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Thursday
July 11, 1991

Briefing on How To Use the Federal Register
For information on a briefing in New Orleans, LA, see announcement on the inside cover of this issue.

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

NEW ORLEANS, LA

WHEN: July 23, at 9:00 am
WHERE: Federal Building, 501 Magazine St., Conference Room 1120, New Orleans, LA
RESERVATIONS: Federal Information Center 1-800-366-2998

Contents

Federal Register
Vol. 56, No. 133
Thursday, July 11, 1991

Agricultural Marketing Service
RULES
Potatoes (Irish) grown in—
Oregon and California, 31534
Tobacco inspection:
Mandatory inspection; fees and charges, 31533

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Farmers Home Administration; Forest Service
NOTICES
Agency information collection activities under OMB review, 31607

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Genetically engineered organisms; field test permits—
Cantaloupes, etc., 31607
Sunflowers, 31608

Antitrust Division
NOTICES
National cooperative research notifications:
Open Software Foundation, Inc.; correction, 31675

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Emergency child abuse and neglect prevention services program, 31782
Head Start/public school early childhood transition demonstration projects, 31818

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 31688

Commerce Department
See International Trade Administration; National Institute of Standards and Technology; National Oceanic and Atmospheric Administration; National Technical Information Service

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Commodity Exchange, Inc.—
Dubai sour crude oil, 31616

Copyright Office, Library of Congress
PROPOSED RULES
Cable compulsory license; cable systems definition, 31580

Customs Service
PROPOSED RULES
Financial and accounting procedures:
Checks submitted to customs; personal information, 31576

Defense Department
RULES
Civil rights; CFR Part removed, 31537
Organization, functions, and authority delegations:
Defense Department Comptroller, 31537
Defense Information Systems Agency, 31540
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Specifications, standards, and other purchase descriptions, 31844

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
DePietro's Pharmacy, 31675

Employment and Training Administration
NOTICES
Adjustment assistance:
Accurate Bushing Co. et al., 31676
Atron/High Q, 31677
Komatsu Dresser, Inc., 31677
Sonoco Fibre Drum, Inc., 31678
Speed Sew et al., 31678

Energy Department
See also Federal Energy Regulatory Commission
NOTICES
Natural gas exportation and importation:
Wes Cana Marketing (U.S.), Inc.; correction, 31689

Environmental Protection Agency
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Weekly receipts; correction, 31689

Executive Office of the President
See National Education Goals Panel; Presidential Documents

Farmers Home Administration
RULES
Program regulations:
Associations—
Community facility loans and grants; solid waste disposal facilities, 31535
PROPOSED RULES
Program regulations:
Associations—
Community facility loans and grants, 31548

Federal Aviation Administration
RULES
Transition areas; correction, 31689

Federal Communications Commission
RULES
Radio stations; table of assignments:
California, 31545
Missouri, 31545
Oregon, 31545
Wisconsin, 31546

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 31688

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Kamine Beaver Falls Cogen Co., Inc., 31616
Kamine Natural Dam Cogen Co., Inc., 31617
Pacific Gas & Electric Co. et al., 31617
Environmental statements; availability, etc.:
Pacific Gas & Electric Co., 31634
Tennessee Gas Pipeline Co., 31618
Hydroelectric applications, 31621
Natural gas certificate filings:
Questar Pipeline Co. et al., 31624
Tennessee Gas Pipeline Co. et al.; correction, 31689
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 31631
ANR Pipeline Co., 31631
Carnegie Natural Gas Co., 31632 (2 documents)
CNG Transmission Corp., 31631
Columbia Gas Transmission Corp., 31633 (2 documents)
Eastern Shore Natural Gas Co., 31633
El Paso Natural Gas Co., 31634
Florida Gas Transmission Co., 31634
Kentucky West Virginia Gas Co., 31635
Mid Louisiana Gas Co., 31635
Midwestern Gas Transmission Co., 31635
Northern Natural Gas Co., 31636 (2 documents)
Questar Pipeline Co., 31636
Southern Energy Co., 31637
Southern Natural Gas Co., 31637
Tennessee Gas Pipeline Co., 31638
Texas Eastern Transmission Corp., 31638
Trunkline Gas Co., 31639
Williston Basin Interstate Pipeline Co., 31639 (2 documents)

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
San Diego County, CA, 31684

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 31688
Applications, hearings, determinations, etc.:
Barton, Ben, et al., 31639
Community Independent Bancorp, Inc., et al., 31640
Summit Bancorp, Inc., et al., 31640

Food and Drug Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Orphan drug products; safety and effectiveness in rare diseases and conditions; competitive renewals, 31645
Meetings:
Consumer information exchange, 31647

Forest Service
NOTICES
Appeal exemptions; timber sales:
Eldorado National Forest, CA, 31609
Environmental statements; availability, etc.:
Lake Tahoe Basin Management Unit, CA, 31611

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Specifications, standards, and other purchase descriptions, 31844

Health and Human Services Department
See also Children and Families Administration; Food and Drug Administration; Health Care Financing Administration; National Institutes of Health
NOTICES
Grants and cooperative agreements; availability, etc.:
Children with disabilities; coordinated service delivery, 31640

Health Care Financing Administration
PROPOSED RULES
Medicare:
Health maintenance organizations; group specific rates, 31597
NOTICES
Agency information collection activities under OMB review, 31647
Medicaid:
State plan amendments, reconsideration; hearings—Texas, 31665
Medicare:
Payment to providers of services; revised procedures, 31653

Housing and Urban Development Department
NOTICES
Agency information collection activities under OMB review, 31669
Grants and cooperative agreements; availability, etc.:
Public and Indian housing—
Drug elimination program, 31670
Organization, functions, and authority delegations:
Assistant Secretary for Housing-Federal Housing Commissioner, 31668

Immigration and Naturalization Service
PROPOSED RULES
Nonimmigrant classes:
Temporary alien workers seeking classification and admission, 31553

Interior Department
See Land Management Bureau; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
PROPOSED RULES
Income taxes:
Partner and partnership transactions
Correction, 31689

International Trade Administration
NOTICES
Antidumping:
Antifriction bearings (other than tapered roller bearings) and parts from—
France, 31748
Italy, 31751
Japan, 31754
Romania, 31757
Singapore, 31759
Sweden, 31762
Thailand, 31765
United Kingdom, 31769
West Germany, 31692
Carbon steel wire rod from Argentina, 31612
Erasable programmable read only memory semiconductors from Japan, 31613

Interstate Commerce Commission
RULES
Rail carriers:
Lumber and wood products; exemption, 31546
NOTICES
Meetings; Sunshine Act, 31688
Railroad operation, acquisition, construction, etc.:
Kulmer, Morris H., et al., 31674
T&P Railway, Inc., 31674

Justice Department
See also Antitrust Division; Drug Enforcement Administration; Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
Lubrizol Corp. et al., 31674

Labor Department
See Employment and Training Administration; Pension and Welfare Benefits Administration

Land Management Bureau
PROPOSED RULES
Minerals management:
Mining claims under general mining laws; surface management, 31602
NOTICES
Meetings:
Lakeview District Multiple Use Advisory Council, 31670
Rock Springs District Advisory Council, 31671
Salmon District Grazing Advisory Board, 31671
Opening of public lands:
Nevada, 31671
Realty actions; sales, leases, etc.:
California, 31672
(2 documents)
Montana, 31672
Nevada, 31672
Survey plat filings:
Idaho, 31673

Library of Congress
See Copyright Office, Library of Congress

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Specifications, standards, and other purchase descriptions, 31844

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 31688

National Education Goals Panel
NOTICES
Meetings, 31683

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Subaru of America, 31685

National Institute of Standards and Technology
NOTICES
Meetings:
Weights and Measures National Conference, 31615

National Institutes of Health
NOTICES
Meetings:
National Center for Nursing Research, 31668
National Institute of Dental Research, 31668

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 31547
Western Pacific pelagic; correction, 31689
NOTICES
Permits:
Foreign fishing, 31615

National Science Foundation
NOTICES
Meetings:
Ocean Sciences Review Panel, 31683

National Technical Information Service
NOTICES
Joint ventures program; prospectuses filed:
NERAC, Inc., 31615

Nuclear Regulatory Commission
NOTICES
Meetings:
MELCOR Peer Review Committee, 31683
Applications, hearings, determinations, etc.:
Public Service Electric & Gas Co., 31684

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; class exemptions:
Individual life insurance and annuity contracts transfer to employee benefit plans, 31681
Individual life insurance contracts and annuities transfer to participants, beneficiaries, employers, or other employee benefit plans, 31679

Presidential Documents
PROCLAMATIONS
Imports and exports:
Peanuts; temporary modification of import quota (Proc. 6313), 31853

Public Health Service
See Food and Drug Administration; National Institutes of Health

Reclamation Bureau
PROPOSED RULES
Colorado River water in Lower Colorado River Basin; entitlements
Correction, 31601
NOTICES
Newlands Project, NV; soil criteria report and map; availability, 31673

Research and Special Programs Administration
NOTICES
Pipeline safety:
User fees, 31686

Small Business Administration
RULES
Small business investment companies:
Miscellaneous amendments, 31774

State Department
NOTICES
Meetings:
Shipping Coordinating Committee, 31684

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Illinois, 31577

Transportation Department
See Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration

Treasury Department
See also Customs Service; Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 31686

United States Information Agency
NOTICES
Meetings:
Public Diplomacy, U.S. Advisory Commission, 31686

Separate Parts In This Issue

Part II
Department of Commerce, International Trade Administration, 31692

Part III
Small Business Administration, 31774

Part IV
Department of Health and Human Services, Administration for Children and Families, 31782

Part V
Department of Health and Human Services, Administration for Children and Families, 31818

Part VI
Department of Defense; General Services Administration; National Aeronautics and Space Administration, 31844

Part VII
The President, 31853

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

3019 (See Proc. 6313)....31853
6313....31853

7 CFR

29....31533
947....31534
1942....31535

Proposed Rules:

1942....31548

8 CFR

Proposed Rules:

214....31553

13 CFR

107....31774

14 CFR

71....31689

19 CFR

Proposed Rules:

24....31576

26 CFR

1....31689

30 CFR

Proposed Rules:

913....31577

32 CFR

Ch. I....31537
352....31537
362....31540

37 CFR

Proposed Rules:

201....31580

42 CFR

Proposed Rules:

417....31597

43 CFR

Proposed Rules:

415....31601
3800....31602

47 CFR

73 (4 documents)....31545, 31546

48 CFR

Proposed Rules:

10....31844
52....31844

49 CFR

1039....31546

50 CFR

672....31547
685....31689

Rules and Regulations

Federal Register
Vol. 56, No. 133
Thursday, July 11, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-91-007]

RIN 0581-AA19

Tobacco Fees and Charges for Mandatory Inspection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Tobacco Inspection Act requires the Secretary to fix and collect fees and charges for inspection and certification, the establishment of standards, and other services, including administrative and supervisory costs, at designated tobacco auction markets in all tobacco producing areas. Fees collected must cover, as nearly as practicable, the Department's costs of performing these services. The present fee of $.0067 per pound is no longer sufficient to recover the costs of operating this activity. This final rule increases the fee to $.0070 per pound to reflect increased program costs. This increase does not affect the fees for import, export, or permissive tobacco inspection.

EFFECTIVE DATE: July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, AMS, USDA, room 502, Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Telephone (202) 447-2567.

SUPPLEMENTARY INFORMATION: Notice was given (56 FR 22664-22665, Thursday, May 16, 1991) that the Department proposed to amend the regulations governing the fees and charges for the mandatory inspection and certification of producer tobacco sold at designated auction markets throughout tobacco producing areas. Interested parties were given an opportunity to comment on the proposed rule. No comments were received.

The Department hereby adopts the regulations appearing in the proposed rule which increase the fees and charges assessed by the Department for providing inspection and certification of quota tobacco, the establishment of standards, and other services. The new fee will cover the increased cost of operating the program, including administrative and supervisory costs. Authority for these regulations is contained in the Tobacco Inspection Act (7 U.S.C. 511-511q).

The current fee of $.0067 per pound has been in effect since July 1, 1989, as published in the **Federal Register** (54 FR 27855).

The Department conducts a yearly review of the financial status of this program to determine whether the fee is sufficient. Receipts for the 1990-91 marketing season were approximately $11,302,000. Anticipated expenses for the period are approximately $11,526,000. At the current fee level insufficient revenue is generated to meet the costs of the inspection program and to replenish funds that had to be used from the program's reserve account. The major factors causing the need for additional funding are increases in Federal salaries, benefits, travel allowances and overall administrative costs since 1989. An analysis of data available to the Department indicates that a fee of $.0070 per pound would cover expenses and maintain a reserve that would meet any reasonable contingency. Information on program income and expenses was presented to the National Advisory Committee for Tobacco Inspection Services at its meeting on March 26, 1991, in Raleigh, North Carolina. The National Advisory Committee, which is made up of 14 representatives from tobacco producer interest groups, was established under the Tobacco Inspection Act to advise the Secretary of Agriculture on the fees to be assessed, level of inspection service, and other related matters. By a majority vote, the Committee adopted a motion to recommend to the Secretary an increase in the fee to $.0070 per pound.

This rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor rule" because it does not meet any of the criteria established for major rules under the Executive Order.

Additionally, in conformance with the provisions of Public Law 96-354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Most of the firms which would be affected by this rule are small businesses. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This final rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this final rule would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and would not alter the market share or competitive positions of small entities relative to the large entities and would in no way effect normal competition in the marketplace. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

One technical change of a non-substantive nature is being made in § 29.75a(b) to correct a typographical error. The second sentence is being amended to state that if the inspector determines that requirements have not been followed, the inspector shall return to the noncomplying warehouse on the next regularly scheduled sale day. The text incorrectly read that the inspector would return to the noncomplying warehouse "or" the next sales day.

In addition, good cause has been found to make this rule effective less than 30 days after publication because it is necessary that the new fee be effective at the beginning of the marketing season which begins in mid-July. Therefore in order to treat all types of tobacco on an equal basis this final rule is made effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committee, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

Accordingly, the Department hereby amends the regulations under the Tobacco Inspection Act contained in 7 CFR part 29 as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

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

Authority: 7 U.S.C. 511m and 511r.

§ 29.75a [Amended]

2. In § 29.75a, Display of burley tobacco on auction warehouse floors in designated markets, the second sentence of paragraph (b) is revised to read:

* * * * *

(b) * * *

If he determines that the prescribed requirements have not been followed, the inspector shall proceed to the next sale or sales as originally scheduled for that day and grade the number of lots of tobacco scheduled for such sale or sales, and shall return to the noncomplying warehouse on the next regularly scheduled sales day for such warehouse, at which time the Set Work Leader or Circuit Supervisor shall again determine if the prescribed system has been followed before starting the inspection.* * *

* * * * *

§ 29.123 [Amended]

3. In § 29.123(a) Mandatory inspection, change "$.0067 per pound" to "$.0070 per pound".

Dated: July 5, 1991.

Daniel Halev,

Administrator.

[FR Doc. 91-16436 Filed 7-10-91; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 947

[Docket No. FV-91-282]

Oregon-California Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 947 for the 1991-92 fiscal period. Authorization of this budget will permit the Oregon-California Potato Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1991, through June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-447-2020.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 113 and Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Oregon-California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of Oregon-California potatoes under this marketing order, and approximately 470 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Oregon-California potato producers and handlers may be classified as small entities.

The Oregon-California Potato Committee authorized its Executive Subcommittee to forward the 1991-92 budget recommendation on its behalf. In 1989, at the full committee's annual meeting, the Executive Subcommittee was unanimously given the authority to act on behalf of the committee to submit the proposed budget and assessment rate to the USDA. At its June 13, 1991, meeting, the full committee reviewed the proposal and recommended slight increases in two categories.

The committee, the agency responsible for local administration of the order, consists of producers and handlers of Oregon-California potatoes, as does the Executive Subcommittee. These producers and handlers are familiar with the committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget.

The recommended assessment was derived by dividing anticipated expenses by expected shipments of Oregon-California potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses. A recommended budget and rate of assessment is usually acted upon before the season starts, and expenses are incurred on a continuous basis.

The recommended budget for the 1991-92 fiscal period of $45,250 is $5,300 more than the previous year due to increases for equipment, staff travel, office supplies, and postage.

The 1991-92 recommended assessment rate of $0.004 per hundredweight of potatoes is the same as last year. This rate, when applied to anticipated fresh market shipments of 8,491,750 hundredweight, will yield $33,967 in assessment revenue. This, along with $11,283 from interest income and the committee's authorized reserve, will be adequate to cover budgeted expenses. The projected reserve for the end of the 1991-92 fiscal period is $18,000, which will be carried over into the next fiscal period. This amount is within the maximum permitted by the order of one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on May 20, 1991 (56 FR 23030). This document contained a proposal to add § 947.242 to authorize expenses and establish an assessment

rate for the committee. That rule provided that interested persons could file comments through June 21, 1991.

One comment was received from the Oregon-California Potato Committee forwarding a revised budget with slight increases in the equipment and staff travel categories. These changes have been incorporated in this final rule.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1991–92 fiscal period begins on July 1, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is hereby amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR part 947 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended: 7 U.S.C. 601–674.

2. A new § 947.242 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 947.242 Expenses and assessment rate.

Expenses of $45,250 by the Oregon-California Potato Committee are authorized, and an assessment rate of $0.004 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1992. Unexpended funds may be carried over as a reserve.

Dated: July 8, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

(FR Doc. 91–16546 Filed 7–10–91; 8:45 am)

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1942

Technical Assistance and Training Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations on Technical Assistance and Training Grants. This action is being taken by FmHA to establish a new grant program for technical assistance for solid waste disposal facilities. Preapplications for this program for the first year will be accepted for 30 days after the effective date. The intended effect of this action is to expand existing regulations to include the new technical assistance grant program.

DATES: Effective on date of publication in the Federal Register. Comments must be received on or before September 9, 1991.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Regulations, Analysis and Control Branch, Farmers Home Administration, USDA, South Building, room 6348, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The reporting and recordkeeping requirements contained in this regulation have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 4 hours per response, with an average of 1 hour per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Donna H. Roderick, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, room 6328, Washington, DC 20250, telephone: (202) 382–9589.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be non-major. The annual effect on the economy will be less than $100 million. There will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete in domestic or export markets.

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under number 10.436, Technical Assistance and Training Grants. The program is excluded from coverage under the provisions of Executive Order 12372, therefore, intergovernmental consultation with State and local officials is not required.

Environmental Impact Statement

This proposed action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The Administrator of Farmers Home Administration has determined that this action will not have a significant economic impact on a substantial number of small entities because, in terms of the total number of entities, less than 25 will be affected annually.

Background

This action extends FmHA's regulations for making technical assistance training grants, by providing for solid waste management grants.

These grants will assist nonprofit associations in providing technical assistance to rural communities for solid waste management. According to the provisions of the Food, Agriculture, Conservation and Trade Act of 1990, Public Law 101–624, the grants will be used to assist communities in the elimination of pollution of water resources and the improvement of solid waste disposal facilities.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking since the change is necessary to comply with the intent of Congress to provide this assistance immediately. In conjunction with the language of Public Law 101–624, Congress appropriated $1.5 million for fiscal year 1991 for this assistance. These funds are available only for this fiscal year, which ends on September 30, 1991. This appropriation clearly reflects Congress' intent that the agency implement this assistance and disburse the funds within this fiscal year. Therefore, in order to comply with this general intent, the regulations must be in place to allow the public access to the program; any delay in implementing this assistance beyond this fiscal year would be contrary to the public interest because the $1.5 million appropriation would be lost. In addition, the regulation revisions necessary to implement this assistance are quite minor. FmHA has for years operated a technical assistance grant program that assists locales in developing solutions for water and waste disposal problems. The provisions of Public Law 101–624 have merely extended this assistance for developing solutions for solid waste disposal problems. Since this revision is minor in nature, publishing the change in proposed rule form would be unnecessary.

FmHA amends subpart J of part 1942 to bring FmHA Technical Assistance and Training grant regulations into compliance with Public Law 101–624.

Lists of Subjects in 7 CFR Part 1942

Community development, Community facilities, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 is revised to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart J—Technical Assistance and Training Grants

2. Section 1942.451 is revised to read as follows:

§ 1942.451 General.

This subpart sets forth the policies and procedures for making Technical Assistance grants. Grants for technical assistance and training for water and waste disposal facilities are authorized under section 306(a)(16)(A) of the Consolidated Farm and Rural Development Act, (CONACT), (7 U.S.C. 1926(a)), as amended. Grants for solid waste management are authorized under section 310B of the CONACT, (7 U.S.C. 1932), as amended.

3. Section 1942.453 is amended by redesignating the introductory paragraph and paragraphs (a), (b) and (c) as paragraphs (a), (a) (1), (2) and (3) respectively; and by adding new paragraph (b) to read as follows:

§ 1942.453 Objectives.

* * * * *

(b) The objectives of the Solid Waste Management Grant Program are to:

(1) Reduce or eliminate pollution of water resources.

(2) Improve planning and management of solid waste sites.

4. Section 1942.454 is amended by removing the paragraph designations and by revising the definition for "Grantee" to read as follows:

§ 1942.454 Definitions.

* * * * *

Grantee—An entity with whom FmHA has entered into a grant agreement under this program to provide technical assistance and/or training to associations as defined in this section.

* * * * *

5. Section 1942.455 is revised to read as follows:

§ 1942.455 Source of funds.

Technical Assistance and Training grants awarded will be made from not less than one (1) percent or, at the discretion of the FmHA Administrator, not more than two (2) percent of any appropriations for grants under section 306(a)(2) of the CONACT, (7 U.S.C. 1926(a)). Technical Assistance and Training grant funds not obligated by September 1 of each fiscal year will be used for water and waste disposal grants made in accordance with subpart H of this part 1942. This section does not apply to Solid Waste Management grants.

6. Section 1942.458 is amended by redesignating the introductory paragraph and paragraphs (a), (1), (2), (3) and (4) as paragraphs (a), (a)(1), (i), (ii), (iii) and (iv); by redesignating paragraphs (b), (1), (2) and (3) as paragraphs (a)(2), (i), (ii) and (iii); by redesignating paragraphs (c), (d) and (e) as paragraphs (a) (3), (4) and (5), respectively; by revising newly redesignated paragraph (a)(5) and by adding a new paragraph (b) to read as follows:

§ 1942.458 Purpose.

(a) * * *

(5) To pay the expenses associated with providing the technical assistance and/or training authorized in paragraphs (a) (1) through (4) of this section.

(b) Solid Waste Management grants may be used to:

(1) Evaluate current landfill conditions to determine threats to water resources.

(2) Provide technical assistance and/or training to enhance operator skills in the maintenance and operation of active landfills.

(3) Provide technical assistance and/or training to help communities reduce the solid waste stream.

(4) Provide technical assistance and/or training for operators of landfills which are closed or will be closed in the near future with the development/implementation of closure plans, future land use plans, safety and maintenance planning, and closure scheduling within permit requirements.

7. Section 1942.463 is amended by revising paragraphs (a) and (b)(1), and by adding paragraph (g) to read as follows:

§ 1942.463 Preapplications.

(a) Applicants will file an original and one copy of SF 424.1, "Application for Federal Assistance (For Non-construction)," with the appropriate FmHA office between October 1 and December 31 each fiscal year. Preapplications for Solid Waste Management grants for the first year will be accepted for 30 days after the effective date of the **Federal Register**. This form is available in all FmHA offices. Applicants proposing to provide technical assistance and/or training in only one State will apply through the appropriate FmHA State Office. The FmHA State Office will review and forward preapplications, with their recommendations, within seven working days to the National Office, Attention: Water and Waste Disposal Division. Applicants providing technical assistance and/or training in more than

one State will forward the preapplication to the Administrator, Farmers Home Administration, Washington, DC 20250. Preapplications for Solid Waste Management grants that cannot be funded in the fiscal year received will not be retained for consideration for funding in the following fiscal year and will be handled as outlined in § 1942.463(g).

(b) * * *

(1) Evidence of applicant's legal existence and authority, in the form of certified copies of articles of incorporation and bylaws and a certified list of directors and officers with their respective terms.

* * * * *

(g) Applicants who have filed preapplications for solid waste management grant funds that cannot be funded within the available funds will be notified, using AD-622, that their preapplication will not be retained. They will also be notified that they may file a new preapplication when funds again become available using the following statement:

"If the Farmers Home Administration receives funding for the program in FY ____, you may file a new preapplication on or after October 1, 19____."

8. Section 1942.464 is amended by redesignating paragraphs (a) through (g) as paragraphs (a)(1) through (a)(7), respectively; by revising and redesignating the introductory text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 1942.464 Priority.

(a) The preapplication and supporting information will be used to determine the applicant's priority for available funds for the Technical Assistance and Training Grant program. The following specific criteria will be considered in the competitive selection of Technical Assistance and Training Grant recipients:

* * * * *

(b) Preapplications received for the Solid Waste Management Grant program that will provide for regional technical assistance will be given priority within the available funds.

Dated: June 27, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-16251 Filed 7-10-91; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Chapter I

Administrative Changes

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document removes and reserves subchapter Q and revises the heading subchapter R. This document makes administrative changes within chapter I of title 32 of the Code of Federal Regulations for ease of use.

EFFECTIVE DATE: July 11, 1991.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Correspondence and Directives Directorate, Washington Headquarters Services, Pentagon, Washington, DC 20301-1155, (703) 697-4111.

Accordingly, under the authority of 10 U.S.C. 131, 32 CFR chapter I is amended by removing and reserving Subchapter Q and revising the heading of subchapter R as follows:

SUBCHAPTER Q—[REMOVED AND RESERVED]

SUBCHAPTER R—ADMINISTRATION AND CHARTERS

Dated: July 8, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-16530 Filed 7-10-91; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 352

[DoD Directive 5118.3]

Comptroller of the Department of Defense; Revision Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This revision updates the responsibilities, functions, relationships and authorities of the Comptroller of the Department of Defense (C, DoD). Significant revisions include: designation of the DoD Comptroller as the Chief Financial Officer of the Department of Defense, pursuant to Public Law 101-576, "Chief Financial Officers Act of 1990," November 15, 1990, and the assignment of associated responsibilities and functions; addition of responsibility and associated delegations of authority for the supervision of the Defense Finance and Accounting Agency, and the delegation of authority to approve requests to reprogram and transfer funds, transmit Antideficiency Act reports, and to approve selected obligation adjustments; clarification of contract audit responsibilities; and deletion of DoD Comptroller responsibility for the Corporate Information Management initiative, and related information management and information resources management functions, and for involvement in the performance evaluation of Defense Agency and Defense Field Activity comptrollers.

EFFECTIVE DATE: June 24, 1991.

FOR FURTHER INFORMATION CONTACT: D. Clark, Office of the Director of Administration and Management, Organizational and Management Planning, Pentagon, Washington, DC 20301, telephone 703-697-0709.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 352

Organization and functions (Government agencies)

Accordingly, 32 CFR part 352 is revised to read as follows:

PART 352—COMPTROLLER OF THE DEPARTMENT OF DEFENSE (C, DOD)

Sec.
352.1 Purpose.
352.2 Definition.
352.3 Responsibilities.
352.4 Functions.
352.5 Relationships.
352.6 Authorities.
Appendix A to part 352—Delegations of Authority.

Authority: 10 U.S.C. 137

§ 352.1 Purpose.

This part:

(a) Implements 10 U.S.C. 137 that establishes the position of the Comptroller of the Department of Defense (C, DoD).

(b) Assigns the responsibilities, functions, relationships, and authorities prescribed herein, pursuant to the authority vested in the Secretary of Defense under 10 U.S.C. 137.

§ 352.2 Definition.

DoD Components. The Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities.

§ 352.3 Responsibilities.

The Comptroller of the Department of Defense is the principal advisor and assistant to the Secretary of Defense for budgetary and fiscal matters (including financial management, accounting policy and systems, internal control systems, budget formulation and

execution, and contract audit administration and organization), and general management improvement programs. The C, DoD, is the Chief Financial Officer of the Department of Defense under Public Law 101-576; 104 Stat. 2838-2855 (1990).

§ 352.4 Functions.

In carrying out the responsibilities assigned in § 352.3, the C, DOD, shall:

(a) Administer the planning, programming, and budgeting system of the Department of Defense.

(b) Supervise and direct the formulation and presentation of Defense budgets, the interactions with the Congress on budgetary and fiscal matters, and the execution and control of approved budgets; and maintain effective control and accountability over the use of all financial resources of the Department of Defense.

(c) Establish and supervise the execution of uniform DoD policies, principles, and procedures (including terminologies and classifications, as necessary) for:

(1) Budget formulation and execution; financial management programs and systems; accounting and disbursing systems; cash and credit management; debt collection; financial progress and statistical reporting; and technical, organizational, and administrative matters related to contract audit.

(2) Relationships with financial institutions, including those operating on DoD installations in the United States and overseas.

(3) International financial matters, including the adequacy of international financial agreements.

(4) Education, training, and career development of comptroller and financial management personnel.

(5) Prices for transactions involving the provision of goods and services by DoD Components, including sales to foreign governments.

(6) Access to DoD budgetary material and other records by the General Accounting Office (GAO).

(d) Provide for the design, development, and installation of management improvement programs and systems throughout the Department of Defense by:

(1) Improving general management practices within the Department by analyzing current practices, identifying improvements that will result in management efficiencies, measuring cost savings, and implementing changes.

(2) Developing and overseeing implementation of total cost per output standards for the Department of Defense to be used for budget, management, and productivity improvement purposes.

(3) Establishing and maintaining an internal management control program to control waste, fraud, and mismanagement.

(4) Safeguarding DoD resources against waste, fraud, and inefficiency.

(5) Promoting accuracy and reliability in accounting and operating data.

(6) Evaluating the efficiency of financial operations.

(e) Serve as the Chief Financial Officer of the Department of Defense, and shall:

(1) Report directly to the Secretary of Defense on financial management matters.

(2) Oversee all financial management activities on the programs and operation of the Department of Defense.

(3) Develop and maintain an integrated DoD accounting and financial management system, including financial reporting and internal controls that:

(i) Complies with applicable accounting principles, standards, and requirements, and internal control standards established under Public Law 101-576; 104 Stat. 2838-2855 (1990) or other law.

(ii) Complies with such policies and requirements as may be prescribed by the Director of the Office of Management and Budget (OMB).

