of Alaska.

Since the Act does not establish a designated geographical service area for Tribes, as it does for Alaska Native organizations, the proposed rules define such area. The Tribe will receive JOBS funds based on the number of adult members of the Tribe receiving AFDC who reside in the designated service area as compared to the total number of adult AFDC recipients in the State. Thus, the designated area creates a manageable program service area which permits funds to be provided based on those Tribal members who could realistically be served by the Tribe. The State IV-A agency will be expected to provide JOBS services to Tribal recipients outside of the designated area. A designated service area concept is used in various other programs such as JTPA, the Community Services Block Grant and those under the Bureau of Indian Affairs (BIA).

State IV-A agencies and Tribes or organizations have a mutual responsibility to share all available information so a funding level can be calculated. Accordingly, the proposed regulations specify that the State IV-A agency and the Tribe or organization must exchange available information on adult Tribal AFDC recipients needed to determine the estimated number of the eligible Tribal recipients and to define the designated service area, if other than the reservation or trust lands, as appropriate. This requirement reflects the fact that the State IV-A agency is the most appropriate source of data relating to AFDC recipient status. However, many State IV-A agencies cannot identify individuals in their caseload by Tribal affiliation and thus will probably need membership or residence information from Tribes or organizations to verify Tribal AFDC recipient status.

We recognize that State IV-A agencies and Indian Tribes or Alaska Native organizations may have difficulty developing data on adult Tribal AFDC recipients, especially using the definition of adult recipient contained in the Act (i.e., an individual other than a dependent child, including a minor custodial parent of another dependent child, who is receiving AFDC).

Because of these data deficiencies, we strongly encourage Indian Tribes or Alaska Native organizations and State IV-A agencies to enter into agreements which establish population estimates as well as service area definitions, as appropriate. If a State IV-A agency and Tribe or organization cannot agree on the number of Tribal eligible recipients and/or the designated service area, the Department will, in consultation with the Tribe or organization and the State IV-A agency, make the final determination.

Non-Tribal recipients in a designated area are subject to the requirements of the State's JOBS program. However, a State IV-A agency may through contract (or other referral arrangement) authorize an Indian Tribe grantee to serve non-Tribal members residing in the designated service area. The State IV-A agency may only delegate to a Indian Tribe grantee those functions which do not involve agency discretionary judgment, as discussed in proposed § 250.10 and related sections of the preamble.

Program Administration, Implementation and Operations (§ 250.94 of the Proposed Regulations)

Program Administration. Under the proposed rules, the Tribe or organization must designate an administrative entity, such as the social services agency or the Tribal JTPA agency, to be responsible for the administration of the JOBS program. This responsibility for program administration includes all the requirements under the Act, unless waived under proposed § 250.96, as we, as applicable requirements under all other related Federal regulations. Such regulations include the general funding provisions under Part 92 which are generally applicable to Tribal administration of Federal programs (as reflected in § § 250.13 and 250.77 of the proposed rules) and the joint Department of Labor/Department of Health and Human Services regulations being developed which cover worker's issues such as working conditions and displacement, as appropriate.

The responsibility to administer JOBS means that the Tribe or organization has the responsibility for program functions such as exemption and priority determinations, orientation, referrals,

assessment and development of the employability plan, JOBS activities and hearings involving JOBS participation issues. However, the proposed regulations clarify that certain other related functions, such as imposition of sanctions, are retained by the State IV-A agency based on its responsibility to administer the IV-A program. For instance, if the Tribe or organization determines that an individual failed to meet participation requirements, the State IV-A agency would be responsible for making the necessary AFDC payment changes, after the individual has been afforded appropriate due process.

Part 255 proposes that the State IV-A agency (which receives matching Federal funds under title III of the Statute to guarantee child care for JOBS participants) provide necessary child care for Tribal participants either directly or through contract with the Tribe or organization. Also, under Part 256 the State IV-A agency is responsible for transitional child care benefits. Because of these interrelated functions, we encourage State IV-A agencies and Tribal grantees to enter into agreements to develop the referral and operating procedures necessary for effective program implementation.

Implementation. The proposed rules permit the Tribe or organization to begin its JOBS program before the State implements its program. This provision reflects the sovereignty of the Tribe or organization to operate its program to the full extent allowable under the Act. Given that proposed § 255.2(f) requires the State IV-A agency to guarantee child care necessary for Tribal members' participation, this proposed section (§ 250.94) of the regulations provides options to permit a Tribe or organization to conduct its program prior to the State's implementation. During the period prior to the State's implementation of the program, these options permit the Tribe or organization to either guarantee necessary child care for its participants or to operate its program on an entirely voluntary basis. These provisions are discussed in detail in the proposed § 250.95 and accompanying preamble concerning supportive services.

Also, the proposed rules and the initial application guidelines (FSA-AT-89-11) require that the Tribe or organization submit its application with final documentation to the Department at least 45 days prior to implementation to provide sufficient opportunity for the Secretary's review and approval. Similar to the requirements for State IV-A agencies at § 250.20(b), the proposed rules indicate that the Tribe or organization may not begin its JOBS program prior to approval by the Secretary. Prior approval is necessary given the complexity of the program, the needed interface which must occur between the Tribal applicant and the IV-A agency, and the fact that Tribal programs represent a whole new direction for welfare work programs.

Operations. This section of the proposed regulations exempts Tribes and organizations from the requirements of § 250.12 in order to specify appropriate coordination requirements for Tribal grantees. Under this proposed section, the Tribe or organization is required to provide its application to the State IV-A agency prior to its submittal to the Department. This is to ensure that necessary interface with the State IV-A agency has been established, including the development of agreements or methodologies, to assure that Tribal recipients receive equitable treatment under both the AFDC and JOBS programs.

The proposed rules also indicate the appropriate agencies and programs with which the Tribe or organization must coordinate. The coordination requirements reflect congressional concern that agencies administering JOBS identify available resources from other programs in order to prevent duplication of services, to assure that the maximum level of services is available to participants and to ensure that costs of these other program services for which welfare recipients have been eligible are not shifted to the JOBS program. This latter provision is closely related to the provisions on maintenance of effort which are described in the proposed § 250.98 and preamble.

Furthermore, although Tribal grantees would be subject to § 250.44, which covers mandatory components, they would not be subject to § 250.45, which covers optional components. The proposed § 250.94(e) instead requires Tribal JOBS programs to include four mandatory components and at least one optional component. The following program design modification is proposed to more realistically reflect the special circumstances and needs of Tribal grantees.

Because the four mandatory components cover basic education, training and employment activities, many of which should be available to Tribal participants through other program resources, we believe that most Tribal programs should be able to offer all four components. For example, many literacy programs should be available to Tribal recipients through the Office of Indian Education and, thus, would not be funded under JOBS.

The Tribal program need include only one optional component. Of the four options given to States, two components—community work experience program (CWEP) and the work supplementation program—are integrally linked with AFDC recipient grants. Thus, the proposed rules require that adequate operational agreements be worked out between the State IV-A agency and Tribal grantee before the Department can approve these components.

A Tribe is permitted to include, as an optional component, a work experience program as approved by the Secretary or alternative education, training, and employment activities as approved by the Secretary. We would approve, for example, an alternative work experience program which generally met the requirements of a CWEP, JTPA, or BIA work experience program. Tribes or organizations are cautioned that in order to receive approval of alternative education, training and employment activities, such approaches must be consistent with the purpose of the JOBS program to reduce welfare dependency and must serve only eligible AFDC recipients. Thus, if JOBS is linked with another program such as JTPA, a Tribal grantee must be able to validate that JOBS funds were used only to serve Tribal JOBS participants. These stipulations are proposed to protect the integrity of the program. Based on congressional concern as well as our careful consideration, the proposed rules further indicate that JOBS funds not be used for public service employment or for allowances.

Supportive Services (§ 250.95 of the Proposed Regulations)

Under the proposed rules, the Tribal grantee must provide for the work-related supportive services, such as clothing or transportation, necessary to enable an individual to participate in the JOBS program. Tribes or organizations must follow the proposed requirements regarding work-related supportive services under Part 255. The Tribal grantee is given flexibility to determine the types of supportive services and methods of delivery but must describe these services/methods in its application documentation pursuant to proposed § 250.97(f)(6).

Since State IV-A agencies are required to provide child care under Part 255 of the proposed regulations, this section proposes that the Tribe or organization must ensure, based on a

method which is acceptable to the Tribe or organization and the State, that necessary child care is available when requiring an individual to participate in its program. Since the State IV-A agency will be providing child care services and the Tribe or organization will be designating who participates, we strongly encourage Tribal grantees to develop with State IV-A agencies appropriate referral mechanisms to ensure that Tribal participants receive necessary child care services. In addition, we are encouraging State IV-A agencies to contract with Tribal grantees for providing child care services for Tribal participants.

The proposed regulations at § 255.2(f) are designed to ensure that States provide sufficient funds to meet the child care needs of Tribal participants and that States use comparable and appropriate methods of providing child care for Tribal participants as they use for non-Tribal participants in the State. The Tribe or organization may guarantee child care for its participants through other program sources.

If the Tribe or organization begins its JOBS program before the State IV-A agency, the Tribal grantee can operate an entirely voluntary program. However, after the State implements its JOBS program, the Tribe or organization may no longer operate an entirely voluntary program, and necessary child care must be arranged to require non-exempt individuals to participate. This provision is consistent with congressional concern, as reflected by the participation and exemption requirements in § 250.30, that individuals who are reasonably able to participate in the program, and for whom guaranteed child care is available, should be required to participate.

Waiver Authority (§ 250.96 of the Proposed Regulations)

This proposed section indicates that certain requirements of the Act and of the proposed rules do not apply to Tribal grantees, as they are unique to State programs. These include provisions relating to State agency administration, the State's JOBS funding allotment or State matching requirements. Thus, these have been determined to be inappropriate for Tribal JOBS programs by the Secretary pursuant to his authority under the Act.

A Tribe or organization may also request waivers for any other requirements of the Act not specifically mentioned but must provide proper justification. The Secretary would consider the appropriateness of such waivers on a case-by-case basis.

Application Requirements and Documentation (§ 250.97 of the Proposed Regulations)

The proposed Tribal application requirements generally follow State JOBS plan requirements, which are discussed in detail in proposed § 250.20 and related preamble.

Under the Act, Tribes and organizations had to apply to the Department by April 13, 1989, in order to conduct a JOBS program. Since we were still developing JOBS policies at the time we released guidelines for Tribal application, we advised Tribal groups in the application notice (FSA-AT-89-11) that their April 13 submissions would probably need to be supplemented.

We believe that the additional application documentation proposed in this section is necessary in order to provide the Secretary with a sufficient level of information upon which to base approval. We determined that this additional documentation was needed, based on our review of all the requirements reflected in the Act and those being proposed for State JOBS programs. Because of the complexity of the JOBS program requirements and the degree of program flexibility we would like to provide Tribal grantees under our waiver authority, we do not think these application requirements impose an undue administrative burden upon Tribal grantees. The application must serve as the Department's primary vehicle for assessing whether a Tribal grantee is meeting the requirements of the Act and regulations.

Maintenance of Effort for Indian Tribes and Alaska Native Organizations (§ 250.98 of the Proposed Regulations)

Tribal grantees are not subject to the requirements in proposed § 250.72. Proposed § 250.98 makes maintenance of effort provisions more appropriate for Tribal entities. The proposed requirements on maintenance of effort reflect congressional concern that JOBS funding not be used to supplant existing funding for programs which have been available for welfare recipients.

This means that JOBS funds should be used only to provide educational, training and employment activities for Tribal participants which are in addition to those which would otherwise be available. For example, where a high school education has been available to Tribal members, JOBS funds must not be used to pay for this activity. Thus, the Tribal grantee may not contract for services which are otherwise available on a non-reimbursable basis pursuant to the proposed regulation at § 250.13.

Part 255—Child Care and Other Work-Related Supportive Services During Participation in Employment, Education, and Training

Purpose (§ 255.0 of the Proposed Regulations)

The purpose for the issuance of the proposed regulations is to implement section 301 of the Family Support Act of 1988.

State Plan Requirements (§ 255.1 of the Proposed Regulations)

Title III of the Statute adds section 402(g) to title IV-A of the Act. Thus, child care is not part of the title IV-A plan which is covered in section 402(a) of the Act. Neither is it included in the State JOBS plan under title IV-F, which is covered in section 482(a) of the Act. In fact, section 402(g) does not address whether a plan is needed regarding the provision of supportive services. However, we propose that services provided under sections 301 and 302 of the Statute be covered by a separate plan submitted in accordance with these regulations. Further, we propose that the State Supportive Services plan covering services under section 301 of the Statute be submitted at the same time as the JOBS plan to ensure appropriate public and Federal review. The approval process will follow that for the State JOBS plan which is specified in § 250.20.

We propose that the State Supportive Services plan contain information about child care services, work-related supportive services, and work-related expenses necessary for JOBS. We propose to require a description of the services in the State Supportive Services plan. We further propose to ask the State IV-A agency to cross reference the State Supportive Services plan in their State JOBS plan to show the coordination between the two plans. The specific State Supportive Services plan requirements are contained at § 255.1. In States where Tribal entities are direct-funded to operate a JOBS program, the State Supportive Services plan must include specific information on the State's provision of child care services for JOBS participants served by those Tribal entities.

Eligibility (§ 255.2 of the Proposed Regulations)

Section 402(g) of the Act provides that the State IV-A agency must guarantee child care to the extent that the State determines necessary for an individual in a family with a dependent child to: (1) Accept or maintain employment, or (2) participate in an education and training activity if the agency approves the

activity and periodically determines that the individual is satisfactorily participating in the activity. (Such education and training is not limited to activities funded under JOBS.) Where the State IV-A agency determines that child care is necessary, it cannot require an individual to participate in an activity or to accept or maintain employment unless it guarantees child care.

Child Care Guarantee. The State IV-A agency must guarantee child care for an eligible family if resources are available. The guarantee may be limited by State appropriation ceilings, the available supply of other State, local and federally-funded services, such as title XX services, and the target group priorities. We propose that the state should assure in its Supportive Services plan that child care provided or claimed for reimbursement is reasonably related to the hours of participation or employment.

The State IV-A agency must also assure that sufficient child care will be available to meet the participation rates described in § 250.74. We propose that the State Supportive Services plan must describe how sufficient child care will be made available as a condition of plan approval. We are particularly interested in comments intended to further specify State plan requirements for a "description of how the State will assure that sufficient child care will be available to meet participation rates in § 250.74."

A State IV-A agency is not required to treat child care benefits under this Part of the proposed regulations as an absolute entitlement and to provide all employed recipients and participants in JOBS with child care benefits. Frequently, child care is provided through informal arrangements at no cost. The child care guarantee does not mean that paid child care must be available for every participant. In determining whether child care is necessary, the State IV-A agency may take into account informal care.

We propose to limit the guarantee of child care to those families with dependent children under 13 or who are physically or mentally incapable of caring for themselves, when the State IV-A agency determines such care is necessary. Limiting child care to these situations is a reasonable policy, consistent with the limits enacted for the Dependent Child Care Tax Credit by section 703(a) of the Family Support Act, and, which will apply to taxable years beginning after December 31, 1988. We believe these limits reflect widely-held views (reflected in a variety of laws and legislative proposals) on appropriate governmental participation in expenditures for child care services.

We also propose to require State IV-A agencies to guarantee care for any child who would be required to be in the assistance unit if it were not for the receipt of SSI under title XVI or foster care payments under title IV-E and would otherwise be guaranteed such care. Although these two categories of individuals are excluded from the AFDC assistance unit, they are treated as dependent children for certain other purposes.

State IV-A agencies must guarantee needed care to recipients who are working at the time the State implements JOBS as well as to recipients who begin working on or after the date the State IV-A agency implements this provision.

Other Supportive Services. The Act requires that the State IV-A agency pay for or reimburse the costs of transportation and other work-related expenses, including work-related supportive services, if the State IV-A agency determines they are necessary for an individual to participate in JOBS. We propose to allow State IV-A agencies to define work-related supportive services and work-related expenses in the State Supportive Services plan. They may include one-time, special work-related expenses which would enable individuals to accept or maintain employment. On-going expenses related to employment are already covered by the work expense disregard (which is raised to 90 effective October 1, 1989); therefore, no provision for such expenses has been made under section 301 of the Statute or these proposed regulations. We propose that the plan must describe methods of providing other supportive services, specify monetary limits for each type, and indicate the basis for determining the need for the type of service.

Verification of Participation in Education or Training Activities. Child care, transportation, and other supportive services necessary for an individual to participate in JOBS or other education and training activities that are approved under JOBS by the State IV-A agency are eligible for FFP. Under the Act, child care and other supportive services for those in "non-JOBS" education and training is allowable only to the extent that these activities are "consistent with the individual's employment goals." This language led us to the conclusion that an employability plan would need to be developed for those in outside education and training. Such a conclusion is also consistent with the statutory language indicating that participation in outside education and training would constitute satisfactory participation in JOBS. Thus, we propose to consider participants in these activities as JOBS participants and to authorize their supportive services other than child care through the JOBS program.

We propose that the State IV-A agency document approval of outside education and training activities in an employability plan and that the agency periodically (but not less than every three months) determine that a recipient is making satisfactory progress, as defined at § 250.1. Three months is considered a review period. However, State IV-A agencies should be aware that child care services (or other supportive services) provided to individuals who are not satisfactorily participating could be considered payments for ineligible individuals and might be subject to disallowances, even if States were following this three-month monitoring standard.

We propose to permit State IV-A agencies to provide child care and other necessary supportive services for up to two weeks for families in which an individual is waiting to enter approved education or training activities or to begin a component. This provision is included to ensure that child care services (or other service arrangements) are not lost and that continuity of care is provided so that an individual may continue the employability process.

Services for Applicants. We were faced with the question of whether Congress intended that child care be available to recipients of AFDC only, or to applicants as well. In considering this issue, we concluded that child care should be available, as it was under prior law, when the agency requires an applicant to participate in job search. We also propose that temporary child care be available for other activities necessary to prepare the individual for participation in the program, such as orientation. States have told us that the lack of such child care during orientation results in a very high absenteeism rate.

However, we do not believe that it is proper or efficient use of resources to provide child care to applicants who are already in education or training or who are employed, until their eligibility is determined. Also, it is not proper use of resources to provide services to applicants who are not likely to be determined eligible. A State IV-A agency may provide services to certain individuals (e.g., job search participants) whose eligibility has not been determined, as long as it has no information indicating that the

individual would not likely qualify for benefits.

We are proposing that the State IV-A agency must provide child care to AFDC applicants and recipients who are served by a JOBS program administered by Tribal or Alaska Native organizations. Such services shall be available to the same extent that they are available to eligible participants in the State's JOBS program. State IV-A agencies must provide an equitable level of services for Indians and Alaska Natives, and they must provide the same range of methods or arrangements, unless certain methods would not be feasible because of the nature of child care services available in Tribal service areas.

Although the Act requires that child care be guaranteed so that an individual may accept or maintain employment, it is silent on whether the State IV-A agency can pay for work-related expenses in order for the same individual to accept or maintain a job.

We are proposing that such expenses would be allowable if the individual participates in a component, including work supplementation, which involve actual work. Further, if a State IV-A agency assigned the individual to the optional component of job search, such expenses would be allowable. However, in other components like skills training or education, job acceptance or maintenance expenses would not be incurred, and therefore not allowed.

We propose to allow State IV-A agencies to make one-time payments for reasonable work-related expenses to an applicant or recipient so that she may accept or maintain employment, if the State IV-A agency so provides in its Supportive Services plan. Such expenses might include a uniform, a set of tools, a pair of eyeglasses (if not available elsewhere), or the fee for a driver's license.

Methods of Providing Child Care and Other Supportive Services (§ 255.3 of the Proposed Regulations)

The Act provides a number of methods to guarantee child care. Specifically, we propose that the State IV-A agency may:

(1) Provide the care itself;

(2) Arrange care through public or private providers by use of contracts or vouchers;

(3) Provide cash or vouchers in advance to the caretaker relative so that the child care costs may be prepaid;

(4) Reimburse the caretaker relative for child care expenses incurred;

(5) Arrange with other agencies and community volunteer groups for non-reimbursed care;

(6) Use the earned income disregard; or

(7) Adopt such other measures as the State IV-A agency deems appropriate.

We propose that the State IV-A agency describe which of these methods it will use in its Supportive Services plan. We elaborate on certain of the options here.

Direct Provision of Child Care. Historically, State IV-A agencies have not provided child care directly except in a few instances. The Act prohibits the State IV-A agency from spending money on construction, so instances where a State IV-A agency would provide the care itself may remain rare. However, we can foresee a situation where a State IV-A agency might provide child care services within the agency while a parent is in a JOBS orientation session. Where care is provided directly, Federal matching is subject to the same limits on costs as would be applied for outside child care; State IV-A agencies cannot charge their direct and overhead costs for providing care without regard to the limits established pursuant to § 255.4(a).

Vouchers. Vouchers have become a very popular method of providing care as they may give parents great freedom of choice. Many States are using voucher systems, also referred to as purchase-of-care mechanisms, for child care delivery. If a State IV-A agency wishes to institute such a system, the Department can provide referrals to agencies with expertise in establishing one.

Voluntary Providers. In planning to meet the child care demands related to the Statute, there may be an opportunity for communities to mobilize volunteer resources to expand existing programs. For example, there is a growing need for before and after school care for school-age children. Volunteers under the supervision of professional caregivers could be a tremendous addition to the staff necessary for such programs. Many communities are also recruiting retired citizens to help fill personnel shortages in day care centers by creating staff positions for aides which can be filled by volunteers.

Direct Payments to the Caretaker Relative. The State IV-A agency may pay the caretaker relative directly either by providing payment in advance or by reimbursing the caretaker relative who has already paid for the care. In these situations, the family member cannot receive the earned income disregard for child care specified at § 233.20(a)(11)(i), and the determination of eligibility and payment amount must be determined without considering child care costs or payments.

Income Disregards. The State IV-A agency may use the existing child care disregards as provided at § 233.20(a)(II)(i). Although the child care disregard is not specifically listed among the methods in the Act, Congress demonstrated its intent that the disregard continue when it raised the amount of the child care disregard in title IV of the Statute effective October 1, 1989.

Inclusion of the disregard as a method for guaranteeing child care under this Part does not mean that the provisions of this Part supersede existing provisions regarding the child care disregard. Thus, the disregard remains limited by the amount specified in section 402(a)(8)(A)(iii) of the Act, it remains available for expenditures on children aged 13 and over, and it is not limited by the local market rate.

We propose that State IV-A agencies could make supplemental payments for child care costs which exceed the disregard amounts, but are within the limits established under this Part. We also propose at § 255.3(f), that, in cases subject to retrospective budgeting, State IV-A agencies could modify their budgeting procedures to provide for child care costs in the first one or two months of employment. This option is discussed in more detail later.

The Statute prohibits a State IV-A agency from disadvantaging any family receiving AFDC on October 13, 1988, through a change in its method of reimbursing the cost of child care. The only method for reimbursing child care costs for recipients with earnings on that date was the earned income disregard.

The only families who could be disadvantaged by a change in method are those who received the disregard on October 13, 1988 and who would be subject to a new method under the State's Supportive Services plan. In these cases, failure to apply the disregard method increases the likelihood that a family would be ineligible due to income.