(iii) Complies with the requirements of law applicable to such systems.

(iv) Provides for:

(A) Complete, reliable, consistent, and timely information that is prepared on a uniform basis and that is responsive to the financial information needs of the Department of Defense.

(B) The development and reporting of cost information.

(C) The integration of accounting and budgeting information.

(D) The systematic measurement of performance.

(4) Make recommendations to the Secretary of Defense about the selection of a Deputy Chief Financial Officer of the Department of Defense.

(5) Direct, manage, and provide policy guidance and oversight of Department of Defense financial management personnel, activities, and operations, including:

(i) The preparation and annual revision of the DoD plan to:

(A) Implement the 5-year financial management systems plan developed by the Director, OMB.

(B) Comply with the requirements established in Public Law 101-576; 104 Stat. 2838-2855 (1990).

(ii) The development of the Department of Defense's financial management budgets.

(iii) The recruitment, selection, and training of personnel to carry out DoD financial management functions.

(iv) The approval and management of the Department of Defense's financial management systems design or enhancement projects.

(v) The implementation of Department of Defense's asset management systems, including systems for cash management, credit management, debt collection, and property and inventory management control.

(6) Prepare and transmit, by not later than 60 days after the submission of the audit report required by Public Law 101-576; 104 Stat. 2838-2855 (1990), an annual report to the Secretary of Defense and the Director, OMB that shall include:

(i) A description and analysis of the status of financial management by the Department of Defense.

(ii) The annual financial statements prepared under Public Law 101-576; 104 Stat. 2838-2855 (1990).

(iii) The audit report transmitted to the Secretary of Defense prepared under Public Law 101-576; 104 Stat. 2838-2855 (1990)

(iv) A summary of the reports on internal accounting and administrative control systems submitted to the President and the Congress under the amendments made by Public Law 97-255; 96 Stat. 814 (1982).

(v) Other information the Secretary of Defense considers appropriate to fully inform the President and the Congress on the financial management of the Department of Defense.

(7) Monitor the financial execution of the DoD budget for actual expenditures, and prepare and submit to the Secretary of Defense timely performance reports.

(8) Review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the Department of Defense for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.

(f) Exercise direction, authority, and control over the Defense Contract Audit Agency, including as follows:

(1) Advise and assist the Secretary and Deputy Secretary of Defense on administration and organization of the contract audit function within the Department of Defense.

(2) Establish and supervise uniform DoD policies, principles, and procedures for administrative matters related to contract audit.

(3) Analyze resource requirements and use of personnel to accomplish the

contract audit needs of the Department of Defense.

(4) Coordinate and interface with other DoD officials having interest in the contract audit mission and related activities, including the Under Secretary of Defense (Acquisition), the Inspector General of the Department of Defense, the Secretaries of the Military Departments, and the Director of the Defense Logistics Agency.

(5) Interact with the Congress on issues involving the contract audit function of the Department of Defense, including interface with the GAO on pertinent audits.

(6) Conduct analyses, develop plans, provide advice, recommend changes, and issue guidance on DoD contract audit organization structure, charter, and management practices.

(7) Interact with the Defense industry on major areas of concern involving contract audit activity.

(g) Exercise direction, authority, and control over the Defense Finance and Accounting Service (DFAS).

(h) Perform such other functions as may be assigned by the Secretary or Deputy Secretary of Defense.

§ 352.5 Relationships.

(a) In the performance of § 352.4, the C, DoD, shall:

(1) Coordinate and exchange information with other DoD Components having collateral or related functions.

(2) Promote coordination, cooperation, and mutual understanding of matters about assigned functions within the Department of Defense and between the Department of Defense, other Government Agencies, and the public.

(3) Serve on boards, committees, and other groups concerned with matters about assigned functions and represent the Secretary of Defense on assigned functions outside the Department of Defense.

(4) Maintain liaison with congressional budget oversight committees on all DoD budgetary and fiscal matters and serve as focal point for joint Office of Management and Budget (OMB)/OSD budget and management reviews.

(5) Use existing facilities and services, whenever practicable, to achieve maximum efficiency and economy.

(b) The C, DoD, shall be consulted as to professional qualifications of Defense Agency and DoD Field Activity Comptrollers (or equivalents) before their selection to such positions.

(c) All DoD Components shall coordinate with the C, DoD, on all matters related to the functions in § 352.4.

§ 352.6 Authorities.

(a) The C, DoD, is hereby delegated authority to:

(1) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1-M [1], that implement policies approved by the Secretary of Defense in the functions assigned to the C, DoD. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified and Specified Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(2) Approve or withhold authority to obligate and expend funds authorized and appropriated by Congress for the execution of DoD programs.

(3) Obtain reports, information, advice, and assistance, consistent with DoD Directive 7750.5[2], in carrying out assigned functions, as necessary.

(4) Communicate directly with the heads of the DoD Components. Communications to the Commanders of Unified and Specified Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(5) Establish arrangements for DoD participation in those nondefense governmental programs for which the C, DoD, has been assigned primary staff cognizance.

(6) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

(7) Provide fiscal management for the defense and military intelligence and national reconnaissance activities in accordance with part 1.11(j) of E.O. 12333 (3 CFR, 1981 Comp. p. 200).

(b) The C, DoD also is hereby delegated the authorities contained in enclosure 1 to DoD Directive 5105.36 [3] and in enclosure 1 to DoD Directive 5118.5 [4]. The C, DoD, may redelegate these authorities, as appropriate, and in writing, except as otherwise provided by law or regulations.

(c) Other authorities specifically delegated by the Secretary of Defense are in appendix A to this part.

Appendix A to Part 352—Delegations of Authority

1. Pursuant to the authority vested in the Secretary of Defense, the C, DoD, is hereby delegated, subject to the direction, authority, and control of the Secretary of Defense, authority to:

a. Approve requests to hold cash at personal risk for authorized purposes, including imprest funds, and to redelegate such authority as appropriate in the administration and control of DoD funds, consistent with provisions of the Treasury Financial Manual (TFM) and under the authority of sections 3321 and 3342 of 31 U.S.C.

b. Approve DoD Component disbursing regulations developed to implement the TFM and to grant waivers when delegated by the Secretary of the Treasury to heads of Executive Departments and Agencies.

c. Approve the establishment of accounts for funds provided to the Department of Defense and issue regulations for the administration of accounts established pursuant to statutory authority.

d. Exercise the authority of the Secretary of Defense to establish reimbursement rates and prices for DoD goods and services and to approve requests for waivers or reductions of such rates and prices that, by statute, may be exercised by the Secretary of Defense.

e. Pursuant to the authority of sections 113 and 137 of 10 U.S.C., make determinations to effectuate transfers under transfer authorities enacted in DoD and military construction appropriation acts and make any reports or furnish notifications to the Congress or its committees that may be required in connection with the exercise of such transfers.

f. Approve all requests for reprogramming of funds or for use of authority to transfer funds and to make any related determinations required by law. This authority may not be redelegated.

g. Transmit Antideficiency Act reports required by sections 1341, 1342, and 1517 of 31 U.S.C. to the OMB, the President, and the Congress. This authority may not be redelegated.

h. Approve obligation adjustments, in accordance with section 1553 of 31 U.S.C., for fixed appropriations for which the period of availability for obligation has ended, if an obligation of funds from that account to provide funds for a program, project, or activity to cover amounts required for contract changes would cause the total amount of obligation from that appropriation during a fiscal year for contract changes for that program, project, or activity to exceed $4 million.

2. Pursuant to the authority vested in the Secretary of Defense, including 10 U.S.C. 113(d), and subject to the direction, authority, and control of the Secretary of Defense, the C, DoD, is hereby delegated the following authorities on the operations and functions of the DFAS:

a. Under 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716 to waive a claim or to make recommendations to the Comptroller General (C.G.) of the United States on the waiver of such claims;

b. Under 31 U.S.C. 3529 to issue payment and certification decisions in cases as authorized by the C.G. of the United States;

c. Under chapter 73 of 10 U.S.C. to make determinations necessary for the administration of the annuity plans covered under such chapter;

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 352.6(a) (1).

[3] See footnote 1 to § 352.6(a)(1).

[4] See footnote 1 to § 352.6(a)(1).

d. Under 10 U.S.C. 4837, 6161, and 9837 to remit or cancel an enlisted member's indebtedness;

e. Under 10 U.S.C. 1053 and 1594 to promulgate regulations establishing conditions under which reimbursements for financial institution charges resulting from late or incorrect direct deposits will be made;

f. Under 37 U.S.C. 602 to designate a person to receive amounts due a member determined to be mentally incapable of managing the member's affairs;

g. Under 37 U.S.C. 423 to make findings of good faith on purported marriages;

h. Under 37 U.S.C. and chapter 55 of 10 U.S.C. to make dependency determinations for pay and allowance and medical care entitlements;

i. Under 31 U.S.C. 3711 to collect, compromise, suspend, or end collection action on claims arising out of the activities of, or referred to, the DFAS; and

j. Under chapter 10 of 37 U.S.C. to make determinations necessary for the administration of missing persons' accounts except determinations on missing status or death.

3. The C, DoD may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above, or as otherwise provided by law or regulation.

4. These delegations of authority are effective June 24, 1991.

Dated: July 2, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-16189 Filed 7-10-91; 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 362

[DoD Directive 5105.19]

Defense Information Systems Agency

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This revision changes the name of the Defense Communications Agency (DCA) to the Defense Information Systems Agency (DISA) and revises the responsibilities, functions, relationships, and authorities of the DISA. For the purposes of 10 U.S.C. 193, any other law or regulation, or for any other purpose, DISA will perform the functions of the Defense Communications Agency. Other major changes in this revision include placing the Director, DISA under the direction, authority, and control of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence; and assigning the DISA new responsibilities to provide technical support to the ASD (C3I) in the implementation of the Defense information management program and the Defense corporate information management initiative, and to support the technical implementation of the Defense information management program and the Defense corporate information management initiative DoD-wide. The DISA is established as a Combat Support Agency of the Department of Defense responsible for planning, developing, and supporting command, control, communications (C3), and information systems that serve the needs of the National Command Authorities (NCA) under all conditions of peace and war. The DISA provides guidance and support on technical and operational C3 and information systems issues affecting the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, and the Defense Agencies; ensures the interoperability of the Worldwide Military Command and Control System (WWMCCS), the Defense Communications System (DCS), theater and tactical command and control systems, North Atlantic Treaty Organization and/or allied C3 systems, and those national and/or international commercial systems that affect the DISA mission; and supports national security emergency preparedness telecommunications functions of the National Communications System (NCS), as prescribed by E.O. 12472.

EFFECTIVE DATE: June 25, 1991.

FOR FURTHER INFORMATION CONTACT: D. Clark, Office of the Director of Administration and Management, Organizational and Management Planning, Pentagon, Washington, DC 20301, telephone 703-697-0709.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 362

Organization and functions (Government agencies).

Accordingly, 32 CFR Part 362 is revised to read as follows:

PART 362—DEFENSE INFORMATION SYSTEMS AGENCY (DISA)

Sec.

362.1 Purpose.
362.2 Definitions.
362.3 Mission.
362.4 Organization and management.
362.5 Responsibilities and functions.
362.6 Relationships.
362.7 Authority.
362.8 Administration.
Appendix A to part 362—Delegations of Authority.

Authority: 10 U.S.C. 193.

§ 362.1 Purpose.

This part changes the name of the Defense Communications Agency (DCA) to the Defense Information Systems Agency (DISA) and revises the responsibilities, functions, relationships, and authorities of the DISA. For the purposes of 10 U.S.C. 193, any other law or regulation, or for any other purpose, DISA will perform the functions of the Defense Communications Agency.

§ 362.2 Definitions.

(a) *Defense Communications System (DCS).* (1) The DCS is a composite of DoD-owned and -leased telecommunications subsystems and networks comprised of facilities, personnel, and material under the management control and operational direction of the DISA. It provides the longhaul, point-to-point, and switched network telecommunications needed to satisfy the requirements of the Department of Defense and certain other Government Agencies, including those required to interconnect the NCA, the Chairman of the Joint Chiefs of Staff, and the Unified and Specified Commanders with the general purpose networks.

(2) The DCS includes fixed, transportable, and mobile facilities. It consists of:

(i) Switching and/or relay facilities to include associated software of the general purpose (common user) networks, such as Defense Switched Network (DSN), Automatic Digital Network (AUTODIN), Defense Data Network (DDN), and Secure Voice System.

(ii) Transmission media and/or circuits that provide user and/or subscriber connection into the DCS networks, or which interconnect the switching and/or relay facilities and/or the user and/or subscriber terminals in use by the DCS. This includes the assets of the Defense Satellite Communications System, except those portions that are specifically excluded from the DCS.

(3) Although the DISA specifies the interconnection and interface standards when operated with DCS networks, the DCS does not include:

(i) Mobile and/or transportable communications facilities and assets organic to Army, Navy, Air Force, and Fleet Marine forces, unless specifically designated as components of the DCS.

(ii) Ship and/or ship, ship and/or shore, air and/or air, air and/or ground, and other tactical telecommunications.

(iii) Post, camp, base, and station user and/or subscriber facilities and terminals.

(iv) On-site telecommunications facilities associated with or integral to weapons systems and to missile launch complexes, including those required for

countdown, command, control, weapons destruct, and range safety.

(v) Consoles and display devices integral to the Unified and Specified Command Centers, their DoD Component Headquarters, and the Military Services' operations centers.

(b) *Fielding Plan.* A fielding plan details the coordination and execution involved in the deployment of a system or equipment, and addresses interoperability opportunities and constraints. The plan includes sufficient information for a common understanding between the program sponsor and the gaining command for equipment quantities, implementation schedules, skill qualifications and training, and any additional manpower, facilities, or support requirements.

(c) *Long-haul Telecommunications.* All general purpose and special purpose long-distance facilities and services (including terminal equipment and local circuitry supporting the long-haul service) used to support the electromagnetic and/or optical dissemination, transmission, or reception of information via voice, data, video, integrated telecommunications, wire, or radio to or from the post, camp, base, or station switch and/or main frame (except for trunk lines to the first-serving commercial central office for local communications services). That includes the FTS2000, DSN, DDN, the AUTODIN, dedicated point-to-point service, and the Primary Interexchange Carrier service associated with business or tie line to the local exchange carrier (e.g., Direct Distance Dialing, Foreign Exchange, WATS, 800 service, etc.) and contractor-provided telecommunications, including the interconnection of various functional Automated Data Processing Systems.

(d) Military Departments' Operations and Maintenance Commands. The Army Information Systems Command, Air Force Communications Command, and the Naval Computers and Telecommunications Command.

(e) Military Satellite Communications (MILSATCOM) Systems. The totality of existing and planned DoD satellite communications capability consisting of the space, ground, and control segments. MILSATCOM systems include the interfaces between satellite systems and ground segments, and the interfaces with other communications systems.

(f) *National Communications System (NCS).* (1) The NCS was established by E.O. 12472 (3 CFR, 1984 Comp., p. 193). It consists of the telecommunications assets of the entities represented on the NCS Committee of Principals and an administrative structure consisting of the Executive Agent, the NCS Committee of Principals, and the Manager.

(2) The mission of the NCS is to assist the President, the National Security Council, the Director of the Office of Science and Technology Policy, and the Director of the Office of Management and Budget in:

(i) The exercise of the telecommunications functions and responsibilities assigned in E.O. 12472.

(ii) The coordination of the planning for, and provision of, national security emergency preparedness communications for the Federal Government under all circumstances, including crisis or emergency, attack, recovery, and reconstitution.

(g) *National Military Command System (NMCS).* The NMCS is the priority DoD Component of the WWMCCS designed to support the NCA in the exercise of its responsibilities. It also supports the Chairman of the Joint Chiefs of Staff in the exercise of his responsibilities.

(h) *Operational Test Agency (OTA).* Separate and independent from the material developing and/or procuring Agency and from the using Agency, the major field OTA shall be responsible for planning and conducting operational tests, reporting test results, and providing an evaluation of the tested system's operational effectiveness and suitability directly to the Agency's Director.

(i) *Procedural Interface Standards.* Specifications for accomplishing the exchange of information across an interface. They define:

(1) The form or format in which information is to be exchanged.

(2) The prescribed information exchange language, syntax, and vocabulary to be used in the information exchange.

(3) Interface operating procedures that govern the information exchange.

(j) *Technical Interface Standards.* Specifications of the functional, electrical, and physical characteristics necessary to allow the exchange of information across an interface between different C3 and information systems or equipment.

(k) *Worldwide Military Command and Control System (WWMCCS).* The WWMCCS is the worldwide command and control system that provides the means for operational direction and technical administrative support involved in the function of C2 of U.S. military forces.

§ 362.3 Mission.

The DISA is responsible for planning, developing, and supporting command, control, communications (C3), and information systems that serve the needs of the National Command Authorities (NCA) under all conditions of peace and war. It provides guidance and support on technical and operational C3 and information systems issues affecting the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "the DoD Components"). It ensures the interoperability of the Worldwide Military Command and Control System (WWMCCS), the Defense Communications System (DCS), theater and tactical command and control systems, North Atlantic Treaty Organization and/or allied C3 systems, and those national and/or international commercial systems that affect the DISA mission. It supports national security emergency preparedness telecommunications functions of the National Communications System (NCS), as prescribed by E.O. 12472.

§ 362.4 Organization and management.

The DISA is established as a Combat Support Agency of the Department of Defense, and shall be under the direction, authority, and control of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C3I)). It shall consist of a Director and such subordinate organizational elements as are established by the Director within the resources authorized by the Secretary of Defense.

§ 362.5 Responsibilities and functions.

(a) The Director, Defense Information Systems Agency, shall:

(1) Organize, direct, and manage the DISA and all assigned resources consistent with this part.

(2) Provide technical and management advice, and perform planning, support systems engineering, and test and/or evaluation support through the design, development, deployment, and evolution of the WWMCCS, as defined in DoD Directive 5100.30.[1] This includes the National Military Command System (NMCS) under DoD Directive S-5100.44 [2] and supporting Communications, especially connectivity to nuclear forces. In accordance with DoD Directive 5100.79,[3]

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] Classified document. Not releasable to the public.

[3] See footnote 1 to § 362.5(a)(2).

provide the necessary guidance, direction, and support to accomplish the definition of technical concepts and performance characteristics for engineering the WWMCCS in consonance with the approved WWMCCS architecture. Recommend revision of the WWMCCS architecture to meet changing policy, doctrine, requirements, systems environments, threats, technology, and resources. Provide planning, engineering, and technical support to the DoD Components, as needed, to ensure the evolution and integration of C3 and information systems within the WWMCCS.

(3) Perform systems engineering for the DCS and ensure that the DCS is planned, improved, operated, maintained, and managed effectively and efficiently. Ensure that end-to-end interoperability and architecture are adequate to meet mission needs. Exercise program management responsibility with management control over the activities of the DoD Components that directly support the establishment and improvement of the DCS.

(4) In consultation with the Chairman of the Joint Chiefs of Staff, formulate the DoD-wide Military Satellite Communications (MILSATCOM) architecture. Analyze user requirements and maintain the user data base. Define system performance criteria for MILSATCOM systems. Establish, in coordination with the DoD Components, overall goals and long-term system plans and transitions for MILSATCOM systems. Perform general systems engineering to promote end-to-end interoperability and performance to meet mission needs. Analyze, on a continuing basis, Military Service programs, plans, budgets, and MILSATCOM systems performance deficiencies, and recommend corrective action, as appropriate. Manage, operate, and support the MILSATCOM systems office to perform functions specified in DoD Directive 5105.44.[4]

(5) Ensure the end-to-end interoperability of strategic and tactical C3 and information systems used by the NCA and the DoD Components for joint and combined operations. Develop and maintain joint architectures, technical and procedural interface standards, specifications, protocols, and definitions; and test and/or verify the interoperability of hardware and procedures for strategic and tactical C3 and information systems. Recommend certification for these systems and their equipment interfaces. With respect to tactical command, control, communications, and intelligence (C3I) systems, DoD Directive 4630.5 [5] shall be observed.

(6) Provide automated information systems, analytical, and other technical support for Chairman of the Joint Chiefs of Staff- and OSD-managed programs. Manage, design, develop, maintain, test, and evaluate standard operating systems and applications software for the WWMCCS, as directed. Assist in implementing configuration control over evolving information systems.

(7) Develop systems architectures and provide systems engineering support. Ensure the evolution of integrated C3 and information systems supporting the NCA's and DoD Components' capability to effectively employ weapon systems and forces. Identify and implement technical improvements and assist the Chairman of the Joint Chiefs of Staff and the Commanders of the Unified and Specified Commands in identifying C3 systems' deficiencies.

(8) Manage nationally sensitive special C3 programs, as directed by higher authority.

(9) Acquire commercial communications services (e.g., long-haul telecommunications circuits, facilities, networks, and associated equipment) for the Department of Defense and other Federal Agencies, as directed; initiate and manage actions relating to regulatory and tariff matters, including rates for these commercial communications services; and manage and maintain the Communications Services Industrial Fund.

(10) Execute tasks as manager of the NCS as may be assigned by law or directed by the Secretary of Defense in the Secretary's capacity as Executive Agent of the NCS.

(11) Review Military Department programs and budgets related to the DISA mission, and recommend actions, through the ASD(C3I), to the Secretary of Defense.

(12) Provide DoD representation and/or participation in selected national and international C3 activities.

(13) Assist OSD and Chairman of the Joint Chiefs of Staff activities by assessing technology; recommend and conduct a program of research, development, test, and evaluation (RDT&E) necessary to ensure that C3 systems remain capable of performing their assigned functions in threatened environments. Monitor and coordinate, as appropriate, DoD Component C3 RDT&E programs.

(14) Exercise operational direction and management control of the DCS through the DISA Operations Control Complex and the Military Departments' operations and maintenance commands. Perform circuit engineering and allocation, and direct restoral for the DCS, in coordination with the NCS's National Coordinating Center.

(15) Establish and maintain a major field independent operational test capability, as an Operational test agency (OTA) under the director, and conduct operational test and evaluation (OT&E) in accordance with DoD Directive 5000.1.[6] Conduct OT&E in a mission and threat environment as operationally realistic as possible.

(16) Serve as Executive Agent and authority for the Joint Interoperability of Tactical Command and Control Systems Program and the Tactical C3I Interoperability Improvement Program.

(17) Provide administrative support to the White House Communications Agency and to the Office of Emergency Operations.

(18) Serve on the Military Communications Electronics Board.

(19) Provide liaison with, and communications support for, the United States Secret Service in accordance with DoD Directive 3025.13.[7]

(20) Develop and maintain databases of developmental and existing interoperability standards.

(21) Coordinate information system security (communications security and computer security) interoperability requirements with cognizant DoD Components.

(22) Review tactical C3 Fielding Plans and define interface specifications, develop and maintain a joint tactical C3 architecture defining joint tactical communications systems (including nonstrategic nuclear forces C3) required to ensure interoperability and information flow among command and control (C2) systems.

(23) Develop, test, and maintain technical and procedural interface standards to be used by tactical C3 systems in joint or combined military operations, in accordance with guidance provided by the Chairman of the Joint Chiefs of Staff, and verify that such systems have implemented the approved interface standards.

(24) Monitor and coordinate strategic and/or tactical C3 programs for which the DISA has responsibility, but which are included in the programs of other DoD Components and Government Agencies, and monitor other programs

[4] See footnote 1 to § 362.5(a)(2).

[5] See footnote 1 to § 362.5(a)(2).

[6] See footnote 1 to § 362.5(a)(2).

[7] See footnote 1 to § 362.5(a)(2).

that may affect tactical C3 interoperability.

(25) Provide source documents from which the DoD Components can develop training materials to facilitate implementation of the tactical C3 architecture.

(26) Develop and maintain databases of tactical C3 developmental and existing interoperability standards.

(27) Coordinate secure tactical C3 communications interoperability requirements with the National Security Agency (NSA)/Central Security Service (CSS), the Defense Intelligence Agency, the Military Departments, and the Chairman of the Joint Chiefs of Staff.

(28) In coordination with NSA/CSS and the Military Departments, and in accordance with DoD Directive C-5200.5,[8] develop a tactical secure communications architecture as an integral part of the overall joint architecture, including orderly and timely introduction of systems to satisfy interoperability requirements.

(29) Provide technical support to the ASD(C3I) in the implementation of the Defense information management program and the Defense corporate information management initiative, to include administrative and technical support as directed by the ASD(C3I).

(30) Support the technical implementation of the Defense information management program and the Defense corporate information management initiative DoD-wide, to include the development and use of process, data, performance and economic models, and related tools; assisting in the development, coordination and execution of the DoD data administration program; providing, as tasked, information services to include operation and design activities and data processing centers; and assisting in the assessment of DoD information services' efficiency and effectiveness.

(31) Perform such other functions as may be assigned by the ASD(C3I)

(b) [Reserved]

§ 362.6 Relationships.

(a) In performing assigned functions, the Director, DISA, shall:

(1) Subject to the direction, authority, and control of the ASD(C3I), be responsible to the Chairman of the Joint Chiefs of Staff for operational matters as well as requirements associated with the joint planning process. For these purposes, the Chairman of the Joint Chiefs of Staff is authorized to communicate directly with the Director, DISA, and may task the Director, DISA to the extent authorized by the ASD(C3I).

(2) Coordinate actions, as appropriate, with other DoD Components and those Departments and Agencies of Government having related functions.

(3) Maintain liaison with other DoD Components and other Agencies of the Executive Branch for the exchange of information on programs and activities in the field of assigned responsibility.

(4) Use established facilities and services in the Department of Defense or other Government Agencies, whenever practicable, to achieve maximum efficiency and economy.

(b) The Secretaries of the Military Departments and the Directors of the Defense Agencies shall:

(1) Provide support to include planning, programming, and budgeting; test and evaluation; operations and maintenance; and integrated logistics support for programs, projects, and systems for which the DISA is responsible.

(2) Advise the Director, DISA, of funding shortfalls that would prevent effective operations and maintenance of existing systems, or prevent or delay scheduled implementation of new subsystems or projects.

(3) Coordinate with the Director, DISA, on all programs and activities that include, or are related to, C3 and information systems for which the DISA has a primary or collateral responsibility. Provide to the DISA, for review and approval before execution, technical specifications, statements of work, and proposed contract changes impacting on configuration, cost, performance, or schedules of all systems for which the DISA is responsible. Obtain the DISA's concurrence on draft acquisition plans and request DISA representation on source selection advisory councils and source selection evaluation boards for C3 and information systems, subsystems, and projects.

(4) Submit C3 and information systems requirements to the DISA, as appropriate.

(5) Submit copies of all requirements involving development, acquisition, or modification of all tactical C3 systems or equipment, copies of all Test and Evaluation Master Plans for such materials, Fielding Plans, and such other reports, as required by DoD Directive 4630.5, to the Director, Joint Tactical Command, Control, and Communications Agency.

(6) Periodically review the efficiency, economy, and effectiveness of the DISA.

(c) The Chairman of the Joint Chiefs of Staff shall:

(1) Review DCS planning and programming documents, and assess their responsiveness to operational, developmental, and training requirements.

(2) Periodically (not less than every 2 years), submit to the Secretary of Defense a report on DISA's responsiveness and readiness to support operating forces in the event of war or threat to national security, and other recommendations as appropriate.

(3) Advise the Secretary of Defense on C3 and information systems requirements and priorities.

(4) Develop and issue jointly with the ASD(C3I) guidance to the DISA and the Unified and Specified Commands that will serve as the basis for interrelationships between these organizations.

(5) Provide for the participation of DISA in joint training exercises and monitor performance.

§ 362.7 Authority.

The Director, DISA, is specifically delegated authority to:

(a) Communicate directly with heads of the DoD Components and other Executive Departments and Agencies, as necessary, to carry out DISA's responsibilities and functions. Communications to the Commanders in Chief of the Unified and Specified Commands shall be coordinated as appropriate with the Chairman of the Joint Chiefs of Staff.

(b) Obtain reports, information, advice, and assistance consistent with the policies and criteria of DoD Directives 4630.5 and 7750.5,[9] as necessary, to carry out DISA-assigned responsibilities and functions.

(c) Exercise the administrative authorities in Appendix A to part 362 when delegated by the ASD(C3I).

§ 362.8 Administration.

(a) The Director and the Deputy Director, DISA, shall be appointed by the Secretary of Defense.

(b) The Military Departments shall assign military personnel to the DISA in accordance with approved authorizations and procedures for assignment to joint duty. The Chairman of the Joint Chiefs of Staff shall review and provide recommendations on the DISA joint manpower program to the ASD(C3I), as appropriate, for those functions where DISA is responsive to the Chairman of the Joint Chiefs of Staff.

[8] See footnote 2 to § 362.5(a)(2).

[9] See footnote 1 to § 362.5(a)(2).

Appendix A to Part 362—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, Instructions, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C3I)), or in the absence of the ASD(C3I), the person acting for the ASD(C3I), is hereby delegated authority as required in the administration and operation of the DISA to:

1. Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 301, 302(b), and 3101 on the employment, direction, and general administration of DISA civilian personnel.

2. Fix rates of pay for wage-rate employees exempted from the Classification Act of 1949 by 5 U.S.C. 5102 on the basis of rates established under the Coordinated Federal Wage System. In fixing such rates, the ASD(C3I), shall follow the wage schedule established by the DoD Wage Fixing Authority.

3. Establish advisory committees and employ temporary or intermittent experts or consultants, as approved by the Secretary of Defense, for the performance of DISA functions consistent with the 10 U.S.C. 173; 5 U.S.C. 3109(b); DoD Directive 5105.4,[1] "DoD Federal Advisory Committee Management Program," September 5, 1989; and the agreement between the Department of Defense and the Office of Personnel Management (OPM) on employment of experts and consultants, June 21, 1977.

4. Administer oaths of office incident to entrance into the Executive Branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with 5 U.S.C. 2903, and designate in writing, as may be necessary, officers and employees of the DISA to perform this function.

5. Establish a DISA Incentive Awards Board and authorize cash awards to, and incur necessary expenses for, the honorary recognition of civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect the DISA or its subordinate activities, in accordance with 5 U.S.C. 4503, applicable OPM regulations, and DoD Directive 5120.15,[2] "Authority for Approval of Cash Honorary Awards for DoD Personnel," August 13, 1985.

6. In accordance with 5 U.S.C. 7532; Executive Orders 10450, 12333, and 12356; and DoD Directive 5200.2,[3] "DoD Personnel Security Program," December 20, 1979; as appropriate:

a. Designate any position in the DISA as a "sensitive" position.

b. Authorize, in case of an emergency, the appointment of a person to a sensitive position in the DISA for a limited period of time and for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

c. Authorize the suspension, but not terminate the services, of a DISA employee in the interest of national security.

d. Initiate investigations, issue personnel security clearances and, if necessary, in the interest of national security, suspend, revoke, or deny a security clearance for personnel assigned, detailed to, or employed by the DISA. Any action to deny or revoke a security clearance shall be taken in accordance with procedures prescribed in DoD 5200.2-R,[4] "DoD Personnel Security Program," January 1987.

7. Act as agent for the collection and payment of employment taxes imposed by chapter 21 of the Internal Revenue Code of 1954, as amended; and, as such agent, make all determinations and certifications required or provided for under section 3122 of the Internal Revenue Code of 1954, as amended, and section 205(p) (1) and (2) of 42 U.S.C. (Social Security Act), as amended, with respect to DISA employees.

8. Authorize and approve:

a. Temporary duty travel for military personnel assigned or detailed to the DISA in accordance with Volume I, Joint Federal Travel Regulations.

b. Travel for DISA civilian officers and employees in accordance with Volume II, Joint Travel Regulations.

c. Invitational travel to non-DoD employees whose consultative, advisory, or other highly specialized technical services are required in a capacity that is directly related to, or in connection with, DISA activities, in accordance with Volume II, Joint Travel Regulations.

d. Overtime work for DISA civilian employees in accordance with chapter 55, subpart V, of 5 U.S.C. and applicable OPM regulations.

9. Approve the expenditure of funds available for travel by military personnel assigned or detailed to the DISA for expenses incident to attendance at meetings of technical, scientific, professional, or other similar organizations in such instances where the approval of the Secretary of Defense, or designee, is required by 37 U.S.C. 412, and 5 U.S.C. 4110 and 4111.

10. Develop, establish, and maintain an active and continuing Records Management Program pursuant to 44 U.S.C. 3102 and DoD Directive 5015.2,[5] "Records Management Program," March 22, 1991.

11. Establish and use imprest funds for making small purchases of material and services, other than personal services, for the DISA, when it is determined more advantageous and consistent with the best interests of the Government, in accordance with DoD Directive 7360.10,[6] "Disbursing Policies," January 17, 1989.

12. Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of the DISA consistent with 44 U.S.C. 3702.

13. Establish and maintain appropriate property accounts for the DISA, and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for DISA property in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

14. Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DISA, pursuant to DoD Directive 5200.8,[7] "Security of Military Installations and Resources," July 29, 1980.

15. Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD 5025.1-M,[8] "DoD Directives System Procedures," December 1990.

16. Enter into support and service agreements with the Military Departments, other DoD Components, or other Government Agencies, as required, for the effective performance of DISA functions and responsibilities.

17. Exercise the authority delegated to the Secretary of Defense by the Administrator of General Services on the disposal of surplus personal property.

18. Enter into and administer contracts, directly or through a Military Department, a DoD contract administration services component, or other Federal Agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of the DISA. To the extent that any law or Executive order specifically limits the exercise of such authority to persons at the Secretarial level of a Military Department, such authority shall be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

19. Award contracts for the lease of commercial C3 capabilities as delegated in DoD Directive 5134.1,[9] "Under Secretary of Defense (Acquisition)," August 8, 1989.

20. Lease property under the control of the DISA under terms that will promote the national defense or that will be in the public interest, pursuant to 10 U.S.C. 2667.

The ASD(C3I) may redelegate these authorities, as appropriate, and in writing, except as otherwise provided by law or regulation.

These delegations of authority are effective June 25, 1991.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to section 3 of this appendix.

[3] See footnote 1 to section 3 of this appendix.

[4] See footnote 1 to section 3 of this appendix.

[5] See footnote 1 to section 3 of this appendix.

[6] See footnote 1 to section 3 of this appendix.

[7] See footnote 1 to section 3 of this appendix.

[8] See footnote 1 to section 3 of this appendix.

[9] See footnote 1 to section 3 of this appendix.

Dated: July 2, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-16190 Filed 7-10-91; 8:45 am]

BILLING CODE 3810-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-436; RM-6784]

Radio Broadcasting Services; Chester and Shingletown, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 287C2 from Chester to Shingletown, California, and modifies the construction permit of Michael Robert Birdsill for Station KRKQ(FM), as requested, pursuant to the provisions of § 1.420(i) of the Commission's Rules. See 54 FR 41468, October 10, 1989. The allotment of Channel 287C2 to Shingletown will provide the community with its first local aural transmission service without depriving Chester of local aural transmission service. Coordinates used for Channel 287C2 at Shingletown are 40-29-36 and 121-53-12. With this action, the proceeding is terminated.

EFFECTIVE DATE: August 22, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-436, adopted June 24, 1991, and released July 8, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 287C2 at Chester and adding Channel 287C2, Shingletown.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-16549 Filed 7-10-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-44; RM-7619]

Radio Broadcasting Services; Warrenton, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 260C3 for Channel 260A at Warrenton, Missouri, and modifies the construction permit for Station KFAV(FM) to specify operation on Channel 260C3, in response to a petition filed by Kaspar Broadcasting Company of Missouri. See 56 FR 9190, March 5, 1991. The coordinates for Channel 260C3 are 38-54-00 and 91-08-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 22, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91-44, adopted June 24, 1991, and released July 8, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 260A and adding Channel 260C3 at Warrenton.

Federal Communications Commission

Andrew J. Rhodes,

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

[FR Doc. 91-16550 Filed 7-10-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-591; RM-7079, RM-7316]

Radio Broadcasting Services; Bend and Cottage Grove, OR

AGENCY: Federal Communications Commission.

ACTION: Finale rule.

SUMMARY: The Commission, at the request of JJP Broadcasting, Inc., substitutes Channel 289C1 for Channel 289C2 at Bend, Oregon, and modifies its license for Station KQAK to specify operation on the higher powered channel, and allots Channel 288A to Cottage Grove, Oregon, as the community's first local FM service. A proposal to allot Channel 288C1 to Cottage Grove is denied. See 55 FR 883, January 10, 1990. Channel 289C1 can be allotted to Bend in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.9 kilometers (11.1 miles) west to accommodate petitioner's desired transmitter site, at coordinates North Latitude 44-02-48 and West Longitude 121-31-53. Channel 288A can be allotted to Cottage Grove with a site restriction of 7.7 kilometers (4.8 miles) west to avoid a short-spacing to the Channel 289C1 allotment at Bend, Oregon, at coordinates 43-47-40 and 123-09-01. With this action, this proceeding is terminated.

DATES: Effective August 22, 1991. The window period for filing applications for Channel 288A at Cottage Grove, Oregon, will open on August 23, 1991, and close on September 23, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-591, adopted June 24, 1991, and released July 8, 1991.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor

Downtown Copy Center (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 289C2 and adding Channel 289C1 at Bend, and adding Channel 288A, Cottage Grove.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-16551 Filed 7-10-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-93; RM-7661]

Radio Broadcasting Services; Ladysmith, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 226A for Channel 224A at Ladysmith, Wisconsin, and modifies the license for Station WLDY-FM to specify operation on Channel 226A, in response to a petition filed by Flambeau Broadcasting Company. See 56 FR 15062, April 15, 1991. The coordinates for Channel 226A are 45-28-05 and 91-05-00. Canadian concurrence has been obtained for the allotment of Channel 226A at Ladysmith. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 22, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91-93, adopted June 24, 1991, and released July 8, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036 (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 224A and adding Channel 226A at Ladysmith.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-16552 Filed 7-10-91; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub 25)]

RIN 3120-AB64

Rail General Exemption Authority—Lumber and Wood Products

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: Pursuant to its authority under 49 U.S.C. 10505, the Commission exempts at 49 CFR 1039.11 the transportation by rail of certain lumber and wood products, specifically: Sawmill or planning mill products (STCC No. 24 2); millwork or prefabricated wood products or plywood or veneer (STCC No. 24 3); treated wood products (STCC No. 24 91); and wood posts, poles or piling (STCC No. 24 116). This exemption does not embrace exemptions from regulation of car hire and car service, nor does it include exemption from existing Class III railroad protections regarding joint rates on boxcar traffic. Carriers shall continue to comply with Commission accounting and reporting requirements.

DATES: Comments by persons opposed to the exemption of (untreated) wood posts, poles, or piling (STCC No. 24 116) shall be filed with the Secretary of the Commission on or before July 31, 1991. The final rule shall become effective August 10, 1991.

ADDRESSES: An original and 10 copies, if possible, of each submission in opposition to the exemption of untreated posts, poles or piling should be forwarded to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Michael Redisch or Robert Lundy, Interstate Commerce Commission, Office of Economics, Washington, DC 20423, 202-275-1914 or 275-7684 (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: In the notice instituting this proceeding, served April 2, 1990 (55 FR 12392, April 3, 1990), the Commission proposed to exercise its authority under 49 U.S.C. 10505, as amended, to exempt from regulation the transportation by rail of lumber, plywood, and treated wood products (STCC Nos. 24 2, 24 3, 24 91, respectively). This was done in response to a petition by the Association of American Railroads (AAR) which, in turn, was prompted by our prior decision in Ex Parte No. 346 (Sub-No. 24) Rail General Exemption Authority—Miscellaneous Manufactured Commodities, 6 ICC 2d 186 (1989), where (at p. 197) we invited such a petition on the basis of shipper testimony on that record.

The responses and evidence on the record overwhelmingly supports this exemption. In addition, several shippers request that we also exempt untreated wood posts, poles and piling (STCC No. 24116), since the exemption, as proposed, already includes competing and similar treated posts, poles and piling. We agree, and add STCC No. 24 116 to this exemption, subject to a 20-day comment period.

The purpose of this exemption is to comply with section 10505 of the Act (49 U.S.C. 10505). The statute requires that the Commission exempt a transaction or service if it finds that regulation is no longer necessary to carry out the rail transportation policy; and that (A) such transaction or service is of limited scope, or (B) that regulation is not needed to protect shippers from abuse of market power. The record in this proceeding indicates convincingly that this exemption will promote the pro-competitive and efficiency goals of the rail transportation policy and that sufficient intermodal, intramodal and geographic competition exists to protect shippers from abuse of market power. Shipper support is based largely on favorable experience with deregulation of lumber shipments moving in boxcars. The exemption will enable both carriers and shippers to eliminate the duplicative and burdensome system under which, at present, lumber is exempt from

regulation if moving in boxcars, but regulated if moving on flatcars.

This exemption extends to all provisions of subtitle IV of title, and applies to all rail carriers nationwide; except that regulation is retained in regard to (1) car hire and car service regulations, and (2) certain class III railroad joint rate/through route protections for boxcar movements. These exceptions are retained in order to maintain consistency with Commission action in Miscellaneous Manufactured Commodities, (*supra*); in recognition of the Commission's ongoing proceeding in Ex Parte No. 334 (Sub-No. 8) Joint Petition for Rulemaking on Railroad Car Hire Compensation (January 16, 1991), which we perceive as the more comprehensive forum for determining these issues; and in compliance with the legislatively-affirmed Class III railroad protections in Ex Parte 346 (Sub-No 19) Boxcar Car Hire and Car Service (1986). However, we specifically retain jurisdiction to reopen this proceeding should the parties find the solution reached in Ex Parte No. 344 (Sub-No. 8) *supra* to be unsatisfactory.

The Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This proceeding is not a major Federal action significantly affecting the quality of the human environment or the conservation of energy resources.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: July 1, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner Simmons and Commissioner McDonald dissented in part with separate expressions.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for 49 CFR part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10708, 10762 and 11105, 5 U.S.C. 553.

2. In § 1039.11 paragraph (a) is amended by adding to the chart, before STCC No. 24 9, the following commodities; and by removing the words "except 24 91 Treated wood products" from the commodity column of STCC No. 24 9:

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * *

STCC No.	STCC tariff	Commodity
*	*	*
24 116	do	Wood posts, poles or piling.
24 2	do	Sawmill or planing mill products,
24 3	do	Millwork or prefabricated wood products or plywood or veneer.
*	*	*

[FR Doc. 91-16538 Filed 7-10-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901184-1042]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of prohibition on retention of sablefish.

SUMMARY: The Secretary of Commerce (Secretary) is prohibiting further retention of sablefish by vessels using hook-and-line gear in the Central Regulatory Area and the West Yakutat District of the Eastern Regulatory Area of the Gulf of Alaska and is requiring that sablefish be treated in the same manner as a prohibited species by hook-and-line vessels in those regions. This action is necessary to prevent the hook-and-line gear share of sablefish in this area and district from being exceeded. The intent of this action is to ensure optimum use of groundfish while conserving sablefish stocks.

DATES: Effective 12 noon Alaska local time (A.l.t.), July 5, 1991, until midnight, A.l.t., December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone within the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and was implemented by regulations for the foreign fisheries at 50 CFR 611.92 and for the U.S. fisheries at 50 CFR parts 620 and 672.

The amount of a species or species group apportioned to a fishery, the total allowable catch (TAC), is defined at §§ 672.20(a)(2) and 672.20(c)(1). The final notice of 1991 initial specifications of groundfish established the TAC for sablefish in the West Yakutat District as 4,050 metric tons (mt) and the TAC for sablefish in the Central Regulatory Area as 10,575 mt. This notice further established the hook-and-line gear share of sablefish in the West Yakutat District as 3,850 mt and the hook-and-line gear of sablefish in the Central Regulatory Area as 8,460 mt (56 FR 8723; March 1, 1991).

The Director of the NMFS Alaska Region has determined that the share of sablefish TAC assigned to hook-and-line gear in the Central Regulatory Area and the West Yakutat District has been reached. Therefore, under § 672.24(c)(3)(ii) further catches of sablefish by hook-and-line gear in the Central Regulatory Area and the West Yakutat District must be treated as prohibited species for the remainder of the fishing year and may not be retained.

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: July 5, 1991.

David S. Crestin,

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

[FR Doc. 91-16443 Filed 07-05-91; 4:11 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 133
Thursday, July 11, 1991

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

Farmers Home Administration

7 CFR Part 1942

Community Facility Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations on Community Facility Loans and Grants. This action is necessary to implement sections 2328 and 2383, title XXIII of the Public Law 101-624 and to make other minor revisions. Section 2328 modifies the eligibility for FmHA's water and waste disposal and essential community facility programs so that rural businesses occupy the same status as rural residents. Section 2383 provides that the interest rate on loans for health care and related facilities be based solely on the income of the area to be served. Other editorial revisions are being made to clarify and remove unnecessary language.

DATES: Comments must be received on or before August 12, 1991.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Regulations, Analysis and Control Branch, Farmers Home Administration, USDA, South Building, room 6343, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, room 6328, Washington, DC 20250, telephone: (202) 382-9589.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be non-major. The annual effect on the economy will be less than $100 million. There will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete in domestic or export markets.

Intergovernmental Review

These programs are listed in the Catalog of Federal Domestic Assistance under numbers 10.423, Community Facilities Loans, and 10.418, Water and Waste Disposal Systems for Rural Communities, and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This proposed action has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." FmHA has determined that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The Administrator of Farmers Home Administration has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

Background

Section 2328 of Public Law 101-624 authorizes the financing of water and waste disposal and essential community facility projects in rural areas that serve rural businesses in addition to farmers, ranchers, farm laborers, farm tenants, and other rural residents. This action proposes to amend FmHA's regulations to allow rural businesses to be the beneficiary of services provided by water and waste disposal and essential community facility projects.

Section 2383 of Public Law 101-624 provides for loan rates to be established for health care and related facilities based solely on the income of the area to be served. This proposed action will exempt health care and related facilities from the poverty line interest rate requirement that the primary purpose of the FmHA loan is to upgrade or construct facilities required to meet applicable health or sanitary standards. The action will amend FmHA's regulations to allow for the interest rates on loans made for health care and related facilities to be based solely on the income of the area to be served.

The proposed action also eliminates certain obsolete sections and amends other sections to provide clarification.

Lists of Subjects in 7 CFR Part 1942

Community Development, Community Facilities, Grant Programs—housing and community development, Loan Programs—housing and community development, Loan security, Rural Areas, Waste treatment and disposal—domestic, Water supply— domestic.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Community Facility Loans

2. Section 1942.2 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 1942.2 Processing applications.

(a) * * *

(2) * * *

(ii) The State Director shall maintain a working relationship with the State office or official that has been designated as the single point of contact for the intergovernmental review process and give full consideration to their comments when selecting preapplications to be processed.

* * * * *

3. Section 1942.17 is amended by redesignating paragraphs (b) (2), (3), and (4) and (b) (3), (4), and (5) respectively; by adding new paragraphs (b)(2), and (d)(2)(ix); and by revising paragraph (a), introductory text of paragraph (b), (b)(1), introductory text of paragraph (d)(1) (i) and (e), (e)(3)(ii), introductory text of paragraphs (f)(2), (g)(2)(i)(D), (g)(3)(i)(E), and the introductory text of paragraphs (h) and (p)(6)(i); and by removing paragraph (s) to read as follows:

§ 1942.17 Community facilities.

(a) *General.* This section includes information and procedures specifically designed for use by applicants including their professional consultants and/or agents who provide such assistance and services as architectural, engineering, financial, legal or other services related to application processing and facility planning and development. This section is made available as needed for such use. It includes FmHA policies and requirements pertaining to loans for community facilities. It provides applicants with guidance for use in proceeding with their application. FmHA shall cooperate fully with appropriate State agencies to give maximum support of the State's strategies for development of rural areas.

(b) *Eligibility.* Financial assistance to areas or communities adjacent to, or closely associated with, non-rural areas is limited by § 1942.17(c) of this subpart.

(1) *Applicant.* (i) A public body such as a municipality, county, district, authority, or other political subdivision of a State.

(A) Loans for water or waste disposal facilities will not be made to a city or town with a population in excess of 10,000 inhabitants according to the latest decennial census of the United States.

(B) Loans for essential community facilities will not be made to a city or town with a population in excess of 20,000 inhabitants according to the latest decennial census of the United States.

(ii) An organization operated on a not-for-profit basis such as an association, cooperative, and private corporation. Applicants organized under the general profit corporation laws may be eligible if they actually will be operated on a not-for-profit basis under their charter, bylaws, mortgage, or supplemental agreement provisions as may be required as a condition of loan approval. Essential community facility applicants other than utility-type must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas. Ties may be evidenced by items such as:

(A) Association with or controlled by a local public body or bodies, or broadly based ownership and controlled by members of the community.

(B) Substantial public funding through taxes, revenue bonds, or other local Government sources, and/or, substantial voluntary community funding such as would be obtained through a community-wide funding campaign.

(iii) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes.

(2) *Facility.* (i) Facilities must be located in rural areas except for utility-type services, such as water, sewer, natural gas, or hydroelectric, serving both rural and non-rural areas. In such cases, FmHA funds may be used to finance only that portion serving rural areas, regardless of facility location.

(ii) Essential community facilities must primarily serve rural areas.

(iii) For water or waste disposal facilities the terms "rural" and "rural area" will not include any area in any city or town with a population in excess of 10,000 inhabitants according to the latest decennial census of the United States.

(iv) For essential community facilities the terms "rural" and "rural area" will not include any area in any city or town with a population in excess of 20,000 inhabitants according to the latest decennial census of the United States.

* * * * *

(d) * * *

(1) * * *

(i) To construct, enlarge, extend, or otherwise improve water or waste disposal, and other essential community facilities providing essential service primarily to rural residents and rural businesses.

* * * * *

(2) * * *

(ix) That portion of a water and/or waste disposal facility normally provided by a business or industrial user.

(e) *Facilities for public use.* All facilities financed under the provisions of this subpart shall be for public use.

* * * * *

(3) * * *

(ii) Financing or constructing facilities where it is not economically feasible to serve the entire area provided economic feasibility is determined on the basis of the entire system and not by considering the cost of separate extensions to or parts thereof; the applicant publicly announces a plan for extending service to areas not initially receiving service for the system; and potential users located in the areas not to be initially served received written notice from the applicant that service will not be provided until such time as it is economically feasible to do so.

* * * * *

(f) * * *

(2) *Poverty line rate.* The proverty line interest rate will not exceed five per centum annum. The provisions of paragraph (f)(2)(i) of this section do not apply to health care and related facilities that provide direct health care to the public. Otherwise, all loans must comply with the following conditions:

* * * * *

(g) * * *

(2) * * *

(i) * * *

(D) In those cases involving water and waste disposal projects where there is a substantial number of other than full-time users and facility costs result in a higher than reasonable rate for such full-time users, the loan will be secured by the full faith and credit of the borrower or by an assignment or pledge of taxes, or assessments from public bodies or other organizations having the authority to issue or pledge such taxes, or assessments.

* * * * *

(3) * * *

(i) * * *

(E) In those cases where there is a substantial number of other than full-time users and facility costs result in a higher than reasonable rate for such full-time users, the loan will be secured by an assignment or pledge of general obligation bonds, taxes, or assessments from public bodies or other organizations having the authority to issue or pledge such taxes, or assessments.

* * * * *

(h) *Economic feasibility requirements.* All projects financed under the provisions of this section must be based on taxes, assessments, revenue, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, a reasonable reserve, and debt payment. An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by FmHA staff and approval official. If the primary use of the facility is by business and the success of failure of the facility is dependent on the business, then the economic viability of that business must be assessed.

* * * * *

(p) * * *

(6) * * *

(i) *FmHA loan and/or grant funds.* Remaining funds may be used for purposes authorized by paragraph (d) of this section and § 1942.359 of subpart H of this part 1942, provided the use will not result in major changes to the facility design or project and that the purpose of the loan and/or grant remains the same

* * * * *

Subpart H—Development Grants for Community Domestic Water and Waste Disposal System

4. Sections 1942.351 through 1942.400 of subpart H to part 1942 are revised to read as follows:

§ 1942.351 General.

(a) This subpart outlines the policies and authorizations and sets forth the procedures for making and processing grants to assist in financing the development cost of domestic water and waste disposal systems to rural communities. Farmers Home Administration (FmHA) will maintain continuous liaison and coordination with State and substate planning district officials. FmHA shall cooperate fully with appropriate State agencies in making grants in a manner which will assure maximum support of the State's strategies for development of rural areas.

(b) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes are eligible to apply for and are encouraged to participate in this program. Such tribes might not be subject to State and local laws or jurisdiction. However, any requirements of this subpart that affect applicant eligibility, the adequancy of FmHA's security or the adequacy of service to users of the facility and all other requirements of this subpart must be met. FmHA State Directors are reminded that funds allocated for use as prescribed in this subpart are to be considered for used by Indian tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. It is essential that Indians residing on such reservations have equal opportunity to participate in the benefits of this program on an equal basis with other residents of the State. This is intended to include an equal application of the outreach activities of FmHA County and District Offices.

(c) It is the policy that the County Office will normally be the entry point for preapplications and serve as the local contact point. However, applications will be filed and grants will be processed to the maximum extent possible by the District Office staff. The State Office staff will monitor grant making and servicing and will provide assistance to District Office personnel to the extent necesary to assure that the activities are being accomplished in an orderly manner consistent with FmHA regulations. The District Director will supply information to the County Supervisor on grant activity within the County Office service area at key points throughout the grant making process.

(d) Federal statutes provide for extending FmHA financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physicial/mental handicap (provided the participant possessess the capacity to enter into legal contracts).

§ 1942.352 Purpose.

Provide grant funds for water and waste disposal projects serving the most financially needy communities to reduce user costs to a reasonable level for farmers, ranchers, farm laborers, rural businesses, and other rural users.

§ 1942.353 Definitions.

Poverty line. Income for a family of four, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

Reasonable average annual cost. Cost to the applicant which is not less than existing prevailing cost in communities, served by an established system, with similar economic conditions.

Reasonable user cost. Cost that is not less than similar system cost.

Service area. The area reasonably expected to be served by the facility financed by FmHA.

Similar system cost. System cost of a community having similar economic conditions being served by the same type of established system constructed at similar cost per user. Similar system cost shall include all charges, taxes, and assessment attributable to the system.

§ 1942.354 [Removed and Reserved]

§ 1942.355 Processing applications and docket preparation.

(a) Preapplications and applications for grants will be processed in accordance with § 1942.2 of subpart A of this part 1942.

(b) Grant dockets will be prepared in accordance with this subpart and applicable portions of subpart A of this part 1942.

(c) Financial feasibility information contained in preliminary engineering reports will be prepared assuming all FmHA funds will be loan funds and without considering the impact of FmHA grant funds.

§ 1942.356 Applicant eligibility and priority.

(a) *Eligibility.* Applicant eligibility shall be determined in accordance with § 1942.17(b), (b)(1), (b)(2) and (b)(4) of subpart A of this part 1942. Grants shall not be made in connection with any project unless the project:

(1) Will serve a rural area which, if such project is carried out, is not likely to decline in population below that for which the project was designed.

(2) Is designed and constructed so that adequate capacity will or can be made available to serve the present population of the area to the extent feasible and to serve the reasonably foreseeable growth needs of the area to the extent practicable. Water systems must have sufficient capacity to provide for reasonable fire protection to the extent practicable.

(3) Is necessary for orderly community development consistent with a comprehensive community water, waste disposal, or other development plan of the rural area and not inconsistent with any planned development provided in any State, multijurisdictional, county, or municipal plan approved by competent authority for the area in which the rural community is located.

(4) Needs grant funds in order to reduce user costs to a reasonable level.

(b) *Applicant priorities.* Priority for grant funds will be given to applicants and projects in accordance with § 1942.17(c) of subpart A of this part 1942.

§§ 1942.357-1942.358 [Removed and Reserved]

§ 1942.359 Use of grant funds.

Funds may be used only for the following purposes:

(a) To construct, enlarge, extend, or otherwise improve community water, sanitary sewage, solid waste disposal, and storm wastewater disposal facilities.

(b) To construct or relocate public buildings, roads, bridges, fences, utilities, and to make such other public improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(c) To relocate private buildings, roads, bridges, fences, utilities, and to make such other private improvements necessary for the successful operation or protection of facilities authorized in paragraph (a) of this section.

(d) When a necessary part of the project relates to those facilities in

paragraphs (a), (b), and (c) of this section, the following costs may be considered:

(1) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archaeological surveys, possible salvage or other mitigation measures, planning, and establishing or acquiring rights.

(2) Costs of acquired interest in land, rights such as water rights, leases, permits, rights-of-way, and other evidence of land or water control which are necessary for development of the facility.

(3) Purchase or rent equipment necessary to install, maintain, extend, protect, operate or utilize facilities (subject to limitations contained in § 1942.361(a) of this subpart).

(4) Payment of tap fees and other utility connection charges as provided in utility purchase contracts prepared in accordance with § 1942.18(f) of subpart A of this part 1942.

(e) To use FmHA grant funds on projects when the applicant's share of the project cost will be available prior to the start of construction. When all or a portion of the funds will come from other agencies, the maximum percentages allowed under other agencies' authorities will apply to their participation in the project. However, the FmHA grant may not exceed applicable percentages in § 1942.361(b) of this subpart. The need for FmHA grant funds must meet the requirements of § 1942.364 of this subpart after considering all project financing.

(f) To restore FmHA loan funds used in accordance with § 1942.17(d)(1)(iv)(G) of subpart A of this part 1942.

§ 1942.360 [Removed and Reserved]

§ 1942.361 Grant limitations.

(a) Grant funds may not be used to:

(1) Finance facilities which are not modest in size, design, and cost.

(2) Pay loan or grant finder's fees.

(3) Pay for the construction of any new combined storm and sanitary sewer facilities.

(4) Pay any annual recurring costs including purchases or rentals that are generally considered to be operating and maintenance expenses.

(5) Construct or repair electric generating plants, electric transmission lines, or gas distribution lines to provide services for commercial sale.

(6) Purchase fire trucks, hoses, and other fire fighting equipment, or construct housing for such equipment.

(7) Pay rental for the use of equipment or machinery owned by the grantee.

(8) Pay for salesrooms or other purposes not directly related to operating and maintenance of the facility being installed or improved.

(9) Purchase existing systems.

(10) Refinance existing indebtedness.

(11) Pay interest.

(12) Pay any portion of the cost of a facility which is not located in a rural area.

(13) Pay any costs of a project when the median household income of the service area is above the poverty line and more than 100 percent of the nonmetropolitan median household income of the State.

(14) Pay project costs when other funding is not at reasonable rates and terms.

(15) Pay project costs when other funding is a guaranteed loan obtained in accordance with subpart I of part 1980 of this chapter.

(16) To pay that portion of project costs normally provided by a business or industrial user such as wastewater pretreatment, etc.

(b) Grants may not be made in excess of the following percentages (whichever is higher) of the eligible project development costs. Facilities previously installed will not be considered in determining the development costs.

(1) Seventy-five percent (75%) when the median household income of the service area is below the poverty line or below 80 percent (whichever is higher) of the Statewide nonmetropolitan median household income.

(2) Fifty-five percent (55%) when the median household income of the service area exceeds the seventy-five percent requirements described in paragraph (b)(1) of this section but is not more than 100 percent of the Statewide nonmetropolitan median household income.

§§ 1942.362–1942.363 [Removed and Reserved]

§ 1942.364 Determining the need for development grants.

(a) *Responsibility.* FmHA District Directors are responsible for determining applicant's eligibility for grants and the amount of such grants. The amount of grant assistance shall be based on the FmHA interest rate in effect at the time of grant approval. If an FmHA loan is associated with the grant, and the loan is closed at a lower rate, no change will be made in the amount of grant assistance. Form FmHA 1942–51, "Water and Waste Disposal Grant Determination," will be used to determine the amount of FmHA grant assistance for which the applicant qualifies. A separate form will be used to record the determination of FmHA grant assistance for each water, sewer collection and/or treatment, solid waste, and storm drainage project.

(b) *Grant determination.* Grants will be determined in accordance with the following and will not result in user costs below the reasonable user cost. Paragraph (b)(2) of this section will not be used in determining the amount of grant in paragraph (b)(5) of this section.

(1) *Maximum grant.* Grants may not exceed the percentages in § 1942.361(b) of this subpart of the eligible project development costs listed in § 1942.359 of this subpart.