At § 255.3(e), we propose to require that, for recipients who received AFDC payments on October 13, 1988, which were determined by using the child care disregard at § 233.20(a)(11)(i), the State IV-A agency must determine current AFDC eligibility and payments based on the continued application of the disregard in order to find out if the family would be disadvantaged. If the family would be disadvantaged, we propose to prohibit the State IV-A agency from using one of the direct payment methods for these individuals.

Parental Choice. The proposed regulations at §§ 255.3(c) and 255.3(d)

reflect our desire to allow the caretaker relative to choose the type of child care (center, group family day care, family day care or in-home care), if more than one type is available. This is consistent with section 482 of the Act which requires State IV-A agencies to provide information to individuals about child care, including what assistance is available to help the participant select appropriate child care services.

Our proposed regulations at § 255.3(d) also provide that an individual who is required to participate under Part 250 may not refuse appropriate care unless she can arrange other care or demonstrate that such refusal will not prevent or interfere with participation. Thus, an individual's choice is not constrained by the methods or types of care which the State IV-A agency has elected to provide under its Supportive Services plan. The State IV-A agency is required to pay for the child care services arranged by the individual, even if that would require that it set up an alternative mechanism for payment of such services. Such payment would still be subject to the limits established by this Part.

Needs of the Child. The Act and the proposed regulations at § 255.3(b) require that the State IV-A agency must take into account the needs of the child if it arranges the care. This means that care must be available during the hours needed, including before or after school (or both) as well as care for the entire day. The care must be reasonably accessible so that neither the child nor the caregiver must travel distances beyond what is normally acceptable in the community.

Special attention should be given to children with special needs. There are a variety of programs funded at the Federal and the State level for children with special needs. Often, there is little or no coordination between these programs and other dependent care. We encourage State IV-A agencies to make a special effort to identify programs that might benefit JOBS participants and their children and to coordinate with these programs.

There are many materials already developed by the Department, the States, and the private sector that contain information on the types of care and selection of appropriate care. State IV-A agencies may find it cost effective to use local child care resource and referral (CCR&R) agencies to provide this information for them. Child care resource and referral agencies exist throughout the country as a public/private venture to serve the community. They keep data on available resources (including openings and providers), often listing not only name, address, and cost of care, but information on curriculum and special programs.

Other Supportive Services. We propose at § 255.3(g) that State IV-A agencies can provide transportation or other supportive services either directly or through payment or reimbursement. This policy is consistent with current Federal policy and State practices under existing work program options.

Coordination. Under the Act and proposed regulations at § 255.3(h), the State IV-A agency must coordinate its child care activities with existing early childhood education programs in the State, including Head Start and preschool programs funded under Chapter 1 of the Education Consolidation and Improvement Act. State IV-A agencies should build upon existing resources to expand the range of services available to JOBS participants. We recognize that helping a mother set up a stable child care plan, especially if it involves more than one provider, can be difficult. However, we also know how important a well-developed plan is; poorly thought-out arrangements break down, causing disruption to training and employment. We believe that the provision of services for the two-week interim may prevent the disruption of such carefully planned arrangements and allow continuity of care.

Meeting Child Care Costs Under Retrospective Budgeting. Recipients who need child care before beginning employment often lack sufficient funds to pay for such care before receiving their paychecks. In State IV-A agencies that use a two-month retrospective budgeting cycle and meet child care through the disregard at § 233.20(a)(11), for the first four months of employment, a family only receives recognition of child care costs for two of those four months. For example, under current rules, if a recipient becomes employed in January and has child care costs in January, February, March and April, the child care disregard will not offset income in determining the amount of the payment until March and April. If a State IV-A agency decides to provide child care for the first and second month of employment, as a start-up cost, the State IV-A agency could not use the disregard to offset income used to determine March and April's payment because the recipient did not actually meet the cost of child care in January and/or February.

We propose to allow State IV-A agencies to provide start-up costs for child care for the initial one or two months of employment and to apply the disregard for the third and fourth months as if such costs had been paid by the recipient. However, in order to prevent duplication of benefits, if a State IV-A agency elects to do this, it may not apply the disregard to income used to determine the payment for the month(s) following the month in which child care ceases. The State IV-A agency may meet the start-up costs by making direct payments to the provider or by reimbursing the recipient. Any reimbursement shall not be counted as income or resources for any month.

Allowable Costs and Matching Rates (§ 255.4 of the Proposed Regulations)

Section 402(g)(1)(C) of the Act and § 255.4(a) of the proposed regulations provide that FFP is available for payments for the actual cost of child care up to the statewide limit chosen by the State IV-A agency. This statewide limit may be the disregard level at § 233.20(a)(11)(i), or some higher figure. In no case is FFP available for payments which exceed the applicable local market rate.

An example may help to explain this provision. Suppose a State IV-A agency sets a statewide limit ($250), which is higher than the child care disregard, for the purpose of calculating the amount of child care costs that it will pay for or reimburse. In City A, the applicable local market rate is also $250. Thus the State IV-A agency can pay for the actual cost up to $250. In City B, the applicable local market rate is $225. Thus even if the care cost $250 in City B, FFP would only be available for $225. In City C, the applicable local market rate is $275. FFP would be available for only $250 (the Statewide limit) or, if less than $250, the actual cost of care.

Local Market Rates. Each State IV-A agency must establish local market rates, and the State Supportive Services plan must explain the methodology used to establish them. We do not propose to impose any statistical formula to be used uniformly. However, in § 255.4(a)(2), we are proposing four guidelines which the State IV-A agency would have to follow in establishing these rates.

First, the State IV-A agency would have to base the rates on a representative sample of providers, obtained in a survey by the State IV-A agency or under an outside survey. Second, we believe the data generally should be collected for areas no greater than political subdivisions. While we are interested in minimizing the administrative burdens on the State IV-A agency in establishing these rates, we are also concerned that local market rates be determined for small enough

geographical areas to reflect actual expected costs. In major urban markets, political subdivisions may be too large an area for this purpose, and we will continue to consider alternative approaches.

Also, it might be appropriate to consolidate information on areas which are very small or which are very similar in nature (such as small towns or remote regions of a state) rather than to develop independent estimates for all subdivisions. We would welcome suggestions in both these areas.

Thirdly, we are proposing that the local market rates be established at the 75th percentile. This level was selected because it represents a reasonable balance between concerns about fiscal accountability and accessibility to services.

Finally, we are proposing that local market rates should be determined by type of care such as center care, group family day care, family day care, and in-home care. Rates should be differentiated by care for infants, toddlers, preschool and school children and whether there are different rates for full-time and part-time care. Where appropriate, rates should reflect reductions in the cost of care for additional children from the same family.

States IV-A agencies should not find it a burden to establish local market rates since they have told us that they have used local market rate information for the preparation of their State budgets and in the calculation of their allowable title XX rate for child care. Also, studies are available to a State IV-A agency if help is needed in establishing local market rates. Many States rely on information provided by the local child care resource and referral agencies such as the studies done in 1987 and 1988 by the California Child Care Resource and Referral Network that gave costs of care, licensed capacity, enrollment, open slots, wait lists, hours of care, transportation, and types of regulated providers.

Collecting data on unregulated caregivers providing care in the home of the child may be more difficult and demand a different approach. We are aware of this difficulty, and we welcome suggestions that would help State IV-A agencies obtain this information. We will make information about current studies and methodologies available to interested State IV-A agencies.

Applicable Standards for Child Care. The Statute requires that FFP be available for child care only if it meets applicable standards of State and local law and requires that parents be allowed access to the child care services. The requirement for parental access would cover custodial parents and non-custodial parents consistent with court orders governing such matters.

The State IV-A agency must also establish procedures to ensure that center-based care will be subject to State and local requirements designed to ensure basic health and safety, including fire safety, protections. The State must also endeavor to develop guidelines for family day care if it does not already have them. We do not believe, however, that Congress intended to limit child care only to care that is specifically regulated by current State or local law. Other care, even if it is unregulated at the State or local level, is reimbursable under the Act. For example, some States exempt from their standards any center care that is under the auspices of a religious organization. Some States do not have licensing or registration standards for family day care. Other States do not require licensing or registration for family day care until they serve more than a specified number of children.

It should be noted that there are few laws covering in-home care, i.e., care of a child in that child's own home. Appropriate individuals may be paid as in-home caregivers, unless there are State restrictions regarding the age of the caregiver or restrictions based on the fact that the caregiver may already be in the grant. We propose that FFP be available for child care provided in the child's home by a relative (who is not a member of the AFDC unit) such as a grandparent, aunt, or older sibling. FFP is also available for care by a relative outside of the home if care by that relative meets any applicable standards.

Many State and local agencies have indicated concern that adequate child care resources will not be available. However, the Conference Report does not support an interpretation that Congress intended to provide funds for activities such as resource development, recruitment and training under this program. Therefore, the proposed regulations at § 255.4(f) specify that administrative costs for such activities as recruitment and training of providers, licensing, or resource development would not be considered allowable IV-A costs.

Under the Statute, Congress authorized a separate appropriation of $13,000,000 for fiscal years 1990 and 1991 for the Secretary to make grants to the States to improve their licensing and registration requirements and procedures, and to monitor child care provided to children who receive aid under the State plan. State grants would reflect the State's proportion of the number of children in the State receiving aid under the State IV-A plan compared to the national total. The State would have to provide matching funds for these funds for an amount that is not less than 10 percent of the amount of the grant.

FFP is available for child care on Indian reservations if that care meets applicable State or Tribal standards. When both State and Tribal standards exist, the Tribal standards are the applicable standard. Following the Act, we propose that any such applicable Tribal standards for center-based child care include, at a minimum, requirements to ensure basic health and safety protections, including fire safety.

Matching Rates. The costs of providing transportation, work-related expenses, and other work-related supportive services are matched at 50 percent and are under the JOBS cap.

FFP is available for child care benefits at the Federal medical assistance percentage and is not subject to the funding cap for JOBS for any State IV-A agency other than Puerto Rico, the Virgin Islands, Guam and American Samoa. For these jurisdictions, treatment of child care costs incurred is described at § 250.71(c). Although the Statute does not directly address child care administrative costs, we propose that such costs be matched at the administrative matching rate for AFDC as expenditures necessary for the proper and efficient administration of the program. Matchable administrative expenditures would include costs such as staff, supplies and overhead associated with the determination of eligibility for benefits, computation and issuance of benefit payments, reviews of payment accuracy, hearings, program referrals, program planning and management, and data collection and reporting.

Although the Statute does not explicitly extend safeguarding against fraud and abuse to the supportive services authorized under the Statute, we believe that it is in the best interest of the Federal government and the State IV-A agency to require the State IV-A agency to do so. We have incorporated such a requirement at § 255.4(h). State IV-A agencies may use any method they deem reasonable to insure that charges are properly claimed and paid, and that they cover services actually received. Financial reviews to identify costs not eligible for FFP will be an important part of Federal oversight.

Special Needs. In the past, many supportive services, especially for persons participating in employment

and training programs, have been allowed as special needs. With the enactment of JOBS and the new child care provisions, Congress established specific programs for funding for such services and eliminated the need to treat such costs as special needs. Furthermore, for education and training activities and supportive services other than child care, it established an overall cap on the amount of Federal funds which it wanted to commit for these purposes. We, therefore, propose that State IV-A agencies not be permitted to provide child care or payment for other supportive services that may be provided under JOBS as special needs.

Nature of Child Care Payments. Under section 402(g)(3)(A) of the Act, child care payments are funded under 403(a). However, they are not IV-A assistance payments as such. Thus, (1) they are covered under a Supportive Services plan, rather than the State IV-A plan; (2) their receipt does not provide categorical Medicaid eligibility; (3) there is no entitlement to direct payment of benefits; (4) they are not subject to disallowance under the AFDC quality control system; and (5) they are not treated as assistance payments for the purposes of child support enforcement. At the same time, however, these child care benefits are funded on the same basis as AFDC, as an open-ended entitlement program, and they are administered by the same agency. Thus, for ease of administration, we are proposing at § 255.4(i) that they be subject to many of the same administrative and financial rules as AFDC. For example, we are proposing that child care payments be subject to similar financial reporting requirements, that similar procedures apply with respect to issues like the appeal of disallowances and the treatment of cancelled and uncashed checks, and that grants to States are subject to the same basic administrative rules.

As indicated earlier, we are proposing that child care expenditures not be subject to disallowance under the AFDC Quality Control (QC) system. It appears that the QC system would not be an effective or proper vehicle for this purpose. However, consistent with the efficient administration of the program, we are considering using the existing QC process as a means of sampling cases and gathering information on the correctness of child care payments. Using the data from the QC system, we propose to take disallowances following the procedures currently used for AFDC administrative costs. We welcome comments on this matter.

Due process requirements (using the JOBS or IV-A hearing process, as appropriate) would apply. However, except in situations where a change in the method of payment affects AFDC benefit levels, requirements for timely notice would not apply to disputes about the method of payment. Under this Part, State IV-A agencies have discretion about the method of payment to be used; unlike the AFDC program, recipients are not necessarily entitled to assistance in any particular form.

Also, we view child care benefits under this Part to be a conditional entitlement in that they must be guaranteed only to the extent necessary for an individual to accept or retain employment or to participate in a JOBS activity which the State IV-A agency is requiring. Therefore, if disputes arise about the provision of child care benefits under this part or the State IV-A agency proposes to deny, discontinue, terminate or reduce child care benefits, the individual is entitled to a hearing, but is not entitled to a continuation of child care benefits in the same amount or form pending that hearing. Consistent with the requirements of § 205.10, however, the individual's AFDC payment may not be reduced because of sanctions under § 250.33 or because of changes in the method of guaranteeing an individual's child care benefits while a hearing is pending.

For example, in cases where a recipient's participation in a JOBS activity or in outside education or training ceased (e.g., due to illness or termination due to unsatisfactory progress), the State IV-A agency would cease providing child care benefits. The individual could appeal that State IV-A agency decision, but child care benefits would not have to be provided during conciliation or while a hearing was pending. In the meantime, the recipient might be prevented from continuing (or resuming) participation because of the termination of child care benefits. She could not have her AFDC benefits reduced for non-participation while a hearing was pending, and the termination of child care benefits would be considered in determining whether she had good cause for non-participation. If the State IV-A agency later requires the individual to again participate, necessary child care would have to be guaranteed.

Child Care Standards (§ 255.5 of the Regulations)

The language of the Act reflects Congress' intent to ensure the health and well-being of the children for whom child care is provided. Child care must meet current applicable standards of State and local law; however, States are not required to develop new standards. Consistent with congressional intent, we are not proposing to create Federal requirements in this area. At § 255.1(e), we propose that the State Supportive Services plan include an assurance that the State will meet the appropriate standards of State and local law. The State must make the standards available upon request to the Family Support Administration for the purposes of program reviews, payment reviews and audits.

The proposed rules incorporate the requirements in the Statute that the State provide the Secretary with a description of State and local requirements for center-based care designed to ensure basic health and safety, including fire safety, protections and endeavor to develop guidelines for family day care. The Secretary shall report to the Congress on the nature and content of State and local standards for health and safety by October 1, 1992. We will be sending an Action Transmittal to the State IV-A agency at a future date requesting the information necessary to meet these requirements. For the purpose of the one-time report to Congress it would be helpful if the State IV-A agency describe both the procedures that have been and that will be established. The State also must endeavor to develop guidelines for family day care if such guidelines do not already exist.

Uniform Reporting Requirements for Child Care (§ 255.6 of the Proposed Regulations)

Consistent with the requirements of Section 606 of the Statute, State IV-A agencies are required to report information on child care to ensure that the provisions of the Statute are effectively implemented. These requirements are addressed in § 255.6 of the proposed rules. We are also considering including a requirement that the State IV-A agency report the number of children for whom care is provided, by type of care, under both Parts 255 and 256. We invite comments on this proposal. However, more information will be sent to State IV-A agencies concerning these requirements. State IV-A agencies should know that, as in any other fiscal expenditure, adequate information must be in the case record documenting these expenditures.

Part 256—Transitional Child Care

Purpose (§ 256.0 of the Proposed Regulations)

The purpose for the issuance of the proposed regulations is to implement

section 302 of the Family Support Act of 1988.

State Plan Requirements (§ 256.1 of the Proposed Regulations)

The State Supportive Services plan must include the methods available to provide extended child care. We suggest that the State IV-A agency use the same methods, except for the income disregard, that it has in place for providing child care during employment, education and training, including JOBS.

The State Supportive Services plan must also contain the sliding fee scale under which the family will contribute to the cost of the child care.

Like the initial JOBS plan, we would expect the State IV-A agency to submit a Supportive Services plan for transitional child care 45 days before the April 1, 1990, effective date. Where a State has not previously submitted a Supportive Services plan because it has not implemented its JOBS program, the Supportive Services plan for transitional child care would contain both the provisions discussed here and any provisions described at § 255.1 that apply to transitional care. For example, the transitional plan would include necessary assurances on procedures and information on local market rates.

Eligibility (§ 256.2 of the Proposed Regulations)

Effective April 1, 1990, certain AFDC recipients will, upon loss of eligibility for AFDC because of employment, become eligible for 12 consecutive months of child care. To be eligible for this benefit, the former recipient must have received AFDC (or been considered a recipient under § 233.20(a)(3)(viii)(D)) for 3 of the prior 6 months. The proposed rule defines the first month of the period of eligibility as the first month the individual becomes ineligible for AFDC because of one of the following three events:

(1) Any increase in earned income;

(2) The loss of the $30 + 1/3 or the $30 disregard because of the expiration of the time limit on its use; or

(3) For AFDC-UP cases only, an increase in the number of hours worked to over 100 hours per month.

We propose to require that the former recipient request this benefit in writing on a form prescribed by the State and that the payment of the benefit cannot be for any month prior to the request. This is similar to the basic rule for the AFDC program, in which no payment can be made for any period prior to the filing of an application, even though otherwise eligible.

We are proposing these policies at § 256.2(b)(3) so that the State IV-A agency can obtain the information it needs to determine eligibility on a timely basis and to evaluate the need for child care. They also provide the State IV-A agency and the former recipient an opportunity to explore alternative child care arrangements before costs are incurred.

The State has the responsibility of informing the recipient that the transitional child care benefits are available. Such notification should take place at the time the State provides the program information required at § 250.40 and be repeated at the time of termination of the individual's AFDC benefits. We are therefore proposing to require that recipients be notified of their potential eligibility for transitional child care when they become ineligible for AFDC and that they be informed of the steps they need to take to ensure that they apply for and receive all benefits for which they would be eligible. Individuals should also be clearly informed of the consequences of the failure to apply, i.e, the loss of transitional child care benefits for any month prior to the month of application.

We considered when the first month of ineligibility must occur to qualify a former recipient for this benefit. We decided that the first month of ineligibility for AFDC-and the concomitant first month of eligibility for transitional child care—must be April, 1990, or later, because April 1, 1990, is the effective date for the transitional child care provisions. Therefore, to receive transitional child care for April, 1990, the last month of AFDC benefits must have been in March, 1990, and March would be one of the three months with receipt of AFDC benefits required during the six-month period following September which are necessary for eligibility.

We propose that, based on the intent that families have help with their child care needs for 12-months after losing their AFDC benefits, families who do not need child care immediately after such loss of AFDC may begin to receive child care in any month during the 12-month eligibility period for the remaining balance of the 12month period. For example, a family that does not need child care until five months after going off AFDC would qualify for that month and the remaining six months of the 12 month eligibility period. If child care is not requested until the fifth month, the State cannot pay retroactively for the first four months of the 12-month period.

The law provides that a family is ineligible for transitional child care if the caretaker relative, who is a member of the AFDC family, terminates employment without good cause or fails to cooperate in establishing paternity and enforcing child support. Cooperation in establishing paternity and enforcing child support is discussed at § 232.12.

We propose that if the caretaker relative loses a job (with good cause as defined at § 250.35), and then (prior to re-establishing eligibility for AFDC) finds another, the family would qualify for the remaining portion of the 12 month eligibility period. Also, if the caretaker relative loses a job and the family goes back on AFDC, that family could again become eligible for a full 12 months of transitional child care as long as it meets the eligibility requirements discussed above.

Fee Requirement (§ 256.3 of the Proposed Regulations)

Section 402(g)(3)(A)(vii) of the Act requires the State agency to establish a sliding fee scale for the purpose of calculating a family's contribution for transitional child care. Section 256.3 of the proposed regulations describes this requirement.

We considered imposing specific limits on the fee scales determined by the States. In particular, we considered setting a minimum contribution by families with income above the poverty level, and limiting the availability of these benefits to those with income below 185 percent of poverty, as is the case with certain Medicaid benefits. However, we have not proposed these or other limits because we recognize that States currently employ a variety of different fee scales, and we want to solicit suggestions for Federal limits which would not be too cumbersome for States, in light of their current practices. We believe Federal rules should be developed because we are concerned that: (1) Without a realistic contribution by the former recipient to her child care expenses, the transitional nature of these benefits will be lost; (2) the interests of self-sufficiency and cost-effectiveness be served; and (3) the benefits available to former welfare recipients not be disproportionate to those available for families similarly situated. We are therefore interested in specific suggestions for Federal rules in this area.

We also propose at § 256.3(c) to allow the States to set different periods of payment collection for differing levels of payment. For example, it may not be cost-effective to collect and record very low fees every month. Data will be required in the case record concerning the fee schedule and the collection of the fee.

Under the proposed regulations at § 256.3(e), the State IV–A agency must take appropriate action if a family does not pay its fee. If a family does not cooperate in paying its fee, we propose that it would become ineligible for continued transitional benefits, and it would remain ineligible for so long as back fees were owed, unless satisfactory arrangements have been made to make full payment. However, transitional child care benefits would not be discontinued without due process, and benefits would be continued pending a hearing, if requested. Unless the fee requirements are taken seriously by States and recipients of benefits, the program will not be effective in providing a transition toward self-sufficiency.

States must keep case records open for 12 months after the individual, who loses AFDC eligibility, becomes eligible for the transitional child care.

Other Provisions (§ 256.4 of the Proposed Regulations)

In part because the transitional child care provisions of the Statute have distinct beginning and ending dates separate from the other child care provisions of the Statute, we have included them as a separate part in these proposed regulations. However, most of the provisions in Part 255 apply to this part. For example, the provisions of § 255.3(a) regarding the methods of providing child care generally apply to transitional child care although the income disregard is not an option in these cases. The other provisions in Part 255 that pertain to allowable costs, matching rates, standards, disallowance procedures, and uniform reporting also apply. One minor exception to this general rule relates to the funding of Puerto Rico, Guam, the Virgin Islands and American Samoa. The exception reflects the fact that child care costs under Part 255 for these jurisdictions are covered under the JOBS funding cap, while their transitional child care costs fall under the section 1108 limits. Another exception is that transitional child care benefits cannot be suspended, reduced, discontinued or terminated until a decision is rendered after a hearing requested within a timely notice period. Transitional child care benefits under this Part represent an entitlement in a broader sense than benefits under Part 255, and recipients of these benefits do not have the same protections (in terms of continuation of AFDC benefits and the option to cease participation) as those available to individuals receiving child care under Part 255.

Technical and Conforming Amendments (§§ 205.50, 224.0, 233.20, 233.90, 233.100, 234.60, 238.01, 239.01 and 240.01 of the Proposed Regulations)

Section 202 of the Family Support Act, Pub. L. 100–485, contains the technical and conforming amendments to title IV–A of the Social Security Act which are required by the enactment of the Statute.

Until October 1, 1990, we cannot remove existing Federal regulations which have been amended by the Statute because the existing regulations will continue to govern State IV–A agencies until they have approved JOBS plans. Therefore, in amending the Federal regulations, we have either incorporated JOBS provisions in the existing regulation (for example, § 205.50 on safeguarding of information) or added a provision specific to States with JOBS programs (for example, treatment of earned income at § 233.20(a)(11)(v)).