(2) *Debt service.* Applicants will be considered for grant assistance when the debt service portion of the average annual user cost, for users in the applicant's service area, exceeds the following percentages of median household income:

(i) *.5 percent* when the median household income of the service area is below the poverty line or below 80 percent (whichever is higher) of the Statewide nonmetropolitan median household income.

(ii) *1.0 percent* when the median household income of the service area exceeds the .5 percent requirements but is not more than 100 percent the Statewide nonmetropolitan household income.

(3) *Similar system cost.* In cases where FmHA determines that a reasonable user cost has not been achieved under paragraph (b)(2) of this section, similar system cost can be used to determine the amount of the grant.

(4) *Average annual cost.* If FmHA determines that a reasonable average annual cost to the applicant for delivery of service has not been achieved, FmHA may proceed with a grant in an amount necessary to reduce such cost to not below a reasonable user cost. This option is only available to an applicant when:

(i) The annual cost to the applicant for delivery of service is subsidized by either the State, Commonwealth, or Territory, and

(ii) Uniform user charges are imposed for similar classes of service throughout the service area.

(5) *Bulk service.* When an applicant provides bulk sales or services on a contract basis to another system(s) (entity), prepare one Form FmHA 1942–51. Similar system cost will be used in determining the amount of grant needed to achieve a reasonable bulk user cost. For purposes of determining income and number of individual users, the service area would be the entire area served by all the other system(s).

(c) *Income data.* The income data used to determine median household income should be that which most accurately reflects the income of the service area. The median household income of the service area and the nonmetropolitan median household income for the State will be determined using income data from the most recent decennial census of the U.S. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, the reasons will be documented on Form FmHA 1942-51, and the applicant may furnish, or FmHA may obtain, additional information regarding such median household income. Information will consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. The nonmetropolitan median household income of the State may be updated on a National basis by the FmHA National Office. This will be done only when median household income data for the same year for all Bureau of the Census areas is available from the Bureau of the Census, or other reliable sources. Bureau of the Census areas would include areas such as: counties, county subdivisions, cities, towns, townships, boroughs, and other places.

(d) *User costs.* The user costs should be reasonable and produce enough revenue to provide for all costs of the facility after the grant is closed. The planned revenue should be sufficient to provide for all debt service, reserve, operation and maintenance and, if appropriate, additional revenue for facility replacement of short lived assets without building a substantial surplus. Ordinarily, the total reserve will be equal to one average annual loan installment which will accumulate at the rate of one-tenth of the total each year.

§§ 1942.365-1942.366 [Removed and Reserved]

§ 1942.367 Application review, approval and obligation of funds.

(a) When a grant only (no FmHA loan) is being made, only those applicable provisions of review and approval procedures outlined in § 1942.5 of subpart A of this part 1942 will apply which are necessary to assure that:

(1) The proposed development is completed in accordance with approved plans and specifications.

(2) Grants funds are expended for authorized purposes.

(3) The applicant can comply with the terms of the grant agreement.

(4) If the primary use of the facility is by business and the success or failure of the facility is dependent on the business, then the economic viability of that business must be assessed.

(b) When the grant approval official requires an appraisal, Form FmHA 440-12, "Appraisal Report-Water and Waste Disposal Systems," with appropriate supplements, may be used. Appraisal reports may be prepared by the FmHA engineer or, if desired by the grant approval official, another qualified appraiser.

(c) The application review and approval procedures outlined in § 1942.5 of subpart A of this part 1942 will be followed.

(d) Grants will be approved in accordance with this subpart and Exhibit B of FmHA Instruction 1901-A, which is available in any FmHA office.

(e) Grants requiring National Office review will be submitted in accordance with § 1942.5(b)(1) of subpart A of this part 1942.

(f) Each letter of conditions involving a grant will contain the following:

(1) Paragraphs which read:

"Attached is a copy of Form FmHA 1942-31, "Association Water or Sewer System Grant Agreement," for your review. You will be required to execute a completed form at the time of grant closing."

"The applicant contribution shall be considered as the first funds expended except (insert appropriate exceptions if funds from other sources make an exception necessary). After providing for all authorized costs, any remaining FmHA projects funds will be considered FmHA grant funds and refunded to FmHA. If the amount of unused FmHA project funds exceeds the FmHA grant, that part would be FmHA loan funds."

(2) All items contained in § 1942.(a)(1) of subpart A of this part 1942 applicable to the grant funding.

(3) Environmental mitigation measures and other relative requirements.

(g) A copy of Form FmHA 1942-51, along with the letter of conditions and Form FmHA 1942-45, "Project Summary—Water and Waste Disposal and Other Utility-Type Projects," (including the required copy of Forms FmHA 1942-14, "Association Project Fund Analysis," and FmHA 442-7, "Operating Budget"), will be submitted to the National Office, Attention: Water and Waste Disposal Division, by the State Director not later than the time the letter of conditions is issued.

§ 1942.368 [Removed and Reserved]

§ 1942.369 Grantee contracts.

The requirements §§ 1942.4, 1942.17(1), and 1942.18 of subpart A of this part 1942 will be followed when concurring in agreements between grantees and third parties.

§ 1942.370 Planning and performing development.

Planning and performing development will be handled in accordance with §§ 1942.9 and 1942.18 of subpart A of this part 1942.

§ 1942.371 Preparation for grant closing.

(a) § 1942.6 of subpart A of this part 1942 will be followed when preparing for grant closing.

(b) The requirements of § 1942.17(n)(1) of subpart A of this part 1942 will be followed for water and waste disposal development grants.

§§ 1942.372-1942.373 [Removed and Reserved]

§ 1942.374 Grant closing and delivery of funds.

(a) Grants will be closed in accordance with instructions received from the Office of the General Counsel (OGC). FmHA policy is not to disburse grant funds from the Treasury until they are actually needed by the applicant. Borrower funds will be disbursed before the disbursal of any FmHA grant funds.

(1) FmHA or other loan funds will be disbursed before the disbursal of any FmHA grant funds except when:

(i) Interim financing of the total estimated amount of loan funds needed during construction is arranged, and

(ii) All interim funds have been disbursed, and

(iii) FmHA grant funds are needed before the FmHA or other loan can be closed.

(2) If grant funds are available from other agencies and are transferred to the Finance Office for disbursement by FmHA, these grant funds shall be disbursed in accordance with the agreement governing such agencies' participation in the project.

(3) Any grant funds remaining will be handled in accordance with § 1942.17(p)(6) of subpart A of this part 1942.

(b) FmHA grant funds will be disbursed using multiple advances in accordance with § 1942.17(p)(2) of subpart A of this part 1942.

(c) Payment for construction will be made in accordance with § 1942.17(p)(5) subpart A of this part 1942.

(d) Form FmHA 1942-31 will be completed and executed in accordance with the requirements of grant approval and closing instructions. District Directors or State Directors are authorized to sign the grant agreement on behalf of FmHA. For grants that supplement FmHA loan funds, the grant

should be closed simultaneously with the closing of the loan. However, when grant funds will be disbursed before loan closing as provided in paragraph (a)(1) of this section, the grant will be closed not later than the delivery date of the first advance of grant funds. The grant will be considered closed when Form FmHA 1942-31 has been properly executed. Incorporated as a part of this subpart is Form FmHA 1942-31, which appears as Exhibit C to this subpart.

§ 1942.375 [Removed and Reserved]

§ 1942.376 Actions subsequent to grant closing.

Section 1942.8 (f) and (g) of subpart A of this part 1942 will be followed for water and waste disposal development grants.

§ 1942.377 Grant servicing.

Grants will be serviced in accordance with § 1951.215 of subpart E and subpart O of part 1951 of this chapter.

§ 1942.378 Grant cancellation.

The District Director or State Director may prepare and execute Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," in accordance with the Forms Manual Insert. If the docket has been forwarded to OGC, that office will be notified of the cancellation by a copy of Form FmHA 1940-10. The grantee's attorney and engineer, if any, should be notified of the cancellation. The grantee's attorney and engineer may be provided a copy of the notification to the grantee.

§ 1942.379 [Removed and Reserved]

§ 1942.380 Subsequent grants.

Subsequent grants will be processed in accordance with this subpart.

§ 1942.381 Regional commission grants.

Grants are sometimes made by regional commissions for projects eligible for FmHA assistance. FmHA has agreed to administer such funds in a manner similar to administering FmHA assistance.

(a) When FmHA has funds in the project, no charge will be made for administering regional commission funds.

(b) When fmHA has no loan or grant funds in the project, an administrative charge will be made pursuant to the Economy Act of 1932, as amended (31 U.S.C. 1535). A fee of five percent (5%) of the first $50,000 of a regional commission grant and one percent (1%) of any amount over $50,000 will be paid FmHA by the commission.

(1) *Appluchian Regional Commission (ARC).* Exhibit A of this subpart will be followed in determining the responsibilities of FmHA. The ARC Federal Co-Chairman and the FmHA State Director will provide each other with the necessary notification and certification.

(2) *Other regional commissions.* Title V of the Public Works and Economic Development Act of 1965 authorizes other commissions similar to ARC. Exhibit B of this subpart will be used to develop a separate project management agreement between FmHA and the commission for each project. The agreement should be prepared by the FmHA State Director as soon as notification is received that a commission grant will be made and the amount is confirmed

(c) Regional commission grants should be obligated as soon as possible in accordance with § 1942.5(d) of subpart A of this part 1942 except that the announcement proecdure referred to in § 1942.5(d)(6) is not applicable. Regional commission grants will be obtained from the Finance Office in the same manner as FmHA funds are obtained

§ 1942.382 Audits.

Audits will be handled in accordane with § 1942.17(q)(4) of subpart A of this part 1942.

§ 1942.383 Management assistance.

Grant recipients will be supervised to the extent necessary to assure that facilities are constructed in accordance with approved plans and specifications and to assure that funds are expended for approved purposes.

§ 1942.384 State supplements and guides.

This subpart may be supplemented by state supplements and guides in accordance with § 1942.16 of subpart A of this part 1942.

§ 1942.385 Delegation of authority.

The State Director is responsible for the overall implementation of the authorities contained in this subpart and may redelegate any such authority to appropriate FmHA employees.

§§ 1942.386-1942.400 [Removed and Reserved]

Subpart H—Part 1942

5. Subpart H to part 1942 is revised by removing Exhibit D.

Dated: May 15, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-16252 Filed 7-10-91; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1417-91]

Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements provisions of the Immigration Act of 1990 (IMMACT), Public Law 101-649, November 29, 1990, as they relate to temporary alien workers seeking nonimmigrant classification and admission to the United States under sections 101(a)(15) (H), (L), (O), and (P) of the Immigration and Nationality Act (Act), 8 U.S.C. 1101. This rule also contains technical amendments which reflect the Service's operating experience under the H and L classifications. This rule will conform Service policy to the intent of Congress as it relates to these classifications, implement new nonimmigrant classifications and requirements established by Public Law 101-649, and clarify for businesses and the general public requirements for classification, admission, and maintenance of status.

DATES: Written comments must be submitted on or before August 12, 1991.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. To ensure proper handling, please reference INS No. 1417-91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7223, Washington, DC 20536, telephone (202) 514-3946.

SUPPLEMENTARY INFORMATION: The discussion that follows relates to the major changes which Public Law 101-649 made to the H and L nonimmigrant classifications, and the major requirements for the newly established O and P nonimmigrant classifications.

H Visa Classification

Public Law 101-649 significantly changed the definition of the H-1B. category and imposed a numerical limit classification on some H nonimmigrants.

Under existing law, the H-1B nonimmigrant classification applies to "aliens of distinguished merit and ability." Aliens who are members of the professions (except certain foreign physicians) and aliens who are prominent in their field are classifiable under current law as H-1B aliens of distinguished merit and ability. Public Law 101-649 significantly changed the definition of the H-1B classification by (1) creating two new nonimmigrant O and P classifications, (2) changing the reference to aliens who are members of the professions to aliens in specialty occupations, (3) requiring approval of a labor condition application by the Secretary of Labor before the Attorney General can grant H-1B classification, and (4) removing the restriction on H-1B classification for foreign physicians who are coming to the United States to perform patient care, rather than to do teaching or research at a public or private nonprofit institution. Since the restriction on H-1B classification for foreign physicians was eliminated, this rule proposes to remove the special requirements for physicians in existing H regulations at 8 CFR 214.2(h)(4)(v)(B).

Without specifying the appropriate nonimmigrant visa classification, section 222 of Public Law 101-649 provided for admission of aliens (1) who will perform services of an exceptional nature requiring exceptional merit and ability relating to a Department of Defense (DOD) cooperative research and development project or a coproduction project under a reciprocal Government-to-Government agreement administered by the Secretary of Defense, and in section 223, (2) aliens who will participate in a special education exchange visitor program which provides for practical training and experience in the education of children with physical, mental, or emotional disabilities. This proposed rule provides that these workers will be classified as H-1B and H-3 nonimmigrants respectively, but will not be subject to the requirements for classification which apply to other H-1B or H-3 nonimmigrants. This rule proposes special eligibility requirements for aliens in DOD projects and special education exchange programs.

Public Law 101-649 imposed a numerical limit on the number of aliens who can be granted classification or issued visas each year under certain H classifications. This proposed rule provides at 8 CFR 214.2(h)(8)(ii) that aliens included in a new petition will be counted in the order that petitions are filed for purposes of the numerical limits. Aliens classified as H-1B in specialty occupations are limited to 65,000 per year; aliens classified as H-1B to work on DOD cooperative research and development projects or coproduction projects are limited to no more than 100 at any time; aliens classified as H-2B to perform nonagricultural work are limited to 66,000 per year; and aliens classified as H-3 participants in special education exchange programs are limited to 50 per year.

This proposed rule amends the Service's regulations at 8 CFR 214.2(h) to reflect all of the changes made by Public Law 101-649. The following further discusses some of the major changes to H regulations:

Removal of the Prominence Category

Under existing regulations the H-1B prominence category includes aliens who have sustained national or international acclaim and recognition in their field, aliens who have exceptional career achievement in business, and aliens who are unique or traditional artists. Public Law 101-649 replaced this category with two new nonimmigrant categories that have different qualifying standards. The new O classification applies to aliens who have extraordinary ability in the sciences, arts, education, business, or athletics, or extraordinary achievement in motion picture and television productions. The new P classification applies to certain artists, entertainers, and athletes. It may result that some aliens who qualified for H-1B classification under the prominence category in existing regulations, such as business persons with exceptional career achievement, may not qualify for H-1B or the new O or P classification under Public Law 101-649.

Aliens in a Specialty Occupation

The definition and standards for an alien in a specialty occupation mirror the Service's current requirements for aliens who are members of the professions. Public Law 101-649 amended section 214 of the Act to define specialty occupation as an occupation which requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) is required as a minimum for entry into the occupation in the United States. It further required the alien to have any required state license to practice in the occupation, the degree required for the occupation, or experience in the specialty equivalent to completion of the degree and recognition of expertise in the specialty through progressively responsible positions. This proposed rule amends regulations at 8 CFR 214.2(h)(4)(iii) to change all references to "profession" to "specialty occupation" and to specify the same standards for qualifying as an alien in a specialty occupation that were indicated for an alien who is a member of the professions under existing regulations.

Labor Condition Application

Public Law 101-649 made approval of a labor condition application by the Secretary of Labor under section 212(n) of the Act a prerequisite for approval of H-1B nonimmigrant classification by the Service. Under current law, the Service makes two determinations: whether a position offered is a professional one and whether the alien beneficiary qualifies as a member of the relating profession. Under the new law, the determination of whether a position involves a specialty occupation will be made by the Service when it adjudicates the petition, not by the Department of Labor when it makes a determination on the labor condition application. The Department of Labor will consider only the specific requirements of the labor condition application.

L Visa Classification

The intent of Public Law 101-649 as it relates to the L classification was to broaden its utility for international companies. To comply with Congressional intent, this proposed rule adopts the more liberal definitions of manager and executive now specified in section 101(a)(44) (A) and (B) of the Act. The definitions are nearly the same as those in existing L regulations, except that Public Law 101-649 includes higher level management of an essential function under managerial capacity, and prohibits use of the number of employees as the only factor in determining managerial or executive capacity. The L regulations have also been modified to include a more liberal interpretation of specialized knowledge as defined in section 214(c)(2)(B) of the Act.

Under Public Law 101-649, an intracompany transferee may have been employed abroad continuously for one year by the same employer within the preceding three years.

The definition of affiliate at 8 CFR 214.2(l)(1)(ii)(L) is being modified by Public Law 101-649 to include international accounting firms which provide accounting services along with managerial and consulting services and which market their services under an internationally recognized name under an agreement with a worldwide

coordinating organization that is owned and controlled by the member accounting firms.

Another significant change made by Public Law 101–649 was extension of the total period of stay for managers and executives to seven years. However, the period of stay for aliens in a specialized knowledge capacity was reduced from the possible six years at the present time to five years. This rule proposes to revise L regulations to reflect these time periods without any showing of extraordinary circumstances. The regulations also propose to provide at 8 CFR 214.2(l)(15) that when the alien was initially admitted to the United States in a specialized knowledge capacity and is later promoted to a managerial or executive position, he or she must have been employed in the managerial or executive position (and had such change in employment approved by the Service) for at least two years to be eligible for the total period of stay of seven years.

O Visa Classification

The new O visa classification established by Public Law 101–649 includes three categories of aliens. They are: O–1 aliens of extraordinary ability in the sciences, arts, education, business, or athletics, O–1 aliens who have extraordinary achievement in motion picture and television productions, and O–2 accompanying aliens to artists and athletes. The admission of an O–1 alien must substantially benefit the United States. This proposed rule requires an O–1 petition to be accompanied by an explanation of the economic, social, educational, cultural, or other benefit to the United States that will result from the alien's admission.

The O–1 classification for aliens of extraordinary ability requires a different and higher standard than the O–1 classification for aliens of extraordinary achievement in motion picture and television productions. Separate qualifying standards are reflected in this proposed rule. Extraordinary ability requires sustained national or international acclaim while extraordinary achievement could be a one-time extraordinary accomplishment.

A petition can only be approved for an event or performance. The Service intends to interpret the terms as broadly as possible. For example, the term event is meant to include an entire season of an opera company or an entire tour by a circus group.

The O–2 accompanying aliens must be coming to the United States to assist an O–1 artist or athlete in a specific event or performance, be an integral part of the performance, and have critical skills and experience with the O–1 artist or athlete. When the event involves a motion picture or television production, the O–2 accompanying alien must have a pre-existing, longstanding working relationship with the O–1 alien, or it must be demonstrated that continuing participation of the accompanying alien is essential to successful completion of a production where significant principal photography will take place inside and outside the United States.

Public Law 101–649 requires the Attorney General to consult with peer groups, labor organizations, and/or management organizations before granting O–1 or O–2 classification. This proposed rule specifies procedures which encourage the petitioner to obtain a written advisory opinion from an appropriate organization prior to filing a petition with the Service to ensure timely adjudication of an O–1 or O–2 petition. The rule recognizes that when the Service itself is required to obtain a written advisory opinion from an appropriate organization, considerably longer adjudication time will be required.

P Visa Classification

Public Law 101–649 establishes the new P nonimmigrant classification exclusively for athletes, artists, and entertainers and divides it into three distinct categories. They are: P–1 classification for internationally recognized athletes and members of internationally recognized entertainment groups; P–2 classification for artists or entertainers in a reciprocal exchange program; and P–3 classification for artists or entertainers in culturally unique programs. The P–1 and P–3 classifications share a numerical cap of 25,000 per year on the number of aliens who can be granted these classifications.

It is unclear from the statutory language of the P classifications whether Congress intended aliens who provide essential support to athletes, artists, and entertainers to be given P classification. As a practical matter, principal aliens in these occupations traditionally require a few to a large number of support personnel in order to successfully perform their services. For example, an internationally recognized athlete may be provided support by a manager and trainer. Musical groups, ballet companies, and theater groups may be supported by a large number of essential personnel in various occupations such as directors and make-up artists. The Service believes, from operating experience, that it would not be feasible for the petitioner to obtain H–2B classification for each support person because of timing and paperwork requirements. This proposed rule provides for P classification of essential support persons to P–1, P–2, and P–3 athletes, artists, and entertainers.

This rule incorporates the specific statutory requirements for each P classification and specifies the standards for qualifying under each. The discussion that follows reflects major requirements for the categories:

P–1 Classification for Internationally Recognized Athletes

The P–1 classification applies to athletes who are internationally recognized for their performance as an individual athlete or as a member of an internationally recognized athletic team. An employer must petition for the alien to come to the United States to participate in a specific athletic competition. When the petition involves an individual athlete, the period of stay may be for an initial period not to exceed five years, and may be extended for an additional five years for a total period of stay of 10 years. The period of stay for an athletic team is limited to the time required to complete the specific athletic competition. Consultation with labor organizations that have expertise in the specific field of athletics is required before the Service can grant P–1 classification.

P–1 Classification for Members of Internationally Recognized Entertainment Groups

The P–1 classification requires entertainment groups to have been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time which the Service proposes to be at least one year. An individual entertainer cannot qualify for P–1 classification, just as an entertainment group cannot qualify for O–1 classification. Pub. L. 101–649 requires each member of the entertainment group to have had a sustained and substantial relationship with the group over a period of at least one year and provide functions integral to the performance of the group. The group must be petitioned for by an employer to come to the United States for a specific performance, and may be admitted for a period of stay necessary to complete the performance. Consultation with labor organizations that have expertise in the specific field of entertainment is required before the Service can grant P–1 classification to members of an entertainment group.

P-2 Artist or Entertainer in a Reciprocal Exchange Program

Public Law 101-649 provides for an individual artist or entertainer (or artistic or entertainment group) to come to the United States to perform under a reciprocal exchange program that is between an organization or organizations in the United States and an organization in one or more foreign countries. The exchange program must provide for the temporary exchange of artists and entertainers between the United States and the foreign countries on an individual-for-individual or group-for-group basis. Since Public Law 101-649 requires the appropriate labor organization to ensure that there is reciprocity, this proposed rule requires the petitioner to show that an appropriate labor organization in the United States was involved in negotiating, or has concurred with, arrangements for the reciprocal exchange of United States and foreign artists or entertainers. The sponsoring organization need not be an employer to petition for aliens under a reciprocal exchange program. The aliens are to be admitted for the specific event or performance and may not be readmitted unless the alien has remained outside the United States for at least three months after the date of his or her most recent admission. The Service can waive this requirement for individual artists or entertainers on tour where imposition of the requirement would cause undue hardship. Aliens under the P-2 classification will not be subject to a numerical limit.

P-3 Classification for Artists or Entertainers in Culturally Unique Programs

The Service interprets the P-3 classification for artists or entertainers in culturally unique programs under Public Law 101-649 as the replacement category for the existing H-1B prominence category for unique and traditional artists. This proposed rule duplicates the standards for that H-1B category for P-3 classification. Consultation with a labor organization that has expertise in the specific field of entertainment is required before the Service can grant P-3 classification. As with P-2 aliens, those classified as P-3 must remain outside the United States for three months after the date of the most recent admission, unless the Service waives the requirement.

General Statement on Potential Comments Regarding the O and P Categories

The Service wants to establish a procedure for the filing and adjudication of O and P petitions which will facilitate international travel effecting the entertainment, sports, and business communities of the United States. Therefore, the Service desires to obtain proposals and suggestions for streamlining the petitioning process for these nonimmigrant categories to minimize the paperwork essential to sound adjudications consistent with statutory language. The Service would also like comments on whether this proposed rule is more restrictive than was intended by the statute.

To better focus potential comments regarding the proposed rule, comments should concentrate on factors which can shorten the petitioning process. For example, the consultation process involving those cases where the Service itself must obtain the written consultation is difficult and cumbersome. Suggestions on how to streamline this process would be welcome. A suggestion to eliminate the consultation process is, obviously, in direct contradiction to the statute and could not be implemented.

Another area in which the Service desires to obtain comments involves the evidence required to establish eligibility for the O and P classifications. Suggestions on what evidence would establish extraordinary achievement, extraordinary ability, sustained national or international acclaim would be welcome.

The Service would also be open to proposals for expedited procedures to minimize repeated adjudications involving aliens who had previously qualified as outstanding or extraordinary. For example, should an employer who wishes to employ an O nonimmigrant alien who has been classified as such an alien on two previous occasions be required to establish the beneficiary's sustained international or national acclaim again or can the petitioning process be streamlined in some way. Should there be a time limit, for example, five years, on how long a previous Service determination is valid.

The Service has proposed that petitions for the O and P nonimmigrant classifications be filed no more than 90 days prior to the need of the alien's services. The purpose of this restriction is to ensure orderly processing of petitions for these classifications. The statute provides that no more than 25,000 P-1 and P-3 principal aliens may be admitted in one fiscal year. The Service anticipates that failure to provide such filing restrictions would result in a "run" on this limited supply of nonimmigrant numbers by employers who fear that an adequate supply of visas will not be available in the latter part of the year. The Service proposal should prevent a run caused by an unreasonable fear of an unavailability of numbers (which can itself cause the unavailability). Our experience with other nonimmigrant petitions indicates that this precaution is not likely to be needed with regard to the H-1b petitions for specialty occupations and H-2b petitions for temporary workers. The Service does not anticipate that this restriction will cause any undue hardship on petitioners since historically petitioners rarely, if ever, file more than 90 days in advance of the date the alien's services are needed. It is believed that the primary reason a petitioner might change its filing practices would be to reserve a quota number well in advance, which is exactly what the Service wishes to avoid. Another purpose of the time limitation is to avoid having to readjudicate the petition due to changed circumstances and to avoid having to deal with the substitution of accompanying aliens. Accordingly, the Service desires comments from the public regarding whether a time limitation is desirable for H petitions as well as the O and P petitions, whether the 90 day time frame is a realistic requirement, and whether some other timeframe (e.g. 180 days or 270 days) would be more advantageous.

The Service's definition of the term event is very broad and is meant to encompass a number of activities related to the alien's principal purpose in coming to the United States. For example, an entertainer who is admitted to the United States to make a movie will also, in all likelihood, be engaged in activities promoting the film. Such activities are considered part of the event and are within the scope of the initial petition. However, the Service recognizes that an alien may engage in a number of activities that are not as clearly related to the principal purpose of the alien's visit as in the example provided. Comments from public in this area which will assist the Service in determining what activities are in the scope of the initial petition will be welcome.

The Service has proposed standards for aliens of extraordinary achievement which are substantially lower than those for aliens of extraordinary ability. The Service would like comments on

whether the proposed standard for extraordinary achievement is consistent with statutory intent.

Finally, the Service would like comments regarding the length of time, if any, that essential support personnel and accompanying aliens should be affiliated with the principal alien before they can be accorded nonimmigrant status based on that relationship.

The Service believes that the proposed rule as written strikes a good balance between the needs of the entertainment, sports and business communities of the United States and the protection of the United States labor market.

Technical Amendments

(1) *Adjudication of H, L, O and P petitions only at Service Centers.* This proposed rule modifies the filing procedures in H and L regulations and specifies in the filing procedures in new O and P regulations that petitioners must file H, L, O, and P petitions, even in emergent situations, only with the appropriate Service Center, except where specifically indicated in these regulations. The Service believes that centralization of adjudication of these petitions only in the Service Centers is necessary to assure consistency in decisions, to control the numerical limits required for certain classifications, and to ensure that the statutory requirement for consultation with outside organizations is accomplished where required. Each Service Center will develop its own procedures for handling emergent cases.

(2) *New petition.* This rule proposes to change references to Form I-129H, Petition for Temporary Worker or Trainee and Form I-129L, Petition for Intracompany Transferee to Form I-129, Petition for Nonimmigrant Worker. This new Form I-129 will be used to petition for a number of nonimmigrant classifications besides H, L, O, and P classification. The most significant benefit of this new form is that it combines several requests for action on one form, including request for classification, request to extend the alien's stay in the United States, and request to change an alien's status from one nonimmigrant classification to another. It is anticipated that this new form will be implemented on October 1, 1991 along with the provisions in these regulations.

(3) *Change of employer under the H classification.* When an alien is in the United States and decides to change employers, current H regulations indicate that the new employer must file a petition, but an extension of stay is not required for the alien until the alien's previously authorized stay is about to expire. Operating experience has shown that this procedure is cumbersome and confusing for the public and Service officers. This rule proposes to modify 8 CFR 214.2(h)(2)(i)(D) to require the new employer to file the petition on the new Form I-129 requesting classification and extension of the alien's stay. If the new petition is approved, extension of the alien's stay may be granted for the validity of the petition.

(4) *Petition extension/extension of stay.* Current regulations for the H and L classifications require the filing of an extension of stay application by the beneficiary, accompanied by an employer letter (and in some cases, a Department of Labor determination) stating the current terms and conditions of employment. If the alien's extension of stay application is approved, the petition is automatically extended. This procedure has created problems in extension cases where the alien's eligibility for the classification is questioned. In addition, it creates problems when the alien is required to leave the United States for business or personal reasons before the alien's extension application is approved. Since a request to extend a petition and a request to extend an alien's stay in the United States have been combined on one form (Form I-129), this rule proposes to revise the H and L regulations to require the filing of Form I-129 (without supporting documents) by the petitioner to request extension of the validity of the petition and extension of the alien's stay. If the alien leaves the United States while a decision is pending, extension of the petition only can be approved and notice of such approval sent to the consulate where the alien will apply for a visa. This proposed rule reflects the same extension procedures for the new O and P classifications.

(5) *Extension periods/total period of stay.* Public Law 101-649 limits the period of stay for aliens in a number of categories and occupations, such as six years for H1-B aliens in a specialty occupation, seven years for L-1 managers and executives, five years for specialized knowledge, 10 years for P-1 individual athletes, and the time required to complete an event or performance for O-1 and O-2 aliens. This proposed rule specifies initial admission periods and extension periods that are consistent with the maximum period of stay allowable and will ease the paperwork burden on the public and the Service.

(6) *Temporary/permanent intent.* This rule proposes to amend the H and L regulations to remove the evidentiary requirements for petitioners and aliens to demonstrate their temporary intent whenever a labor certification has been approved or a preference petition has been filed in the alien's behalf. The Service believes that adherence to the time limits on a temporary stay in the United States is sufficient to demonstrate temporary intent. The proposed rule for the H, L, O, and P classifications provide that the approval of a labor certification or the filing of a preference petition shall not be a basis for denying classification, admission, or status under these classifications.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this rule have been forwarded to the Office of Management and Budget, under the provisions of the Paperwork Reduction Act, for review and clearance.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, aliens, authority delegation, employment, organization and functions, passports and visas.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a, 1187 and 8 CFR part 2.