Sections 202 and 204 repeal the following statutory provisions of title IV as of October 1, 1990: Part C (WIN); section 409 of Part A (community work experience program (CWEP)); section 402(a)(35) of Part A (employment search); and section 414 of Part A (work supplementation). For States which implement JOBS prior to October 1, 1990, the Federal regulations governing WIN (Part 224), CWEP (Part 238), work supplementation (Part 239), and employment search (Part 240) will no longer apply. Therefore, we have added a provision to each of these existing regulations clarifying that the current regulations do not apply to States with approved JOBS plans and will be repealed for all States as of October 1, 1990. The proposed regulations which distinguish the applicability of the current regulations are found at §§ 224.0(c) (WIN), 238.01(b) (CWEP), 239.01(b) (work supplementation), and 240.01(b) (employment search).

Section 202 of the Statute amends section 402(a)(9)(A) of the Act to include programs under Part F for which the State IV–A agency must also provide safeguards which restrict the use or disclosure of information concerning applicants or recipients. In accordance with these amendments, we have amended § 205.50(a)(1)(i)(A) to cover programs under Part F under our safeguarding regulations.

Section 202 of the Statute also amends section 402(a)(8)(A)(iv) of the Act regarding the treatment of earned income to remove special treatment afforded earned income from public service employment and incentive payments for institutional training under the Work Incentive program. In lieu of amending § 233.20(a)(11)(iv) which governs treatment of earned income under WIN, we have added a new provision at § 233.20(a)(11)(v) that governs the treatment of earned income and expenses in States with approved JOBS plans. For regular employment or OJT, the disregards in §§ 233.20 (a)(11)(i) and (a)(11)(ii)(B) apply. For earned income from a job under work supplementation, the same disregards apply unless a State IV–A agency has elected to provide differently in its State JOBS plan in accordance with § 250.62 (j) and (k). Section 233.20(a)(11)(v)(C) provides that any advance payment or reimbursement to the JOBS participant for child care, transportation, work-related expenses, or work-related supportive services is to be disregarded. Section 233.20(a)(11)(v)(D) provides that payment for or reimbursement of child care pursuant to Part 255 for employed individuals who are not JOBS participants is disregarded.

Changes to Section 407. Section 202 of the Statute amends section 407(d)(1) of the Act which defines a "quarter of work" for the purposes of qualifying for benefits under the Unemployed Parent (UP) Program. Under current law, a "quarter of work" is defined as having earned income of $50 or more during the period of three consecutive calendar months, or as having participated in WIN or CWEP during the quarter. The amendment replaces participation in WIN or CWEP with participation in a JOBS program. Similarly, we are amending the definition of "quarter of work" at § 233.100(a)(3)(iv) to add participation in JOBS if a State IV–A agency has an approved JOBS plan under § 250.20. We keep participation in WIN and CWEP in the definition of "quarter of work" because, even after a State IV–A agency has an approved JOBS plan, participation in either CWEP or WIN during a quarter prior to implementation of JOBS will count as meeting the "quarter of work" requirement.

Under current law, a principal earner in an AFDC-Unemployed Parent Case must be registered with WIN or, if exempt because of remoteness, with a public employment office as a condition of eligibility for aid. In addition, there is a requirement that the principal earner be certified to participate in WIN within 30 days after receipt of AFDC. Certification means that the necessary support services are available so that recipients can participate in training or employment. Additionally, Federal financial participation is not available if, after the 30 days, the State IV–A agency

has not taken action to certify the principal earner to WIN.

The Statute amends the current law to provide that aid will be denied if the parent, unless exempt under the new section 402(a)(19)(C)(vii), is not currently participating or available for participation in a JOBS program, or, if exempt due to remoteness, is not registered with the State public employment office. We have amended § 233.100(a)(5)(i) to add this provision for States with approved JOBS plans.

The Statute further amends the Act to provide that within 30 days after receiving aid, the parent must participate or apply for participation in the JOBS program, unless the program is not available in the area where the parent is living. We have amended § 233.100(a)(6) to add this provision for States with approved JOBS plans.

The Statute also amends the Act to provide that FFP will not be available to the State IV-A agency for any period beginning with the 31st day after the individual receives aid, if the State has not taken appropriate steps directed towards the participation of the parent in a JOBS program. We have amended § 233.100(c)(2)(iii) to add this provision for States with approved JOBS plans.

Other Provisions. We are also proposing to remove the provision at § 233.90(b)(2) which states that an otherwise eligible child under age 18 may not be denied aid if he fails to attend school or make satisfactory grades. This regulation runs counter to the provisions in the Act and congressional intent that State IV-A agencies focus their attention on school attendance requirements for teen-aged recipients. Since it raised questions about the ability of a State IV-A agency to impose such requirements on non-exempt recipients, we have deleted it.

The Statute also amends section 402(a)(19)(G) of the Act to extend to the JOBS program the requirement that the State IV-A agency make vendor or protective payments in the event the caretaker relative is sanctioned for failure to participate. Therefore, we have revised § 234.60(a)(12) to add JOBS to the list of programs for which imposing a sanction requires a State IV-A agency to provide protective or vendor payments.

Finally, we also propose to amend § 233.20(a)(2)(v) to prohibit the use of special needs for child care, work-related expenses, and other work-related supportive services that can be paid for under JOBS. A more complete discussion of this provision is contained in the preamble to § 255.4.

All conforming amendments and other changes to Chapter II necessitated by the Family Support Act will be handled in another regulatory package.

(Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payments Maintenance Assistance)

Note: We have requested that the JOBS program be added to the Catalog of Federal Domestic Assistance and we have received a tentative assignment of No. 13.781.

List of Subjects

45 CFR Part 205

Computer technology, Grant programs—social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

45 CFR Part 224

Administrative practice and procedure, Grant programs—social programs, Reporting and recordkeeping requirements, Work Incentive (WIN) Programs.

45 CFR Part 233

Aliens, Grant programs-social programs, Public assistance programs, Reporting and recordkeeping requirements.

45 CFR Part 234

Grant programs-social programs, Health care, Public assistance programs, Rent subsidies.

45 CFR Part 238

Aid to Families with Dependent Children, Grant programs-social programs, Manpower training programs.

45 CFR Part 239

Aid to Families with Dependent Children, Employment, Grant programs-social programs.

45 CFR Part 240

Aid to Families with Dependent Children, Employment, Grant programs-social programs.

45 CFR Part 250

Aid to Families with Dependent Children, Grant programs-social programs, Employment, education and training.

45 CFR Part 255

Aid to Families with Dependent Children, Grant programs-social programs, Employment, education and training, Day care.

45 CFR Part 256

Aid to Families with Dependent Children, Grant programs-social programs, Employment, education and training, Day care.

Dated: April 6, 1989.

Catherine Bertini,

Acting Assistant Secretary for Family Support.

Approved: April 6, 1989.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

Accordingly, Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

1. The authority citation for Part 205 is revised to read as set forth below:

Authority: Sections 402, 403, 406, 411, 1102, and 1106(a) of the Social Security Act (42 U.S.C. 602, 603, 606, 611, 1302, and 1306(a)); Section 202 of pub. L. 100-485, 102 Stat. 2377.

2. Section 205.50 is amended by revising paragraph (a)(1)(i)(A) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) * * *

(1) * * *

(i) * * *

(A) The administration of the plan of the State approved under title IV-A, the plan or program of the State under title IV-B, IV-C, IV-D, or IV-F or under title I, X, XIV, XVI (AABD), XIX or XX or the supplemental security income (SSI) program established by title XVI. Such purposes include establishing eligibility, determining amount of assistance, and providing services for applicants and recipients.

* * * * *

PART 224—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

1. The authority citation for Part 224 is revised to read as set forth below and the authority citations following all the sections in Part 224 are removed:

Authority: Sections 402(a)(19), 430-444 and 1102 of the Social Security Act (42 U.S.C. 602(a)(19), 630-644, and 1302); Sections 202 and 204 of Pub. L. 100-485, 102 Stat. 2377, 2381.

2. In § 224.0, paragraph (c) is added to read as follows:

§ 224.0 Purpose and scope.

* * * * *

(c) The provisions of this part do not apply to any State IV-A agency which has an approved JOBS plan under § 250.20. A list of State IV-A agencies with approved JOBS plans is available

from the Family Support Administration, Office of Family Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. For all State IV-A agencies the provisions of this part are repealed as of October 1, 1990.

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for Part 233 is revised to read as set forth below and the authority citations following all the sections in Part 233 are removed:

Authority: Sections 1, 402, 406, 407, 1002, 1102, 1402, and 1602 of the Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1602, and 1382 note); and Section 6 of Pub. L. 94-114, 89 Stat. 579 and Part XXIII of Pub. L. 97-35, 95 Stat. 843, and Pub. L. 97-248, 96 Stat. 324, and Pub. L. 99-603, 100 Stat. 3359, Section 221 of Pub. L. 98-181, as amended by Section 102 of Pub. L. 98-479 (42 U.S.C. 602 note) and Section 202 of Pub. L 100-485, 102 Stat. 2377.

2. In § 233.20, paragraph (a)(2)(v) is revised, paragraphs (a)(11)(v) and (a)(11)(vi) are redesignated as paragraphs (a)(11)(vi) and (a)(11)(vii) respectively and a new paragraph (a)(11)(v) is added to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(2) * * *

(v) If the State IV-A agency includes special need items in its standard:

(A) Describe those that will be recognized and the circumstances under which they will be included, and

(B) Provide that they will be considered for all applicants and recipients requiring them; except that:

(*1*) Under AFDC, work expenses and child care (or care of incapacitated adults living in the same home and receiving AFDC) resulting from employment or participation in either a CWEP or an employment search program cannot be special needs, and

(*2*) In a State which has a JOBS program under Part 250, child care, work-related expenses, and other work-related supportive services resulting from participation in JOBS (including participation pursuant to §§ 250.46, 250.47, and 250.48) cannot be special needs.

* * * * *

(11) * * *

(v) The treatment of earned income and expenses under JOBS is as follows:

(A) For earned income from regular employment or on-the-job training, as described at § 250.61, the disregards in paragraphs (a)(11)(i) and (a)(11)(ii)(B) of this section shall apply.

(B) For earned income from a job under the work supplementation component, as described at § 250.62, the disregards in paragraphs (a)(11)(i) and (a)(11)(ii)(B) of this section shall apply unless the State IV-A agency in its State JOBS plan, has elected to provide otherwise under § 250.62(j) and § 250.62(k).

(C) For all activities under JOBS, advance payments or reimbursement to the participant for child care, transportation, work-related expenses, or work-related supportive services is disregarded.

(D) Payment or reimbursement of child care pursuant to Part 255 for employed individuals who are not JOBS participants is disregarded.

* * * * *

§ 233.90 [Amended]

3. In § 233.90, paragraph (b)(2) is removed and paragraphs (b)(3) through (b)(6) are redesignated (b)(2) through (b)(5).

4. Section 233.100 is amended by revising paragraphs (a)(3)(iv); (a)(5)(i); (a)(6); and (c)(2)(iii) to read as follows:

§ 233.100 Dependent children of unemployed parents.

(a) * * *

(3) * * *

(iv) A "quarter of work" with respect to any individual means a period (of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31) in which he or she received earned income of not less than $50 (or which is a "quarter of coverage" as defined in section 213(a)(2) of the Act), or in Which he or she participated in a community work experience program under Part 238, the Work Incentive program under Part 224, or, if the State IV-A agency has an approved JOBS plan pursuant to § 250.20, in a program under Part 250.

* * * * *

(5) * * *

(i) If and for so long as such child's parent, unless exempt under § 224.20, is not currently registered for the work incentive program or if exempt under § 224.20(b)(6), is not currently registered with a public employment office in the State, except that in a State with an approved JOBS plan under § 250.20, such child's parent, unless exempt under § 250.30(b), must be currently participating (or available for participation) in a program under Part 250, or, if he is exempt under § 250.30(b)(5), must be registered with a public employment office in the State, and

* * * * *

(6) Provide that within 30 days after the receipt of such aid, unemployed principal earners will be certified for participation in the Work Incentive program under Part 224 or, if the State IV-A agency has an approved JOBS plan pursuant to § 250.20, will participate or apply for participation in a program under Part 250 unless the program is not available in the area where the parent is living.

* * * * *

(c) * * *

(2) * * *

(iii) For any period beginning with the 31st day after receipt of aid, if and for long as no action is taken during the period to certify the parent for participation in the Work Incentive program under Part 224, or if the State IV-A agency has an approved JOBS plan pursuant to § 250.20, no action is taken during the period to undertake appropriate steps directed toward the participation of such parent in a program under Part 250; and

* * * * *

PART 234—FINANCIAL ASSISTANCE TO INDIVIDUALS

1. The authority citation for Part 234 is revised to read as follows and all other authority citations which appear throughout Part 234 are removed:

Authority: Sections 402, 403, 406 and 1102 of the Social Security Act (42 U.S.C. 602, 603, 606, and 1302); Section 201 of Pub. L. 100-485, 102 Stat 2359.

2. Section 234.60 is amended by revising paragraph (a)(12) to read as follows:

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) * * *

(12) In cases where an individual is sanctioned for failure to participate in WIN, employment search, CWEP, or JOBS, the State plan must provide that when protective or vendor payments are made pursuant to § 224.52(a)(1), § 238.22, § 240.22(a)(1), § 240.22(b)(1) and § 250.34(c) of this chapter, only paragraphs (a)(7), (9)(ii), and (11)(i) and (ii) of this section will be applicable.

* * * * *

PART 238—COMMUNITY WORK EXPERIENCE PROGRAM

1. The authority citation for Part 238 is revised to read as follows and all other authority citations which appear throughout Part 238 are removed:

Authority: Section 409 and 1102 of the Social Security Act (42 U.S.C. 609 and 1302); sections 202 and 204 of Pub.L. 100-485, 102 Stat 2378, 2381.

2. Section 238.01 is revised to read as follows:

§ 238.01 Scope of this part.

(a) *General.* State IV-A agencies may operate community work experience programs (CWEP) which serve a useful public purpose, and require AFDC recipients to participate in them as a condition of AFDC eligibility. The purpose of these CWEP programs is to provide work experience for AFDC recipients. CWEP projects must meet appropriate standards for health and safety and may not displace persons currently employed or fill established unfilled vacancies. Subject to the conditions specified at § 238.16, State IV-A agencies must provide necessary transportation, day care, and other related services or reimburse CWEP participants for costs directly related to participation in the program. Allowable costs to operate CWEP (see Subpart D) are matched by the Federal government at the AFDC administrative match level (50 percent).

(b) *Applicability.* The provisions of this part do not apply to any State IV-A agency which has an approved JOBS plan under § 250.20. A list of State IV-A agencies with approved JOBS plans is available from the Family Support Administration, Office of Family Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. For all State IV-A agencies, the provisions of this part are repealed as of October 1, 1990.

PART 239—WORK SUPPLEMENTATION PROGRAM

1. The authority citation for Part 239 is revised to read as follows and all other citations which appear throughout Part 239 are removed:

Authority: Sections 414 and 1102 of the Social Security Act (42 U.S.C. 614 and 1302); sections 202 and 204 of Pub. L. 100-485, 102 Stat. 2378, 2381.

2. Section 239.01 is revised to read as follows:

§ 239.01 Scope of this part.

(a) *General.* Under the work supplementation program, State IV-A agencies may use AFDC funds to develop and subsidize work for AFDC recipients as an alternative to aid provided to AFDC recipients. The work supplementation program may be implemented notwithstanding the definitions contained in section 406 of the Social Security Act or any other provision of law. Under this program AFDC recipients may choose, on a voluntary basis, to accept an offer of work to the extent such jobs are made available. In order to pay for the costs of developing and subsidizing these jobs, a State IV-A agency may reduce the need standard in effect for selected categories of recipients on the basis of their ability to participate in the work supplementation program. The reduction of the need standard may be made for either the entire State or for selected geographical areas. The total amount of Federal financial participation for operation of a State IV-A agency's work supplementation program is limited as provided in Subpart D of this part.

(b) *Applicability.* The provisions of this part do not apply to any State IV-A agency which has an approved JOBS plan under § 250.20. A list of State IV-A agencies with approved JOBS plans is available from the Family Support Administration, Office of Family Assistance, 370 L'Enfant Promenade SW., Washington, DC 20447. For all State IV-A agencies, the provisions of this part are repealed as of October 1, 1990.

PART 240—EMPLOYMENT SEARCH

1. The authority citation for Part 240 is revised to read as follows and all other citations which appear throughout Part 240 are removed:

Authority: Sections 402(a) and 1102 of the Social Security Act (42 U.S.C. 602(a) and 1302); sections 202 and 204 of Pub. L. 100-485, 102 Stat. 2377, 2381.

2. Section 240.01 is revised to read as follows:

§ 240.01 Scope of this part.

(a) *General.* Each State with a plan approved under title IV-A of the Social Security Act may establish a program of employment search in accordance with the requirements in this part. The single State agency designated in the State plan to administer or supervise the AFDC program must administer the employment search program.

(b) *Applicability.* The provisions of this part do not apply to any State IV-A agency which has an approved JOBS plan under § 250.20. A list of State IV-A agencies with approved JOBS plans is available from the Family Support Administration, Office of Family Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. For all State IV-A agencies, the provisions of this part are repealed as of October 1, 1990.

Title 45, Chapter II, Code of Federal Regulations is amended by adding a new Part 250 to read as follows:

Part 250—JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

Subpart A—Purpose and Definitions

Sec.
250.0 Purpose.
250.1 Definitions.

Subpart B—Administration

250.10 State IV-A agency administration.
250.11 Requirement for a statewide program.
250.12 Coordination and consultation.
250.13 Contracting authority.

Subpart C—State Plan Requirements and Content

250.20 Requirement for a State JOBS plan.
250.21 State plan content.

Subpart D—Participation Requirements, Exemptions and Sanctions

250.30 Requirements for individual participation and exemptions.
250.31 Volunteers.
250.32 Participation requirements for education.
250.33 Participation requirements for unemployed parents.
250.34 Sanctions.
250.35 Good cause.
250.36 Conciliation and fair hearings.

Subpart E—Operation of State JOBS Programs/Program Components

250.40 Providing information to AFDC applicants and recipients.
250.41 Initial assessment and employability plan.
250.42 Agency-participant agreement.
250.43 Case management.
250.44 Mandatory components.
250.45 Optional components.
250.46 Postsecondary education.
250.47 Other education, training and employment activities.
250.48 Self-initiated education or training.

Subpart F—[Reserved]

Subpart G—Optional Components of State JOBS Programs

250.60 Job search program.
250.61 On-the-job training.
250.62 Work supplementation program.
250.63 Community work experience program.

Subpart H—Funding

250.70 JOBS allocation entitlement.
250.71 Allotment of JOBS limit of entitlement.
250.72 Maintenance of effort.
250.73 Matching rates.
250.74 Reduced matching rate.
250.75 Activities excluded from FFP.
250.76 Financial reports, records, statements and audits.
250.77 Costs matchable as AFDC payments.

Subpart I—Uniform Data Collection Requirements

250.80 Uniform data collection requirements.
250.81 State data systems options.
250.82 Required case record data.

Subpart J—Operation of JOBS Programs by Indian Tribes and Alaska Native Organizations

250.90 Scope and purpose.
250.91 Eligible Indian Tribe and Alaska Native organization grantees.
250.92 Selection criteria for eligible Alaska Native organizations.
250.93 Funding formula.
250.94 Program administration, implementation and operations.
250.95 Supportive services.
250.96 Waiver authority.
250.97 Application requirements and documentation.
250.98 Maintenance of effort for Indian Tribes and Alaska Native organizations.

Authority: Sections 402, 403, 481 note, 482, 483, 484, 485, 486, 487, and 1102 of the Social Security Act as amended (42 U.S.C. 602, 603, 681, 682, 682 note, 683, 684, 685, 686, 687, and 1302); section 204(b) of Pub. L. 100-485, 102 Stat. 2381.

Subpart A—Purpose and Definitions

§ 250.0 Purpose.

(a) The purpose of the Job Opportunities and Basic Skills Training (JOBS) program under titles IV-A and IV-F of the Social Security Act is to encourage, assist, and require applicants for and recipients of AFDC to fulfill their responsibilities to support their children by preparing for, accepting and retaining employment. To assure that needy families with children are provided the means to avoid long-term welfare dependency, the JOBS program is intended to:

(1) Provide individuals with the opportunity to acquire the basic education and skills necessary to qualify for employment;

(2) Provide necessary supportive services, including transitional child care and medical assistance, so that individuals can participate in JOBS and accept employment;

(3) Promote coordination of services at all levels of government in order to make a wide range of services available, especially for individuals at risk of long-term welfare dependency, and to maximize the use of existing resources; and

(4) Emphasize accountability for both participants and service providers.

(b) This part provides that a State IV-A agency, as a condition of participation in the AFDC program, must operate a JOBS program. In addition, these regulations require that States provide child care and other supportive services for participants in the JOBS program, as well as certain other individuals, pursuant to Parts 255 and 256. This part contains the policies, rules and regulations pertaining to the Job Opportunities and Basic Skills Training (JOBS) program.

(c) This part is applicable to States with approved JOBS programs pursuant to § 250.20, and to all States as of October 1, 1990.

§ 250.1 Definitions.

Except to the extent otherwise specified in this section, terms used in Part 250 shall have the same meaning otherwise applicable to the Aid to Families with Dependent Children (AFDC) program.

Adult recipient means an individual other than a dependent child (unless such child is the minor custodial parent of another dependent child) whose needs are met (in whole or in part) with payments of Aid to Families with Dependent Children.

Basic literacy level means a literacy level that allows a person to function at the level of an individual who has successfully completed the eighth grade.

Component means any of the services or activities available under the provisions of § 250.44 through § 250.48.

CWEP means the community work experience program authorized in § 250.45 and § 250.63.

Department means the U.S. Department of Health and Human Services.

FFP means Federal financial participation in expenditures made by a State.

Institution of higher education means any institution determined by the Secretary of Education to meet:

(1) The definition of such term contained in either section 1201(a) or section 481(a) of the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), as amended; or

(2) The definitions of "proprietary institution of higher education" or "postsecondary vocational institution," which are defined at sections 481 (b) and (c) of that Act.

Intensive job search is, for purposes of § 250.74(c), job search by a parent in an Unemployed Parent case that is either group or individual job search for a monthly average equivalent to 20 hours per week.

JAS means a JOBS Automated System authorized under § 250.81 for a State to support its operation of the JOBS program.

JOBS is the Job Opportunities and Basic Skills Training program required by section 402(a)(19) of the Social Security Act, as amended by section 201(a) of the Family Support Act of 1988 (Pub. L. 100-485) and set forth in Part F of title IV of the Social Security Act, as added by section 201(b) of the Family Support Act.

JOBS plan means the statewide operational plan for JOBS.

Limited English proficiency means limited ability in speaking, writing, or understanding the English language by a person whose native language is a language other than English, or who lives in a family or community environment where a language other than English is the dominant language.

Make good progress and *Making satisfactory progress* in an educational component mean that the participant in any educational activity is meeting, on a periodically measured basis of less than one year, such as a term or quarter, a consistent standard of progress based upon a written policy that was: developed by the educational institution or program in which she is enrolled; and approved by the appropriate State or local education agency and the State welfare agency. Such standard includes both a qualitative measure of a participant's progress, such as a grade point average, and a quantitative measure, such as a reasonable time limit by which a student is expected to complete her studies. If the educational institution or program is accredited by an accrediting body that is listed by the Secretary of Education and that has established a satisfactory progress policy, then that body's policy shall apply. Upon review and approval by the State education agency and the State IV-A agency, the standard may provide that a student who does not meet the institution's or program's progress standard is nonetheless making satisfactory progress during a probationary period, or shall be deemed to be making satisfactory progress because of mitigating circumstances. *Make good progress* and *Making satisfactory progress* in a training component (i.e., OJT and skills training) mean that the participant is meeting, on a periodically measured basis of less than one year, such as quarterly, a consistent standard of progress based upon a written policy that was: Developed by the training provider, and approved by the State IV-A agency. Such standard includes both a qualitative measure of a participant's progress, such as competency gains or proficiency level, and a quantitative measure, such as a reasonable time limit for completion of the training program.

MSA means Metropolitan Statistical Area, a system of geographical areas defined and maintained by the Executive Office of the President, Office of Management and Budget.

OJT means on-the-job training as authorized in § 250.45 and § 250.61.

Participation: (1) For purposes of determining a State's participation rate

under § 250.74(b) and § 250.74(c), an individual is participating if she is:

(i) An AFDC recipient who is assigned to a JOBS program component specified in paragraph (5) of this definition for at least the minimum activity level specified in that paragraph, or an applicant assigned to the job search program for the State's specified activity level; and

(ii) Participating at the assigned level of activity or has provided documented good cause for temporary absence in accordance with State policy.

(2) An individual active only in orientation, assessment, or employability development planning or case management is not a participant for these purposes.

(3) When an individual is assigned to activities in more than one component, she is a participant if the total of her hours meets the average hours requirement of the assigned components.

(4)(i) For purposes of the UP work requirement at § 250.33, a parent in a UP family is a participant if his or her activity level is at least 16 hours per week in work supplementation, CWEP, OJT, or a State designed work program approved by the Secretary.

(ii) A parent under the age of 25 in such a family who has not completed high school or an equivalent course of education will meet the UP work requirement if the State requires, in lieu of the work requirement in paragraph (4)(i) of this definition, the parent to participate in educational activities directed at attaining a high school diploma or its equivalent or completing a basic education program, and he or she is making satisfactory progress.

(5) The specified minimum activity levels for JOBS program components are the average monthly activity levels equivalent to the following:

(i) For any of the educational activities specified in § 250.44: Making satisfactory progress;

(ii) Job skills training: At least 20 hours of instruction or training per week;

(iii) Job readiness activities: At least 20 hours of structured, guided activity per week;

(iv) Individual job search: The equivalent in structured activity and employer contacts of 20 hours per week.

(v) Group job search: At least 20 hours per week.

(vi) OJT: Full-time work according to the standard of the occupation.

(vii) Work supplementation program: Full-time work according to the standard of the occupation.

(viii) CWEP: The lower of 20 hours per week or the CWEP maximum hours for that individual.

(ix) Other work experience: As defined by the State and approved by the Secretary; except that for the purpose of the UP work requirement, the activity, to qualify for participation, must constitute actual work, and not training, and be at least 16 hours per week.

(x) Postsecondary education: Making satisfactory progress.

(xi) Other allowed activities: As defined by the State and approved by the Secretary.

(6) This definition of participation is directly related to the requirements of § 250.74 and does not preclude a State from assigning an individual to a component for fewer hours than required to meet the participation rate if appropriate.

Postsecondary education means a program of postsecondary instruction offered by:

(1) An institution of higher education determined by the Secretary of Education to meet section 1201(a), or section 481 (a), (b), or (c) of the Higher Education Act of 1965, as amended;

(2) An institution of higher education or a vocational school determined by the Secretary of Education to meet section 435(b) or section 435(c) of the Higher Education Act of 1965, as amended; or

(3) A public institution that is legally authorized by the State to provide such a program within the State.

Secretary means the Secretary of Health and Human Services.

Target population means that group composed of each individual who:

(1) Is receiving AFDC, and who has received such aid for any 36 of the preceding 60 months;

(2) Makes application for AFDC, and has received such aid for any 36 of the 60 months immediately preceding the most recent month for which application has been made;

(3) Is a custodial parent under the age of 24 who:

(i) Has not completed a high school education and, at the time of application for AFDC, is not enrolled in high school (or a high school equivalency course of instruction); or

(ii) Had little or no work experience in the preceding year; or

(4) Is a member of a family in which the youngest child is within 2 years of being ineligible for AFDC because of age.

For a particular State, this term will include, in lieu of individuals listed, such alternative groups of long-term or potential long-term recipients as the State has demonstrated to the satisfaction of the Secretary are feasible target populations in that State's caseload.

UP means Unemployed Parent and refers to that segment of the AFDC program authorized in section 407 of the Social Security Act which provides aid with respect to a dependent child who is deprived of parental support or care by reason of the unemployment of the parent who is the principal earner.

Subpart B—Administration

§ 250.10 State IV-A agency administration.

(a) The State agency responsible for the administration or supervision of the State's title IV-A plan is responsible for the administration or supervision of the JOBS program.

(b) The provisions of § 205.100(b) apply to this section.

(c) Examples of functions which must be retained by the State IV-A agency pursuant to § 250.13 of this part include the following:

(1) Establishment of optional provisions and components of the program;

(2) Responsibility for program planning, design of program, and determining who should participate;

(3) Establishment of program participation requirements;

(4) Development of definition of good cause for failing to participate;

(5) Development of definition of failure to participate; and

(6) Determination of how assistance shall impact on the AFDC grant as a result of a dispute involving an individual's participation.

§ 250.11 Requirement for a statewide program.

(a) Not later than October 1, 1992 the State must make the JOBS program available in each political subdivision (county, parish or independent city) where it is feasible to do so.

(b) Although all required and at least two optional components, as described in §§ 250.44 and 250.45, must be included in a State JOBS program, all such components need not be operated in every political subdivision of the State, nor need the State operate each such component to the same extent in each political subdivision.

(c)(1) If the State IV-A agency concludes that a statewide program is not feasible, appropriate justification must be submitted to the Secretary for review and approval as part of its JOBS plan, unless the following criteria are met:

(i) A minimal JOBS program would be available in a number of political subdivisions sufficient to serve 95 percent of adult recipients; and

(ii) A complete JOBS program would be available in all Metropolitan Statistical Areas in the State, and in a number of political subdivisions sufficient to serve 75 percent of adult recipients.

(iii) A minimal program includes high school or equivalent education, as specified at § 250.44, one optional component from among those specified at § 250.45, and information and referral to available non-JOBS employment services. A complete program includes all mandatory components as well as any two optional components.

(2) The justification must include the following:

(i) The number of adult recipients that would be excluded and a comparison of:

(A) The estimated average annual unit cost per participant were the JOBS program extended to them with

(B) The estimated average annual unit cost per JOBS participant in the included areas;

(ii) A description of the local economic conditions that make operation of the program in such areas infeasible; and

(iii) Whether the State expects to expend all of its limit of entitlement, pursuant to § 250.70, for the period covered by the JOBS plan.

§ 250.12 Coordination and consultation.

State IV-A agencies are required to assure coordination of JOBS program services, including child care pursuant to § 255.3(h) of the regulations, with related services provided by other agencies.

(a) The Governor shall assure that JOBS program activities are coordinated with programs under the Job Training Partnership Act (JTPA) and with any other relevant employment, training, and education programs available within the State. At a minimum, this means that the appropriate job training and preparation components of the State JOBS plan shall be consistent with the coordination criteria specified in the Governor's coordination and special services plan required under section 121 of the JTPA.

(b) In developing the JOBS plan and carrying out the JOBS program, including the supportive services provisions, the State IV-A agency must consult and coordinate with other providers, including those specified in paragraph (c) of this section, to identify existing resources to prevent duplication of services, assure that other program services are available to enable participants to achieve self-sufficiency, and assure that costs for these other services for which welfare recipients have been eligible are not incurred by the JOBS program pursuant to § 250.72.

(c) At a minimum, the State IV-A agency must consult and coordinate with:

(1) The State agency responsible for JTPA;

(2) The State agency responsible for the Employment Service;

(3) The State education agency for programs under the Adult Education Act (20 U.S.C. 1201 *et seq.*) and Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq.*); and

(4) The State agencies responsible for child care activities as described in § 255.3(h).

(d) The State IV-A agency and local welfare agencies, as appropriate, must consult with the private industry councils (as established under section 102 of the JTPA):

(1) On the development of arrangements and contracts under JOBS, as described in § 250.13, and under the JTPA; and

(2) To identify and obtain advice on the types of jobs available, or likely to become available, in the area. The State IV-A agency must ensure that JOBS provides training only for the types of jobs which are, or are likely to become, available in the area, and that resources are not expended on training for jobs that are not likely to become available.

(e) The State IV-A agency must exchange certain information with an eligible Indian Tribe or Alaska Native organization interested in conducting a separate JOBS program under § 250.91.

(1) This information includes available data on adult Tribal or Alaska Native organization AFDC recipients necessary to determine a Tribe or organization's JOBS funding level and designated service area, as appropriate, as described in § 250.93(b). State and Tribal and Alaska Native organization representatives receiving such AFDC recipient data must follow comparable standards of confidentiality as described in § 250.93(b)(2).

(2) Since the State IV-A agency maintains responsibility for providing basic AFDC program services, such as eligibility notifications, as well as child care funds or services, to Tribal and Alaska Native organization JOBS participants, the State and such grantee must coordinate interrelated activities as described in § 250.94(a) and Part 255.

§ 250.13 Contracting authority.

The State IV-A agency shall carry out the JOBS program directly or through arrangements or under contracts with administrative entities under section 4(2) of the Job Training Partnership Act (JTPA), with State and local educational agencies, and with other public agencies, Indian Tribes or Alaska Native organizations or private organizations (including community-based organizations as defined in section 4(5) of the JTPA).

(a) Arrangements and contracts entered into under this section may cover any service or activity (including outreach, information and referral) to be made available under the JOBS program. Such contracted service or activity must be consistent with the requirements under § 250.10 and must not otherwise be available on a nonreimbursable basis, as specified in § 250.72(c).

(b) The State IV-A agency must consult with the private industry councils on the development of arrangements and contracts under JOBS pursuant to § 250.12.

(c) In selecting service providers, the State IV-A agency must take into account appropriate factors which may include past performance in providing similar services, demonstrated effectiveness, fiscal accountability, cost efficiency, ability to meet performance standards, and such other factors as the State IV-A agency may determine to be appropriate.

(d) For purposes of claiming FFP, the State IV-A agency must segregate costs by the applicable matching rates, as defined at § 250.73(b)(1), in any arrangement or contract entered into under this section.

(e) Services contracted under JOBS are subject to the requirements of Part 92, excluding the provisions at § 92.30(d)(4).

Subpart C—State Plan Requirements and Content

§ 250.20 Requirement for a State JOBS plan.

(a) As a condition of participation in the AFDC program, the agency responsible for administering or supervising the administration of the IV-A plan must:

(1) No later than October 1, 1990, establish and operate a JOBS program under a JOBS plan that has been approved by the Secretary before implementation and that meets the requirements of this Part;

(2) Submit its initial JOBS plan to the Secretary for review and action at least 45 days prior to the anticipated implementation date; and

(3) Submit its initial Supportive Services plan, in accordance with §§ 255.1 and 256.1 concurrent with the initial JOBS plan, except that a State

which has not submitted a JOBS plan prior to April 1, 1990, must submit a Supportive Services plan for transitional child care in accordance with § 256.1 at least 45 days prior to implementation.

(b) The initial JOBS plan and Supportive Services plan will be subject to prior approval by the Secretary. FFP will only be available for expenditures incurred after approval by the Secretary.

(c) A State JOBS plan and Supportive Services plan must be submitted to:

(1) The Governor for review and comment; and

(2) The State Job Training Coordinating Council (SJTCC) and the State education agency for review and comment at least 60 days prior to submittal to the Secretary. The plan shall be published and otherwise made available to the public, including members of federally-recognized Tribes and Alaska Native organizations in the State, for review and comment, concurrent with submittal to the SJTCC and the State education agency. Comments received shall be resolved by the State.

(d)(1) State JOBS plans and Supportive Services plans submitted to the Secretary prior to the issuance of the JOBS and Supportive Services plan preprints shall be considered interim plans.

(2)(i) A State operating a JOBS program and providing supportive services under interim plans shall submit a new JOBS plan and a new Supportive Services plan for approval within 60 days of the date that JOBS and Supportive Services plan preprints are issued by the Secretary.

(ii) The new JOBS and Supportive Services plans must be submitted to the SJTCC no later than the date submitted to the Secretary, if substantial changes to the interim plans have been made.

(iii) Interim plans shall remain in force until formal action on the new plans is taken (i.e., approval or disapproval) by the Secretary.

(e)(1) The State must submit an update of its JOBS and Supportive Services plans to the Secretary for approval not less than every two years. The update shall be considered a new JOBS plan and Supportive Services plan, and shall be submitted to the Secretary for approval at least 90 days prior to beginning of the next biennial period. The State must follow the public review and comment provisions in paragraph (c) of this section.

(2) The update must consist of:

(i) Assurances regarding those parts of the State JOBS Plan and Supportive Services plan that remain unchanged;

(ii) A description of any changes in program operations including but not limited to changes in components and target populations served;

(iii) An estimate of the number of persons to be served by the program during the next biennium; and

(iv) An assurance that the State JOBS plan is consistent with the coordination criteria specified in the current Governor's Coordination and Special Services Plan required under section 121 of the JTPA.

(3)(i) For all States the first biennial update must be submitted by July 1, 1992, for the period beginning October 1, 1992.

(ii) A State JOBS plan and Supportive Services plan approved pursuant to paragraph (d)(2) of this section shall remain in force until formal action is taken (i.e., approval or disapproval) by the Secretary on the first biennial update.

(iii) Each approved biennial update shall remain in force until formal action is taken (i.e., approval or disapproval) by the Secretary on the update for the following biennial period.

(f) The State shall submit proposed amendments to approved plans as necessary and they shall be reviewed according to the process described at § 201.3 (f) and (g).

(g) A State that submits a plan, an amendment to an existing plan, or a biennial update that is not approvable will be given the opportunity to make revisions before formal disapproval; upon formal disapproval, a State may request a hearing pursuant to the process set forth in § 201.4 and Part 213.

§ 250.21 State plan content.

A State's JOBS plan must include the following:

(a) Assurances that the title IV–A agency will, upon approval of the JOBS plan by the Secretary, have in effect and operation:

(1) A JOBS program that meets the requirements of section 402(a)(19) and title IV–F of the Act, including assurances:

(i) By cross-reference to appropriate statutory and regulatory citations, that the JOBS program will meet all statutory and regulatory requirements; and

(ii) That to the extent the program, including child care, is available in a political subdivision of a State and the State's resources otherwise permit, the State will require non-exempt recipients to participate; and

(2) A program for providing child care and other supportive services consistent with the requirements of the Act and with the State's separate Supportive Services plan, pursuant to §§ 255.1 and 256.1.

(b) A statement of the goals and objectives of the State JOBS program, and how the State intends to implement the program during the biennium to support those goals and objectives. If the program is not implemented initially on a statewide basis, this description must include the anticipated schedule for phased implementation.

(c) A description of the administrative structure for the JOBS program, including:

(1) A description of the conciliation process and any alternative fair hearing process the State proposes; and

(2) The manner in which the title IV–A agency will assure, in accordance with section 402(a)(44) of the Act, that the benefits and services under title IV–F of the Act will be furnished in an integrated manner with those of titles IV–A and IV–D of the Act.

(d) Annual estimates of the numbers of persons to be served on a monthly basis during the biennium covered by the plan.

(e) Identification of the subdivisions, if any, proposed to be excluded. For any period after September 30, 1992, appropriate justification as required in § 250.11(c) must be included for not establishing the program in such subdivisions.

(f) A description of the nature of coordination with public and private education and training agencies and organizations, at the political subdivision and State levels, as required at § 250.12, and a description of the services identified as available and appropriate for participants in the State JOBS program.

(g) Descriptions of program operations to include:

(1) The required and optional components that will be provided, and the extent to which the range of services will vary by political subdivision or otherwise;

(2) The needs to be addressed through the provision of these services;

(3) The extent to which and the bases upon which, the State anticipates each service and activity will be available to JOBS participants during the biennium:

(i) On a non-reimbursable basis;

(ii) Through direct agency provision; and

(iii) On a purchase basis;

(4) The contracting processes that will be used to deliver services for the State IV–A agency, pursuant to § 250.13, including:

(i) The service providers such as JTPA agencies, educational agencies, and other public agencies or private organizations; and

(ii) The types of services to be provided such as skills training, vocational education, etc.;

(5) The orientation processes the IV-A State agency will use to provide program information to AFDC applicants and recipients pursuant to § 250.40(a); this description must specify the methods and timeframes for providing this information;

(6) The assessment processes the State IV-A agency will use, including variations among political subdivisions, pursuant to § 250.41(a). This description must include:

(i) The types of assessment tools selected (self-assessment survey, literacy tests, vocational aptitude testing, etc.); and

(ii) The bases for selection;

(7) If the State elects to use agreements or contracts with participants, pursuant to § 250.42(a), the purpose and content of such agreements or contracts and the basis for determining the groups of participants for which they will be used;

(8) If the State elects to use a case management system pursuant to § 250.43,

(i) The functions;

(ii) The participants to be included under the system (target populations vs. all participants); and

(iii) If not statewide, identification of the populations or areas that will use case management; and

(9) The process for developing an employability plan, pursuant to § 250.41.

(h) A description of any work experience program under § 250.63 or other employment, education, or training under § 250.47 that the State proposes.

(i) A description of how the State will determine the appropriateness of educational activities for different categories of participants, to include:

(1) State policy on educational requirements for parents under age 20 who have not completed high school or its equivalent, including any criteria for excluding parents under age 18 from such requirements;

(2) Any training or work alternatives in the case of a parent aged 18 or 19 who has not completed high school or its equivalent;

(3) State policy on educational activities for those age 20 or over without a high school diploma or GED;

(4) Criteria for determining those for whom attendance in higher education or a school or course of vocational or technical training is appropriate; and

(5) Policies for approval of postsecondary education (under section 482(d)(1)(B)(i) of the Act).

(j) A description of the criteria that will be used to refer participants to services and activities. The plan must describe the approaches the program will use for individuals who are:

(1) Members of the target populations described in § 250.1; and

(2) Parents and caretakers with children under the age of 6, including the State's exemption policy for those with children between the ages of 1 and 3.

(k) With regard to Unemployed Parent cases,

(1) A description of agency policies on exemptions and participation of a principal earner and the other parent; and

(2) A description of any State-designed work program to meet the UP work requirements at § 250.33.

(l) The State's policy for determining whether self-initiated education and training constitutes participation consistent with the individual's employment goals, and if the education or training is appropriate, how the State will assure that any other participation by such individual in the JOBS program will not be permitted to interfere.

(m) A description of any agreements the State IV-A agency has reached with the State's education agency, with regard to determining, consistent with the relevant definitions in § 250.1:

(1) Whether an individual is attending such education or training activities in good standing;

(2) Whether an individual is making satisfactory progress in such education or training; and

(3) How attendance that meets these specifications will be regularly determined to be continuing.

(n) A description of the State IV-A agency's actions to assure that training and education activities conducted under JOBS are directed toward specific jobs that are available, or are likely to become available, in the State.

(o) An assurance that individuals are not discriminated against on the basis of race, sex, national origin, religion, age, or handicapping condition in assignment to training and education developed under the JOBS program.

Subpart D—Participation Requirements, Exemptions and Sanctions

§ 250.30 Requirements for individual participation and exemptions.

A State JOBS plan must provide that:

(a) Where State resources otherwise permit, all recipients of AFDC who live in a subdivision covered by a JOBS program and for whom the State IV-A agency has guaranteed child care in accordance with Part 255 shall be required to participate in JOBS except as provided under paragraph (b) of this section.

(b) An individual shall be considered exempt and not be required to participate if she:

(1) Is a dependent child who is under age 16 (except a minor parent who is considered an adult recipient for purposes of this part) or attends, full-time, an elementary, secondary, vocational or technical school;

(2) Is ill, when determined by the State on the basis of medical evidence or another sound basis that the illness or injury is serious enough to temporarily prevent entry into employment or training;

(3) Is incapacitated, when verified by the State that a physical or mental impairment, determined by a physician or a licensed or certified psychologist, by itself or in conjunction with age, prevents the individual from engaging in employment or training under JOBS;

(4) Is 60 years of age or older;

(5) Resides in a subdivision of the State where the JOBS program is available, but in a location which is so remote from a JOBS program or activity that effective participation is precluded. The individual shall be considered remote if a round trip of more than 2 hours by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility, would be required for a normal work or training day. However, if normal round trip commuting time in the area is more than 2 hours, then the round trip commuting time shall not exceed the generally accepted community standards;

(6) Is needed in the home because another member of the household requires the individual's presence due to illness or incapacity as determined by a physician or a licensed or certified psychologist, and no other appropriate member of the household is available to provide the needed care;

(7) Is working 30 or more hours a week. The State IV-A agency may establish minimum standards in its JOBS plan for work that qualifies an individual for this exemption;

(8) Is pregnant, and it has been medically verified that the child is expected to be born in the month in which participation would be required or within the following six-month period; or

(9)(i) Subject to paragraph (b)(9)(iv) of this section, is the parent or other relative of a child under 3 years of age (or an age less than 3 but not less than 1, if the State plan so provides) who is personally providing care for the child; or

(ii) Subject to paragraph (b)(9)(iv) of this section, is the parent or other relative personally providing care for a child under 6 years of age, unless the State IV–A agency assures that child care will be guaranteed and that participation in the program by the parent or relative will not be required for more than 20 hours per week.

(iii) Only one parent or other relative in a case may be exempt under paragraph (b)(9)(i) or paragraph (b)(9)(ii) of this section.

(iv) In the case of a family eligible for AFDC by reason of the unemployment of the parent who is the principal earner, only one parent may be exempt under paragraph (b)(9)(i) or paragraph (b)(9)(ii) of this section. The State IV–A agency may:

(A) Limit the exemptions in paragraph (b)(9)(i) and paragraph (b)(9)(ii) of this section to the parent who is not the principal earner;

(B) Make the exemptions in paragraph (b)(9)(i) and paragraph (b)(9)(ii) of this section inapplicable to both parents and require their participation in the program if child care in accordance with Part 255 is guaranteed with respect to the family.

(c) The State IV–A agency will reevaluate any exemption at such time as the condition is expected to terminate but no less frequently than each redetermination of AFDC eligibility.

§ 250.31 Volunteers.

The State IV–A agency must provide that applicants for and recipients of AFDC who are exempt under § 250.30 from participation in the program or who are not otherwise required by the State IV–A agency to participate will be allowed to do so on a voluntary basis to the extent that the program is available in the applicable political subdivision and State resources otherwise permit.

(a) The State IV–A agency shall give first consideration to applicants for or recipients of AFDC who volunteer to participate in determining the priority of participation within the target populations described at § 250.1.

(b) When an individual who volunteers to participate stops participating in the program without good cause as defined at § 250.35,

(1) If she has been determined to be exempt pursuant to § 250.30, she shall not be given priority to participate so long as other individuals are actively seeking to participate.

(2) If she has been determined not to be exempt pursuant to § 250.30, she shall be subject to sanction as described at § 250.34.

§ 250.32 Participation requirements for education.