2. Section 214.2 is amended by:

a. Revising paragraphs (h)(1), (h)(2)(i)(A), (C), (D), (E), and (h)(2)(ii);

b. Revising paragraph (h)(4) heading;

c. Revising paragraph (h)(4)(i) through (h)(4)(iii);

d. Removing paragraphs (h)(4)(iv) and (h)(4)(v);

e. Redesignating paragraphs (h)(4)(vi) and (h)(4)(vii) as (h)(4)(iv) and (h)(4)(v);

f. Revising newly redesignated paragraph (h)(4)(iv);

g. Adding new paragraphs (h)(4)(vi), (h)(6)(vi)(E), and (h)(7)(iv);

h. Revising paragraph (h)(8);

i. Redesignating paragraphs (h)(9)(iii)(A) through (h)(9)(iii)(C) as (h)(9)(iii)(B) through (h)(9)(iii)(D);

j. Adding a new paragraph (h)(9)(iii)(A);

k. Revising newly designated paragraphs (h)(9)(iii)(B) and (h)(9)(iii)(D);

l. Revising paragraphs (h)(10)(ii), (h)(10)(iii), (h)(11)(i), (h)(13) through (h)(16) and (h)(18) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) *Temporary employees*—(1) *Admission of temporary employees*—(i) *General.* Under section 101(a)(15)(H) of the Act, an alien may be authorized to come to the United States temporarily to perform services or labor for, or to receive training from an employer, if petitioned for by that employer. Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(H)(i)(a) of the Act as a registered nurse, or under section 101(a)(15)(H)(i)(b) as an alien who is coming to perform services in a specialty occupation or services relating to a Department of Defense (DOD) cooperative research and development project or coproduction project, or under section 101(a)(l5)(H)(ii)(a) of the Act as an alien who is coming to perform agricultural labor or services of a temporary or seasonal nature, or under section 101(a)(25)(H)(ii)(b) of the Act as an alien coming to perform other temporary services or labor, or under section 101(A)(15)(H)(iii) of the Act as an alien who is coming as a trainee or participant in a special education exchange visitor program. These classifications are commonly called H-1A, H-1B, H-2A, H-2B, and H-3, respectively. The employer must file a petition with the Service for review of the services or training and for determination of the alien's eligibility for classification as a temporary employee or trainee, before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures whereby these classifications may be applied for and granted, denied, extended, revoked, and appealed.

(ii) *Description of classifications.* (A) An H-1A classification applies to an alien who is coming temporarily to the United States to perform services as a registered nurse, meets the requirements of section 212(m)(1) of the Act, and will perform services at a facility for which the Secretary of Labor has determined and certified to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) of the Act for the facility.

(B) An H-1B classification applies to an alien who is coming temporarily to the United States:

(*1*) To perform services in a specialty occupation (except registered nurses, agricultural workers, aliens of extraordinary ability or achievement, accompanying aliens, athletes, and entertainers) described in section 214(i)(1) of the Act, that meets the requirements of section 214(i)(2) of the Act, and for whom the Secretary of Labor has determined and certified to the Attorney General that the prospective employer has an approved labor condition application under section 212(n)(1) of the Act, or

(*2*) To perform services of an exceptional nature requiring exceptional merit and ability relating to a cooperative research and development project or a coproduction project provided for under a Government-to-Government agreement administered by the Secretary of Defense.

(C) An H-2A classification applies to an alien who is coming temporarily to the United States to perform agricultural work of a temporary or seasonal nature.

(D) An H-2B classification applies to an alien who is coming temporarily to the United States to perform nonagricultural work of a temporary or seasonal nature, if unemployed persons capable of performing such service or labor cannot be found in this country. This classification does not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession. The temporary or permanent nature of the services or labor to be performed must be determined. This classification requires a temporary labor certification issued by the Secretary of Labor or the Governor of Guam, or a notice from one of them that certification cannot be made prior to the filing of a petition with the Service.

(E) An H-3 classification applies to an alien who is coming temporarily to the United States:

(*1*) As a trainee, other than to receive graduate medical education or training, or training provided primarily at or by an academic or vocational institution, or

(*2*) As a participant in a special education exchange visitor program which provides for practical training and experience in the education of children with physical, mental, or emotional disabilities.

(2) * * *

(i) * * *

(A) *General.* A United States employer seeking to classify an alien as an H-1A, H-1B, H-2A, H-2B, or H-3 temporary employee shall file a petition on Form I-129, Petition for Nonimmigrant Worker, only with the Service Center which has jurisdiction in the area where the alien will perform services or receive training, even in emergent situations, except as provided in this section. Petitions in Guam and the Virgin Islands, and petitions involving special filing situations as determined by the Service's Headquarters, shall be filed with the local Service Office or a designated Service Office. The petitioner may submit a legible photocopy of a document in support of the visa petition without the original. The original document shall be submitted if requested by the director.

* * * * *

(C) *Services or training for more than one employer.* If the beneficiary will perform nonagricultural services for, or receive training from, more than one employer, each employer must file a separate petition with the Service Center that has jurisdiction over the area where the alien will perform services or receive training, unless an established agent files the petition.

(D) *Change of employers.* If the alien is in the United States and decides to change employers, the new employer must file a petition on Form I-129 requesting classification and extension of the alien's stay in the United States. If the new petition is approved, the extension of stay may be granted for the validity of the approved petition. The validity of the petition and the alien's extension of stay shall conform to the limits on the alien's temporary stay that are prescribed in paragraph (h)(13) of this section. The alien is not authorized to begin the new employment until the petition is approved.

(E) *Amended or new petition.* The petitioner shall file an amended or new petition with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the beneficiary's eligibility as specified in the original approved petition. An amended or new H-1A, H-1B, H-2A, or H-2B petition must be accompanied by a current or new Department of Labor determination.

* * * * *

(ii) *Multiple beneficiaries.* More than one beneficiary may be included in an H-2A, H-2B, or H-3 petition if the beneficiaries will be performing the same service or receive the same training for the same period of time, and in the same location. If they will be applying for visas at more than one consulate, the petitioner shall file a

separate petition for each consulate. If visa-exempt beneficiaries will be applying for admission at more than one port of entry, the petitioner shall file a separate petition for each port of entry.

* * * * *

(4) *Petition for alien to perform services in a specialty occupation or services relating to a DOD cooperative research and development project or coproduction project (H-1B)*—(i)(A) *Types of H-1B classification.* An H-1B classification may be granted to an alien who:

(*1*) Will perform services in a specialty occupation which requires theoretical and practical application of a body of highly specialized knowledge and attainment of a baccalaureate or higher degree or its equivalent as a minimum requirement for entry into the occupation in the United States, and who is qualified to perform services in the specialty occupation because he or she has attained a baccalaureate or higher degree or its equivalent in the specialty occupation, or

(*2*) Based on reciprocity, will perform services of an exceptional nature requiring exceptional merit and ability relating to a DOD cooperative research and development project or a coproduction project provided for under a Government-to-Government agreement administered by the Secretary of Defense.

(B) *General requirements for petitions involving a specialty occupation.* (*1*) Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain approval of a labor condition application from the Department of Labor in the occupational specialty in which the alien(s) will be employed.

(*2*) Approval by the Department of Labor of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(l) of the act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

(*3*) If all of the beneficiaries covered by an H-1B labor condition application have not been identified at the time a petition is filed, petitions for beneficiaries may be filed at different times during the validity of the approved labor condition application using photocopies of the same approval. Each petition must reference all previously approved petitions by file number for that labor condition application.

(*4*) When petitions have been approved for the total number of workers specified in the approved labor condition application, substitution of aliens against previously approved openings shall not be made and a new labor condition application shall be required.

(*5*) If the Secretary of Labor notifies the Service that the petitioning employer has failed to meet a condition in its labor condition application, or that there was a misrepresentation of a material fact in the application, the Service shall not approve new petitions in specialty occupations for that employer, or extend the stay of aliens employed in specialty occupations by that employer for a period of one year from the date of receipt of such notice.

(*6*) If approval of the employer's labor condition application is suspended or invalidated by the Department of Labor, the Service will not suspend or revoke the employer's approved petitions for aliens already employed in specialty occupations, if the employer has agreed to comply with the terms of the labor condition application for the duration of the authorized stay of aliens it employs.

(ii) *Definitions*—(A) *Specialty occupation* means an occupation which requires theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation in such fields of human endeavor as architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires completion of a specific course of education at an accredited college or university, culminating in a baccalaureate or higher degree in a specific occupational specialty, where attainment of such degree or its equivalent is the minimum requirement for entry into the occupation in the United States.

(B) *Recognized authority* means a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an opinion must state:

(*1*) The writer's qualifications as an expert;

(*2*) The writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom;

(*3*) How the conclusions were reached; and

(*4*) The basis for the conclusions, including copies or citations of any research material used.

(iii) *Criteria and documentary requirements for H-1B petitions involving a specialty occupation—(A) Standards for specialty occupation position.* To qualify as a specialty occupation, the position must meet the following criteria:

(*1*) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(*2*) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(*3*) The employer normally requires a degree or its equivalent for the position;

(*4*) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

(B) *Petitioner requirements.* The petitioner shall submit the following with an H-1B petition involving a specialty occupation:

(*1*) An approved labor condition application from the Department of Labor in the specialty occupation, valid for the dates of intended employment,

(*2*) a statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay,

(*3*) Evidence that the alien qualifies to perform services in the specialty occupation as described in paragraph (h)(4)(iii)(B) of this section, and

(*4*) A statement, signed by an authorized official of the employer, that the employer will be liable for the reasonable costs of return transportation of the alien abroad, if the alien is dismissed from employment by the employer before the end of the period of authorized admission pursuant to section 214(c)(5) of the Act.

(C) *Beneficiary qualifications.* To qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

(*1*) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(*2*) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(*3*) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

(*4*) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions related to the specialty.

(D) *Equivalence to completion of a college degree.* For purposes of paragraph (h)(4)(iii)(B)(*4*) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty; and shall be determined by one or more of the following:

(*1*) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;

(*2*) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

(*3*) An evaluation of education only by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

(*4*) Evidence of certification or registration from a nationally recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(*5*) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or progressively responsible work experience in areas related to the specialty, and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of progressive experience in the specialty. The Service will not evaluate equivalence to a Doctorate degree. If required by a specialty, the alien must hold the Doctorate degree. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

(*i*) Recognition of expertise in the specialty by at least two recognized authorities in the specialty occupation,

(*ii*) Membership in a recognized foreign or United States association or society in the specialty occupation,

(*iii*) Published material by or about the alien in professional publications, trade journals, books, or major newspapers,

(*iv*) Licensure or registration to practice the specialty occupation in a foreign country, or

(*v*) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

(iv) *General documentary requirements for H–1B classification in a specialty occupation.* An H–1B petition involving a specialty occupation shall be accompanied by:

(A) Documentation, certifications, affidavits, degrees, diplomas, writings, reviews, or any other required evidence sufficient to establish that the beneficiary is qualified to perform services in a specialty occupation as described in paragraph (h)(4)(i) of this section, and that the services the beneficiary is to perform are in a specialty occupation. The evidence shall conform to the following:

(*1*) School records, diplomas, degrees, affidavits, contracts, and similar documentation submitted must reflect periods of attendance, courses of study, and similar pertinent data, be executed by the person in charge of the records of the educational or other institution, firm, or establishment where education or training was acquired.

(*2*) Affidavits submitted by present or former employers or recognized authorities certifying to the recognition and expertise of the beneficiary shall specifically describe the beneficiary's recognition and ability in factual terms and must set forth the expertise of the affiant and the manner in which the affiant acquired such information.

(B) Copies of any written contracts between the petitioner and beneficiary, or a summary of the terms of the oral agreement under which the beneficiary will be employed, if there is no written contract.

* * * * *

(vi) *Criteria and documentary requirements for H–1B petitions involving DOD cooperative research and development projects or coproduction projects*—(A) *General.* (*1*) For purposes of H–1B classification, services of an exceptional nature relating to DOD cooperative research and development projects or coproduction projects shall be those services which require a baccalaureate or higher degree or its equivalent to perform the duties. The existence of this special program does not preclude the DOD from utilizing the regular H–1B provisions provided the required guidelines are met.

(*2*) The requirement for approval of a labor condition application from the Department of Labor shall not apply to petitions involving DOD cooperative research and development projects or coproduction projects.

(B) *Petitioner requirements.* (*1*) The petition must be accompanied by a verification letter from the DOD project manager for the particular project stating that the alien will be working on a cooperative research and development project or a coproduction project under a reciprocal Government-to-Government agreement administered by DOD. Details about the specific project are not required.

(*2*) The petitioner shall provide a general description of the alien's duties on the particular project and indicate the actual dates of the alien's employment on the project.

(*3*) The petitioner shall submit a statement indicating the names of aliens currently employed on the project in the United States and their dates of employment. The petitioner shall also indicate the names of aliens whose employment on the project ended in the past year.

(C) *Beneficiary requirement.* The petition shall be accompanied by evidence that the beneficiary has a baccalaureate or higher degree or its equivalent in the occupational field in which he or she will be performing services in accordance with paragraph

(h)(4)(iii)(B) and/or (h)(4)(iii)(C) of this section.

* * * * *

(6) * * *

(vi) * * *

(E) *Liability for transportation costs.* The petitioner shall submit a statement, signed by an authorized official, that the employer will be liable for the reasonable costs of return transportation of the alien abroad, if the alien is dismissed from employment by the employer before the end of the period of authorized admission pursuant to section 214(c)(5) of the Act.

(7) * * *

(iv) *Petition for participant in a special education exchange visitor program*—(A) *General requirements.* (*1*) The H-3 participant in a special education training program must be coming to the United States to participate in a structured program which provides for practical training and experience in the education of children with physical, mental, or emotional disabilities.

(*2*) The petition must be filed by a facility which has professionally trained staff and a structured program for providing education to children with disabilities, and for providing training and hands-on experience to participants in the special education exchange visitor program.

(*3*) The requirements in this section for alien trainees shall not apply to petitions for participants in a special education exchange visitor program.

(B) *Evidence.* An H-3 petition for a participant in a special education exchange visitor program shall be accompanied by:

(*1*) A description of the training program and the facility's professional staff, and details of the alien's participation in the training program (any custodial care of children must be incidental to the training), and

(*2*) Evidence that the alien participant is nearing completion of a baccalaureate or higher degree in special education, or already holds such a degree, or has extensive prior training and experience in teaching children with physical, mental, or emotional disabilities.

(8) *Numerical limits*—(i) *Limits on affected categories.* During each fiscal year, the total number of aliens who can be provided nonimmigrant classification is subject to a numerical limit as follows:

(A) Aliens classified as H1-B nonimmigrants, excluding those involved in DOD research and development projects or coproduction projects, may not exceed 65,000.

(B) Aliens classified as H-1B nonimmigrants to work for DOD research and development projects or coproduction projects may not exceed 100 at any time.

(C) Aliens classified as H-2B nonimmigrants may not exceed 66,000.

(D) Aliens classified as H-3 nonimmigrant participants in a special education exchange visitor program may not exceed 50.

(ii) *Procedures.* (A) Each alien (or job opening(s) for aliens in petitions with unnamed beneficiaries) included in a new petition shall be counted for purposes of the numerical limit. Aliens shall not be counted on requests for petition extension or extension of the alien's stay. The spouse and children of principal aliens classified as H-4 nonimmigrants shall not be counted in the numerical limit.

(B) Numbers will be assigned in the order that petitions are filed. If a petition is denied, the number(s) originally assigned to the petition shall be returned to the system which maintains and assigns numbers.

(C) For purposes of assigning numbers to aliens on petitions filed in Guam and the Virgin Islands, Headquarters Adjudications shall allocate numbers to these locations from the central system which controls and assigns numbers to petitions filed in other locations of the United States. The frequency with which numbers are allocated and the amount allocated shall be determined from workload patterns in these offices.

(D) When an approved petition is not used because the beneficiary(ies) does not apply for admission to the United States, the petitioner shall notify the Service Center Director who approved the petition that the number(s) have not been used. The petition shall be revoked pursuant to paragraph (h)(11)(ii) of this section and the unused number(s) shall be returned to the system which maintains and assigns numbers.

(E) If the total numbers available in a fiscal year are used, new petitions and the accompanying fee shall be rejected with a notice that numbers available for the particular nonimmigrant classification have been used until the beginning of the next fiscal year.

(9) * * *

(iii) * * *

(A) *H-1A petition.* An approved petition for an alien classified under section 101(a)(15)(H)(i)(a) of the Act shall be valid for a period of up to three years.

(B)(*1*) *H-1B petition in a specialty occupation.* An approved petition classified under section 101(a)(15)(H)(i)(b) of the Act for an alien in a specialty occupation shall be valid for a period of up to three years, but may not exceed the approval period of the labor condition application.

(*2*) *H-1B petition involving a DOD research and development or coproduction project.* An approved petition classified under section 101(a)(15)(H)(i)(b) of the Act for an alien involved in a DOD research and development project or a coproduction project shall be valid for a period of up to five years.

(C) * * *

(D)(*1*) *H-3 petition for alien trainee.* An approved petition for an alien trainee classified under section 101(a)(15)(H)(iii) of the Act shall be valid for a period of up to two years.

(*2*) *H-3 petition for alien participant in a special education training program.* An approved petition for an alien classified under section 101(a)(15)(H)(iii) of the Act as a participant in a special education exchange visitor program shall be valid for a period of up to 18 months.

* * * * *

(10) * * *

(ii) *Notice of intent to deny.* When an adverse decision is proposed on the basis of derogatory information of which the petitioner is unaware, the director shall notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

(iii) *Notice of denial.* The petitioner shall be notified of the reasons for the denial, and of his or her right to appeal the denial of the petition under 8 CFR Part 103. There is no appeal from a decision to deny an extension of stay to the alien.

(11) * * *

(i) *General.* (A) The petitioner shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under section 101(a)(15)(H) of the Act and paragraph (h) of this section. An amended petition on Form I-129 should be filed when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the change(s) to the director who approved the petition.

(B) The director shall revoke a petition only when the validity of the petition has not expired. However, a petition that has expired may be revoked in certain situations, such as those where the facts of the petition were not true and correct or where the

director determines that it is appropriate.

* * * * *

(13) *Admission.* (i) *General.* (A) A beneficiary shall be admitted to the United States for the validity period of the petition, plus a period of up to 30 days before the validity period begins and 30 days after the validity period ends. The beneficiary may not work except during the validity period of the petition.

(B) When an alien in an H classification has spent the maximum allowable period of stay in the United States, a new petition under sections 101(a)(15) (H) or (L) of the Act may not be approved unless that alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the time limit imposed on the particular H classification. Brief trips to the United States for business or pleasure during the required time abroad are not interruptive, but do not count towards fulfillment of the required time abroad. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purposes of any trips to the United States during the period that the alien was required to spend time abroad.

(ii) *H-1A limitation on admission.* An H-1A alien who has spent five, or in certain extraordinary circumstances, six years in the United States under section 101(a)(15)(H) of the Act may not seek extension, change status, or be readmitted to the United States under the H visa classification, unless the alien has resided and been physically present outside the United States, except for brief trips for pleasure or business, for the immediate prior year.

(iii) *H-1B limitation on admission*—(A) *Alien in a specialty occupation.* An H-1B alien in a specialty occupation who has spent six years in the United States under section 101(a)(15) (H) and/or (L) of the Act may not seek extension, change status, or be readmitted to the United States under the H or L visa classification, unless the alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the immediate prior year.

(B) *Alien involved in a DOD research and development or coproduction project.* An H-1B alien involved in a DOD research and development or coproduction project who has spent 10 years in the United States may not be given an extension of stay or change of status, or be readmitted to the United States under section 101(a)(15)(H) of the Act to perform services involving a DOD research and development project or coproduction project. A new petition or change of status under the H or L visa classification may not be approved for such an alien unless the alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the immediate prior year.

(iv) *H-2B and H-3 limitation on admission.* An H-2B alien who has spent three years in the United States under section 101(a)(15) (H) and/or (L) of the Act, or an H-3 alien who has spent 18 months under section 101(a)(15) (H) and/or (L) of the Act may not seek extension, change status, or be readmitted to the United States under the H or L visa classification unless the alien has resided and been physically present outside the United States for the immediate prior six months.

(v) *Exceptions.* The limitations in paragraphs (h)(13)(ii) through (h)(13)(iv) of this section shall not apply to H-1A, H-1B, H-2B, and H-3 aliens who did not reside continually in the United States and whose employment in the United States was seasonal or intermittent, or an aggregate of six months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. To qualify for this exception, the petitioner and the alien must provide clear and convincing proof that the alien qualifies for an exception. Such proof shall consist of evidence such as arrival and departure records, copies of tax returns, and records of employment abroad.

(14) *Extension of visa petition validity.* The petitioner shall file a request for a petition extension on Form I-129 to extend the validity of the original petition under section 101(a)(15)(H) of the Act. Supporting evidence is not required unless requested by the director. A request for a petition extension may be filed only if the validity of the original petition has not expired, the alien beneficiary is physically present in the United States, and the petitioner is requesting extension of the beneficiary's stay on the same petition. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. Even though the requests to extend the petition and the alien's stay are combined on the petition, the director shall make a separate determination on each. If the alien is required to leave the United States for business or personal reasons while the extension requests are pending, the petitioner may request the director to cable notification of approval of the petition extension to the consular office abroad where the alien will apply for a visa.

(15) *Extension of stay*—(i) *General.* The petitioner shall apply for extension of an alien's stay in the United States by filing a petition extension on Form I-129 accompanied by the documents described for the particular classification in paragraph (h)(15)(ii) of this section. When the total period of stay in an H classification has been reached, no further extensions may be granted.

(ii) *Extension periods*—(A) *H-1A extension of stay.* An extension of stay may be authorized for a period of up to two years for a beneficiary of an H-1A petition. The alien's total period of stay may not exceed five years, except in extraordinary circumstances. Beyond five years, an extension of stay not to exceed one year may be granted under extraordinary circumstances. Extraordinary circumstances shall exist when the director finds that termination of the alien's services will impose extreme hardship on the petitioner's business operation or that the alien's services are required in the national welfare, safety, or security interests of the United States. Each request for an extension of stay for the beneficiary of an H-1A petition must be accompanied by a current copy of the Department of Labor's notice of acceptance of the petitioner's attestation on Form ETA 9029.

(B) *H-1B extension of stay*—(*1*) *Alien in a specialty occupation.* An extension of stay may be authorized for a period of up to three years for a beneficiary of an H-1B petition in a specialty occupation. The alien's total period of stay may not exceed six years. The request for extension must be accompanied by an approved labor condition application for the specialty occupation valid for the period of time requested.

(2) Alien in a DOD research and development or coproduction project. An extension of stay may be authorized for a period up to five years for the beneficiary of an H-1B petition involving a DOD research and development project or coproduction project. The total period of stay may not exceed 10 years.

(C) *H-2A or H-2B extension of stay.* An extension of stay for the beneficiary of an H-2A or H-2B petition may be authorized for the validity of the labor certification or for a period of up to one year, except as provided for in paragraph (h)(5)(x) of this section. The alien's total period of stay as an H-2A or H-2B worker may not exceed three years, except that in the Virgin Islands,

the alien's total period of stay may not exceed 45 days.

(D) *H-3 extension of stay.* An extension of stay may be authorized for the length of the training program for a total period of stay as an H-3 trainee not to exceed two years, or for a total period of stay as a participant in a special education training program not to exceed 18 months.

(16) *Effect of approval of a permanent labor certification or filing of a preference petition on H classification*—(i) *H-1A or H-1B classification.* The approval of a permanent labor certification or the filing of a preference petition for an alien shall not be a basis for denying an H-1A or H-1B petition or a request to extend such a petition, or the alien's admission, change of status, or extension of stay. The alien may legitimately come to the United States for a temporary period as an H-1A or H-1B nonimmigrant and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the United States.

(ii) *H-2A, H-2B, and H-3 classification.* The approval of a permanent labor certification, or the filing of a preference petition for an alien in the same or a different job or training position and for the same petitioner shall be a reason by itself to deny the alien's extension of stay.

* * * * *

(18) *Use of approval notice, Form I-797.* The Service shall notify the petitioner on Form I-797 whenever a visa petition, an extension of a visa petition, or an alien's extension of stay is approved under the H classification. The beneficiary of an H petition who does not require a nonimmigrant visa may present a copy of the approval notice at a port of entry to facilitate entry into the United States. A beneficiary who is required to present a visa for admission and whose visa will have expired before the date of his or her intended return may use a copy of Form I-797 to apply for a new or revalidated visa during the validity period of the petition. The copy of Form I-797 shall be retained by the beneficiary and presented during the validity of the petition when reentering the United States to resume the same employment with the same petitioner.

* * * * *

§ 214.2 [Amended]

3. In § 214.2, paragraph (h)(2)(iii) is amended by removing the reference to "I-129H" in the first sentence.

4. In § 214.2, paragraph (h)(2)(iv) is amended by removing the term "H-1B and" in the first sentence.

5. In § 214.2, paragraph (h)(4)(v)(E) is amended by adding the phrase "in the same state" immediately after the word "valid" in the last sentence of the paragraph.

6. In § 214.2, paragraph (h)(5)(i)(A) is amended by changing the reference to "Form I-129H" to "Form I-129".

7. In § 214.2, paragraph (h)(6)(iii)(E) is amended by removing the term "on I-129H," after the word "petition", and removing the term "for I-129Hs" after the word "jurisdiction".

8. In § 214.2, paragraph (h)(6)(vi) introductory text is amended by removing the phrase "filed on Form I-129H".

9. In 214.2, paragraph (h)(7) is amended by changing the heading of this paragraph to read " *Petition for alien trainee or participant in a special education exchange visitor program (H-3)*—".

10. In § 214.2, paragraph (h)(7)(i) is amended by changing the heading of this paragraph to read "*Alien trainee.*" and changing the word "instruction" in the first sentence to "training".

11. In § 214.2, paragraph (h)(7)(ii) is amended by changing the heading of this paragraph to read "*Evidence required for petition involving alien trainee*—".

12. In § 214.2, paragraph (h)(7)(iii) is amended by changing the heading of this paragraph to read "*Restrictions on training program for alien trainee.*"

13. In § 214.2, paragraph (h)(9)(i) is amended by removing the term "Form I-171C, Notice of Approval or" in the second sentence of introductory text.

14. In § 214.2, paragraphs (h)(9)(ii)(A), (B), and (C) are amended by changing the reference to "(h)(9)(ii)" to "(h)(9)(iii)".

15. Section 214.2 is amended by;

a. Revising paragraphs (1)(1)(i), (1)(1)(ii)(A), (B), (C), (D), (F), (G), (K), and (L);

b. Revising paragraphs (1)(2)(i) and (1)(3)(iii);

c. Redesignating paragraphs (1)(3)(vi) and (1)(3)(vii) as paragraphs (1)(3)(vii) and (1)(3)(viii);

d. Revising paragraphs (1)(3)(v) introductory text;

e. Adding a new paragraph (1)(3)(vi);

f. Revising paragraphs (1)(5)(ii)(C) and (1)(6);

g. Revising paragraphs (1)(7)(i) introductory text;

h. Revising paragraphs (1)(7)(i)(C), (1)(7)(ii), (1)(8)(ii) and (1)(8)(iii), (1)(9)(i), (1)(10)(i), (1)(12), (1)(14)(i), (1)(15), and (1)(16) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(1) * * *

(1) * * *

(i) *General.* Under section 101(a)(15)(L) of the Act, an alien who within the preceding three years has been employed abroad for one continuous year by a qualifying organization may be admitted temporarily to the United States to be employed by a branch of that same employer or a parent, affiliate, or subsidiary of that employer in a managerial, executive, or specialized knowledge capacity. An alien transferred to the United States under this nonimmigrant classification is referred to as an intracompany transferee, and the organization which seeks the classification of an alien as an intracompany transferee is referred to as the petitioner. The Service has responsibility for determining whether the alien is eligible for admission and whether the petitioner is a qualifying organization. These regulations set forth the procedures whereby these benefits may be applied for and granted, denied, extended, or revoked. They also set forth procedures for appeal of adverse decisions and admission of intracompany transferees. Certain petitioners seeking the classification of aliens as intracompany transferees may file blanket petitions with the Service. Under the blanket petition process, the Service is responsible for determining whether the petitioner and its parent, branches, subsidiaries, and affiliates specified are qualifying organizations. The Department of State or, in certain cases, the Service is responsible for determining the classification of the alien.

(ii) * * *

(A) *Intracompany transferee* means an alien who, within three years preceding the time of his/her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his/her services to a branch of the same employer or a parent, subsidiary, or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge. Periods spent in the United States in lawful status for a branch of the same employer or a parent, subsidiary, or affiliate thereof and brief trips to the United States for business or pleasure shall not be

interruptive of the one year of continuous employment abroad, but such periods shall not be counted towards fulfillment of that requirement.

(B) *Managerial capacity* means an assignment within an organization in which the employee primarily:

(*1*) Manages the organization, or a department, subdivision, function, or component of the organization,

(*2*) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization,

(*3*) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed, and

(*4*) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

(C) *Executive capacity* means an assignment within an organization in which the employee primarily:

(*1*) Directs the management of the organization or a major component or function of the organization,

(*2*) Establishes the goals and policies of the organization, component, or function,

(*3*) Exercises wide latitude in discretionary decision-making, and

(*4*) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

(D) *Specialized knowledge* means special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

* * * * *

(F) *New office* means an organization which has been doing business in the United States through a parent, branch, subsidiary, or affiliate for less than one year.

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

(*1*) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, subsidiary, or affiliate specified in paragraph (l)(1)(ii) of this section.

(*2*) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country for the duration of the alien's stay in the United States as an intracompany transferee directly or through a parent, branch, subsidiary, or affiliate, and

(*3*) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

* * * * *

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50–50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means (*1*) One of two subsidiaries both of which are owned and controlled by the same parent, or

(*2*) One of two legal entities entirely owned and controlled by the exact same individuals (not companies), each individual directly owning and controlling approximately the same share or proportion of each entity, or

(*3*) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and consulting services, and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services, shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member (This provision is limited exclusively to entities which practice as part of an international accounting organization).