(a) To the extent that the program is available in the political subdivision involved and State resources otherwise permit, in the case of a custodial parent who is not yet 20 years of age, has not completed a high school education (or its equivalent) and is not exempt from participation under § 250.30(b), the State shall require such a parent to participate in educational activities as described in § 250.44(a)(1). For purposes of this section, custodial parent means the parent who lives with the child, and custodial parents exempt under § 250.30(b)(9) because of the age of the youngest child.

(1) The State IV–A agency may require full-time participation (as defined by the educational provider) in educational activities directed toward the attainment of a high school diploma or its equivalent. This includes individuals who would otherwise only have to participate on a part-time basis because their youngest child is under 6 years of age.

(2) The State IV–A agency may excuse a custodial parent who is under age 18 from the school attendance requirement if such parent is determined to be beyond the State's compulsory attendance requirements and if the State's JOBS plan contains criteria for making this determination. The State's criteria:

(i) Must provide that each determination is based upon an individual assessment of the parent rather than upon the application of categorical exemptions;

(ii) May not rely solely upon grade completion; and

(iii) Must provide for participation in another educational activity as defined under § 250.44(a) from which the individual could benefit.

(3) The State IV–A agency may require a custodial parent who is age 18 or 19, and required to participate in JOBS under this section, to participate in training or work activities (subject to the 20-hour limit in § 250.30(b)(9)(ii)) in lieu of educational activities described at § 250.44(a) if one of the following conditions is met:

(i) Such parent fails to make good progress in successfully completing educational activities, or

(ii) Prior to any assignment of the individual to such educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in educational activities is inappropriate for such parent.

(b) If a State IV–A agency requires an individual who has attained the age of 20 years and has not earned a high school diploma (or its equivalent) to participate in JOBS, the State agency shall include educational activities consistent with her employment goals as a component in the individual's employability plan. Any other services or activities may not be permitted to interfere with her participation in appropriate educational activities under § 250.44. However, a State IV–A agency may elect not to require an individual to participate in educational activities if:

(1) The individual demonstrates a basic literacy level; or

(2) The long-term employment goal of the individual, as identified by the State IV–A agency in her employability plan, does not require a high school diploma (or equivalent).

§ 250.33 Participation requirements for unemployed parents.

(a) The State IV–A agency shall require that at least one parent, in any family eligible for AFDC by reason of the unemployment of the parent who is the principal earner, participate for a total of at least 16 hours a week in a work supplementation program, a community work experience program, or other work experience program, on-the-job training, or a State-designed work program described in the State JOBS plan and approved by the Secretary. A State-designed work program may not substitute education or training activities for the work requirement.

(b) In the case of a parent under age 25 who has not completed high school or an equivalent course of education, the State IV–A agency may require the individual to participate in educational activities as defined at § 250.44(a) in lieu of one or more of the programs specified in paragraph (a) of this section. An individual meets the participation requirements of this section if he or she is making satisfactory progress as defined at § 250.1.

(c) An individual participating in a community work experience program under § 250.63 shall be considered to have met the participation requirement in paragraph (a) of this section if the individual participates for the maximum number of hours in any month calculated in accordance with § 250.63(d)(1).

§ 250.34 Sanctions.

(a)(1) When an AFDC recipient who is required to participate in the JOBS program, including those individuals required to participate because the State IV–A agency exercised its option under

§ 250.30(b)(9)(iii), fails without good cause to participate in the program or refuses without good cause to accept employment, the sanctions in paragraph (c) of this section shall apply during the following periods:

(i) For the first such failure or refusal, until the failure or refusal ceases;

(ii) For the second such failure or refusal, until the failure or refusal ceases, or 3 months, whichever is longer; and

(iii) For any subsequent failure or refusal, until the failure or refusal ceases, or 6 months, whichever is longer.

(2) Failure to participate in the program includes failure to meet State IV-A agency requirements for orientation, assessment, employability development, plan or case management.

(b) For the purpose of determining that an individual's failure to comply has ceased in the instance of a first sanction, a State IV-A agency may require the individual to participate in the activity to which she was previously assigned or an activity designed by the State to lead to full participation for a period of up to two weeks before terminating the sanction. If she successfully participates in such activities, the sanction will be considered to have terminated as of the day she agreed to participate. If no such activity is available, the sanction will terminate on the day she agrees to participate.

(c) During the sanction period:

(1) The State IV-A agency will not take into account the individual's needs in determining the family's need for assistance and the amount of the assistance payment.

(2) If the individual is a parent whose family is eligible in accordance with § 233.100, the State IV-A agency will not take into account the needs of his or her spouse in determining the family's need for assistance and the amount of the assistance payment unless the spouse is participating in the JOBS program.

(d) If such individual is a parent or other caretaker relative, payments for the remaining members of the assistance unit will be in the form of protective or vendor payments in accordance with § 234.60(a)(12). However, if after making reasonable efforts the State IV-A agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned caretaker relative.

(e) The State IV-A agency will promptly remind any individual in writing whose failure or refusal has continued for 3 months, of the individual's option to end the sanction. The notice shall advise that:

(1) She may immediately terminate the first or second sanction by participating in the program or accepting employment; and

(2) She may terminate any subsequent sanction after six months have elapsed by participating in the program or accepting employment.

§ 250.35 Good cause.

For the purposes of § 250.34(a), good cause for failure to participate in the program or refusal to accept employment shall be found if:

(a) The individual is the parent or other relative personally providing care for a child under age 6 and the employment would require such individual to work more than 20 hours per week;

(b) Child care (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to participate or continue participation in the program or accept employment and such care is not available and the State agency fails to provide such care;

(c) The employment would result in the family of the participant experiencing a net loss of cash income. A participant may not claim good cause under this paragraph if the State IV-A agency assures that the family will not experience a net loss of cash income by making a supplemental payment. Net loss of cash income results if the family's gross income less necessary work-related expenses is less than the cash assistance the individual was receiving at the time the offer of employment is made. Gross income includes, but is not limited to, earnings, unearned income and cash assistance; or

(d) The individual meets other grounds for good cause set forth by the State IV-A agency in its JOBS plan.

§ 250.36 Conciliation and fair hearings.

(a) Each State IV-A agency shall establish a conciliation procedure to resolve disputes related to an individual's participation in the JOBS Program.

(b) If a dispute is not resolved through conciliation, the State shall provide the individual with an opportunity for a hearing. The hearing process may follow the provisions of § 205.10. Alternatively, the hearing process may be established especially for the JOBS program. However, assistance may not be suspended, reduced, discontinued, or terminated as a result of a dispute involving an individual's participation in JOBS unless the hearing meets the due process standards set forth by the U.S. Supreme Court in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970).

Subpart E—Operation of State JOBS Programs/Program Components

§ 250.40 Providing program information to AFDC applicants and recipients.

(a) The State IV-A agency must at the time of application or redetermination inform all AFDC applicants and recipients, in writing and orally as appropriate, of the availability of the program activities and the supportive services for which they are eligible, and agency and participant responsibilities, including:

(1) Education, employment, and training opportunities available under the JOBS plan;

(2) Supportive services, including, but not limited to, child care during participation, transitional child care, health coverage transition options pursuant to section 1925 of the Act, and transportation and other work-related supportive services provided under the JOBS plan;

(3) The obligations of the State IV-A agency including the program and supportive services to be provided, as described in paragraphs (a) (1) and (2) of this section;

(4) The rights, responsibilities, and obligations of participants in the program, including but not limited to, the grounds for exemptions from participation and the consequences for refusing or failing to participate (including the effect on volunteers as described in § 250.31);

(5)(i) The types and locations of child care services reasonably accessible to participants in the program. Such information may be provided directly or through arrangement with others such as the appropriate human services or resource and referral agency;

(ii) The assistance that is available to help participants select appropriate child care services; and

(iii) The assistance available, on request, to help participants obtain child care services.

(b) The agency must also inform applicants and recipients of their responsibility to cooperate in establishing paternity and enforcing child support obligations, as described in Part 232, and must assist individuals in obtaining the paternity establishment and child support services for which they may be eligible.

(c)(1) After the State IV-A agency gives an AFDC applicant the information described in paragraphs (a)

and (b) of this section, the State IV-A agency must notify the individual, in writing, within one month of the determination of eligibility, of the opportunity to indicate her desire to participate in the program and provide a clear description of how to enter the program.

(2) After the State IV-A agency gives an AFDC recipient the information described in paragraphs (a) and (b) of this section, the State IV-A agency must notify the individual, in writing, within one month of providing that information, of the opportunity to indicate her desire to participate in the program, and provide a clear description of how to enter the program.

(3) The notification provision in paragraph (c)(1) and (c)(2) of this section does not prohibit the State IV-A agency from requiring non-exempt recipients, or applicants in the case of job search, to participate in the JOBS program prior to the one-month notice.

(4) If a non-exempt individual indicates a preference not to participate, in response to such notification under paragraph (c)(1) or (c)(2) of this section, such a preference does not prevent the State IV-A agency from otherwise requiring participation in JOBS.

§ 250.41 Initial assessment and employability plan.

(a)(1) Within a reasonable time period prior to participation the State IV-A agency must make an initial assessment of employability based on:

(i) The individual's educational, child care, and other supportive services needs;

(ii) The individual's proficiencies, skills deficiencies and prior work experience;

(iii) A review of the family circumstances, which may include the needs of any child of the individual; and

(iv) Other factors that the State IV-A agency determines are relevant in developing the employability plan, as described in paragraph (b) of this section.

(2) The State IV-A agency may conduct the initial assessment through various methods such as interviews, testing, counseling and self-assessment instruments.

(b) On the basis of the assessment described in paragraph (a) of this section, the State IV-A agency must develop an employability plan in consultation with the participant, including a participant in a self-initiated activity pursuant to § 250.48 of this part.

(1) The employability plan must:

(i) Contain an employment goal for the participant;

(ii) Describe the services to be provided by the State IV-A agency, including child care and other supportive services pursuant to Part 255;

(iii) Describe the JOBS activities, as described in Subpart E of this part, that will be undertaken by the participant to achieve the employment goal; and

(iv) Describe any other needs of the family, pursuant to paragraph (a)(1)(iii) of this section, that might be met by JOBS, such as participation by a child in drug education or in life skills planning sessions.

(2) The employability plan shall take into account:

(i) Available program resources;

(ii) The participant's supportive services needs;

(iii) The participant's skills level and aptitudes;

(iv) Local employment opportunities; and

(v) To the maximum extent possible the preferences of the participant.

(3) The employability plan shall not be considered a contract.

(4) Final approval of the plan rests with the State IV-A agency.

§ 250.42 Agency-participant agreement.

(a) Following the initial assessment and the development of the employability plan as described in § 250.41, the State IV-A agency may require the participant (or the adult caretaker in the family of which the participant is a member) to negotiate and enter into an agreement with the State IV-A agency.

(1) Such agreement should indicate at a minimum:

(i) The purpose of the agreement;

(ii) The participant's obligations under the program;

(iii) The length of participation in the program, including the number of hours of participation per week; and

(iv) The educational, training and employment activities and the supportive services, including child care, to be provided by the agency during the period of participation.

(2) If the State IV-A agency elects this option, it must give the participant such assistance as she may need to review and understand the agreement.

(3) This agreement may be considered a contract between the State IV-A agency and the JOBS participant, pursuant to applicable State laws and regulations.

(b) If the State IV-A agency elects to use agreements or contracts, it does not have to use them in all political subdivisions having JOBS programs. The State IV-A agency, however, must apply this provision to participants on an equitable basis.

§ 250.43 Case management.

(a) The State IV-A agency may assign a case manager to a participant and the participant's family. The decision to assign a case manager may be made on a case-by-case basis.

(b) The case manager must be responsible for assisting the family to obtain any services that may be needed to assure effective participation in the program.

§ 250.44 Mandatory components.

A State's JOBS program must include the following four services and activities. The State IV-A agency need not make each service or activity a discrete offering, but may combine several into a single program activity, provided that the State IV-A agency can adequately distinguish the principal components for the purpose of Federal reporting requirements. The required services and activities are:

(a) Any educational activity below the postsecondary level that the State IV-A agency determines to be appropriate to the participant's employment goal. Such activities may be combined with training that the State IV-A agency determines is needed in relation to the participant's employability plan. The educational activities that must be made available include, but are not limited to:

(1) High school education or education designed to prepare a person to qualify for a high school equivalency certificate;

(2) Basic and remedial education that will provide an individual with a basic literacy level, equivalent to successful completion of grade 8, in order to fulfill an employment goal; basic education is instruction to provide these educational skills for the first time; remedial education involves repetition of such instruction previously given to the participant; and

(3) Education in English proficiency for an individual who is not sufficiently competent to speak, read or write the English language to allow employment commensurate with her employability goal;

(b) Job skills training, which includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area. The State IV-A agency must develop qualitative measures for making good or satisfactory progress, pursuant to § 250.1, for such programs, including those arranged through contracts and agreements, in order to qualify the training program as a component activity under JOBS;

(c) Job readiness activities that help prepare participants for work by

assuring that participants be familiar with general work place expectations, and exhibit work behavior and attitudes necessary to compete successfully in the labor market; and

(d) Job development and job placement activity by the agency, in soliciting a public or private employer's unsubsidized job opening, or in discovering such job openings, and the marketing of participants, and securing job interviews for participants.

§ 250.45 Optional components.

A State JOBS program must include, but is not limited to at least, two of the following four components:

(a) Group and individual job search, as described in § 250.60;

(b) On-the-job training, as described in § 250.61;

(c) Work supplementation, as described in § 250.62; and

(d) Community work experience program, or other approved work experience program, as described in § 250.63.

§ 250.46 Postsecondary education.

A State's JOBS program may include referral of a participant to postsecondary education, as determined necessary to meet any individual goals that are directly related to obtaining useful employment in a recognized occupation, within limits established by the State IV-A agency and reflected in the State JOBS plan. In accordance with § 233.20(a)(2)(v), the costs of such education, including tuition, books and fees, do not qualify for FFP as special needs.

§ 250.47 Other education, training, and employment activities.

(a) A State's JOBS program may include education, training, and employment activities other than those described in §§ 250.44 through 250.46, but which are included in the approved State JOBS plan.

(b) In no event will a State program of public service employment be approved under JOBS.

§ 250.48 Self-initiated education or training.

(a) The State IV-A agency may allow a parent or other caretaker relative or any dependent child in the family who is attending in good standing an institution of higher education (as defined in section 481(a) of the Higher Education Act of 1965), or a school or other entity offering a course of vocational or technical training, at the time she would otherwise be required to commence participation in the JOBS program, to continue to attend. Vocational or technical training consists of postsecondary education, as defined in § 250.1, that both leads to useful employment in a recognized occupation and results in other than a baccalaureate or advanced degree. Such participation shall meet the individual's obligation to participate in accordance with requirements at § 250.30 if the following conditions are met:

(1) The participant is attending at least half-time as defined by the institution; and

(2) The participant is making satisfactory progress in such institution, school, or course; and

(3) The course of study is consistent with the individual's employment goal.

(b) An applicant or recipient shall appear for an assessment and the development of an employability plan so that the State IV-A agency may determine the appropriateness of the educational or training activity.

(c) If the State IV-A agency approves the educational or training activity, any other JOBS activities in which such individual participates may not be permitted to interfere with the education or training activity.

(d) A State IV-A agency may restrict postsecondary education or training in its State JOBS plan.

(e) The costs of such education or training shall not constitute federally reimbursable expenses under JOBS.

(f) The costs of child care, transportation and other supportive services which the State IV-A agency determines are necessary for such attendance are eligible for Federal reimbursement pursuant to § 255.4.

Subpart F—[Reserved]

Subpart G—Optional Components of State JOBS Programs

§ 250.60 Job search program.

(a) A State IV-A agency may operate a job search program as a component of its JOBS program. A job search program may serve participants in either group or individual job-seeking activities.

(1) Individual job search includes the provision of counseling, training, information dissemination and support on a one-to-one basis.

(2) Group job search includes the provision of counseling and training in a group setting where applicants or recipients are taught job-seeking skills, and may include a phone bank from which participants contact potential employers.

(b) In addition to non-exempt recipients, a State IV-A agency may require an individual applying for AFDC to participate in job search unless she is exempt under § 250.30(b).

(c) A State IV-A agency may require an individual to participate in a job search program from the time she files an application for aid for an initial period of up to eight consecutive weeks. Following this initial period (which may extend beyond the date when eligibility is determined) the State IV-A agency may require additional participation in job search not in excess of eight weeks (or its equivalent) in any period of 12 consecutive months. The first such period of 12 consecutive months shall begin at any time following the close of the initial period.

(1) A State IV-A agency may not delay the processing of an individual's application for aid because of her participation in job search.

(2) In no event may an individual be required to participate in job search for more than 3 weeks before the State IV-A agency conducts an assessment as provided at § 250.41.

(d) Additional job search activities beyond those required in paragraph (c) of this section may be required only in conjunction with some other educational, training, or employment activity designed to improve the individual's employment prospects.

(e) Job search by an individual under this section shall in no event be treated, for any purpose, as an activity under JOBS if the individual has participated in such job search for 4 months out of the preceding 12 months.

§ 250.61 On-the-job training.

(a) A State IV-A agency may operate an on-the-job training (OJT) program as a component of its JOBS program. Under OJT a participant is hired by a private or public employer and while engaged in productive work receives training that provides knowledge or skills essential to the full and adequate performance of that job. The State IV-A agency or its agent shall enter into a contract with the OJT employer to subsidize the extraordinary costs incurred by the employer in providing training and additional supervision to the participant.

(b) Payments to an employer for on-the-job training shall not exceed an average of 50 percent of the wages paid by the employer to the participant during the period of such training.

(c) A participant in OJT shall be compensated by the employer at the same rates, including benefits and periodic increases, as similarly situated employees or trainees and in accordance with applicable law, but in no event less than the higher of the Federal minimum wage or applicable State or local minimum wage law.

(d) Wages paid to participants in OJT will be considered to be earned income for purposes of any provision.

(e) If a participant in OJT becomes ineligible for AFDC pursuant to the rules applicable to earned income at § 233.20, or pursuant to the 100-hour rule at § 233.100 in the case of a principal earner in an unemployed parent case, she shall remain a JOBS participant for the duration of the OJT and may be eligible for supportive services under Part 255 available to other JOBS participants similarly situated.

(f) If the individual would have been eligible for transitional child care pursuant to Part 256 at the time the ineligibility for AFDC occurred, she shall be eligible for transitional child care after the OJT ends for the number of months that remain in the 12-month period following the month in which she became ineligible for AFDC after OJT ended. As an alternative, the State IV-A agency may treat all child care provided after an individual in an OJT job loses eligibility for AFDC as transitional child care if the individual meets the requirements at Part 256.

(g) The State IV-A agency must develop qualitative measures for making good or satisfactory progress, pursuant to § 250.1, for OJT, in order to qualify as a component activity under JOBS.

§ 250.62 Work supplementation program.

(a) A State IV-A agency may operate a work supplementation program as a component of its JOBS program. Under the work supplementation program, a State IV-A agency may use AFDC funds to develop and subsidize jobs for AFDC recipients as an alternative to aid.

(b) A "supplemented job" is a job provided under this section to an eligible individual by the State or local agency administering the State IV-A plan or by any other employer for which all or part of the wages are paid by such State or local IV-A agency.

(1) The State IV-A agency may use whatever means it determines appropriate to provide or to subsidize jobs for participants.

(2) The State IV-A agency may provide or subsidize any type of job. It may determine the length of time the position is to be provided or subsidized, the amount of wages to be paid to the recipient, the amount of subsidy to be provided by the State or local IV-A agency, and the conditions of participation, except that no participant may be assigned to fill any established, unfilled position vacancy in accordance with section 484 of the Act.

(c) An eligible individual is an individual who is in a category which the State IV-A agency determines should be eligible to participate in the work supplementation program, and who would, at the time of placement in the supplemented job, be eligible for AFDC if the State IV-A agency did not have a work supplementation program in effect. For the purpose of this section, time of placement is defined as the date on which the State IV-A agency and the employer reach agreement on the terms of the placement and the specific individual to be placed.

(d) A State or local IV-A agency administering the State plan is not required to provide employee status to any eligible individual to whom it provides a job position or with respect to whom it subsidizes all or part of the wages paid to such individual by another entity under this program, nor is it required to provide that eligible individuals filling job positions provided by other entities under such program be provided employee status by such entity during the first 13 weeks in which they fill such position.

(e) Participants in supplemented jobs will be paid wages which shall be considered to be earned income for purposes of any provision of law.

(f) The State IV-A agency may elect to calculate the amount of an eligible individual's residual (direct AFDC) grant, if any, at the time of placement in the supplemented job and base the amount of the residual grant (the AFDC grant minus earnings and other countable income) for the duration of the individual's participation in the supplemented job (in whole or part) on that calculation. Such a policy is known as "freezing the grant." If the individual becomes otherwise ineligible for AFDC benefits, the State IV-A agency may allow the individual to continue in the supplemented job and divert the AFDC grant to the wage pool, but the State IV-A agency shall not pay a residual grant to the individual.

(g) At State option, individuals who hold supplemented jobs may be exempt from the retrospective budgeting requirements at Part 233 and monthly reporting, and the amount of the aid which is payable to the family of any such individual for any month, or which would be so payable but for the individual's participation in a supplemented job, shall be determined on the basis of the income and other relevant circumstances in that month.

(h) If an individual in a supplemented job would have been eligible for transitional child care pursuant to Part 256 at the time the ineligibility for AFDC occurred, she shall be eligible for transitional child care after her supplemented job ends for the number of months that remain in the 12-month period following the month in which she became ineligible. In the alternative, the State IV-A agency may treat all child care provided after an individual in a supplemented job loses eligibility for AFDC as transitional child care if the individual meets the requirements at Part 256.

(i) A State IV-A agency may adjust the standard of need under the State IV-A plan as the State determines to be necessary and appropriate to carry out a work supplementation program. Such changes in the need standard may be made notwithstanding § 233.20.

(1) The standard of need in effect in those subdivisions of the State in which such program is in operation may be different from the need standard in effect in subdivisions in which such program is not available.

(2) The standard of need for categories of recipients of aid may vary among such categories as the State IV-A agency determines to be appropriate on the basis of ability to participate in the work supplementation program.

(3) A State IV-A agency may make further adjustments in the amount of aid paid under the title IV-A plan to different categories of recipients in order to offset increases in benefits from other government-provided, needs-related programs as the State IV-A agency deems necessary and appropriate to further the purpose of the work supplementation program.

(j) A State IV-A agency may reduce or eliminate the amount of earned income to be disregarded from participation in a supplemented job.

(k) Notwithstanding the time limitations on the $30 and one-third and the $30 disregard in § 233.20(a)(11), a State IV-A agency may allow a participant employed in a supplemented job to receive the $30 and one-third or the $30 disregards for one or more of the first nine months of such employment.

(l) Payments by the State IV-A agency to individuals or to entities providing jobs for recipients under the work supplementation program shall be expenditures incurred by the State IV-A agency for AFDC and shall not exceed the amount that would otherwise be payable under the title IV-A plan if the family of each individual employed in the program had received the maximum amount of aid payable to such a family with no income for a period of either 9 months or the length of the individual's employment in the program, whichever is less. (This amount is determined without regard to any adjustments made under paragraphs (i), (j), and (k) of this section, and for each month of participation, may be based upon the

maximum amount that would otherwise have been payable for a month at the time of placement in the program).