* * * * *

(2) * * *

(i) Except as provided in paragraphs (l)(2)(ii) and (l)(17) of this section, a petitioner seeking to classify an alien as an intracompany transferee shall file a petition on Form I–129, Petition for Nonimmigrant Worker, only at the Service Center which has jurisdiction over the area where the alien will be employed, even in emergent situations. The petitioner shall advise the Service whether it has filed a petition for the same beneficiary with another office, and certify that it will not file a petition for the same beneficiary with another office, unless the circumstances and conditions in the initial petition have changed. Failure to make a full disclosure of previous petitions filed will result in denial of this petition.

* * * * *

(3) * * *

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

* * * * *

(v) If the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

* * * * *

(vi) If the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured,

(B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section, and

(C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

* * * * *

(5) * * *

(ii) * * *

(C) When the alien is a visa-exempt nonimmigrant seeking L classification under a blanket petition, or when the alien is in the United States and is seeking a change of status from another nonimmigrant classification to L classification under a blanket petition, the petitioner shall submit Form I–129S, Certificate of Eligibility, and a copy of the approval notice, Form I–797, to the Service Center with which the blanket petition was filed.

* * * * *

(6) *Copies of supporting documents.* The petitioner may submit a legible photocopy of a document in support of the visa petition, without the original. However, the original document shall be submitted if requested by the Service.

(7) * * *

(i) *General.* The director shall notify the petitioner of the approval of an individual or a blanket petition within 30 days after the date a completed petition has been filed. If additional information is required from the petitioner, the 30 day processing period shall begin again on receipt of the information. Only the Director of a Service Center may approve individual and blanket L petitions. The original Form I-797 received from the Service with respect to an approved individual or blanket petition may be duplicated by the petitioner for the beneficiary's use as described in paragraph (l)(13) of this section.

* * * * *

(C) *Amendments.* The petitioner shall file an amended petition, with fee, at the Service Center where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (i.e. from a specialized knowledge position to a managerial position), and any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act.

(ii) *Spouse and dependents.* The spouse and unmarried minor children of the beneficiary are entitled to L nonimmigrant classification, subject to the same period of admission and limits as the beneficiary, if the spouse and unmarried minor children are accompanying or following to join the beneficiary in the United States. Neither the spouse nor any child may accept employment unless he or she is otherwise authorized to be employed pursuant to the Act.

(8) * * *

(ii) *Individual petition.* If an individual petition is denied, the petitioner shall be notified of the denial, the reasons for the denial, and the right to appeal the denial within 30 days after the date a completed petition has been filed.

(iii) *Blanket petition.* If a blanket petition is denied in whole or in part, the petitioner shall be notified of the decision, the reasons for the denial, and the right to appeal the denial within 30 days after the date a completed petition has been filed. When the petition is denied in part, the Service Center issuing the denial shall forward to the petitioner, along with the denial, a Form I-797 listing those organizations which were found to qualify. If the decision is reversed on appeal, a new Form I-797 shall be sent to the petitioner to reflect the changes made as a result of the appeal.

(9) * * *

(i) *General.* The director shall revoke a petition only when the validity of the petition has not expired. However, a petition that has expired may be revoked in certain situations, such as those where the facts of the petition were not true and correct or where the director determines that it is appropriate.

* * * * *

(10) * * *

(i) A petition denied in whole or in part may be appealed under 8 CFR Part 103. Since the determination on the Certificate of Eligibility, Form I-129S, is part of the petition process, a denial or revocation of approval of an I-129S is appealable in the same manner as the petition.

* * * * *

(12) *L-1 limitation on period of stay.* (i) *Limits.* An alien who has spent five years in the United States in a specialized knowledge capacity or, seven years in the United States in a managerial or executive capacity under section 101(a)(15)(L) and/or (H) of the Act may not be readmitted to the United States under the H or L visa classification unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year. Such visits do not interrupt the one year abroad, but do not count towards fulfillment of that requirement. In view of this restriction, a new individual petition may not be approved for an alien who has spent the maximum time period in the United States under section 101(a)(15) (L) and/or (H) of the Act, unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purpose of any trips to the United States for the previous year. A consular or Service officer may not grant L classification under a blanket petition to an alien who has spent five years in the United States as a specialized knowledge professional, or seven years in the United States as a manager or executive, unless the alien has met the limitations contained in this paragraph.

(ii) *Exceptions.* The limitations of paragraph (l)(12)(i) of this section shall not apply to aliens who do not reside continually in the United States and whose employment in the United States is seasonal, intermittent, or an aggregate of six months or less per year. In addition, the limitations will not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. The petitioner and the alien must provide clear and convincing proof that the alien qualifies for an exception. Clear and convincing proof shall consist of evidence such as arrival and departure records, copies of tax returns, and records of employment abroad.

* * * * *

(14) *Extension of visa petition validity—(i) Individual petition.* The petitioner shall file a petition extension on Form I-129 to extend an individual petition under section 101(a)(15)(L) of the Act. Except in those petitions involving new offices, supporting documentation is not required, unless requested by the director. A petition extension may be filed only if the validity of the original petition has not expired, the alien beneficiary is physically present in the United States, and the petitioner is requesting extension of the beneficiary's stay on the same petition. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. Even though the requests to extend the visa petition and the alien's stay are combined on the petition, the director shall make a separate determination on each. If the alien is required to leave the United States for business or personal reasons, while the extension requests are pending, the petitioner may request the director to cable notification of approval of the petition extension to the consular office abroad where the alien will apply for a visa.

* * * * *

(15) *Extension of stay.* In individual petitions, the petitioner must apply for the petition extension and the alien's extension of stay concurrently on Form I-129. When the alien is a beneficiary under a blanket petition, a new certificate of eligibility, accompanied by a copy of the previous approved certificate of eligibility, shall be filed by the petitioner to request an extension of the alien's stay. An extension of stay may be authorized in increments of up to two years for beneficiaries of individual and blanket petitions. The total period of stay may not exceed five years for aliens employed in a specialized knowledge capacity. The total period of stay for an alien employed in a managerial or executive capacity may not exceed seven years. No further extensions may be granted. When the alien was initially admitted to the United States in a specialized knowledge capacity and is later promoted to a managerial or executive

position, he or she must have been employed in the managerial or executive position for at least two years to be eligible for the total period of stay of seven years. The change to managerial or executive capacity must have been approved by the Service in an amended, new, or extended petition at the time that the change occurred.

(16) *Effect of approval of a permanent labor certification or filing of a preference petition on L-1 classification.* The approval of a permanent labor certification or the filing of a preference petition for an alien shall not be a basis for denying an L petition, a request to extend an L petition, the alien's application for admission, change of status, or extension of stay. The alien may legitimately come to the United States as a nonimmigrant under the L classification and depart voluntarily at the end of his or her authorized stay, and at the same time, lawfully seek to become a permanent resident of the United States.

* * * * *

§ 214.2 [Amended]

16. § 214.2 is amended by changing the reference to "Form I-129L" to "Form I-129" whenever it appears in the following paragraphs:

(l)(2)(ii) text
(l)(3) introductory text
(l)(4)(iv) introductory text
(l)(14)(ii) introductory text
(l)(14)(iii)(A) text
(l)(17)(i) text

17. Section 214.2 is amended by changing the reference to "Form I-171C" to "Form I-797" whenever it appears in the following paragraphs:

(l)(5)(ii)(A) text
(l)(5)(ii)(B) text
(l)(7)(i)(A)(1) text
(l)(7)(i)(B)(1) text
(l)(9)(iii)(B) text
(l)(13) heading
(l)(13)(i) text
(l)(13)(ii) text
(l)(17)(ii) text

18. In § 214.2, paragraph (l)(17)(ii) is amended by removing the term "(or Form I-797)," in the second sentence.

19. In § 214.2, paragraph (l)(1)(ii)(M) is amended by changing the reference to "district director or Regional Service Center director" to "Service Center director".

20. In § 214.2, paragraph (l)(2)(ii) is amended by changing the reference to "Regional Service Center" to "Service Center".

21. In § 214.2, paragraph (l)(3)(iii) is amended by changing the word "immediately" to the phrase "within the three years".

22. In § 214.2, paragraph (l)(3)(v) is amended in the introductory text by inserting the phrase "to the United States as a manager or executive" after the word "coming".

23. In § 214.2, paragraph (l)(14)(ii)(D) is amended by adding the phrase "when the beneficiary will be employed in a managerial or executive capacity" after the phrase "wages paid to employees" and before the " ; ".

24. In § 214.2, paragraph (l)(17)(iv) is amended by removing the phrase "on Form I-292" in the third sentence, by changing the reference to "Regional Service Center (RSC)" in the fourth sentence to "Service Center", and by changing the reference to "RSC" in the last sentence to "Service Center".

25. In § 214.2, paragraphs (l)(17)(v)(A) and (B) are amended by inserting the phrase "subject to the same limits" after the phrase "length of stay".

26. Section 214.2 is amended by redesignating paragraph (o) as paragraph (s), reserving paragraphs (q) and (r), and adding new paragraphs (o) and (p) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(o) *Aliens of extraordinary ability or achievement*—(1) *Classifications*—(i) *General.* Under section 101(a)(15)(O) of the Act, a qualified alien having a residence in a foreign country which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services relating to a specific event or performance. Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(O)(i) of the Act as an alien who has extraordinary ability in the sciences, arts, education, business, or athletics, or who has extraordinary achievements in the motion picture and television field. Under section 101(a)(15)(O)(ii) of the Act, the alien may be classified as an accompanying alien who is coming to assist in the artistic or athletic performance of an alien admitted under section 101(a)(15)(O)(i) of the Act. These classifications are called O-1 and O-2, respectively. The petitioner must file a petition with the Service for a determination of the alien's eligibility for O-1 or O-2 classification before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures whereby these classifications may be applied for and granted, denied, extended, revoked, and appealed.

(ii) *Description of classifications.* (A) An O-1 classification includes two categories of aliens and applies to:

(*1*) An individual alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim; who is coming temporarily to the United States to continue work in the area of extraordinary ability; and whose admission will substantially benefit the United States, or

(*2*) An alien who has a demonstrated record of extraordinary achievement in motion picture and television productions; who is coming temporarily to the United States to continue work in the area of extraordinary achievement; and whose admission will substantially benefit the United States.

(B) An O-2 classification applies to an accompanying alien who is coming temporarily to the United States solely to assist in the artistic or athletic performance by an O-1 alien for a specific event or performance. The O-2 accompanying alien must:

(*1*) Be an integral part of such actual performance or event and possess critical skills and experience with the O-1 alien that are not of a general nature and cannot be performed by others, cr

(*2*) In the case of a motion picture or television production, the alien's critical skills and experience with the O-1 alien must be either based on a pre-existing longstanding working relationship or, if in connection with a specific production only, because significant principal photography will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production.

(2) *Filing of petitions*—(i) *General.* A petitioner seeking to classify an alien as an O-1 or O-2 employee shall file a petition on Form I-129, Petition for Nonimmigrant Worker, only with the Service Center which has jurisdiction in the area where the alien will work. The petition may not be filed more than (alternate 1; 90 days), (alternate 2; 180 days), (alternate 3; 270 days) before the actual need for the alien's services. An O-1 or O-2 petition shall be adjudicated at the appropriate Service Center, even in emergent situations. The petition shall be accompanied by the evidence specified in this section for the classification. A legible photocopy of a document in support of the petition may be submitted without the original. The original document shall be submitted if requested by the director

(ii) *Other filing situations*—(A) *Services in more than one location.* A petition which requires the alien to work in more than one location must include an itinerary with the dates and locations of work and must be filed with the Service Center which has jurisdiction in the area where the petitioner is located. The address which the petitioner specifies as its location on the petition shall be where the petitioner is located for purposes of this paragraph. If the petitioner is a foreign employer with no United States location, the petition shall be filed with the Service Center having jurisdiction over the area where the work will begin.

(B) *Services for more than one employer.* If the beneficiary will work concurrently for more than one employer within the same time period, each employer must file a separate petition with the Service Center that has jurisdiction over the area where the alien will perform services, unless an established agent files the petition.

(C) *Change of employer.* If an O-1 alien in the United States seeks to change employers, the new employer must file a petition with the service center having jurisdiction over the new place of employment.

(D) *Amended petition.* The petitioner shall file an amended petition with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or the beneficiary's eligibility as specified in the original approved petition.

(E) *Agents as petitioners.* An established United States agent may file a petition in cases involving an alien who is traditionally self-employed or uses agents to arrange short-term employment in his or her behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A petition filed by an agent is subject to the following conditions:

(*1*) A person or company in business as an agent may file the petition involving multiple employers as the representative of both the employers and the beneficiary if the supporting documentation includes a complete itinerary of the event or events. The itinerary must specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues, or locations where the services will be performed. A contract between the employers and the beneficiary is required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(*2*) An agent performing the function of an employer must provide the contractual agreement between the agent and the beneficiary which specify the wage offered and the other terms and conditions of employment of the beneficiary.

(F) *Multiple beneficiaries.* More than one O-2 accompanying alien may be included on a petition if they are assisting the same O-1 alien in an event or performance for the same period of time and in the same location. If they will be applying for visas at more than one consulate, the petitioner shall submit a separate petition for each consulate. If the beneficiaries will be applying for admission at more than one port of entry, the petitioner shall submit a separate petition for each port of entry.

(3) *Petition for alien of extraordinary ability or achievement (O-1)*—(i) *General.* Extraordinary ability in the sciences, arts, education, business or athletics, or extraordinary achievement in the case of an alien in the motion picture or television industry, must be established for an individual alien. An O-1 petition must be accompanied by evidence that the work which the alien is coming to the United States to continue is in the area of extraordinary ability or achievement, that the alien meets the criteria in paragraph (o) (3) (iv) or (v) of this section, and that the alien's admission will substantially benefit the United States.

(ii) *Definitions*—(A) *Extraordinary ability* in the sciences, arts, education, business or athletics means superior knowledge, ability, expertise and accomplishments in a particular field, evidenced by sustained national or international acclaim and renown in the field of endeavor.

(B) *Extraordinary achievement* with respect to motion picture and television productions, as commonly defined in the industry, means a high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that the person is recognized as outstanding, leading, and well-known in the motion picture and television field.

(C) *Event or performance* means an activity such as a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year or entertainment event. An entertainment event could include an entire season of performances. A group of related activities will also be considered an event.

(D) *Substantially benefit prospectively the United States* means a significant result from the alien's participation in an event or performance that is an economic, social, educational, cultural, or other benefit to the United States.

(iii) *Standards for establishing a position prospectively substantially benefits the United States.* To establish a position prospectively substantially benefits the United States, it must meet one of the following criteria:

(A) The position or services to be performed involve an event, production or activity which has a distinguished reputation or is a comparable newly organized event, production or activity;

(B) The services to be performed are as a lead, starring or critical role in an activity for an organization or establishment that has a distinguished reputation, or record of employing extraordinary persons;

(C) The services primarily involve a specific scientific or educational project, conference, convention, lecture, or exhibit sponsored by bona fide scientific or educational organizations or establishments; or

(D) The services consist of a specific business project that is appropriate for an extraordinary executive, manager, or highly technical person due to the complexity of the business project.

(iv) *Standards for an O-1 alien of extraordinary ability.* An alien of extraordinary ability in the sciences, arts, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally-recognized award, such as the Nobel Prize, or

(B) At least three of the following forms of documentation:

(*1*) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(*2*) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(*3*) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(*4*) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the

same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly or artistic contributions of major significance in the field or evidence of the alien's authorship of scholarly articles in the field, in professional journals or other major media;

(6) Evidence of the display of alien's work in the field at artistic exhibitions or showcases in more than one country or evidence that the alien has performed as a lead, starring or critical role for organizations and establishments that have a distinguished reputation;

(7) Evidence that the alien has commanded a high salary or other significantly high remuneration for services in relation to others in the field or evidence of commercial successes in the performing arts, as shown by box office receipts or record sales, cassettes, compact disks, or other video sales.

(C) If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

(v) *Standards for an O-1 alien of extraordinary achievement.* To qualify as an alien of extraordinary achievement in the motion picture or television industry, the alien must be recognized as an artist who has a demonstrated record of achievements in motion picture and television productions as demonstrated by the following:

(A) Has been nominated for or been the recipient of significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Has performed and will perform services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

(2) Has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, or magazines;

(3) Has performed as a lead, starring or critical role for organizations and establishments that have a distinguished reputation;

(4) Has a record of major commercial or critically acclaimed successes, as evidenced by such indicators as title, rating, or standing in the field, box office receipts, credit for original research or product development, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Has received significant recognition for achievements from organizations, critics, government agencies or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form that clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Has commanded and now commands a high salary or other substantial remuneration for services in relation to others in the field, evidenced by contracts or other reliable evidence.

(4) *Petition for an O-2 accompanying alien.* (i) *General.* An O-2 accompanying alien is an essential support person to an O-1 artist or athlete; however, such alien may not accompany O-1 aliens in the sciences, business, or education. Although the O-2 alien must obtain his or her own classification, it does not entitle him or her to work separate and apart from the O-1 alien to whom he or she provides support. An O-2 alien must be petitioned for by an employer in conjunction with the services of the O-1 alien.

(ii) *Standards for qualifying as an O-2 accompanying alien.* (A) *Accompanying alien to an O-1 artist or athlete of extraordinary ability.* To qualify as such O-2 accompanying alien, the alien must:

(1) Be a highly skilled, essential person determined by the director to be coming to the United States to perform support services which are not of a general nature and cannot be readily performed by a U.S. worker,

(2) Perform support services which are essential to the successful performance of the services to be rendered by an O-1 artist or athlete, and

(3) Have appropriate qualifications, significant prior experience with the O-1 alien, and critical knowledge of the specific services to be performed.

(B) *Accompanying alien to an O-1 alien of extraordinary achievement.* To qualify as an O-2 accompanying alien to an O-1 alien involved in a motion picture or television production, the alien must:

(1) Perform support services which are an integral part of and essential to the successful performance of services by an O-1 alien of extraordinary achievement, and

(2) Have skills and experience with such alien which are not of a general nature and which are critical based on either:

(i) A pre-existing, longstanding working relationship, or

(ii) A specific production that requires principal photography which will take place both inside and outside the United States, in which the continuing participation of the alien is essential to the successful completion of the production.

(iii) *Evidence.* A petition for an O-2 accompanying alien must be accompanied by:

(A) A statement from the O-2 petitioning entity describing the prior and current essentiality, critical skills and experience of the O-2 with the O-1 alien;

(B) Statements from the O-1 alien or from persons having first hand knowledge that the alien has substantial experience performing the critical skills and essential support services for the O-1 alien; and

(C) In the case of a specific motion picture or television production, written statements from production executives attesting to the fact that significant principal photography has taken place outside the United States, and will take place inside the United States, and to the fact that the continuing participation of the alien is essential to the successful completion of the production.

(5) *Consultation*—(i) *General.* (A) Written evidence of consultation with an appropriate peer group, union, and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

(B) Evidence of consultation shall be a written advisory opinion from the peer group, union, and/or management organization. If the director requests an advisory opinion and no response is received within the time period specified, the director shall make a decision without the advisory opinion. The director's written request for an opinion shall be evidence of consultation.

(C) To expedite adjudication of an O-1 or O-2 petition, the petitioner should obtain a written advisory opinion from an appropriate peer group, union, and/or management organization and submit it when the petition is filed. When a petition is filed without the required evidence of such consultation, the petitioner shall send a copy of the petition and supporting documents to an appropriate peer group, union, and/or management organization at the same time that the petition is filed with the Service. The petitioner shall explain to the organization that it will be contacted by the Service for an advisory opinion

regarding the services to be performed and the alien's qualifications. The name and address of the organization where the copy of the petition was sent shall be indicated in the petition that is filed with the Service. If the director determines that the petition was sent to an appropriate organization, the director shall request, in writing, a written advisory opinion from that group or organization before approving a petition. When the Service must obtain an advisory opinion, considerably longer adjudication time will be required. Consultation is not required if the petition will be denied on another ground. The written opinion should set forth a specific statement of facts on which the conclusion was reached.

(D) Written evidence of consultation shall be included in the record in every approved O petition. Consultations are advisory in nature and non-binding on the Service. If a petition is denied because of the opinion provided by a peer group, labor organization, or management organization, it shall be attached to the director's decision.

(ii) *Consultation requirements for an O-1 alien of extraordinary ability.* Written consultation with a peer group in the area of the alien's ability is required in an O-1 petition. The peer group shall be an appropriate association or entity with expertise in that area. The advisory opinion provided by the peer group shall evaluate and/or comment on the alien's ability and achievements in the field of endeavor and whether the alien's admission will substantially benefit the United States. The written opinion shall be signed by an authorized official of the organization.

(iii) *Consultation requirements for O-1 alien of extraordinary achievement.* In the case of an alien of extraordinary achievement who will be working on a motion picture or television production, consultation shall be made with the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability. The advisory opinion from the labor and management organizations shall evaluate the alien's achievements in the motion picture or television field and whether the alien's admission will substantially benefit the United States. Any recommendation from the labor and/or management organization to deny the petition must be attached to the director's decision. In making the decision, the director shall consider the exigencies and scheduling of the production.

(iv) *Consultation requirements for an O-2 accompanying alien.* Written consultation for O-2 accompanying aliens must be made with a labor organization with expertise in the skill area involved. The opinion provided by the labor organization shall evaluate the alien's essentiality to and working relationship with the O-1 artist or athlete and state whether there are available U.S. workers who can perform the support services. If the alien will accompany an O-1 alien involved in a motion picture or television production, the opinion shall address whether the alien has a longstanding working relationship with the O-1 alien, or whether principal photography will be in the United States and abroad and the continuing participation of the alien is essential. In making the decision, the director shall consider the exigencies and scheduling of the production. A single consultation may be submitted in conjunction with multiple accompanying aliens even though more than one petition is filed in their behalf.

(v) *Procedures for advisory opinions.* (A) The Service shall list in its Operations Instructions for O classification those organizations which agree to provide advisory opinions to the Service and/or petitioners. The list shall not be exclusive. The Service and petitioners shall use other sources, such as publications, to identify appropriate peer groups, labor organizations, and management organizations.

(B) The director's request for an advisory opinion shall specify the information needed. The organization to which the request is being made should be advised that a written opinion is needed within 15 days of the date of the director's letter. After 15 days, the director shall make a decision without the advisory opinion. The director may shorten the 15-day period in his discretion.

(6) *General documentary requirements for O classification*—The evidence submitted with an O petition shall conform to the following:

(i) Affidavits, contracts, awards, reviews, and similar documentation must reflect the nature of the alien's achievement, be executed by the person in charge of the institution, firm, establishment, or organization where the work was performed.

(ii) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability, or in the case of a motion picture or television production, the extraordinary achievement of the alien, shall specifically describe the alien's recognition and ability or achievement in factual terms and must set forth the expertise of the affiant and the manner in which the affiant acquired such information.

(iii) Copies of any written contracts between the petitioner and the alien beneficiary, or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed.

(iv) An explanation of the nature of the event or activity, the beginning and ending date for the event or activity, and a copy of any itinerary of the alien's performances for the event.

(7) *Approval and validity of petition*—(i) *Approval.* The director shall consider all the evidence submitted and such other evidence as he or she may independently require to assist his or her adjudication. The director shall notify the petitioner of the approval of the petition on Form I-797, Notice of Action. The approval notice shall include the alien beneficiary's name and classification and the petition's period of validity.

(ii) *Recording the validity of petitions.* Procedures for recording the validity period of petitions are as follows:

(A) If a new O petition is approved before the date the petitioner indicates the services will begin, the approved petition and approval notice shall show the actual dates requested by the petitioner as the validity period, not to exceed the limit specified by paragraph (o)(7)(iii) of this section or other Service policy.

(B) If a new O petition is approved after the date the petitioner indicates the services will begin, the approved petition and approval notice shall show a validity period commencing with the date of approval and ending with the date requested by the petitioner, not to exceed the limit specified by paragraph (o)(7)(iii) of this section or other Service policy.

(C) If the period of services requested by the petitioner exceeds the limit specified in paragraph (o)(7)(iii) of this section, the petition shall be approved only up to the limit specified in that paragraph.

(iii) *Validity.* The approval period of an O petition shall conform to the limits prescribed as follows:

(A) *O-1 petition.* An approved petition for an alien classified under section 101(a)(15)(O)(i) of the Act shall be valid for a period of time determined by the director to be necessary to accomplish the event or activity, not to exceed three years.

(B) *O-2 petition.* An approved petition for an alien classified under section 101(a)(15)(O)(ii) of the Act shall be valid for a period of time determined to be necessary to assist the O-1 artist or athlete to accomplish the event or activity, not to exceed three years.

(iv) *Spouse and dependents.* The spouse and unmarried minor children of the O-1 or O-2 alien beneficiary are entitled to O-3 nonimmigrant classification, subject to the same period of admission and limitations as the alien beneficiary, if they are accompanying or following to join the alien beneficiary in the United States. Neither the spouse nor a child of the alien beneficiary may accept employment unless he or she has been granted a nonimmigrant classification authorizing his or her employment.

(8) *Denial of petition*—(i) *Notice of intent to deny.* When an adverse decision is proposed on the basis of derogatory information of which the petitioner is unaware, the director shall notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

(ii) *Notice of denial.* The petitioner shall be notified of the decision, the reasons for the denial, and the right to appeal the denial under part 103 of this chapter. There is no appeal from a decision to deny an extension of stay to the alien.

(9) *Revocation of approval of petition*—(i) *General.* (A) The petitioner shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under section 101(a)(15)(O) of the Act and paragraph (o) of this section. An amended petition should be filed when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the change(s) to the director who approved the petition.

(B) The director shall revoke a petition only when the validity of the petition has not expired. However, a petition that has expired may be revoked in certain situations, such as those where the facts of the petition were not true and correct or where the director determines that it is appropriate.

(ii) *Automatic revocation.* The approval of an unexpired petition is automatically revoked if the petitioner goes out of business, files a written withdrawal of the petition, or notifies the Service that the beneficiary is no longer employed by the petitioner.

(iii) *Revocation on notice*—(A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

(*1*) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;

(*2*) The statement of facts contained in the petition was not true and correct;

(*3*) The petitioner violated terms and conditions of the approved petition;

(*4*) The petitioner violated requirements of section 101(a)(15)(O) of the Act or paragraph (o) of this section; or

(*5*) The approval of the petition violated paragraph (o) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of the date of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition.

(10) *Appeal of a denial or a revocation of a petition*—(i) *Denial.* A denied petition may be appealed under Part 103 of this chapter.

(ii) *Revocation.* A petition that has been revoked on notice may be appealed under Part 103 of this chapter. Automatic revocations may not be appealed.

(11) *Admission.* A beneficiary may be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may not work except during the validity period of the petition.

(12) *Extension of visa petition validity.* The petitioner shall file a request to extend the validity of the original petition under section 101(a)(15)(O) of the Act on Form I-129 in order to continue or complete the same activity or event specified in the original petition. Supporting documents are not required unless requested by the director. A petition extension may be filed only if the validity of the original petition has not expired.

(13) *Extension of stay*—(i) *Extension procedure.* The petitioner shall request extension of the alien's stay to continue or complete the same event or activity by filing Form I-129, accompanied by a statement explaining the reasons for the extension. The petitioner must also request a petition extension. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. The alien beneficiary must be physically present in the United States at the time of filing of the extension of stay. Even though the requests to extend the petition and the alien's stay are combined on the petition, the director shall make a separate determination on each. If the alien leaves the United States for business or personal reasons while the extension requests are pending, the petitioner may request the director to cable notification of approval of the petition extension to the consular office abroad where the alien will apply for a visa.

(ii) *Extension period.* An extension of stay may be authorized in increments of up to one year for an O-1 or O-2 beneficiary to continue or complete the same event or activity for which he or she was admitted plus an additional ten days.

(14) *Effect of approval of a permanent labor certification or filing of a preference petition on O classification.* The approval of a permanent labor certification or the filing of a preference petition for an alien shall not be a basis for denying an O petition or a request to extend such a petition, or the alien's admission, change of status, or extension of stay. The alien may legitimately come to the United States for a temporary period as an O nonimmigrant and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the United States.

(15) *Effect of a strike.* (i) If the Secretary of Labor certifies to the Commissioner that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place where the beneficiary is to be employed, and that the employment of the beneficiary would adversely affect the wages and working conditions of U.S. citizens and lawful resident workers:

(A) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(O) of the Act shall be denied.

(B) If a petition has been approved, but the alien has not yet entered the United States, or has entered the United States but has not commenced employment, the approval of the petition is automatically suspended, and the application for admission of the basis of the petition shall be denied,

(ii) If there is a strike or other labor dispute involving a work stoppage of workers in progress, but such strike or other labor dispute is not certified under paragraph (o)(15)(i) of this section, the Commissioner shall not deny a petition or suspend an approved petition.

(iii) If the alien has already commenced employment in the United States under an approved petition and is participating in a strike or labor dispute involving a work stoppage of workers, whether or not such strike or other labor

dispute has been certified by the Secretary of Labor, the alien shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers but is subject to the following terms and conditions:

(A) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act, and regulations promulgated thereunder in the same manner as all other O nonimmigrants,

(B) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving a work stoppage of workers, and

(C) Although participation by an O nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for deportation, an alien who violates his or her status or who remains in the United States after his or her authorized period of stay has expired will be subject to deportation.

(16) *Use of approval notice, Form I-797.* The Service shall notify the petitioner on Form I-797 whenever a visa petition or an extension of a visa petition is approved under the O classification. The beneficiary of an O petition who does not require a nonimmigrant visa may present a copy of the approval notice at a port of entry to facilitate entry into the United States. A beneficiary who is required to present a visa for admission and whose visa will have expired before the date of his or her intended return may use Form I-797 to apply for a new or revalidated visa during the validity period of the petition. The copy of Form I-797 shall be retained by the beneficiary and presented during the validity of the petition when reentering the United States to resume the same employment with the same petitioner.

(p) *Athletes and artists or entertainers*—(1) *Classifications.* (i) *General.* Under section 101(a)(15)(P) of the Act, an alien having a residence in a foreign country which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or a sponsor. Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(P)(i) of the Act as an alien who is coming to the United States to perform services as an internationally recognized athlete or member of an internationally recognized entertainment group, or under section 101(a)(15)(P)(ii) of the Act, as an alien who is coming to perform as an artist or entertainer under a reciprocal exchange program, or under section 101(a)(15)(P)(iii) of the Act, as an alien who is coming solely for the purpose of performing under a program which is culturally unique. These classifications are called P-1, P-2, and P-3 respectively. The employer or sponsor must file a petition with the Service for review of the services and for determination of the alien's eligibility for a P classification before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures whereby these classifications may be applied for and granted, denied, extended, revoked, and appealed.

(ii) *Description of classifications.* (A) A *P-1* classification applies to an alien who is coming temporarily to the United States:

(*1*) To perform at a specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, or

(*2*) To perform at a specific entertainment performance as a member of an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time, and the alien has had a sustained and substantial relationship with that group over a period of at least one year and provides functions integral to the performance of the group.

(B) A *P-2* classification applies to an alien who is coming temporarily to the United States to perform as an artist or entertainer, individually or as part of a group, or to perform as an integral part of the performance of such a group, and seeks to perform under a reciprocal exchange program which is between an organization or organizations in the United States and an organization in one or more foreign states, and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers between the United States and the foreign states involved.

(C) A *P-3* classification applies to an alien who is coming temporarily to the United States to perform as an artist or entertainer, individually or as part of a group, or to perform as an integral part of the performance of such a group and seeks to perform under a program that is culturally unique.

(2) *Filing of petitions*—(i) *General.* A P-1 petition for an athlete or entertainment group shall be filed by a United States or foreign employer. A P-2 petition for an artist or entertainer in a reciprocal exchange program, or a P-3 petition for an artist or entertainer in a culturally unique program shall be filed by the sponsoring organization or an employer in the United States. The petitioning employer or sponsoring organization shall file a P petition on Form I-129, Petition for Nonimmigrant Worker, with the Service Center which has jurisdiction in the area where the alien will work. The petition may not be filed more than (alternate 1; 90 days), (alternate 2; 180 days), (alternate 3; 270 days) before the actual need for the alien's services. A P-1, P-2, or P-3 petition shall be adjudicated at the appropriate Service Center, even in emergent situations. The petition shall be accompanied by the evidence specified in this section for the particular classification. A legible photocopy of a document in support of the petition may be submitted without the original. The original document shall be submitted if requested bv the Director.

(ii) *Other filing situations*—(A) *Services in more than one location.* A petition which requires the alien to work in more than one location (i.e., a tour) must include an itinerary with the dates and locations of the competition or performances, and must be filed with the Service Center which has jurisdiction in the area where the petitioner is located. The address which the petitioner specifies as its location on the petition shall be where the petitioner is located for purposes of this section. If the petitioner is a foreign employer with no United States location, the petition shall be filed with the Service office that has jurisdiction over the area where the employment began.

(B) *Services for more than one employer.* If the beneficiary(ies) will work concurrently for more than one employer within the same time period, each employer must file a separate petition with the Service Center that has jurisdiction over the area where the alien will perform the services, unless an established agent files the petition.

(C) *Change of employer.* If a P-1, P-2, or P-3 alien in the United States seeks to change employers or sponsors, the new employer must file a petition and a request to extend the alien's stay in the United States. A P-2 or P-3 petition must be accompanied by an explanation of why it would be a hardship for the alien(s) to remain outside the United States for a three month period pursuant to paragraph (p)(9)(iv) of this section, before engaging in a new activity or performance in the United States. If a P-1 petition for an alien to change employers or sponsors is approved, the alien must apply for a new visa at a

consular office abroad or, if a visa is not required, apply for admission to enter the United States for the new performance or activity.

(D) *Amended petition.* The petitioner shall file an amended petition with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or the beneficiary's eligibility as specified in the original approved petition.

(E) *Agents as petitioners.* An established United States agent may file a petition in cases involving workers who traditionally are self-employed or use agents to arrange short-term employment in their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A petition filed by an agent is subject to the following conditions:

(*1*) A person or company in business as an agent may file the P petition involving multiple employers as the representative of both the employers and the beneficiary(ies) if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues, or locations where the services will be performed. In questionable cases, a contract between the employer(s) and the beneficiary(ies) may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(*2*) An agent performing the function of an employer must specify the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary(ies). The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

(F) *Multiple beneficiaries.* More than one beneficiary may be included in a P petition if they are members of a group seeking classification based on the reputation of the group as an entity, or they are essential support aliens to P-1, P-2, or P-3 beneficiaries. If visa-exempt beneficiaries will be applying for visas at more than one consulate, the petitioner shall submit a separate petition for each consulate. If the beneficiaries will be applying for admission at more than one port of entry, the petitioner shall submit a separate petition for each port of entry.

(G) *Named beneficiaries.* Petitions for P classification must include the names of beneficiaries and other required information at the time of filing.

(3) *Definitions:*

(i) *Contract* means the written agreement between the petitioner and the beneficiary(ies) that explains the terms and conditions of employment. The contract shall describe the services to be performed, and specify the wages, hours of work, working conditions, and any fringe benefits.

(ii) *Culturally unique* means a style of artistic expression which is peculiar or unique to a society or class of a country.

(iii) *Essential support alien* means a highly skilled, essential person determined by the director to be an integral part of the competition or performance of a P-1, P-2, or P-3 alien because he or she performs support services which cannot be readily performed by a United States worker, and which are essential to the successful performance of services by the P-1, P-2, or P-3 alien. Such alien must have appropriate qualifications to perform the services, critical knowledge of the specific services to be performed, and experience in providing such support to the P-1, P-2, or P-3 alien.

(iv) *Group* means two or more persons established as one entity or unit to provide a service or performance. A group, for the purposes of this section, must have been established for a minimum of one year or more.

(v) *Internationally recognized* means a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that the person is well-known in more than one country.

(vi) *Member of a group* means a person who has been performing as a group member for a minimum of one year or more. For the purposes of this section, the group member is restricted to those persons actually performing the entertainment services.

(vii) *Sponsor* means an established organization in the United States which will not directly employ a P-2 or P-3 alien, but will assume responsibility for the accuracy of the terms and conditions specified in the petition.

(viii) *Team* means two or more persons organized to work together on the same side in a competitive athletic event.

(4) *Petition for an internationally recognized athlete or member of an internationally recognized entertainment group (P-1)*—(i) *Types of P-1 classification*—(A) *P-1 classification as an athlete in an individual capacity.* A P-1 classification may be granted to an alien who is an internationally recognized athlete based on his or her own reputation and achievements as an individual. The alien must be coming to the United States to perform services which require an internationally recognized athlete.

(B) *P-1 classification as a member of an entertainment group or an athletic team.* An entertainment group or athletic team consists of two or more persons who function as a unit. The entertainment group or athletic te a unit must be internationally recognized as outstanding in the discipline and must be coming to the United States to perform services which require an internationally recognized entertainment group or athletic team. A person who is a member of an internationally recognized entertainment group or athletic team may be granted P-1 classification based on that relationship, but may not perform services separate and apart from the entertainment group or athletic team. An entertainment group must have been established for a minimum of one year or more, and any member of a group must have been performing entertainment services for such group for a minimum of one year or more.

(C) *P-1 classification as an essential support alien.* An alien who is an essential support person as defined in paragraph (p)(3)(ii) of this section may be granted P-1 classification based on a support relationship to an individual athlete, athletic team, or entertainment group.

(ii) *Criteria and documentary requirements for P-1 athletes*—(A) *General.* P-1 athletes must have a reputation that is internationally recognized, as an individual athlete or as a member of a foreign team that is internationally recognized, and the athlete or team must be coming to the United States to participate in an athletic competition that has a distinguished reputation, and requires participation of an athlete or athletic team that has an international reputation.

(B) *Standards for an internationally recognized athlete or athletic team.* A petition for an athletic team must be accompanied by evidence that the team as a unit has achieved international recognition in the sport. Each member of the team is accorded P-1 classification based on the international reputation of the team. A petition for an athlete who will compete individually or as a member of a United States based team must be accompanied by evidence that the athlete has achieved international recognition in the sport based on his or her own reputation. A petition for a P-1 athlete or athletic team shall include:

(*1*) A tendered contract with a major United States sports league or team, or a tendered contract in an individual sport commensurate with international recognition in that sport, and

(*2*) Documentation of at least two of the following:

(*i*) Evidence of having participated to a substantial extent in a prior season with a major United States sports league,

(*ii*) Evidence of having participated in international competition with a national team,

(*iii*) Evidence of having participated to a substantial extent in a prior season for a United States college or university in intercollegiate competition,

(*iv*) Written statement from an official of a major United States sports league or an official of the governing body of the sport which details how the alien or team is internationally recognized,

(*v*) Written statement from a member of the sports media or a recognized expert in the sport which details how the alien or team is internationally recognized,

(*vi*) Evidence that the individual or team is ranked if the sport has international rankings, or

(*vii*) Evidence that the alien or team has received a significant honor or award in the sport.

(iii) *Criteria and documentary requirements for members of an internationally recognized entertainment group*—(A) *General.* P-1 classification shall be accorded to an entertainment group to perform as a unit based on the international reputation of the group. Individual entertainers shall not be accorded P-1 classification to perform separate and apart from a group. It must be established that the group has been internationally recognized as outstanding in the discipline for a sustained and substantial period of time. A member of a group must have had a sustained and substantial relationship with the group for at least one year and provide functions integral to the group's actual performance.

(B) *Standards for members of internationally recognized entertainment groups.* A petition for P-1 classification for the members of an entertainment group shall be accompanied by:

(*1*) Evidence that the group, under the name shown in the petition, has been established and performing regularly for a period of at least one year,

(*2*) A statement from the petitioner listing each member of the group and the exact dates which that member has been employed on a regular basis by the group, and

(*3*) Evidence that the group is internationally recognized in the discipline. This may be demonstrated by the submission of evidence of the group's nomination or receipt of significant international awards or prizes for outstanding achievement in their field or by three of the following different types of documentation:

(*i*) Has performed and will perform as a starring or leading entertainment group in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, or contracts;

(*ii*) Has achieved international recognition and acclaim for outstanding achievement in their field as evidenced by reviews in major newspapers, trade journals, magazines, or other published material;

(*iii*) Has performed and will perform services as a leading or starring group for organizations and establishments that have a distinguished reputation;

(*iv*) Has a record of major commercial or critically acclaimed successes, as evidenced by such indicators as ratings, or standing in the field, box office receipts, record, cassette, or video sales, and other achievements in the field as reported in trade journals, major newspapers, or other publications.

(*v*) Has received significant recognition for achievements from organizations, critics, government agencies or other recognized experts in the field. Such testimonials must be in a form that clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(*vi*) Has commanded and now commands a high salary or other substantial remuneration for services comparable to others similarly situated in the field as evidenced by contracts or other reliable evidence.

(5) *Petition for an artist or entertainer under a reciprocal exchange program (P-2)*—(i) *General.* (A) A P-2 classification shall be accorded to artists or entertainers, individually or as a group, who will be performing under a reciprocal exchange program which is between an organization or organizations in the United States and an organization in one or more foreign states and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers between the United States and the foreign states involved.

(B) The exchange of artists or entertainers shall be similar in terms of caliber of artists or entertainers, terms and conditions of employment such as length of employment and numbers of artists or entertainers involved in the exchange.

(C) An alien who is an essential support person as defined in paragraph (p)(3)(ii) of this section may be accorded P-2 classification based on a support relationship to a P-2 artist or entertainer under a reciprocal exchange program.

(ii) *Documentary requirements for petition involving a reciprocal exchange program.* A petition for P-2 classification shall be accompanied by:

(A) A copy of the formal reciprocal exchange agreement between the United States organization or organizations which is sponsoring the aliens, and an organization or organizations in a foreign country which will receive the United States artist or entertainers,

(B) A statement from the sponsoring organization describing the reciprocal exchange of United States artists or entertainers as it relates to the specific petition for which P-2 classification is being sought,

(C) Evidence that an appropriate labor organization in the United States was involved in negotiating, or has concurred with, the reciprocal exchange of United States and foreign artists or entertainers, and

(D) Evidence that the aliens for whom P-2 classification is being sought and the United States artists or entertainers subject to the reciprocal exchange agreement are experienced artists or entertainers with comparable skills, and that the terms and conditions of employment are similar, and that the exchange is individual for individual or group for group.

(6) *Petition for an artist or entertainer under a culturally unique program*—(i) *General.* (A) A P-3 classification may be accorded to artists or entertainers, individually or as a group, that are recognized by governmental agencies, cultural organizations, scholars, arts administrators, critics, or other experts in the particular field for excellence in developing, interpreting, or representing a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation;

(B) The artist or entertainer must be coming to the United States primarily for cultural events(s) to further the understanding or development of that art form, and be sponsored primarily by educational, cultural, or governmental organizations which promote such international cultural activities and exchanges.

(C) A P-3 classification may be accorded to an alien who is an essential support person as defined in paragraph (p)(3)(ii) of this section based on a support relationship to the P-3 artist or

entertainer under a culturally unique program.

(ii) *Documentary requirements for petition involving a culturally unique program.* A petition for P-3 classification must be accompanied by:

(A) Affidavits, testimonials, or letters from recognized experts attesting to the authenticity and excellence of the alien's or group's skills in performing or presenting the unique or traditional art form, explaining the level of recognition accorded the alien or group in the native country or in another country, and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill and recognition, and

(B) Evidence that most of the performances or presentations will be culturally unique events sponsored by educational, cultural, or governmental agencies.

(7) *Consultation*—(i) *General.* (A) Written evidence of consultation with an appropriate labor organization regarding the nature of the work to be done, and the alien's qualifications is mandatory before a petition for P-1, P-2, or P-3 classification can be approved.

(B) Evidence of consultation shall be a written advisory opinion from an official of the labor organization. If the director makes a written request for an advisory opinion and no response is received within the time period requested, the director shall make a decision without the advisory opinion. The director's written request for an opinion shall be evidence of consultation.

(C) To obtain timely adjudication of a P-1, P-2, or P-3 petition, the petitioner should obtain a written advisory opinion from an appropriate labor organization and submit it when the petition is filed. When a petition is filed without the required evidence of such consultation, the petitioner shall send a copy of the petition and supporting documents to an appropriate labor organization at the same time that the petition is filed with the Service. The petitioner shall explain to the labor organization that it will be contacted by the Service for an advisory opinion regarding the services to be performed and the alien's qualifications. The name and address of the labor organization where the copy of the petition was sent shall be indicated in the petition that is filed with the Service. If the director determines that a copy of the petition was sent to an appropriate agency, the director shall request, in writing, a written advisory opinion from the labor organization before approving the petition. When the Service must obtain an advisory opinion, considerably longer adjudication time will be required. Consultation is not required if the petition will be denied on other grounds.

(D) Written evidence of consultation shall be included in the record in every approved P petition. A single consultation may be submitted in conjunction with multiple essential support personnel or a group of principal aliens even though more than one petition is filed in their behalf. The advisory opinion should set forth a specific statement of facts on which the conclusion was reached. Consultations are advisory in nature and non-binding on the Service. If a petition is denied because of the opinion provided by a labor organization, it shall be attached to the director's decision.

(E) In those cases where it is established by the petitioner that an appropriate labor organization does not exist, the Service shall render a decision on the evidence of record. This does not preclude the Service from obtaining a consultation from a closely related labor organization.

(ii) *Consultation requirements for P-1 athletes and entertainment groups.* Written consultation with a labor organization that has expertise in the area of the alien's sport or entertainment field is required in a P-1 petition. The advisory opinion provided by the labor organizations shall evaluate and/or comment on the alien's or group's ability and achievements in the field of endeavor, whether the alien or group is internationally recognized for achievements, and whether the services the alien or group is coming to perform is appropriate for an internationally recognized athlete or entertainment group. The written opinion shall be signed by an authorized official of the organization.

(iii) *Consultation requirements for P-2 alien in a reciprocal exchange program.* In P-2 petitions where an artist or entertainer is coming to the United States under a reciprocal exchange program, consultation with the appropriate labor organization is required to verify the existence of a viable exchange program. The advisory opinion from the labor organization shall comment on the bona fides of the reciprocal exchange program and specify whether the exchange meets the requirements of paragraph (p)(5)(ii) of this section.

(iv) *Consultation requirements for P-3 alien in a culturally unique program.* Consultation with an appropriate labor organization is required for P-3 petitions involving aliens in a culturally unique program. The advisory opinion shall evaluate the cultural uniqueness of the alien's skills, state whether the events are mostly cultural in nature or mainly held for commercial entertainment, and whether the event or activity is appropriate for P-3 classification.

(v) *Consultation requirements for essential support aliens.* Written consultation on petitions for P-1, P-2, or P-3 essential support aliens must be made with a labor organization with expertise in the skill area involved. The opinion provided by the labor organization shall evaluate the alien's essentiality to and working relationship with the artist or athlete and state whether there are available U.S. workers who can perform the support services.

(vi) *Procedures for advisory opinions.* (A) The Service shall list in its Operations Instructions for P classification those organizations which agree to provide advisory opinions to the Service and/or petitioners. The list shall not be exclusive. The Service and petitioners shall use other sources, such as publications, to identify appropriate labor organizations.

(B) The director's request for an advisory opinion shall specify the information needed. The organization to which the request is being made should be advised that a written opinion is needed within 15 days of the date of the director's letter. After 15 days, the director shall make a decision without the advisory opinion. The director may shorten the 15-day period in his discretion.

(8) *Numerical limits*—(i) *Limit on affected category.* During each fiscal year, the total number of principal aliens who can be provided P-1 or P-3 nonimmigrant classification is limited to 25,000.

(ii) *Procedures.* (A) Each alien included in a new petition shall be counted for purposes of the numerical limit. Aliens shall not be counted on requests for petition extension/extension of the alien's stay. The spouse and children of principal aliens classified as P-4 nonimmigrants shall not be counted in the numerical limit.

(B) Numbers shall be counted in the order that petitions are filed. If a petition is denied, the number(s) originally assigned to the petition shall be returned to the system which maintains and assigns numbers.

(C) For purposes of assigning numbers to aliens on petitions filed in Guam and the Virgin Islands, Headquarters Adjudications shall allocate numbers to these locations from the central system which controls and assigns numbers to petitions filed in other locations of the United States. The frequency with which numbers are allocated and the amount

allocated shall be determined from workload patterns in these offices.

(D) When an approved petition is not used because the beneficiary(ies) will not apply for admission to the United States, the petitioner shall notify the Service that the number(s) have not been used. The petition shall then be revoked pursuant to paragraph (p)(11)(ii) of this section and the unused numbers shall be returned to the system which maintains and assigns numbers.

(E) If the total numbers available in a fiscal year are used, new petitions and the accompanying fee shall be rejected with a notice that numbers available for the P-1 and P-3 nonimmigrant classifications have been used until the beginning of the next fiscal year.

(9) *Approval and validity of petition*—(i) *Approval.* The director shall consider all the evidence submitted and such other evidence as he or she may independently require to assist in his or her adjudication. The director shall notify the petitioner of the approval of the petition on Form I-797, Notice of Action. The approval notice shall include the alien beneficiary's name and classification and the petition's period of validity.

(ii) *Recording the validity of petitions.* Procedures for recording the validity period of petitions are:

(A) If a new P petition is approved before the date the petitioner indicates the services will begin, the approved petition and approval notice shall show the actual dates requested by the petitioner as the validity period, not to exceed the limit specified by paragraph (p)(9)(iii) of this section, or other Service policy.

(B) If a new P petition is approved after the date the petitioner indicates the services will begin, the approved petition and approval notice shall show a validity period commencing with the date of approval and ending with the date requested by the petitioner, not to exceed the limit specified by paragraph (p)(9)(iii) of this section or other Service policy.

(C) If the period of services requested by the petitioner exceeds the limit specified in paragraph (p)(9)(iii) of this section, the petition shall be approved only up to the limit specified in that paragraph.

(iii) *Validity.* The approval period of a P petition shall conform to the limits prescribed as follows:

(A) *P-1 petition for athletes.* An approved petition for an individual athlete classified under section 101(a)(15)(P)(i) of the Act shall be valid for a period up to five years. An approved petition for an athletic team classified under section 101(a)(15)(P)(i) of the Act shall be valid for a period of time determined by the director to complete the competition or event for which the alien team is being admitted, not to exceed six months.

(B) *P-1 petition for entertainment group.* An approved petition for an entertainment group classified under section 101(a)(15)(P)(i) of the Act shall be valid for a period of time determined by the director to be necessary to complete the performance or event for which the group is being admitted, not to exceed one year.

(C) *P-2 and P-3 petitions for artists or entertainers in reciprocal exchange programs and culturally unique programs.* An approved petition for an artist or entertainer under section 101(a)(15)(p)(ii) or (iii) of the Act shall be valid for a period of time determined by the director to be necessary to complete the event, activity, or performance for which the P-2 or P-3 aliens are admitted, not to exceed six months.

(iv) *P-2 and P-3 limitation on admission.* An alien who has been admitted as a P-2 or P-3 nonimmigrant may not be readmitted as a P-2 or P-3 nonimmigrant unless the alien has remained outside the United States for at least three months after the date of his or her most recent admission. The director may waive this requirement in cases of individual tours where application of this requirement would cause undue hardship.

(v) *Spouse and dependents.* The spouse and unmarried minor children of a P-1, P-2, or P-3 alien beneficiary are entitled to P-4 nonimmigrant classification, subject to the same period of admission and limitations as the alien beneficiary, if they are accompanying or following to join the alien beneficiary in the United States. Neither the spouse nor a child of the alien beneficiary may accept employment unless he or she has been granted a nonimmigrant classification authorizing his or her employment.

(10) *Denial of petition*—(i) *Notice of intent to deny.* When an adverse decision is proposed on the basis of derogatory information of which the petitioner is unaware, the director shall notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

(ii) *Notice of denial.* The petitioner shall be notified of the decision, the reasons for the denial, and the right to appeal the denial under part 103 of this chapter. There is no appeal from a decision to deny an extension of stay to the alien.

(11) *Revocation of approval of petition*—(i) *General.* (A) The petitioner shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under section 101(a)(15)(P) of the Act and paragraph (p) of this section. An amended petition should be filed when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the change(s) to the director who approved the petition.

(B) The director shall revoke a petition only when the validity of the petition has not expired. However, a petition that has expired may be revoked in certain situations, such as those where the facts of the petition were not true and correct or where the director determines that it is appropriate.

(ii) *Automatic revocation.* The approval of an unexpired petition is automatically revoked if the petitioner goes out of business, files a written withdrawal of the petition, or notifies the Service that the beneficiary is no longer employed by the petitioner.

(iii) *Revocation on notice*—(A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

(*1*) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;

(*2*) The statement of facts contained in the petition was not true and correct;

(*3*) The petitioner violated terms and conditions of the approved petition;

(*4*) The petitioner violated requirements of section 101(a)(15)(P) of the Act or paragraph (p) of this section;

(*5*) The approval of the petition violated paragraph (p) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of the date of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition.

(12) *Appeal of a denial or a revocation of a petition*—(i) *Denial.* A denied petition may be appealed under Part 103 of this chapter.

(ii) *Revocation.* A petition that has been revoked on notice may be appealed under Part 103 of this chapter.

Automatic revocations may not be appealed.

(13) *Admission.* A beneficiary may be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may not work except during the validity period of the petition.

(14) *Extension of visa petition alidity.* The petitioner shall file a request to extend the validity of the original petition under section 101(a)(15)(P) of the Act on Form I-129 in order to continue or complete the same activity or event specified in the original petition. Supporting documents are not required unless requested by the director. A petition extension may be filed only if the validity of the original petition has not expired.

(15) *Extension of stay*—(i) *Extension procedure.* The petitioner shall request extension of the alien's stay to continue or complete the same event or activity by filing Form I-129, accompanied by a statement explaining the reasons for the extension. The petitioner must also request a petition extension. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. The beneficiary must be physically present in the United States at the time the extension of stay is filed. Even though the requests to extend the petition and the alien's stay are combined on the petition, the director shall make a separate determination on each. If the alien leaves the United States for business or personal reasons while the extension requests are pending, the petitioner may request the director to cable notification of approval of the petition extension to the consular office abroad where the alien will apply for a visa.

(ii) *Extension periods*—(A) *P-1 individual athlete.* An extension of stay for a P-1 individual athlete may be authorized for a period up to five years for a total period of stay not to exceed 10 years.

(B) *Other P-1, P-2, and P-3 aliens.* An extension of stay may be authorized in increments of six months for P-1 athletic teams, entertainment groups, aliens in reciprocal exchange programs, and aliens in culturally unique programs to continue or complete the same event or activity for which they were admitted.

(16) *Effect of approval of a permanent labor certification or filing of a preference petition on P classification.* The approval of a permanent labor certification or the filing of a preference petition for an alien shall not be a basis for denying a P petition, a request to extend such a petition, or the alien's admission, change of status, or extension of stay. The alien may legitimately come to the United States for a temporary period as a P nonimmigrant and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the United States.

(17) *Effect of a strike.* (i) If the Secretary of Labor certifies to the Commissioner that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place where the beneficiary is to be employed, and that the employment of the beneficiary would adversely affect the wages and working conditions of U.S. citizens and lawful resident workers:

(A) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(P) of the Act shall be denied.

(B) If a petition has been approved, but the alien has not yet entered the United States, or has entered the United States but has not commenced employment, the approval of the petition is automatically suspended, and the application for admission on the basis of the petition shall be denied.

(ii) If there is a strike or other labor dispute involving a work stoppage of workers in progress, but such strike or other labor disputes is not certified under paragraph (p)(17)(i) of this section, the Commissioner shall not deny a petition or suspend an approved petition.

(iii) If the alien has already commenced employment in the United States under an approved petition and is participating in a strike or labor dispute involving a work stoppage of workers, whether or not such strike or other labor dispute has been certified by the Secretary of Labor, the alien shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers, but is subject to the following terms and conditions:

(A) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act, and regulations promulgated thereunder in the same manner as all other P nonimmigrants,

(B) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving a work stoppage of workers, and

(C) Although participation by an P nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for deportation, an alien who violates his or her status or who remains in the United States after his or her authorized period of stay has expired will be subject to deportation.

(18) *Use of approval notice, Form I-797.* The Service shall notify the petitioner on Form I-797 whenever a visa petition or an extension of a visa petition is approved under the P classification. The beneficiary of a P petition who does not require a nonimmigrant visa may present a copy of the approval notice at a port of entry to facilitate entry into the United States. A beneficiary who is required to present a visa for admission and whose visa expired before the date of his or her intended return may use Form I-797 to apply for a new or revalidated visa during the validity period of the petition. The copy of Form I-797 shall be retained by the beneficiary and presented during the validity of the petition when reentering the United States to resume the same employment with the same petitioner.

Dated: April 1, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization.

Editorial Note: This document was received by the Office of the Federal Register on July 3, 1991.

[FR Doc. 91-16226 Filed 7-10-91; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

Proposed Customs Regulations Amendment Pertaining to Personal Information on Checks Submitted to Customs

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Customs proposes to amend the Customs Regulations to provide that identifying information on uncertified personal checks over $25.00 in amount given for noncommercial importations include the payor's name, home and business telephone number, including area code, and date of birth. Additionally, Customs proposes that one of the following be required: The payor's social security number, passport number, or driver's license number, including issuing State. This proposed amendment is in response to a need to

improve collection efforts on debts arising from dishonored checks.

DATES: Comments must be received on or before September 9, 1991.

ADDRESSES: Written comments may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Robert Hamilton, Revenue Branch, National Finance Center 317-298-1308.

SUPPLEMENTARY INFORMATION:

Background

In an effort to facilitate its ability to collect on debts arising from dishonored personal checks received for noncommercial importation, Customs has determined that additional information is needed pertaining to the identification of the payor on uncertified personal checks over $25.00 in amount which are submitted to Customs and processed at piers, terminals, bridges, airports and other similar places. Customs is of the opinion that collection activities on amounts of $25.00 and less would not be cost effective.

Customs proposes to amend § 24.1(b), Customs Regulations (19 CFR 24.1(b)), to require that identifying information pertaining to the payor on uncertified personal checks over $25.00 in amount submitted to Customs for noncommercial importation include the payor's name, home and business telephone number, including area code, and date of birth. Additionally, Customs proposes that one of the following be required: The payor's social security number, current passport number, or current driver's license number, including issuing State.

Pursuant to § 7(b) of the Privacy Act of 1974, 5 U.S.C. 552a Note, a governmental agency "which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it." In order to comply with the § 7(b) notice requirements of the Privacy Act, concurrent with a final rule being published on this proposed amendment, Customs will have in place a notification program pertaining to the voluntary disclosure of the payor's social security number.

Comments

Prior to adoption of this proposal, consideration will be given to written comments (preferably in triplicate) timely submitted to Customs. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC.

Regulatory Flexibility Act

This document is not subject to the Regulatory Flexibility Act. This proposed amendment is certified under the provisions of § 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) not to have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Michael Smith, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Executive Order 12291 and Regulatory Flexibility Act

Because this rule relates to agency organization and management, it is not subject to either Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 19 CFR Part 24

Customs duties and inspection, Imports, Accounting, Claims, Taxes.

Proposed Amendment

It is proposed to amend Part 24, Customs Regulations (19 CFR Part 24) as set forth below:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24, Customs Regulations (19 CFR part 24), would continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58a-58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 31 U.S.C. 9701, unless otherwise noted.

Section 24.1 also issued under 19 U.S.C. 197, 198, 1648.

* * * * *

2. It is proposed to revise the introductory text of § 24.1(b), Customs Regulations (19 CFR 24.1(b)), to read as follows:

§ 24.1 Collection of Customs duties, taxes, and other charges.

* * * * *

(b) At piers, terminals, bridges, airports and other similar places, in addition to the methods of payment prescribed in paragraph (a) of this section, a personal check drawn on a national or state bank or trust company of the United States, shall be accepted by inspectors of Customs and other Customs employees authorized to receive Customs collections in payment of duties, taxes, and other charges on noncommercial importations subject to the identification requirements of paragraph (a)(4) of this section and this paragraph. Where the amount of the check is over $25.00, the Customs cashier or other employee authorized to receive Customs collections shall ensure the payor's name, home and business telephone number, including area code, and date of birth is recorded on the instrument. Additionally, one of the following will be recorded on the instrument: The payor's social security number, current passport number, or current driver's license number, including issuing state. A personal check received under this paragraph and a United States Government check, traveler's check, or money order received under paragraph (a) of this section by such Customs inspectors and other Customs employees shall also be subject to the following conditions:

* * * * *

Carol Hallett,

Commissioner of Customs.