(m) A State IV-A agency may determine the amounts to be reserved and used for providing and subsidizing jobs under this section by using a sampling methodology. The State IV-A agency must describe its sampling methodology in its JOBS plan.

§ 250.63 Community work experience program.

(a) A State IV-A agency may operate a community work experience program (CWEP) as a component of its JOBS program. The purpose of CWEP is to improve the employability of individuals not otherwise able to obtain employment by providing work experience and training to assist them to move promptly into regular public or private employment.

(b) The State IV-A agency shall provide coordination among a community work experience program, any program of job search, and the other employment-related activities under the JOBS program to insure that job placement will have priority over participation in CWEP, and that individuals eligible to participate in more than one program under JOBS are not denied AFDC on the grounds of failure to participate in one such program if they are actively and satisfactorily participating in another. The State IV-A agency may provide that part-time participation in more than one such program may be required where appropriate.

(c) Community work experience programs shall be limited to projects which serve a useful public purpose in fields such as health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care.

(d)(1) The maximum number of hours that an individual may be required to work or undergo training (or both) in CWEP is the number of hours which would result from dividing the family's monthly grant amount by the greater of the Federal or the applicable State minimum wage.

(2) A State IV-A agency may include the value of food stamp benefits in computing the maximum number of hours that a food stamp recipient, who is exempt from food stamp work registration by virtue of her participation in a CWEP program under JOBS, is required to participate. No food stamp recipient, who is exempt from food stamp work registration, may be required to participate in CWEP under JOBS more than 120 hours per month.

(3) The portion of a recipient's aid for which the State is reimbursed by a child support collection (except for the $50 pass-through) shall be excluded in determining the maximum number of hours that she is required to work.

(e) Nothing contained in this section shall be construed as authorizing the payment of AFDC as compensation for work performed, nor shall a participant be entitled to a salary or to any work or training expense provided under any other provision of law by reason of her participation in a CWEP program.

(f) To the extent possible, a State IV-A agency should take into account the prior training, experience and skills of a recipient in making appropriate work assignments.

(1) After each six months of an individual's participation in a community work experience program and at the conclusion of each assignment under such a program the State IV-A agency must provide a reassessment and revision, as appropriate, of the individual's employability plan.

(2) After an individual has been assigned to a position for a total of nine months, such individual may not be required to continue in that assignment unless the maximum number of hours of participation is no greater than the family's grant divided by the highest of:

(i) The Federal minimum wage; or

(ii) The applicable State minimum wage; or

(iii) The rate of pay for individuals employed in the same or similar occupations by the same employer at the same site.

The portion of a recipient's aid for which the State is reimbursed by a child support collection (not including the $50 pass-through) shall continue to be excluded in determining the number of hours that such individual may be required to work.

(g) Participants in CWEP may perform work in the public interest (which otherwise meets the requirements of this section) for a Federal office or agency with its consent, and, notwithstanding 31 U.S.C. 1342, or any other provision of law, such agency may accept such services, but such participants shall not be considered to be Federal employees for any purpose.

(h) Nothing in this section or in any State plan approved under § 250.20 shall be construed to prevent a State IV-A agency from operating (on such terms and conditions and in such cases as the State IV-A agency may find to be necessary or appropriate) a community work experience program.

(i) CWEP participants must not fill established, unfilled position vacancies in accordance with section 484 of the Act.

(j) FFP is not available for:

(1) Capital expenditures, depreciation or use allowances in connection with a CWEP;

(2) The cost of making or acquiring materials or equipment in connection with participation in a project; or

(3) The cost of supervision of participants.

(k) The State IV-A agency may offer any other work experience program which is described in the JOBS plan and approved by the Secretary.

(1) The program narrative for such a program should include a description of the potential sponsors; the type of activities; the hours or length of participation required; target group(s); and how the program is different from CWEP.

(2) The limitations on FFP for CWEP in paragraph (j) of this section apply to all State work experience programs.

(3) Any other work experience program must meet the general program standards at section 484 of the Act.

Subpart H—Funding

§ 250.70 JOBS allocation entitlement.

(a) Federal matching for JOBS program expenditures is limited to a national total equal to the amounts authorized and appropriated for each fiscal year.

(b) A State IV-A agency with an approved JOBS plan shall be entitled to payments from this annual limit. The maximum annual payment for a State will be the sum of two amounts:

(1) An amount equal to the State's WIN or WIN Demonstration allotment for fiscal year 1987; and

(2) An amount allocated from the balance of the annual national limitation on the basis of each State's relative average monthly number of adult recipients as defined at § 250.1.

(c) In accordance with § 92.23, JOBS funds allocated to a State IV-A agency for a given Federal fiscal year are for use during that fiscal year and must be obligated by the State no later than the end of the fiscal year. Carry forward of an unobligated balance of Federal funds to a succeeding Federal fiscal year is not permitted. An unobligated Federal fund balance at the close of a Federal fiscal year will be returned to the Federal government through the issuance of a negative grant award by the Department

following receipt of the final quarterly expenditure report for the fiscal year.

(d) A State must liquidate all obligations incurred under the title IV-F grant awards not later than one year after the end of the fiscal year for which the funds were awarded and obligated. The Federal share of unliquidated obligations will be returned to the Federal government.

§ 250.71 Allotment of JOBS limit of entitlement.

(a) For a State IV-A agency that implements JOBS in a quarter of a fiscal year prior to October 1, 1990, the State's allotment from its JOBS limit of entitlement for that period will be proportional to the number of such quarters that JOBS is operational in that State in that fiscal year.

(b) An Indian Tribe or Alaska Native organization which receives the Secretary's approval to conduct a JOBS program shall receive a direct payment for operation of its JOBS program, without the requirement for a non-Federal share, pursuant to § 250.93.

(1) The amount of any such direct payment will be deducted from the amount of the State's allotment, and will be proportional to the Tribe's or organization's proportion of the State's adult AFDC recipient population, as established pursuant to § 250.93.

(2) The remaining allocation to a State IV-A agency shall be subject to the regulations governing FFP at § 250.73.

(c) The following rules apply to Puerto Rico, Guam, the Virgin Islands and American Samoa which are subject to the provisions of section 1108 of the Act:

(1) The limitations on payments contained in section 1108 do not apply to a State's annual limit of entitlement for the JOBS program as described in § 250.70(b).

(2) The availability of FFP for child care under Part 255 and the related appropriate FFP rates are described at § 255.4(b)(2) and § 255.4(g).

(3) The availability of FFP for transitional child care under Part 256 and the related appropriate FFP rates are described at § 256.4(b).

§ 250.72 Maintenance of effort.

(a) Federal JOBS funds shall not be used to supplant non-Federal funds for existing services and activities that promote the purposes of JOBS. Non-Federal funds include both State and local match of Federal funds for existing services for AFDC applicants and recipients and the amounts spent directly by the State IV-A agency without benefit of Federal matching funds.

(b) State and local IV-A agency expenditures for these purposes shall not be less than the fiscal year 1986 level. At a minimum, this requirement applies to non-Federal funds expended for programs to increase self-sufficiency, reduce welfare dependency, and increase earnings of AFDC applicants and recipients.

(c) State IV-A agency contracts and arrangements may be made for services only to the extent that they are not otherwise available on a non-reimbursable basis. "Not otherwise available" here means that if the services were available for AFDC applicants and recipients before JOBS, the State IV-A agency's provider must maintain that level of service before the State IV-A agency may contract for additional services of the same sort from that agency.

(d) Any State IV-A agency arrangement or contract must contain a certification from the provider that the services being contracted for are not otherwise available from that provider on a non-reimbursable basis. Services provided on a "non-reimbursable basis" are those services that a State is required to provide to all citizens or to the low income population, including AFDC applicants and recipients.

(e) A State IV-A agency directly providing JOBS component services must certify in the State JOBS plan that such services are not otherwise available on a nonreimbursable basis.

§ 250.73 Matching rates.

(a) From a State IV-A agency's total annual limit of entitlement, FFP is available at a rate of 90 percent for expenditures up to an amount equal to the State's WIN or WIN Demonstration allotment for fiscal year 1987. The State's match for this amount may be in cash or in kind fairly evaluated.

(b)(1) FFP will be available for the balance of a State IV-A agency's limit of entitlement as follows:

(i) At the higher of the State's Medicaid matching rate or 60 percent for program costs as described in paragraph (c) of this section, and for personnel costs (salaries and benefits) for full-time staff working in any capacity in the JOBS program; and

(ii) At 50 percent for all other administrative costs, as described in paragraph (d) of this section, and transportation, work-related expenses, and work-related supportive services as defined in Part 255.

(2) A State's match for these amounts must be in cash, not in kind. The State share for private and public funds must meet the requirements of § 235.66.

(c) The term "program costs" includes: the costs for an individual's participation in a component, such as OJT payments to an employer, and tuition and fees, where not excluded; for an individual's participation in a JOBS education component; the personnel costs (salaries and benefits) for staff and first-line supervisors directly providing component services to participants, and the costs for equipment, supplies and materials used by a JOBS participant while she is actively participating in the activities of a component.

(d) "Administrative costs" are those costs not considered "program costs", including overhead expenditures, JOBS subsystems costs, personnel costs (salaries and benefits) for staff not directly providing component services to participants such as second-line supervisors and above, personnel administration costs, and all other indirect costs.

§ 250.74 Reduced matching rate.

(a)(1) FFP for a State IV-A agency shall be 50 percent (rather than the rates described in § 250.73) in any fiscal year in which that State spends less than 55 percent of the State's JOBS expenditures on applicants and recipients who are members of the State's target populations as defined in § 250.1.

(2) If any State IV-A agency demonstrates to the satisfaction of the Secretary that the characteristics of the caseload in that State make it infeasible to meet the requirements of paragraph (a)(1) of this section, and that the State is targeting an approved set of long-term or potential long-term recipients, the match rate in § 250.73 shall be applied.

(3) A State IV-A agency need not require or allow participation of an individual in the program if, as a result of such participation, the amount payable to the State for quarters in a fiscal year with respect to the program would be reduced pursuant to paragraph (a)(1) of this section.

(b)(1) FFP for a State IV-A agency shall be 50 percent (rather than the rates described in § 250.73) in any fiscal year for the State's JOBS expenditures if the State's participation rate (determined under paragraph (b)(2) of this section) for the preceding fiscal year does not equal or exceed:

(i) 7 percent if the preceding fiscal year is 1990;

(ii) 7 percent if such year is 1991, however, no reduction in FFP shall be made in 1991 for any failure to meet the participation rate specified in (b)(1)(i) of this section;

(iii) 11 percent if such year is 1992;

(iv) 11 percent if such year is 1993;

(v) 15 percent if such year is 1994; and

(vi) 20 percent if such year is 1995.

(2) The State IV-A agency's participation rate for a fiscal year shall be the average of its participation rates for computation periods in such fiscal year. The computation periods shall be:

(i) The fiscal year, in the case of fiscal year 1990;

(ii) The first six months, and the seventh through twelfth months, in the case of fiscal year 1991;

(iii) The first three months, the fourth through sixth months, the seventh through ninth months, and the tenth through twelfth months, in the case of fiscal years 1992 and 1993; and

(iv) Each month, in the case of fiscal years 1994 and 1995.

(3) The State IV-A agency's participation rate for a computation period shall be the number, expressed as a percentage, equal to: (i) The average monthly number of individuals required or allowed by the State to participate in the program, who have participated (as defined in § 250.1) in such program in months in the computation period, plus the number of individuals required or allowed by the State to participate in such program, who have so participated in that month in such period for which the number of such participants is the greatest; divided by (ii) twice the average monthly number of individuals required to participate in such period (other than individuals described in paragraphs (9)(i) and (9)(iv) of § 250.30(b) with respect to whom the State IV-A agency has exercised its option to require their participation and individuals sanctioned under § 250.34).

(4) If the Secretary determines that the State IV-A agency has failed to achieve the participation rate for any fiscal year specified above, he may waive, in whole or in part, the reduction in the payment rate otherwise required by paragraph (b)(1) of this section if he finds that:

(i) The State is in conformity with section 402(a)(19) and Part F of the Act;

(ii) The State has made a good faith effort to achieve the applicable participation rate for such fiscal year; and

(iii) The State has submitted a proposal which is likely to achieve the applicable participation rate for the current fiscal year and the subsequent fiscal years (if any) specified therein.

(c)(1) FFP for a State IV-A agency shall be 50 percent beginning in fiscal year 1995 for the State's JOBS expenditures (rather than the rates described in § 250.73) if the percentage of UP cases meeting the participation requirements in § 250.33, for the preceding fiscal year does not equal or exceed:

(i) 40 percent in the case of the average of each month in fiscal year 1994;

(ii) 50 percent in the case of the average of each month in fiscal year 1995;

(iii) 60 percent in the case of the average of each month in fiscal year 1996; and

(iv) 75 percent in the case of the average of each month in each of the fiscal years 1997 and 1998.

(2) The percentage of participants for any month in a fiscal year for this purpose shall equal the average of: (i) The number of individuals described in § 250.33 who have met the requirement therein; divided by (ii) the total number of principal earners (but excluding those in families who have been recipients of aid for 2 months or less if, during the period that the family received aid, at least one parent engaged in intensive job search as defined in § 250.1).

(3) If the Secretary determines that the State IV-A agency has failed to achieve the participation rate for any fiscal year specified above, he may waive, in whole or in part, the reduction in the payment rate otherwise required by paragraph (c)(1) of this section if he finds that:

(i) The State is in conformity with section 402(a)(19) and Part F of the Act;

(ii) The State has made a good faith effort to achieve the applicable participation rate and has been unable to do so because of economic conditions in the State, including significant numbers of recipients living in remote locations or isolated rural areas where the availability of work sites is severely limited, or because of rapid and substantial increases in the caseload that cannot reasonably be planned for; and

(iii) The State has submitted a proposal which is likely to achieve the applicable participation rate for the current fiscal year and the subsequent fiscal years (if any) specified therein.

§ 250.75 Activities excluded from FFP.

(a) The costs of education or training activities (such as tuition, books, fees, room, board) that the State IV-A agency determines may constitute participation under the provisions of § 250.48 shall not constitute federally reimbursable expenses for purposes of the JOBS program.

(b) No funds shall be used for construction.

(c) No funds shall be used to assist, promote, or deter union organizing.

§ 250.76 Financial reports, records, statements and audits.

(a) Financial reporting of JOBS program expenditures are generally subject to the requirements of the existing regulations at § 201.5 and § 92.41, as appropriate.

(b) Financial records and accounts shall be made available for audit purposes to the Secretary or any authorized representative.

(c)(1) JOBS program funds are subject to the administration of grant regulations at Part 92.

(2) Program funds and activities shall be audited in conformity with the requirements of §§ 92.26 and 74.62(a).

(3) JOBS program records are subject to the "retention and access requirements for records" at § 92.42.

(d) FFP improperly claimed under the JOBS program is subject to disallowance. If a State IV-A agency disagrees with a decision to disallow FFP, it can appeal within 30 days of the date of the disallowance decision. The procedures for appeal of AFDC disallowances apply, including review of the Departmental Appeals Board in accordance with Part 16 of these regulations.

§ 250.77 Costs matchable as AFDC payments.

(a) Costs incurred by the State IV-A agency for supplemental AFDC payments shall be treated as title IV-A costs with respect to which sections 403(a)(1) or 403(a)(2) of the Act apply, when such payments are made in order that a recipient's family shall not experience a net loss of cash income from the recipient having been required by the State to accept a job.

(b) Payments to employers under work supplementation as described at § 250.62(1) shall be expenditures incurred by the State IV-A agency for AFDC.

Subpart I—Uniform Data Collection Requirements

§ 250.80 Uniform data collection requirements.

(a) A State IV-A agency must provide to the Department a sample of monthly unaggregated case record data containing such data and identifiers as are specified in § 250.82. The sample must be provided in formats specified by the Department. Each record of the sample must contain an identifier that is not the Social Security number, and that protects the privacy of the individual relative to the requirements of § 205.50. The sample must be large enough to provide a precision of plus or minus one percentage point at a 95 percent

confidence level, for at least those data elements necessary to determine a State's FFP as required in § 250.74. Submission of the universe of JOBS case records is also acceptable. Data must be submitted electronically on an ongoing basis, with all cases submitted no later than 45 days after the end of the month.

(b) For purposes of determining participation rates, a State IV-A agency must report, for each month, on a quarterly basis, the aggregate number of individuals required to participate as specified in § 250.74(b)(3)(ii).

(c) A State IV-A agency must annually develop and submit to the Secretary a table of the previous Federal fiscal year's average total cost per participant per month of participation, separately stated with regard to each component and service the State IV-A agency makes available. The Department will determine a State IV-A agency's eligibility for enhanced FFP as specified at § 250.74(a) by applying a State's activity levels of target population participants to that State's table of average costs.

(d) A State IV-A agency must submit any other information that the Secretary determines necessary.

§ 250.81 State data systems options.

(a) A State IV-A agency may integrate its JOBS Automated System (JAS) with an existing or planned title IV-A system. A State IV-A agency may also use a stand-alone system. Either option must be a client-based information system capable of producing at a minimum all data elements required in § 250.82. FFP may be available from either title IV-A or title IV-F funds, as described in paragraphs (b) and (c) of this section.

(b)(1) Title IV-A funding is available for acquisition and development of the JOBS interface between title IV-A and title IV-F requirements. The interface of an automated JOBS program with the title IV-A system, for verification of eligibility and reconciliation of data, includes planning, development and implementation of title IV-A subsystems to:

(i) Manage information on eligibility factors and target group membership;

(ii) Effect notifications and referrals including non-cooperation;

(iii) Check records of applicants and recipients on a periodic basis with other agencies to verify continued eligibility; and

(iv) Notify appropriate officials when a recipient ceases to be eligible.

(2) If the JAS interfaces with an existing or planned FAMIS-type system and all FAMIS requirements are met, 90 percent FFP is available. Otherwise interface expenditures are matched at 50 percent.

(c) JOBS funding is available at a 50 percent administrative rate for the acquisition and development of the remainder of the JAS, subject to the requirements of § 205.37. This excludes the JOBS interface with the title IV-A subsystem, but includes all other input, maintenance and reporting of those data elements required in § 250.82 that cannot be obtained from the title IV-A subsystem through the JOBS interface. A cost allocation plan must be approved to share the cost among all Federal and State programs benefiting from the State's JAS.

(d) The Advance Planning Document (APD) for each subsystem must meet all existing requirements for such a system pursuant to § 205.37.

(e) Administrative funding under either title IV-A or title IV-F for systems development, implementation, operation and/or automatic data processing equipment acquisition must comply with the requirements of § 95.611.

§ 250.82 Required case record data.

(a) In order for a State IV-A agency to produce unaggregated case record data that are required to be reported with regard to individuals who are served in the JOBS program, the data elements specified below are required to be maintained in the State IV-A agency's individual case record for each JOBS participant and for each individual in a self-initiated activity that the State has determined to be eligible for support services. To the extent the State IV-A agency's JAS can access the required elements in the required form from other subsystems, duplicate entry is to be avoided.

(b) The minimum data elements are:

(1) Case identifier in lieu of Social Security Number;

(2) Date of birth;

(3) Basis of eligibility, including codes for UP or regular AFDC, and for deprivation factor;

(4) Applicant or recipient status;

(5) Beginning date of current AFDC eligibility;

(6) Prior receipt of AFDC;

(7) Education level;

(8) Literacy level, when established through an educational assessment using TABE or other State-prescribed tool;

(9) Target group codes to identify, for that month, which of the target groups specified in § 250.1 an individual was a member of, if any, at the time of assessment;

(10) Participation status as defined in § 250.1(1).

(11) Participation status in a component as defined in § 250.1(5), including separate identification of self-initiated educational or training activity;

(12) Participation status in intensive job search as defined in § 250.1 or UP work participation as defined in §§ 250.1(4) (i) and (ii);

(13) Date entered into current JOBS component, or initial assessment;

(14) Date entered into initial JOBS component as defined in §§ 250.1 (5) or (6);

(15) Amount of child care payment during the month, pursuant to section 402(g)(1)(A).

Subpart J—Operation of JOBS Programs by Indian Tribes and Alaska Native Organizations

§ 250.90 Scope and purpose.

The purpose of an Indian Tribe or Alaska Native organization JOBS program is to assure that Tribal (refers to both an Indian Tribe and Alaska Native organization) members receiving AFDC obtain the education, training and employment services they need to avoid long-term dependency. Tribal grantees are subject to all the regulations under Part 250, unless otherwise indicated in this subpart, and, as appropriate, regulations under Parts 255, 74, and 92, which include general funding and disallowance and termination provisions for Federal programs.

§ 250.91 Eligible Indian Tribe and Alaska Native organization grantees.

Funds shall be allotted to operate a JOBS program pursuant to § 250.71 to groups meeting the following eligibility standards:

(a) An Indian Tribe, defined as any Tribe, band, nation, or other organized group or community of Indians which:

(1) Is federally recognized as eligible for the special programs and services provided by the United States Government to Indians because of their status as Indians; and

(2) Has a reservation, which means Indian reservations, public domain Indian allotments, or former Indian reservations in Oklahoma.

(b) A consortium or Tribal organization representing more than one Tribe if each participating member Tribe meets the eligibility requirements for JOBS as defined in paragraph (a) of this section. Such organizations must also meet the following criteria:

(1) All the participating members must be in geographic proximity to one another. However, a consortium may operate in more than one State;

(2) The consortium must demonstrate that it has the managerial, technical or administrative staff with the ability to properly administer government funds, manage a JOBS program, and comply with the provisions of the Statute and of the regulations;

(3) The consortium must submit with its JOBS application a resolution from each participating Tribe authorizing the consortium to receive JOBS funds on behalf of each Tribe in its JOBS program.

(c) An Alaska Native Organization including any Alaska Native village, or regional or village corporation eligible to operate a Federal program under Public Law 93-638 (Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450) or such group's designee. The boundaries of an Alaska Native organization are those of the geographical region, established pursuant to section 7(a) of the Alaska Native Claims Settlement Act, (85 Stat. 688) within which the Alaska Native organization is located.

§ 250.92 Selection criteria for eligible Alaska Native organizations.

(a) The Secretary may approve only one application from an Alaska Native organization for each of the 12 geographical regions established pursuant to section 7(a) of the Alaska Native Claims Settlement Act. The Department shall designate the Alaska Native grantee for each geographic region based on the following criteria:

(1) Previous experience in operating an effective employment and training program serving Indians and Native Alaskans;

(2) The number and kinds of activities of similar magnitude and complexity that the applicant has successfully completed; and

(3) The ability to provide services effectively to all eligible Native Alaskans residing in the region.

(b) In order to be approved an Alaska Native application must promote the efficient and nonduplicative administration of the JOBS program in the State of Alaska.

§ 250.93 Funding formula.

(a) A Tribal grantee's share of program funds will be calculated annually pursuant to § 250.71 and will be based on the following ratio:

(1) The number of adult members of the Indian Tribe receiving AFDC who live in the designated service area—defined as reservation only, the reservation plus adjacent counties, or the reservation plus adjacent land within a specified distance which would be reasonably accessible for Indian Tribal JOBS participants—compared to the total number of adult AFDC recipients in the State; or

(2) The number of adult Alaska Natives receiving AFDC who reside within the boundaries of the region which the organization represents to the total number of adult AFDC recipients in the State of Alaska.

(b)(1) The State IV-A agency and the Indian Tribe or Alaska Native organization must exchange available information on adult Tribal AFDC recipients needed to determine the eligible Tribal population and to define the designated service area, if other than the reservation or trust lands, as appropriate. State and Tribal representatives receiving such AFDC recipient data must follow standards of confidentiality to assure that recipient and Tribal privacy is protected pursuant to § 205.50.

(2) If sufficient data on adult AFDC members of a Tribe or of an Alaska Native organization are not available, the State IV-A agency and the Tribe or organization may enter into an agreement covering a mutually agreed upon estimated figure of the eligible Tribal population and the designated service area, as appropriate.

(3) If the State IV-A agency and the Tribe or organization cannot agree on the number of Tribal adult AFDC recipients and/or designated service area, the Secretary, in consultation with the Tribe or organization and State, will make the final determination of Tribal funding.

(c) A Tribal grantee is not required to match Federal funds.

§ 250.94 Program administration, implementation and operations.

(a) The Tribal grantee must designate a Tribal agency or department to administer the Tribal JOBS program.

(1) The designated agency or department will be responsible for the administration of the Tribal JOBS program including the requirements under 402(a)(19) and Part F of the Act.

(2) The responsibility for the administration of JOBS, pursuant to paragraph (a)(1) of this section, includes functional areas such as exemption and priority determinations (§ 250.30), orientation and referrals (§ 250.40), assessment and the development of the employability plan (§ 250.41), JOBS activities (§ 250.44 and § 250.94(e)), dispute resolution and hearings (§ 250.36). Certain other related functions are retained by the State IV-A agency. These include the imposition of sanctions as described in § 250.34 and the administration of provisions on child care (Part 255) and transitional child care services (Part 256).

(3) The designated agency or department may not delegate or contract out any functions which involve agency discretion, as detailed in § 250.10 of the regulations.

(b) The Tribe or organization may begin operating its JOBS program as of the first day of any quarter between July 1, 1989,and October 1, 1990, independent of the State's JOBS implementation date. If the Tribe or organization elects to begin operating its program before the State, during this interim time period:

(1) The Tribe or organization must guarantee necessary child care (without additional title IV-A funding for child care pursuant to Part 255) if it requires an individual to participate in its JOBS program.

(2) If the Tribe or organization cannot guarantee necessary child care as described in paragraph (b)(1) of this section, it cannot require an individual to participate in its JOBS program but may operate an entirely voluntary program.

(c) The Tribe or organization may not begin its JOBS program prior to approval of the Secretary. Final documentation for the application (meaning supplemental materials submitted after the initial April 13, 1989, application) must be sent to the Department at least 45 days prior to implementation of the Tribal program. This will allow sufficient time for the Department's review and approval.

(d)(1) Tribes or organizations shall not be subject to the specific requirements of § 250.12 of the regulations, but must coordinate program services with appropriate agencies as follows:

(i) The Tribal application with final documentation must be submitted to the State IV-A agency for its review and comment at least 30 days before submittal to the Secretary. The Tribe or organization shall consider comments made by the State IV-A agency in its application submitted to the Secretary.

(ii) The application with final documentation must also be made available to Tribal members for review and comment at least 30 days prior to submittal to the Secretary. The Tribe or organization must certify in its application that such public participation has taken place.

(2) To operate a JOBS program, the Tribe or organization must coordinate with the State IV-A agency to ensure that interrelated program functions are effectively performed. These functions include State responsibilities—such as providing to the Tribal grantee eligibility notifications and the necessary child

care funds or services for Tribal participation—and Tribal responsibilities—such as notifying the State IV-A agency when Tribal members fail to participate without good cause.

(3) A Tribe or organization must consult and coordinate with other providers including those specified in paragraph (d)(4) of this section, to identify existing resources, prevent duplication of services and ensure that the maximum level of services is available to enable participants to achieve self-sufficiency.

(4) At a minimum, the Tribal grantee must consult and coordinate with:

(i) The Tribal agency responsible for JTPA, if applicable;

(ii) The Tribal agency responsible for other employment and training services, including those offered under the Bureau of Indian Affairs;

(iii) The Tribal agency responsible for education including any programs under the Bureau of Indian Affairs, the Department of the Interior, or under the Office of Indian Education, of the Department of Education.

(5) The Tribal grantee must consult with existing formal advisory councils, such as private industry councils, as appropriate, on the development of arrangements and contracts under JOBS, as described in § 250.12(d).

(6) The Tribal grantee must consult with private industry councils and Tribal Employment Rights Offices, as appropriate, to identify and obtain advice on the types of jobs available, or likely to become available, within a reasonable commuting distance from the Tribe's designated service area or the organization's boundaries. The Tribe or organization must ensure that JOBS provides training for the types of jobs which are, or are likely to become, available in or near its designated service area or organization's boundaries and that resources are not expended on training for jobs that are not likely to become available.

(e) Tribal programs are subject to the requirements of § 250.44 but are not subject to the requirements of § 250.45.

(1) A Tribal JOBS program must include all the mandatory components at § 250.44 unless the Tribe or organization can provide justification to show that such activities are inappropriate. A Tribe or organization's application must describe the types of activities and methods of delivery for each of the mandatory components.

(2) Tribal programs are not subject to the provisions at § 250.45 but must include at least one of the following components unless a Tribe or organization can provide justification to show that such activities are inappropriate:

(i) Group and individual job search, as described in § 250.60;

(ii) On-the-job training, as described in § 250.61;

(iii) Community work experience program, as described in § 250.63, or a work experience program as approved by the Secretary;

(iv) Work supplementation program, as described in § 250.62;

(v) Alternative education, training and employment activities which are not described in § 250.60, § 250.61, § 250.62 or § 250.63, as approved by the Secretary.

(A) Innovative approaches with the private sector are encouraged if they are consistent with the purpose of JOBS to assist AFDC recipients to avoid long-term dependency.

(B) JOBS funds may not be used for public service employment or for allowances other than for those required for supportive services as described in Part 255.

(3) Because the amount of the IV-A payment is an integral part of determining participation in work supplementation and community work experience programs, a Tribe or organization may operate these programs only if adequate agreements with the State IV-A agency are implemented. The agreements should cover operational procedures and the exchange of information, including grant levels and child support calculations for community work experience participants and earnings for work supplementation participants.

§ 250.95 Supportive services.

(a) The Tribal grantee must provide, pay for, or reimburse necessary supportive services (other than child care) pursuant to Part 255, including transportation and other work-related expenses, that the Tribe or organization determines are necessary to enable an individual to participate in JOBS.

(b) The State IV-A agency is responsible for guaranteeing child care for Tribal JOBS participants according to the provisions specified under Part 255.

(c) If the Tribe or organization is using child care funds or services provided by the State pursuant to paragraph (b) of this section, it must ensure, based on a method which is mutually acceptable to the State IV-A agency and Tribal grantee, that necessary child care is available when requiring an individual to participate in its program.

(d) If the Tribe or organization does not choose to use State funds or services for child care, it must provide (without additional title IV-A funding for child care) these funds or services in order to guarantee necessary child care when requiring an individual to participate.

(e) Once the State has implemented its JOBS program, the Tribe or organization, in order to require an individual to participate, must guarantee necessary child care either through the State IV-A agency, pursuant to paragraphs (b) and (c) of this section, or directly, pursuant to paragraph (d) of this section; but it may not operate an entirely voluntary JOBS program.

§ 250.96 Waiver authority.

The Secretary may waive any JOBS requirements set forth under titles IV-A and IV-F that he determines inappropriate for Tribal JOBS programs.

(a) The Secretary has determined that certain requirements of the Act are inappropriate for JOBS programs operated by Indian Tribes or Alaska Native organizations. They cover the following provisions or sections of the regulations:

(1) Section 250.10 (IV-A agency administration);

(2) Section 250.11 (Statewide requirement);

(3) Section 250.12 (Coordination and consultation);

(4) Section 250.20 (State plan requirements);

(5) Section 250.21 (State plan content);

(6) Section 250.33 (UP-16 hour rule);

(7) Section 250.45 (Optional components);

(8) Section 250.70 (a) and (b) (Allocation entitlement);

(9) Section 250.71 (b)(2) and (c) (Allotment);

(10) Section 250.72 (Maintenance of effort);

(11) Section 250.73 (Matching rates);

(12) Section 250.74 (Reduced matching rates including provisions relating to target groups);

(13) Section 250.81 (State data systems);

(14) Section 255.1 (c) and (h) (Supportive Services plan requirements);

(b) A Tribe or organization may request that the Secretary waive any other requirements of the Statute not listed under paragraph (a) of this section with proper justification. The Secretary will consider the appropriateness of such waivers on a case-by-case basis.

§ 250.97 Application requirements and documentation.

(a) As a condition of participation in the JOBS program, the designated Tribal agency or department responsible for administering the JOBS program must:

(1) No later than October 1, 1990, establish and operate a JOBS program under a JOBS application that has been approved by the Secretary before implementation and meets the requirements of Parts 250 and 255, as appropriate.

(2) Submit final documentation for the application to the Secretary for review and action at least 45 days prior to the anticipated implementation date. The Tribal grantee may not begin its JOBS program prior to the Secretary's approval pursuant to § 250.94(c).

(b) The Tribal application must be submitted to the State IV-A agency for comment at least 30 days prior to submittal to the Secretary. The application shall be made available to Tribal members for review and comment at least 30 days prior to submittal to the Secretary. Comments received shall be resolved by the Tribe or organization.

(c)(1) The Tribal grantee must submit an update of its JOBS application to the Secretary for approval at least every two years. The update shall be considered a new JOBS application and shall be submitted to the Secretary for approval at least 90 days prior to beginning of the next biennial period. The Tribal grantee must follow the public review and comment provisions in paragraph (b) of this paragraph.

(2) The update must consist of:

(i) Assurances regarding those parts of the Tribal JOBS application that remain unchanged;

(ii) A description of any changes in program operations including but not limited to changes in component activities; and

(iii) An estimate of the number of persons to be served by the program during the next biennium.

(3)(i) For all Tribal grantees the first biennial update must be submitted by July 1, 1992, for the period beginning October 1, 1992.

(ii) Each approved biennial update shall remain in force until formal action is taken (i.e. approval or disapproval) by the Secretary on the update for the following biennial period.

(d) The Tribal grantee shall submit proposed amendments to the approved application as necessary, and they shall be reviewed according to the process described at §§ 201.3(f) and 201.3(g).

(e) A Tribe or organization that submits an application, an amendment to an existing application, or a biennial update to its application that is not approvable will be given the opportunity to make revisions before formal disapproval; upon formal disapproval, a Tribe or organization may request a hearing pursuant to the process set forth in § 201.4 and Part 213.

(f) A Tribal applicant must submit documentation (which is in addition to the information requested in the application) covering the following items for the Secretary's review before final approval of the application can be determined:

(1) Assurances that the administering Tribal agency will have in effect a JOBS program which meets the requirements of section 402(a)(19) and title IV-F of the Act, unless waived by the Secretary, and including crossreferences to all appropriate statutory and regulatory requirements that the JOBS program will meet;

(2) A description of the administrative process and methods of delivery for:

(i) Providing program information under § 250.40;

(ii) Assessments pursuant to § 250.41;

(iii) Agency-participant agreements, if this option is elected;

(iv) Case management system (§ 250.43), if this option is elected;

(3) A description of the mandatory and elected optional component activities described under § 250.94(e) and the methods of delivery;

(4) A description of the selection and assignment criteria that will be used to refer participants to the various services and activities provided under the Tribal JOBS program;

(5) A description of the coordination processes with other programs, including any agreements with the State IV-A agency, Tribal JTPA agency, other employment and training agencies and educational agencies. Specify how these other agencies will track and report to the Tribe or organization on satisfactory participation and use of JOBS funds, if applicable;

(6) A description of how the administering Tribal agency will determine eligibility for work-related expenses such as clothing or transportation and other supportive services; a listing of the work-related expenses and the supportive services it will provide to its JOBS participants; the methods of delivering these supportive services; and

(7) A description of the conciliation and hearings procedures which meet the due process standards specified in proposed § 250.36, including notification to the State IV-A agency of formal decisions that a non-exempt Tribal member has failed to participate.

§ 250.98 Maintenance of effort for Indian Tribes and Alaska Native organizations.

Tribal programs are not subject to the requirements in § 250.72 but are subject to the following requirements:

(a) JOBS funds shall be used only for education, training and employment activities that are in addition to those which would otherwise be available to Tribal AFDC recipients in the absence of such funds.

(b) A Tribe or organization may contract for services only to the extent that such services are not otherwise available to AFDC Tribal recipients on a non-reimbursable basis.

Title 45, Chapter II, Code of Federal Regulations is amended by adding a new Part 255 to read as follows:

PART 255—CHILD CARE AND OTHER WORK-RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION, AND TRAINING

Sec.

255.0 Purpose.
255.1 State plan requirements.
255.2 Eligibility.
255.3 Methods of providing child care and other supportive services.
255.4 Allowable costs and matching rates.
255.5 Child care standards.
255.6 Uniform reporting requirements for child care.

Authority: Sections 402, 403 and 1102 of the Social Security Act as amended (42 U.S.C. 602, 603 and 1302).

§ 255.0 Purpose.

This part contains the regulations pertaining to child care and other supportive services for families receiving, and in some cases applying for, AFDC. State IV–A agencies must provide such services, under conditions specified below, to eligible families to allow participation in employment, education or training.

§ 255.1 State plan requirements.

A State IV–A agency operating a program under title IV–A must submit a Supportive Services plan to the Secretary which includes the following:

(a) The methods the State IV–A agency will use to provide child care in accordance with § 255.3.

(b) The dollar amount which the State IV–A agency establishes for limiting the amount of payment or reimbursement for child care, if the State IV–A agency elects pursuant to § 255.4(a)(1), to set an amount higher than the amount of the disregard at § 233.20(a)(11)(i).

(c) A description of the types of other supportive services and work-related expenses, including transportation, which will be available to participants in the JOBS program under Part 250, the monetary limits to be applied to each type of service or activity, and the basis for determining need for each type.

(d) A description of the priorities to be applied in determining when needed child care will be guaranteed for

accepting or maintaining employment and for education or training, including JOBS participation;

(e) An assurance that procedures are established to ensure that:

(1) Child care meets applicable standards of State and local law in accordance with § 255.5;

(2) Child care activities are coordinated in accordance with § 255.3(h); and

(3) Any entity providing child care allows parental access as required under § 255.4(c)(1).

(f) An assessment of the availability of child care services provided on a non-reimbursable basis by Federal, State and local sources other than title IV-A.

(g) Specification of a State IV-A agency's policies on interim child care and other supportive services as provided in § 255.2(d).

(h) Specification of a State IV-A agency's policy on provision of one-time work-related expenses in accordance with § 255.2(g), including:

(1) The types of any such expense; and

(2) The monetary limits to be applied to such benefits.

(i) A description of the methodology used for setting local market rates pursuant to § 255.4(a)(2). Such methodology must address rates established for each type of care (i.e., center, group family day care, family day care, and in-home care) provided. The plan must address variations in the costs of care for infants, toddlers, preschool and school-age children, whether care is full or part-time, and reduction in the cost of care for additional children in the same family if such variations exist. The rates must be submitted to the Family Support Administration Regional Office and must be updated periodically, but no less than biennially.

(j) A description of how the State will assure that sufficient child care will be available to meet the participation rates in § 250.74.

(k) In States where Tribal entities are directly funded to operate a JOBS program, a description of how the State will provide child care services for JOBS participants served by those Tribal entities.

(l) An assurance that child care provided or claimed for reimbursement is reasonably related to the hours of participation or employment.

§ 255.2 Eligibility.

(a) The State IV-A agency must guarantee child care for a dependent child under age 13, or who is physically or mentally incapable of caring for himself or herself, as verified by the State consistent with the verification requirement at § 250.30(b)(3), (and for a child who would be a dependent child except for the receipt of benefits under Supplemental Security Income under title XVI or foster care under title IV-E), to the extent that such child care is necessary to permit an AFDC eligible family member to:

(1) Accept employment or remain employed; or

(2) Participate in an education or training activity (including participation in the JOBS program under Part 250) if the State IV-A agency approves the activity and periodically (but not less then every three months) determines that the individual is satisfactorily participating in the activity. An approved activity is one that is consistent with the individual's employability plan.

(b) The guarantee under paragraph (a) of this section also applies to American Indians and Alaska Natives who are subject to participation requirements under Subpart J of Part 250, consistent with the requirement in paragraph (f) of this section.

(c) The State IV-A agency must provide, pay for, or reimburse for transportation and other work-related expenses (including other work-related supportive services) which it determines are necessary to enable an individual to participate as required in the JOBS program under Part 250.

(d) The State IV-A agency may provide for child care and other necessary supportive services for a period of up to two weeks for an individual who is waiting to enter an approved education, training, employment, or JOBS component.

(e) The State IV-A agency must provide child care and supportive services necessary for applicants to participate in job search pursuant to § 250.60 and in other activities to prepare them for participation in the JOBS program, if such participation is required.

(f) The State IV-A agency must make child care services available to recipients who are participating in a JOBS program operated by an Indian Tribe or Alaska Native organization, pursuant to §§ 250.94 and 250.95. Child care services, which are also appropriate in meeting any special needs of Tribal participants, must be made available on an equitable basis. To the extent it is appropriate, the same range of reimbursement methods must be available to Tribal JOBS participants as are available to participants in the State JOBS program.

(g) The State IV-A agency may provide one-time work-related expenses to an applicant or recipient so that she may accept or maintain employment.

(h) AFDC applicants and recipients are entitled to hearings under the provisions of §§ 205.10 or 250.36, as appropriate, on issues concerning the denial of, prompt issuance of, or intended actions to discontinue, terminate, suspend or reduce assistance under this Part. However, changes in the manner of payment are not subject to timely notice requirements, and the provisions of § 205.10(a)(6) regarding aid paid pending a hearing do not apply.

§ 255.3 Methods of providing child care and other supportive services.

(a) The State IV-A agency may use any of the following methods for guaranteeing the availability of child care:

(1) Providing the care directly;

(2) Arranging the care through providers by use of purchase of service contracts or vouchers;

(3) Providing cash or vouchers in advance to the caretaker relative in the family;

(4) Reimbursing the caretaker relative in the family;

(5) Arranging with other agencies and community volunteer groups for non-reimbursed care;

(6) Using the child care disregard as provided in § 233.20(a)(11)(i); or

(7) Adopting such other arrangements as the State IV-A agency deems appropriate.

(b) In arranging for child care, the State IV-A agency must take into account the individual needs of the child, including the reasonable accessibility of the care to the child's home and school, or caretakers' place of employment or training, and the appropriateness of the care to the age and special needs of the child.

(c) If more than one type of child care is available, e.g., center, group family care, family day care or in-home care, the caretaker relative must be provided an opportunity to choose the arrangement. The State IV-A agency may select the method of payment under paragraph (a) of this section.

(d)(1) An individual required to participate under Part 250 may refuse available appropriate child care as determined by the State IV-A agency, if she can arrange other child care or can show that such refusal will not prevent or interfere with participation in approved education or training activities (including JOBS) or employment.

(2) The State IV-A agency must establish at least one method by which self-arranged child care can be paid.

(e)(1) If a State IV-A agency chooses to meet the cost of child care through a method other than use of the child care disregard at § 233.20(a)(11)(i), the State IV-A agency must then determine AFDC eligibility and payment amount without this disregard, except for families described in paragraph (e)(2) of this section.

(2) In the case of a family which was receiving AFDC on October 13, 1988, based on application of the child care disregard at § 233.20(a)(11)(i), if such a family would be disadvantaged as a result of meeting the cost of child care other than through the child care disregard, the State is prohibited from choosing such alternate method of payment.

(f) For cases subject to retrospective budgeting, for the first and second months of employment, the State IV-A agency may meet the cost of child care directly or through reimbursement and apply the child care disregard at § 233.20(a)(11)(i) to offset income received in those months when used to determine the amount of the AFDC payment for the corresponding payment months. The State IV-A agency's payment shall not be counted as income or resources for any month. Under these circumstances, a State IV-A agency may not apply the disregard to income used to determine the amount of the payment for the month(s) following the month in which child care ceases.

(g) The State IV-A agency may assure the availability of necessary transportation and other work-related expenses (including other work-related supportive services) through direct provision, or payment, or reimbursement of costs consistent with its Supportive Services plan.

(h) Each State IV-A agency must coordinate its child care activities with existing early childhood education programs in the State, including Head Start programs, preschool programs funded under Chapter 1 of the Education Consolidation and Improvement Act of 1981, and school and nonprofit child care programs (including community-based organizations receiving funds designated for preschool programs for handicapped children).

§ 255.4 Allowable costs and matching rates.

(a) FFP is available for the actual cost of child care up to a statewide limit established by the State IV-A agency in its State Supportive Services plan, but not for more than the applicable local market rate.

(1) In setting the statewide limit, the State IV-A agency may choose the amount of the child care disregard at § 233.20(a)(11)(i), or some higher amount

(2) The applicable local market rates must be determined:

(i) Based on representative samples of child care providers;

(ii) For areas no larger than political subdivisions; and

(iii) Based on the 75th percentile cost of such types of care in the local areas.

(3) Local market rates must:

(i) Be established for center care, group family care, family day care, and in-home care;

(ii) Differentiate among care for infants, toddlers, pre-school and school-age children, where applicable;

(iii) Differentiate between full-time and part-time care, if applicable; and

(iv) Consider reductions in the cost of care for additional children in the same family.

(b)(1) Except for Puerto Rico, Guam, the Virgin Islands, and American Samoa, in the case of amounts expended for child care, FFP shall be at the Federal medical assistance (Medicaid) rate and is included in the title IV-A general program entitlement.

(2) For Puerto Rico, Guam, the Virgin Islands, and American Samoa, the rate is 75 percent and is included in the JOBS limit of entitlement.

(c) FFP is available only if:

(1) The entity providing the care allows parental access; and

(2) The care meets applicable standards of State and local law.

(d) In the case of amounts expended for transportation and other work-related expenses and supportive services for eligible individuals, FFP shall be at the rate of 50 percent and is subject to the annual limit of entitlement, pursuant to § 250.73(b)(1).

(e) The State IV-A agency is not permitted to provide payment for child care or any other supportive service or work-related expense as an AFDC special need pursuant to § 233.20(a)(2)(v)(B)(2).

(f) No Federal matching is available for the recruitment or training of child care providers, resource development, or licensing activities.

(g) The matching rate for child care administrative costs under this part is 50 percent and, except for the Puerto Rico, Guam, the Virgin Islands, and American Samoa, the amount is outside the funding limitation for JOBS.

(h) The State IV-A agency must take reasonable precautions to guard against fraud and abuse in the funding of child care costs.

(i)(1) Federal matching funds improperly claimed for child care services or administration are subject to disallowance under Part 201. If the State IV-A agency disagrees with the decision to disallow FFP, it can appeal under existing IV-A procedures, including review of the Departmental Appeals Board in accordance with Part 16 of these regulations.

(2) Financial reporting of child care expenditures is generally subject to the requirements of the existing regulations at § 201.5.

(3) Child care expenditures are generally subject to the requirements of Part 201, including the provisions at § 201.5(e) (regarding the applicability of most of the requirements of Part 74 to the administration of grants to States), the provisions at Subpart B (regarding review and audits), and the provisions of § 201.67 (regarding treatment of uncashed or cancelled checks).

§ 255.5 Child care standards.

(a) The State IV-A agency must establish procedures to ensure that center-based child care will be subject to applicable standards of State and local law including those designed to ensure basic health, safety protection, and fire safety. Such standards must be made available upon request by the Secretary.

(b) The State must also endeavor to develop guidelines for family day care if it has not already done so.

§ 255.6 Uniform reporting requirements for child care.

Each State IV-A agency shall be required to provide such child care information and data as are determined to be necessary by the Secretary to ensure the effective implementation of the provisions under this part and Part 250. The uniform reporting requirements include, at a minimum, the average monthly number of families served, the types of such families, the amounts expended with respect to families assisted, and the length of time for which such families are assisted. The information and data for these families shall be separately stated with respect to families who have earnings and those who do not, and with respect to families who are receiving aid under the State IV-A plan and those who are not.

Title 45, Chapter II, Code of Federal Regulations is amended by adding a new Part 256 to read as follows:

PART 256—TRANSITIONAL CHILD CARE

Sec.

256.0 Purpose.
256.1 State plan requirements.
256.2 Eligibility.
256.3 Fee requirement.
256.4 Other provisions.

Authority: Section 402, 403 and 1102 of the Social Security Act as amended (42 U.S.C. 602, 603 and 1302).

§ 256.0 Purpose.

This part contains the regulations pertaining to child care available to families whose eligibility for AFDC assistance has ceased due to increased hours of, or earnings from, employment or as a result of the loss of income disregards due to the expiration of the time limits at § 233.20(a)(11).

§ 256.1 State plan requirements.

(a) The State Supportive Services plan specified under § 255.1 must include a description of:

(1) The methods the State IV-A agency will use to provide extended child care; and

(2) The sliding fee scale under which families will contribute toward the cost of child care.

(b) A State IV-A agency which has not implemented a JOBS program as of April 1, 1990 must submit a Supportive Services plan for transitional care which includes the provisions described in this part and the provisions at § 255.1 which apply to transitional child care (i.e., paragraphs (b), (d), (e), (f), (i) and (l)).

§ 256.2 Eligibility.

(a) The State IV–A agency must guarantee child care for a child who is under age 13 or who is physically or mentally incapable of caring for himself or herself, as verified by the State consistent with the verification requirement at § 250.30(b)(3), and who would be a dependent child, if needy (and for a child who would be a dependent child except for the receipt of benefits under Supplemental Security Income under title XVI or foster care under title IV-E), to the extent that such care is necessary to permit a member of an AFDC family to remain employed.

(b) A family is eligible for transitional child care provided the following conditions are met:

(1) The family must have ceased to receive AFDC as a result of increased hours of, or increased income from, employment or the loss of income disregards due to the time limitations at § 233.20(a)(11);

(2) The family must have received AFDC in at least three of the six months immediately preceding the first month of ineligibility; and

(3) The family must apply for transitional child care benefits in writing. There is no eligibility for benefits prior to the month of application.

(c) Eligibility for transitional child care begins with the first month for which the family is ineligible for AFDC, for the reasons included in paragraph (b)(1) of this section, and continues for a period of 12 consecutive months. Families may begin to receive child care in any month during the 12-month eligibility period.

(d) The family is not eligible for child care under this part for any remaining portion of the 12-month period if the caretaker relative:

(1) Terminates employment without good cause, as defined in § 250.35; or

(2) Fails to cooperate with the State IV–A agency in establishing payments and enforcing child support obligations, as defined in § 232.12.

(e) If the caretaker relative loses a job with good cause, and then finds another job, the family can qualify for the remaining portion of the 12-month eligibility period.

§ 256.3 Fee requirement.

(a) The State IV–A agency must require each family receiving transitional child care to contribute toward the payment for such care based on the family's ability to pay.

(b) In accordance with limits established by the Secretary, each State IV–A agency shall establish a sliding fee scale which will include minimum income levels at which fees will be assessed, the income levels at which full costs will be charged to the family, and the proportional share of the costs for families with intermediate levels of income.

(c) A State IV–A agency may vary the period of collection for different fee levels.

(d) In cases where the family's contribution under this section is paid to the State IV–A agency, such contribution is subject to the program income requirements in Part 74, Subpart F.

(e) Individuals who fail to cooperate in paying required fees will, subject to appropriate notice and hearings requirements, lose eligibility for benefits under this part for so long as back fees are owed, unless satisfactory arrangements are made to make full payment.

§ 256.4 Other provisions.

(a) The State IV–A agency, in providing transitional child care, must meet the requirements in §§ 255.3 (a), (b), (c), and (f), 255.5, and 255.6, pertaining to the methods of providing child care, child care standards, disallowances, coordination, services to Indians and Alaska Natives and uniform reporting requirements.

(b) The provisions on child care costs and matching rates at § 255.4 shall apply to this part, except in the case of Puerto Rico, Guam, the Virgin Islands, and American Samoa, child care expenditures under this part are not covered as JOBS expenditures, but as expenditures subject to the limitation under section 1108 of the Act.

(c) The State IV–A agency must notify all families of their potential eligibility for transitional child care services under this part in writing, and orally as appropriate, at the time they become ineligible for AFDC. The notification must include information on the steps they must take to establish eligibility for benefits and the consequences of failing to apply promptly, i.e., the loss of benefits for any month prior to the month of application.

(d) Provision of benefits under this part are subject to the notice and hearings provisions at § 205.10, except that timely notice requirements do not apply to changes in the manner of payment.

[FR Doc. 89–9267 Filed 4–17–89; 8:45 am]

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federal register

Tuesday,
April 18, 1989

Part VII

Department of Defense

Office of the Secretary

Listing of Major Defense Systems; Notice

Billing Code 3810-01

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Contracting; Reporting Procedures on Defense Related Employment.

AGENCY: *Office of the Secretary, DOD.*

ACTION: *Listing of Major Defense Systems.*

SUMMARY: *This rule is the fiscal year 1989 listing of major defense systems under 10 U.S.C. §§ 2397, 2397b, and 2397c. This part is published to assist present and former DOD employees, Agency Ethics Officials and Defense contractors in complying with their obligations under these sections of the United States Code.*

EFFECTIVE DATE: *September 30, 1988.*

FOR FURTHER INFORMATION CONTACT: *Lt. Col. John R. Shaughnessy, Standards of Conduct Office, Room 1E461, The Pentagon, D.C. 20301-1600. Telephone (202) 697-5305.*

FY 1989 PRESIDENTS BUDGET RDT&E ANNEX

Program Elements Containing At Least $75M Lifetime Funding.

Line Items From 1983 Forward.

For Ethics Use Only.

Includes Only Selected Activities and Cost Types.

Arranged Alphabetically by Component.

Project	Project Title
	ARMY
23743A	155MM SELF-PROPELLED HOWITZER IMPROVEMENTS
23726A	ADV FIELD ARTILLERY TACTICAL DATA SYSTEM
63612A	ADVANCED ANTI-TANK WEAPON SYSTEM (AAWS)
64611A	ADVANCED ANTI-TANK WEAPON SYSTEMS - ENG DEV (AAWS)

63220A		ADVANCED ROTOCRAFT TECHNOLOGY INTEGRATION (LHX)
64223A		LIGHT ARMED SCOUT HELICOPTER
64741A		AIR DEFENSE COMMAND, CONTROL AND INTELLIGENCE – ENG DEV
	D126	FAAD C2 ED
64216A		AIRCRAFT PROPULSION SYSTEM
	DC72	T–800 ENGINE ED (LHX)
63302A		JOINT TACTICAL MISSILE DEFENSE PROGRAM
63713A		ARMY DATA DISTRIBUTION SYSTEM (ADDS) (EPLRS)
64324A		ARMY TACTICAL MISSILE SYSTEM (ARMY TACMS)
63757A		FORWARD AREA AIR DEFENSE SYSTEM (FAAD)
	D463	LOS AD SYS FWD–HVY
	D465	NON–LINE OF SIGHT(NLOS)
64310A		HELIBORNE MISSILE – HELLFIRE

63706A	IDENTIFICATION–FRIEND–OR–FOE, ADVANCE DEVELOPMENTS (IFF)
64770A	JOINT SURVEILLANCE/TARGET ATTACK RADAR SYSTEM (JSTARS)
28010A	JOINT TACTICAL COMMUNICATIONS PROGRAM (TRI–TAC)
64321A	JOINT TACTICAL FUSION PROGRAM (JTF)
64702A	JOINT TACTICAL INFORMATION DISTRIBUTION SYSTEM (JTIDS)
64619A	LANDMINE WARFARE
64630A	M1A1 DEVELOPMENT PROGRAM (120MM GUN)
23740A	MANEUVER CONTROL SYSTEM (MCS)
64778A	NAVSTAR GLOBAL POSITIONING SYSTEM (USER EQUIPMENT)
64307A	PATRIOT AIR DEFENSE MISSILE SYSTEM
64730A	REMOTELY PILOTED VEHICLES

	D040	RPV–REM PILOT VEH ED (AQUILA)
0604814A		SEEK AND DESTROY ARMAMENT MISSILE
64306A		STINGER
63746A		SINGLE CHANNEL GROUND AND AIRBORNE RADIO SYSTEM (SINCGARS)
63303A		SURFACE–TO–SURFACE MISSILE ROCKET SYSTEM
	D216	MLRS TERM GUID WHD
63730A		TACTICAL SURVEILLANCE SYSTEM
64740A		TACTICAL SURVEILLANCE SYSTEM
64206A		UH–60 BLACKHAWK
64802A		WEAPONS AND MUNITIONS ENGINEERING DEVELOPMENT
	D134	ADV CBT RIFLE ENG DEV
	D369	SADARM ED

33152A	WORLD-WIDE MILITARY COMMAND AND CONTROL SYS, INFORMATION SYS (WIS)

NAVY/MARINE CORPS

64369N	5"ROLLING AIR FRAME MISSILE (RAM)
63257N	A-6 UPGRADES
0604233N	ADVANCED TACTICAL AIRCRAFT (ATA)
64307N	AEGIS COMBAT SYSTEM ENGINEERING
64575N	AN/SQS-53C SONAR
64214N	AV-8B AIRCRAFT ENGINEERING DEVELOPMENT
64354N	ADVANCED AIR-TO-AIR MISSILE (AAAM)
63321N	ADVANCED AIR-TO-AIR MISSILE (AAAM) (PHOENIX FOLLOW-ON)

63318N	ADVANCED SURFACE-TO-AIR MISSILE
63306N	ADVANCED A/L AIR-TO-SURFACE MISSILE SYSTEM
64610N	ADVANCED LIGHTWEIGHT TORPEDO (ENG) (ALWT) (MK 50 TORPEDO)
64226N	ADVANCED SELF-PROTECTION SYSTEM (ASPJ) (AN/ALQ-165)
63207N	AIR/OCEAN TACTICAL APPLICATIONS
64268N	AIRCRAFT ENGINE COMPONENT IMPROVEMENT PROGRAM
0604524N	AN/BSY-2 COMBAT CONTROL ACOUSTIC SYSTEM FOR SEA WOLF
64260N	C/MH-53E SUPER STALLION HELICOPTER
64358N	CLOSE-IN WEAPON SYSTEM (PHALANX)
060270N	CONSOLIDATED NAVY ELECTRONIC WARFARE PROGRAMS
C1928	TACTICAL ELECTRONIC RECONNAISSANCE PROCESSING AND EVALUATION SYSTEMS (TERPES)

64507N NAVY STANDARD SIGNAL PROCESSOR

24152N EARLY WARNING AIRCRAFT SQUADRONS

W0463 AEW CV-BASED A/C E2C

64255N ELECTRONIC WARFARE SIMULATOR DEVELOPMENT

W0602 ELEX W/F ENVIR SIM (ECHO)

X0672 EFFECT NAV E/W SYS(ENEWS)

11401N EXTREMELY LOW FREQUENCY (ELF) COMMUNICATIONS

25667N F-14 UPGRADE

24136N F/A-18 SQUADRONS

W1662 F/A-18 IMPROV

63784N FIXED DISTRIBUTION SYSTEMS (FDS)

24163N FLEET TELECOMMUNICATIONS (TACTICAL)

X0695 HF ANTI-JAM (HFAJ)

64211N IFF SYSTEM DEVELOPMENT

W1253 COMBAT IDENT SYS (CIS)

64232N COMMUNICATION SUPPORT SYSTEM

28010M JOINT TACTICAL COMMUNICATIONS PROGRAM (TRI-TAC)

64212N LAMPS MK III

63320N LOW COST ANTI-RADIATION SEEKER

64675N MK 48 ADCAP ENGINEERING DEVELOPMENT

64301N MK 92 FIRE CONTROL SYSTEM UPGRADE

060311M MARINE CORPS ASSAULT VEHICLES

C0020 ADVANCED AMPHIBIOUS ASSAULT (AAA)

C1293 STRATIFIED CHARGE ROTARY ENGINE (SCORE)

0604717M MARINE CORPS COMBAT SERVICE SUPPORT (OPERATIONAL SYSTEMS)

C1970 SURF ZONE MINE CLEARING (CATFAE)

	MARINE CORPS COMMAND/CONTROL/COMMUNICATIONS
64719M	SYSTEMS
C0053	J–TIDS
26623M	MARINE CORPS GROUND COMBAT/SUPPORTING ARMS SYSTEMS
C1960	LAV–AD
0206623M	MARINE CORPS GROUND COMBAT/SUPPORTING ARMS (OPERATIONAL SYSTEMS)
C0021	AMPHIBIOUS ASSAULT VEHICLE 7A1 (AAV7A1)
0206625M	MARINE CORPS INTELLIGENCE SYSTEMS
C1296	JOINT SERVICES IMAGERY PROCESSING SYSTEM (JSIPS)
0603612M	MARINE CORPS MINE/COUNTER MINE SYSTEMS
	MINE DETECTION SYSTEMS (AMADASS/FWD DETECTOR SYSTEM)
63319N	NATO AAWS (ANTI–AIR WARFARE COMBAT SYS)
64361N	NATO SEA SPARROW
64777N	NAVSTAR GPS

11402N NAVY STRATEGIC COMMUNICATIONS

W1438 E–6A

64372N NEW THREAT UPGRADE

64221N P–3 MODERNIZATION PROGRAM (P–3G)

63746N RETRACT MAPLE

64217N S–3 WEAPON SYSTEM IMPROVEMENT

64309N SEA LANCE (ASW STAND–OFF MSL)

64561N SSN–21 DEVELOPMENTS

64370N SSN–688 CLASS VERTICAL LAUNCH SYSTEM

33109N SATELLITE COMMUNICATIONS

X1879 SATELLITE LASER COMM

63367N SEA LANCE

64366N		STANDARD MISSILE IMPROVEMENTS
64524N		SUB CBT SYS DEV
	51347	SUBACS (AN/BSY-1)
	51941	SSN-21 CBT SYS (AN/BSY-2)
64562N		SUBMARINE TACTICAL WARFARE SYSTEM
64713N		SURFACE ASW SYSTEM IMPROVEMENT (AN/SQQ-89)
	S0234	TACTAS (AN-SQR-19)
64608N		SURFACE ELECTRO-OPTIC SYSTEM
	S1940	5IN/155MM GUIDED PROJ COMP
63502N		SURFACE MINE COUNTERMEASURES
63208N		T-45 TRAINING SYSTEM
64367N		TOMAHAWK
64363N		TRIDENT II
11228N		TRIDENT

63256N V–22A

W1425 V–22A OSPREY (ASW VARIANT)

64355N VERTICAL LAUNCH ASROC

64353N VERTICAL LAUNCHING SYSTEM

64230N WARFARE SUPPORT SYSTEMS

X1779 ROTHR (RELOCATABLE OTH RADAR)

AIR FORCE

27423F ADVANCED COMMUNICATIONS SYSTEMS

2614 SINCGARS–V

2939 ENHANCED JTIDS (EJS)

11120F ADVANCED CRUISE MISSILE (ACM)

64314F ADVANCED MEDIUM–RANGE, AIR–TO–AIR MISSILE (AMRAAM)

63311F ADVANCED STRATEGIC MISSILE SYSTEMS (ASMS)

63230F	ADVANCED TACTICAL FIGHTER (ATF)
64239F	ADVANCED TACTICAL FIGHTER (ENG) (ATF)
63319F	ADVANCED TECHNOLOGY CRUISE MISSILE
64361F	AIR LAUNCHED CRUISE MISSILE (ALCM)
64737F	AIRBORNE SELF-PROTECTION JAMMER (ASPJ)
27417F	AIRBORNE WARNING AND CONTROL SYSTEM (AWACS)
64223F	ALTERNATE FIGHTER ENGINE
64226F	B-1B
0604240F	B-2 ADVANCED TECHNOLOGY BOMBER
12423F	BALLISTIC MISSILE EARLY WARNING SYSTEM (BMEWS)
64231F	C-17 PROGRAM
64601F	CHEMICAL/BIOLOGICAL DEFENSE EQUIPMENT

5171	BIGEYE
64725F	COMBAT IDENTIFICATION SYSTEMS (CIS)
2598	MARK XV USAF– UNIQUE DEVELOPMENT
12436F & 0102310F	COMD. CTR. PROCESS/DISPLAY SYSTEM
64234F	CSRL LAUNCHER
33110F	DEFENSE SATELLITE COMMUNICATIONS SYSTEM (DSCS)
12431F	DEFENSE SUPPORT PROGRAM (DSP)
35119F	DELTA II (MED LNCH VEH) (SPACE BOOSTERS)
12412F	DISTANT EARLY WARNING (DEW) RADAR STATIONS
64220F	EW COUNTER RESPONSE
27130F	F–15 A/B/C/D SQUADRONS
27133F	F–16 SQUADRONS

27168F	F-111 SELF PROTECTION SYSTEMS
64227F	FLIGHT SIMULATOR DEVELOPMENTS
27217F	FOLLOW-ON TAC RECON SYS (ATARS)
64362F	GROUND-LAUNCHED CRUISE MISSILE (GLCM)
33128F	I-S/A AMPE
64312F	ICBM MODERNIZATION
63109F	INTEGRATED COMMUNICATION-NAVIGATION-IDENTIFICATION AVIONICS/INTEGRATED ELECTRONIC WARFARE SYSTEMS (ICNIA/INEWS)
64770F	JOINT SURVEILLANCE/TARGET ATTACK RADAR SYSTEM (JSTARS)
28010F	JOINT TACTICAL COMMUNICATIONS PROGRAM (TRI-TAC)
64321F	JOINT TACTICAL FUSION PROGRAM (JTF)

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64754F	JOINT TACTICAL INFORMATION DISTRIBUTION SYSTEM (JTIDS)
33601F	MILSTAR SATELLITE COMMUNICATIONS SYSTEM (AF TERMINALS)
33603F	MILSTAR SATELLITE COMMUNICATIONS SYSTEM
33131F	MINIMUM ESSENTIAL EMERGENCY COMMUNICATIONS NETWORK (MEECN)
2834	GROUND WAVE EMERGENCY NETWORK (GWEN)
11213F	MINUTEMAN SQUADRONS
64247F	MODULAR AUTOMATIC TEST EQUIPMENT (MATE)
63269F	NATIONAL AEROSPACE PLANE TECH PROG.
35164F	NAVSTAR GLOBAL POSITIONING SYSTEM (USER EQUIPMENT)
35165F	NAVSTAR GLOBAL POSITIONING SYSTEM (SPACE AND CONTROL SEGMENTS)

64249F		NIGHT/PRECISION ATTACK
	2693	LANTIRN
12417F		OVER-THE-HORIZON BACKSCATTER RADAR (OTH-B)
11312F		PACCS AND WWABNCP SYSTEM EC-135 CLASS V MODS
64742F		PRECISION LOCATION STRIKE SYSTEM (PLSS)
63364F		SHORT RANGE ATTACK MISSILE II (SRAM II)
64406F		SPACE DEFENSE SYSTEM (ASAT)
12432F		SUBMARINE-LAUNCHED BALLISTIC MISSILE (SLBM) RADAR WARNING SYS
64733F		SURFACE DEFENSE SUPPRESSION
	3006	STANDOFF ATTACK GBU-15 P3I
27316F		TACIT RAINBOW MISSILE
64724F		TACTICAL C3 COUNTERMEASURES

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35114F TRAFFIC CONTROL, APPROACH, AND LANDING SYSTEM (TRACALS)

2759 MICROWAVE LANDING SYSTEM (MMLS)

33154F WWMCCS INFORMATION SYSTEM JOINT PROGRAM MANAGEMENT OFFICE(WIS)

64607F WIDE-AREA, ANTI-ARMOR MUNITIONS

2961 SENSOR FUZED WEAPON (SFW)

FY 1988 PRESIDENTS BUDGET PROCUREMENT ANNEX

Procurement Line Items Containing At Least $300M Lifetime Funding.

For Ethics use only.

Includes Procurement Line Items Active From FY 1983 forward.

Includes Only Selected Budget Activities and Cost Types.

Arranged Alphabetically by Component.

Item Number	Item Number Title
	ARMY
2033A01101705G82916	ABRAMS TANK SERIES ROLL (MYP) (M1 TANK)
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2032A02305589C98510	ARMY TACTICAL MISSILE SYSTEM (ATACMS)

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2033A01100565G80702	BRADLEY FIGHTING VEHICLES (MYP)
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2032A02206000C70000	LASER HELLFIRE SYSTEM MISSILE
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2033A01206300GA0650	TANK,COMBAT,FT,105MM GUN,M60SER (MOD))MYP)

2032A03104380C61700	TOW MISSILE
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1507N02022202	AIM/RIM-7 F/M SPARROW MISSILE
1507N02022206	AMRAAM (Adv Med Rng A-A Msl)
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1611N02012080	CV SLEP
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federal register

Tuesday
April 18, 1989

Part VIII

The President

Proclamation 5956—Education Day, U.S.A., 1989 and 1990

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Presidential Documents

Title 3—

The President

Proclamation 5956 of April 14, 1989

Education Day, U.S.A., 1989 and 1990

By the President of the United States of America

A Proclamation

Ethical values are the foundation for civilized society. A society that fails to recognize or adhere to them cannot endure.

The principles of moral and ethical conduct that have formed the basis for all civilizations come to us, in part, from the centuries-old Seven Noahide Laws. The Noahide Laws are actually seven commandments given to man by God, as recorded in the Old Testament. These commandments include prohibitions against murder, robbery, adultery, blasphemy, and greed, as well as the positive order to establish courts of justice.

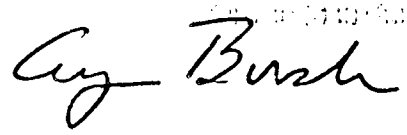
Through the leadership of Rabbi Menachem Schneerson and the worldwide Lubavitch movement, the Noahide Laws—and standards of conduct duly derived from them—have been promulgated around the globe.

It is fitting that we honor Rabbi Schneerson and acknowledge his important contributions to society. Our great Nation takes just pride in its dedication to the principles of justice, equality, and truth. Americans also understand that we have a responsibility to inspire the same dedication in future generations. We owe a tremendous debt to Rabbi Schneerson and to all those who promote education that embraces moral and ethical values and emphasizes their importance.

In recognition of Rabbi Schneerson's vital efforts, and in celebration of his 87th birthday, the Congress, by House Joint Resolution 173, has designated April 16, 1989, and April 6, 1990, as "Education Day, U.S.A." and has authorized and requested the President to issue an appropriate proclamation in observance of these days.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim April 16, 1989, and April 6, 1990, as Education Day, U.S.A. I invite Governors from every State and Territory, community leaders, teachers, and all Americans to observe these days through appropriate events and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of April, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S.J. Res. 43/Pub. L. 101-13

Designating April 9, 1989, as "National Former Prisoners of War Recognition Day". (Apr. 13, 1989; 103 Stat. 36; 1 page) Price: $1.00