Approved: June 28, 1991.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 91-16403 Filed 7-10-91; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on the substantive adequacy of certain program revisions submitted by the Illinois Department of Mines and Minerals (Department) to modify the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

By letter dated February 1, 1991, Illinois submitted a proposed amendment to the Illinois program (Administrative Record No. IL-1131). OSM announced receipt of the proposed amendment in the March 4, 1991, **Federal Register** (56 FR 8969) and in the same notice opened the public comment period and provided opportunity for a public hearing. The comment period closed on April 3, 1991. The amendment was intended to make the requirements of the Illinois program no less effective than the Federal program, to enhance the clarity of Illinois' rules, and to meet State codification rules and guidelines. Illinois submitted changes to the amendment on June 24, 1991 (Administrative Record No. IL-1164).

This notice sets forth the times and locations that the Illinois program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on August 12, 1991. If requested, a public hearing on the proposed amendment will be held at 1 p.m. on August 5, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on July 26, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James F. Fulton, Director, Springfield Field Office, at the address listed below. Copies of the Illinois program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting OSM's Springfield Office.

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 511 West Capitol, suite 202, Springfield, Illinois 62704, Telephone: (217) 492-4495

Illinois Department of Mines and Minerals, 300 West Jefferson Street, suite 300, Springfield, Illinois 62791, Telephone: (217) 782-4970.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office; (217) 492-4495.

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Information pertinent to the general background of the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.11, 913.15, 913.16, and 913.17.

II. Discussion of Proposed Amendment

Pursuant to 30 CFR 732.17, OSM identified required revisions to the Illinois program by letters dated September 20, 1989 and February 7, 1990. OSM also notified Illinois of deficiencies which OSM had determined to be less effective than the Federal requirements for surface mining and reclamation operations in an Illinois program amendment approved by the Director on August 29, 1990 (55 FR 35301) and in deficiency letters dated November 2, 1990 and December 21, 1990.

In response to these notifications, Illinois by letter dated February 1, 1991 (Administrative Record No. IL-1131), submitted proposed changes to the Illinois Administrative Code (IAC). The amendment concerned changes at 62 IAC 1700 General; 62 IAC 1701 General Definitions; 62 IAC 1702 Exemption for Coal Extraction Incidental to the Extraction of Other Minerals; 62 IAC 1761 Areas Designated by Act of Congress; 62 IAC 1772 Requirements for Coal Exploration; 62 IAC 1773 Requirements for Permits and Permit Processing; 62 IAC 1774 Renewal; and Transfer, Assignments, or Sale of Permit Rights; 62 IAC 1778 Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information; 62 IAC 1780 Surface Mining Permit Application—Minimum Requirements for Reclamation and Operation Plan; 62 IAC 1784 Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; 62 IAC 1816 Permanent Program Performance Standards—Surface Mining Activities; 62 IAC 1817 Permanent Program Performance Standards—Underground Mining Activities; and 62 IAC 1823 Special Program Performance Standards on Prime Farmland.

On June 24, 1991, in response to issue letters prepared by OSM on May 8, 1991, and June 5, 1991, Illinois submitted the following proposed revisions dated June 21, 1991 (Administrative Record No. IL-1164), to the amendment.

At 62 IAC 1701.Appendix A, a spelling error is corrected in the definition of "approximate original contour" by changing the word "compliments" to "complements." The proposed change to the spelling of "sequum" in the definition of "soil horizons" is removed, and the spelling of "sequum" remains unchanged.

At 62 IAC 1702.5, labelling errors are corrected and quotation marks are added to the defined terms. At 62 IAC 1702.5(a)(1), the phrase "subject to the Department's approval" was added after the phrase "of the cumulative measurement period" to specify that the provisions of this section are subject to regulatory authority approval. At 62 IAC 1702.5(a)(1)(ii), the phrase "whichever is earlier" is removed and the phrase "coal or the minerals" was changed to "coal or other minerals" to correct a typographical error.

At 62 IAC 1702.15 (a), (d), and (e), the reference "or the Secretary" is added so as not to limit the provisions only to "authorized representative of the Department."

At 62 IAC 1702.16, labelling errors are corrected.

At 62 IAC 1702.17(c)(1), the phrase "any person who submitted written comments or objections to the exemption application pursuant to section 1702.11(d)" is added to the end of the first sentence so that all intervenors would be notified of a decision to revoke the exemption.

Illinois restructured 62 IAC 1761.11(d)(2) to clarify that the public notice and written finding provisions of paragraphs (A) and (C) apply to relocated or closed public roads.

Illinois also restructured 62 IAC 1761.12(c) to clarify that the provisions of paragraphs (2) and (3) apply to relocated or closed public roads.

At 62 IAC 1772.14(a), a typographical error is corrected by changing the second word from "at" to "as."

In order to account for judicial review of federally issued violations, the second sentence of 62 IAC 1773.15(b)(1)(B) is revised to also reference 30 CFR 775.13.

Statutory citations are updated for all of part 62 IAC 1780. At 62 IAC 1780.37(b) and 1784.24(b), the second sentence is revised to add the words "design and" before the word "construction" in order to require that the engineer be experienced in the design of roads as well as the construction of roads.

Illinois revised 62 IAC 1816.49(a) and 1817.49(a) by deleting proposed subsection (a)(4) and revising subsection (a)(3) to be consistent with the Federal counterpart regulations at 30 CFR 816.49(a)(3) and 817.49(a)(3). The U.S. Soil Conservation Service Practice Standard 378, "Ponds," April 1987 is

being proposed as engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor. This would allow operators an alternative to engineering tests for an impoundment not meeting the size or other criteria of 30 CFR 77.216(a) and located where failure would not be expected to cause loss of life or serious property damage to meet the design, construction and maintenance requirements of U.S. Soil Conservation Service Practice Standard 378, "Ponds," April 1987. The remainder of the subsections are renumbered to account for the deletion of proposed subsection (a)(4) and proposed revision of subsection (a)(3). Proposed subsection (a)(6)(A), which is renumbered to subsection (a)(5)(A), is revised to be consistent with 30 CFR 816.49(a)(5)(i) and 817.49(a)(5)(i). Proposed subsection (a)(11)(B) is renumbered to (a)(10)(B) and revised to read as follows: "Water impounding structures that impound water to a design elevation no more than five (5) feet above the upstream toe of the structure and that can have a storage volume of not more than twenty (20) acre-feet; provided the exemption request is accompanied by a report sealed by a registered professional engineer licensed in the State of Illinois, accurately describing the hazard potential of the structure. Hazard potential must be such that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm. The report shall be field verified by the Department prior to approval and periodically thereafter. The Department may terminate the exemption if so warranted by changes in the areas downstream of the structure or in the structure itself; and * * *."

A typographical error is corrected at 62 IAC 1816.(b)(2) and 1817.84(b)(2) by adding the word "the" before the word "Department."

At 62 IAC 1861.116(a)(2)(D) and 1817.116(a)(2)(D), the phrase "the first rainfall event after" was added before the phrase "the repair" to clarify when the Department's determination of whether or not rill and gully repair on cropland-capable reclaimed land is augmentative and new paragraph v) is added to clarify how the permittee is notified of whether or not a repair is augmentative on cropland-capable reclaimed land. At 62 IAC 1816.116(a)(2)(E) and 1817.116(2)(E), new paragraph v) is added to clarify how the permittee is notified of whether or not a repair is augmentative on noncropland-capable land. Illinois also provided additional documentation supporting the designation of rill and gully repair as a normal husbandry practice on noncropland-capable land.

Illinois revised the proposed last sentence of 62 IAC 1816.116(a)(3)(E) and 1817.116(a)(3)(E) to limit the substitution of corn production for hay production on high capability land to one attempt.

At 62 IAC 1816.117(a)(1) and 1817.117(a)(1), the second sentence is revised by adding the words "or later" to the end of the sentence to clarify that the responsibility period in this provision is a minimum time period in which to assess vegetation survival.

At 62 IAC 1816.117(a)(5) and 1817.117(a)(5), a spelling error is corrected by changing the word "gullys" to "gullies." Illinois also provided support for replanting of trees and shrubs as a normal husbandry practice.

At 62 IAC 1816.117(d)(3) and 1817.117(d)(3), the word "foot" is added before the word "increment" to clarify the intended increment of measurement for vegetative ground cover. At 62 IAC 1816.117(d)(6) and 1817.117(d)(6), the phrase " provided the average ground cover is 70% or greater" was added to clarify the minimum average vagetative ground cover required for determining vegetation success. Illinois also provided rationale for the method selected for measuring vegetative ground cover.

Illinois corrected the spelling of the word "gullys" to "gullies" throughout parts 62 IAC 1817.117 and 1817.117.

At 62 IAC 1816.151(a) and 1817.151(a), the second sentence is revised to require that the engineers be experienced in the design of roads as well as the construction of roads.

Illinois revised 62 IAC 1816.151(b) and 1817.151(b) to read as follows: "(b) Safety Factor. Each primary road embankment shall have side slopes of 2H:1V or flatter, or shall be shown to have a minimum static factor of safety of 1.3. All primary road embankments shall be designed and constructed using current and prudent engineering practices."

Illinois proposed numerous revisions to 62 IAC 1816.Appendix A Agricultural Lands Productivity Formula, which is used in determining the success of revegetation of post-mining land for row-crop purposes. These revisions include deletion of references to section 1816.Table E and 1816.Table F, addition of a reference that the Soil Master File is created annually the Illinois Department of Agriculture, addition of a reference that the County Cropped Acreage File is created annually by the Illinois Department of Agriculture, and changes to the various sampling procedures an crop formulas.

At 62 IAC 1823.14(a)(2), a typographical error is corrected by changing "gragipan" to "fragipan."

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15.

If the amendment is deemed adequate, it will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the OSM Springfield Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on July 26, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office list under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**". All such

meetings will be open to the public, and, if possible, notices of meetings will be posted at the locations under "ADDRESSES". A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 1, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91-16532 Filed 7-10-91; 8:45 am]

BILLING CODE 4310-05-M

COPYRIGHT OFFICE

Library of Congress

37 CFR Part 201

[Docket No. RM 86-7B]

Cable Compulsory License; Definition of Cable Systems

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is proposing new regulations that govern the conditions under which satellite master antenna television (SMATV) systems will qualify as cable systems under the compulsory license mechanism of section 111 of the Copyright Act. At the same time, the Office is also announcing a policy decision that satellite carriers are not eligible for the cable compulsory license and a preliminary policy decision that multichannel multipoint distribution services (MMDS) are not cable systems and therefore are not eligible for the cable compulsory license. The proposed regulations would implement a portion of section 111 of the Copyright Act of 1976, title 17 U.S.C. relating to the compulsory license for secondary transmission by cable systems.

DATES: Initial comments should be received no later than September 9, 1991. Reply comments should be received August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540. Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION:

I. Background

On October 15, 1986, the Copyright Office in a notice of inquiry (51 FR 36705) invited public comment on the definition of the term "cable system" as it concerns the operation of the compulsory licensing mechanism in title 17 U.S.C. 111, the Copyright Act of 1976. The Office solicited comments on all aspects of the issue whether satellite master antenna television (SMATV) and multichannel multipoint distribution service (MMDS) operations qualify as cable systems under § 111 of the Copyright Act. The Office also requested comment on five specific questions, discussed in part II below.

Comments were invited through December 15, 1986, and reply comments through January 13, 1987. The Copyright Office received twenty-two comments, including six from representatives of SMATV owners and operators, four from representatives of MMDS owners and operators, one from the representative of an operator of both SMATV and MMDS systems, seven from representatives of broadcast entities (networks, network affiliates, the Public Broadcasting Service, and trade associations), two from representatives of copyright owner/programmers, one from the Federal Trade Commission, and one from the National Cable Television Association. The Office also received nine reply comments.

The comment period was reopened from August 3, 1987, until September 2, 1987 (52 FR 28731), so that the public might respond to four comments received by the Copyright Office after the closing of the initial comment and reply period. The Office received three additional comments at that time.

On May 19, 1988, the Copyright Office again reopened this Inquiry (53 FR 17962) to broaden the scope of the inquiry to include issues relating to the eligibility of satellite carriers to operate under the section 111 compulsory license. In addition to general comment about the eligibility of satellite carriers to qualify as cable systems for purposes of 17 U.S.C. 111(c), the Office sought comment as to whether the same entity may qualify for the passive carrier exemption of section 111(a) with respect to certain transmissions and also qualify as a cable system with respect to other transmissions.

Comments were invited through July 18, 1988. The Office received fifteen comments, including seven from representatives of television broadcast entities (such as networks, network affiliated stations, independent stations, and the Public Broadcasting Service), two from representatives of copyright owner/programmers, four from representatives of satellite carriers, one from a distributor of satellite retransmission services, and one from the National Cable Television Association.

II. Discussion of Comments

A. The SMATV/MMDS Issue

The representatives of SMATV owners and operators uniformly argue that SMATV operations are cable systems under the cable compulsory license, and the representatives of MMDS owners and operators argue that MMDS operations are cable systems. However, the representatives of copyright owners and broadcast entities were not uniform, from an industry-wide perspective, in their positions on the questions presented in this inquiry.

From the broadcasters' perspective, the representatives of NBC, CBS and CBS affiliated stations, the National Association of Broadcasters (NAB), and the Association of Independent Television Stations (INTV) argue that neither SMATV nor MMDS facilities qualify as cable systems. However, the Public Broadcasting Service (PBS) and Turner Broadcasting System, Inc. argue that both types of facilities do qualify as cable systems, and ABC takes the position that SMATV facilities qualify, but MMDS facilities do not.

The copyright owner/programmers are similarly divided in their views. The Motion Picture Association of America and the performing rights societies (MPAA/Music), filing together, believe that both SMATV and MMDS facilities qualify as cable systems while the representatives of the professional sports leagues (Sports) contend that neither type of facility qualifies.

Finally, the National Cable Television Association (NCTA) takes a neutral position. The Federal Trade Commission, though not addressing the legal issue, argues that, from a public policy perspective, compulsory licenses are harmful as a derogation of the general free market copyright licensing system, and the Copyright Office should not find that new retransmission services are eligible for the cable compulsory license.

1. Arguments supporting the view that SMATV operations qualify as cable systems under Section 111.

a. Those commentators representing SMATV owners and operators, and also MPAA/Music, PBS, Turner Broadcasting System, Inc. (Turner), and Capital Cities/ABC contend that SMATV operations meet the explicit requirements set out in the definition of cable system in section 111(f), each being:

a facility located in any State, Territory, Trust Territory, or Possession that in whole

or in part receive signals transmitted by one or more television broadcast stations licensed by the Federal Communications Commission (FCC), and makes secondary transmissions of such signals or programs by wires, cables, or other communications channels to subscribing members of the public who pay for such service.

As will be discussed in greater detail below, these parties uniformly contend that the fact that certain recipients of SMATV signals are "indirect" subscribers does not adversely affect the SMATV facility's eligibility as a cable system.

b. Six commentators representing SMATV owners and operators, Capital Cities/ABC (ABC), and Turner argue that SMATV facilities are technologically equivalent to cable systems. They point out that from a practical standpoint, both types of systems provide a closed circuit television service generally comprised of off-air and satellite transmitted TV signals; both utilize antennas and satellite earth stations to receive those signals, various electronic equipment to process them, and coaxial cable and related amplification equipment to distribute them to viewers; and today SMATV facilities can be as technologically sophisticated as traditional cable. One representative of various SMATV facilities accurately noted in its reply comments that there was no disagreement among the commentators as a whole that the operations of SMATV and cable facilities are identical.

Several of the above commentators note that the only functional difference between the two types of facilities is that SMATV systems are generally confined geographically to private property and do not cross public rights of way whereas cable systems do generally cross public rights of way. This fact results in the further difference that cable systems are often regulated at local, state and federal levels, while SMATV systems are not. The commentators argue that these differences, based on realty and ownership considerations, should not affect the copyright analysis.

c. Several SMATV representatives as well as MPAA/Music maintain that, because SMATV facilities are functionally identical to traditional cable facilities and the services they offer are completely interchangeable with the services offered by cable, the two different industries are in direct competition with one another and should be given equal treatment under the copyright law. Furthermore, the Federal Trade Commission (FTC) finds that the major policy consideration in favor of including SMATV systems as cable systems under the copyright law would be the elimination of a potential artificial flow of resources to traditional cable and away from its functionally identical competitors in the marketplace.[1] MPAA/Music state that they "are aware of no statutory justification for further extending the immense subsidy granted the traditional cable industry in the form of the compulsory license by denying its substantial benefits to new competitive delivery systems such as SMATV and MMDS that fall within the literal meaning of a 'cable system' as defined in the Copyright Act." Comment No. 6 at 3.

d. Five commentators representing SMATV owners and operators and Turner argue that the legislative history to section 111 indicates that Congress intended the definition of cable system to be applied broadly in the future to include certain facilities other than traditional cable systems, so long as the policy considerations underlying the creation of the cable compulsory license apply to those facilities. Those commentators claim this is the position taken by several courts that have reviewed Congressional policy underlying the compulsory licensing mechanism of section 111.

For example, in *WGN Continental Broadcasting Co.* v. *United Video. Inc.*, 693 F.2d 622, 627 (7th Cir. 1982), the Seventh Circuit stated:

> The comprehensive overhaul of copyright law by the Copyright Act of 1976 was impelled by recent technological advances, such as xerography and cable television, which the courts interpreting the prior act, the Copyright Act of 1909, had not dealt with to Congress's satisfaction. This background suggests that Congress probably wanted the courts to interpret the definitional provisions of the new act flexibly, so that it would cover new technologies as they appeared, rather than to interpret those provisions narrowly and so force Congress periodically to update the act.

Likewise, the Eighth Circuit cautioned that " '(i)nterpretation of the (Copyright Act) must occur in the real world of telecommunications, not in a vacuum' " because Congress did not intend "* * * to freeze for § 111 purposes both technological development and implementation." *Hubbard Broadcasting, Inc.* v. *Southern Satellite, Inc.*, 777 F.2d 393, 400 (8th Cir. 1985), *cert. denied*, 479 U.S. 1005 (Dec. 8, 1986) (*quoting Eastern Microwave, Inc.* v. *Doubleday Sports, Inc.*, 691 F.2d 125, 132 (2d Cir. 1982). In *Eastern Microwave*, the court looked to "the common sense of the statute * * * to its purpose, (and) to the practical consequences of the suggested interpretations * * * for what light each inquiry might shed." 69 F.2d at 127.

Applying these principles, the commentators contend that because the practical consequences of the distribution of broadcast signals by SMATV systems are the same as the consequences of the distribution of such signals by traditional CATV systems, and the technology used by SMATV systems is not inconsistent with the definition of a cable system as it is contained in section 111(f) (and is in fact the same), then an interpretation that a SMATV is not a cable system under section 111 would be inconsistent with Congressional intent or the meaning of the statute.

Taking this argument one step further, these commentators note that in 1976, when Congress created the cable compulsory license, the FCC's definition of "cable television system" differed significantly from the definition Congress adopted in the Copyright Act. Among the inconsistencies between the two definitions was that the FCC's definition exempted from regulation as a cable system any facility that served only subscribers in one or more multiple-unit dwellings under ownership, control, or management, typically SMATV-type systems. See 63 F.C.C.2d 956 (1977). The commentators contend that, if Congress had wanted to limit the availability of the cable compulsory license to traditional cable systems, it easily could have done so by defining the term "cable system" by reference to the FCC's definition,[2] as it did in several other definitions found in section 111 of the Copyright Act.

Several of these commentators also argue that the same rationale applied by Congress in 1976 for granting the cable industry a compulsory license applies now to the SMATV industry. Congress created a compulsory license for cable because, while it recognized that cable systems are commercial enterprises whose operations are based on the carriage of copyrighted program material and that copyright royalties should be paid by cable operators for their use of that material, "it would be impractical and unduly burdensome to require every cable system to negotiate with every copyright owner whose work

[1] However, the FTC concludes that this consideration is outweighed by other policy considerations against including SMATV systems as cable systems, as is discussed below.

[2] The compelling counter-argument is that Congress simply did not want to give the FCC the power to change the definition of cable system for copyright purposes.

was retransmitted by a cable system." H.R. Rep. No. 1476, 94th Cong., 2d Sess. 89 (1976). The same rationale would apply for including SMATV systems under the compulsory licensing scheme. Likewise, these commentators contend, including SMATV systems as cable systems would further the important public purposes framed in the copyright clause of the Constitution by "allowing the public to benefit by the wider dissemination of works carried on television broadcast signals." *Capital Cities Cable, Inc.* v. *Crisp*, 467 U.S. 691, 709–11 (1984) (discussing the policy objectives of the cable compulsory license).

In expressing these views, the commentators note that often SMATV operators are small businessmen or entrepreneurs, similar to the majority of cable operators in the 1960's and 1970's, who lack the bargaining power and the administrative means that would be necessary to engage in individual copyright negotiations with innumerable program suppliers. They believe that SMATV operators should be afforded the same opportunity that traditional cable systems are afforded to benefit from the cable compulsory license.

e. In answering the Copyright Office's general inquiry into whether SMATV systems are eligible for a compulsory license under § 111, a number of commentators go beyond a discussion of the definition of cable system to examine the issue of whether the carriage of distant signals by SMATV systems is "permissible under the rules, regulations, or authorizations of the Federal Communications Commission." The commentators include arguments on this point because section 111(c) of the Copyright Act provides that a particular cable system's carriage of broadcast signals is not eligible for compulsory licensing if such carriage is not permissible under the FCC's rules.

One commentator representing SMATV facilities and a commentator representing ABC make the argument that SMATV systems are indeed affirmatively authorized by the FCC to retransmit broadcast signals. These parties point to a 1983 order issued by the FCC in which the Commission treated SMATV service as falling within the long-established exemption of master antenna television systems from its cable regulations. *Earth Satellite Communications, Inc.*, 95 F.C.C.2d 1223, 1224 (1983), *recon. denied*, FCC 84–206, released May 14, 1984, *aff'd sub nom. New York State Comm'n on Cable Television* v. *FCC*, 749 F.2d 804 (D.C. Cir. 1984). The commentators suggest that the FCC's finding in that order reflects an affirmative finding that the signal retransmission activities of SMATV operators are "permissible" as a matter of communications policy.

f. ABC makes the argument that the cable compulsory license applies only to "retransmitting media that are local in scope," and that SMATV facilities meet this requirement. Comment No. 13 at 1. NCTA and NBC Television Affiliates agree with ABC's argument, but apply it differently with respect to the MMDS media. See Comment No. 8 at 2–3; (Reply) Comment No. 27 at 2–3. ABC offers a historical analysis that looks to the communications environment immediately prior to enactment of the Copyright Act of 1976. It notes that at that time, "superstations," broadcast stations retransmitted via satellite to cable systems across the nation as a whole, did not yet exist. It contends that the stations that did exist had little incentive to seek, or ability to obtain, program rights in distant markets that they could exploit only through exposure of their signals on cable systems in those markets. ABC contends that this situation, primarily caused by the inherent characteristics of cable technology at the time, was recognized by the FCC so that the FCC regulated the cable industry as a highly localized media of limited availability. Comment No. 13 at 5–9.

ABC then argues that Congress, cognizant of the FCC's regulations and the 1971 consensus agreement among representatives of the broadcasting, cable, and programming industries that shaped the formation of those regulations, created a compulsory license for cable systems of local, not national, scope. ABC maintains that the section 111(f) definition of cable system makes clear that cable systems must be local transmission media. As evidence, it points to the requirement that a cable facility be located in "any State, Territory, Trust Territory, or Possession," and to the definition's references to "contiguous communities" and "local service areas" of primary transmitters. *Id.* at 9–10.

Applying the definition to SMATV operations, ABC finds that they "utilize cable technology" and "are inherently localized transmission media of limited availability." *Id.* at 20. NCTA and NBC Television Affiliates apparently agree. Comment No. 8 at 9; Comment No. 27 at 2–3. While only NCTA applies this reasoning to conclude that MMDS facilities are inherently localized transmission media of limited availability, all three commentators agree that retransmissions of broadcast signals to satellite dish owners by direct broadcast satellite systems such as Satellite Broadcast Network (SBN) fail to qualify for the compulsory license on these (as well as other) grounds.

g. In their reply comments, the National Cable Satellite Association (NCSA), NCTA, and Tempo, in addition to a number of commentators representing MMDS facilities, argue that the Copyright Office should not consider one point raised by several commentators opposing the view that SMATV (and MMDS) operations qualify for a compulsory license under section 111: The fact that several government agencies are generally opposed to compulsory licenses in favor of free market licensing arrangements, and specifically urge that no new compulsory licenses be created. These reply commentators argue that the issue for the Copyright Office to decide is not one of the expansion of the cable license but, rather, whether certain facilities are by their very nature cable systems under section 111.

h. Also in reply comments, Tempo raises the point that the construction of a cable system is typically more expensive than the construction of SMATV or MMDS systems and, sometimes, a traditional cable system wishes to build a SMATV or MMDS facility as an adjunct to its already existing system in order to serve additional subscribers. Tempo argues that, given a broad definition in section 111(f), it would be bad policy for the Copyright Office to take a position that precludes the availability of cost efficient technology under the cable compulsory license.

2. Arguments opposing the view that SMATV operations qualify as cable systems under section 111.

a. Five commentators argue that SMATV operations do not qualify as cable systems under section 111: Representatives of NBC, CBS, the Professional Sports Leagues (Sports), and, filing jointly, CBS affiliate station operators Bonneville International Corporation and Northern Television, Inc. (Bonneville/Northern), and broadcaster trade associations NAB and INTV. These commentators all argue that the cable compulsory license represents a derogation from the basic copyright principles embodied in the Copyright Act that ensure to copyright owners the right to control the use of their creations and should, therefore, be construed narrowly rather than broadly. They note that the Copyright Office has taken such a narrow view of the statute in the past. See Comment No. 17 at 2, citing 49 FR 14944, 14950–51 (April 16, 1984).

These commentators point out that section 111 represents a carefully crafted solution to a ten-year struggle in Congress to resolve conflicting legal, policy, and practical concerns surrounding one very specific industry: The cable industry as it existed at that time.[3] As such, they contend that it would be inconsistent with basic legal principles for the Copyright Office to extend the section 111 license to any new industry that may now come along, absent absolutely clear evidence that such a result was intended by Congress. NAB/INTV note that Congress's consideration of the Satellite Home Viewer Act indicates that Congress is willing to consider issues regarding the availability and terms of compulsory licensing for new delivery systems. Comment No. 22 at 5.

b. NBC, CBS, Bonneville/Northern, and NAB/INTV all suggest that the Copyright Office does not have the authority to take the position that SMATV operations qualify as cable systems under the section 111(f) definition, and thereby "extend" the compulsory license. They contend that such action would overstep the line between the Office's administrative role and the role of policy making, which rightfully belongs to Congress. In regard to the SMATV issue they assert that "the legislative and other regulatory signposts to which the Copyright Office might have recourse in interpreting the law provide only ambiguous guidance at best." Comment No. 3 at 4.

NBC suggests that the SMATV issue raises the same authority questions raised by an issue faced by the Office several years ago: whether low power television stations, which technologically evolved after the enactment of section 111, should be considered local under the section 111 definition of "local service area." NBC argues that the Copyright Office took a neutral position on that issue and waited for Congress to clarify the law, and the Office should do the same in the instant case.

c. NBC, CBS, and NAB/INTV take the position that SMATV facilities do not qualify as cable systems under the express language of section 111(f). NBC and CBS argue that typical SMATV operations do not serve "subscribing members of the public who pay for (retransmission of broadcast signals)," because they commonly serve residents of condominiums, apartment buildings and trailer parks and occupants of hotels, motels, and other lodgings, who may pay for SMATV service only indirectly when they pay condominium fees, rent, or service or lodging fees.

NAB/INTV argue that SMATV systems do not make secondary transmissions "by wires, cables, or other communications channels," because Congress intended that language to mean retransmission by traditional cable systems; the phrase "other communications channels," they contend, was included in the definition merely to allow traditional cable systems to upgrade their delivery mechanisms in light of technological advances. Comment No. 22 at 3.

d. The commentators for Sports, CBS, and NAB/INTV offer several selections from the legislative history of section 111 to demonstrate that Congress intended to draw a distinction between traditional cable and other retransmission media, such as master antenna television systems (MATV, the predecessor to SMATV systems); they contend the fact that Congress made such a distinction demonstrates that Congress intended for only traditional cable systems, recognized as such in 1976, to qualify for a compulsory license.

Sports and NAB/INTV cite to the section 111(a)(1) MATV exemption from copyright liability for the retransmission of local broadcast signals by the management of hotels, apartment houses, etc., to the private lodgings of guests or residents when no direct charge is made for the service. They argue that this different treatment of MATV facilities and traditional cable reflects a Congressional recognition that all entities that retransmit distant broadcast signals do not qualify as cable systems under the cable compulsory license. They further suggest that a SMATV operator, having forfeited the section 111(a)(1) exemption, should not be able to escape traditional copyright liability by qualifying for the cable compulsory license. Comment No. 17 at 10–11; Comment No. 22 at 3, n. 7.

e. The commentator representing Sports maintains that the basic premise upon which Congress enacted seciton 111 to benefit cable systems is inapplicable to SMATV systems and, therefore, the compulsory licensing provision should not be extended to SMATV. The basic premise referred to is Congress's determination in 1976 that reliance on the retransmission of broadcast signals was necessary to provide the diversity of programming to allow the cable industry to survive and grow. Sports contends that there is no compelling reason to permit SMATV operators to exploit copyright owners' creative efforts through compulsory licensing when the "economic viability of apartment house managers and the like obviously does not depend upon their ability to offer their residents amenities such as copyrighted distant signal programming (particularly, when such programming is merely added to the array of other non-broadcast programming which is available via satellite)." Comment No. 17 at 12.

This sentiment is expressed in economic terms in comments filed by the FTC. That agency concludes that, generally, today a distant signal programming market, for cable, SMATV, MMDS, and other such users, would likely exist and operate effectively without a compulsory license, contrary to Congress's findings in 1976. Comment No. 14 at 5. Thus, none of those industries need to rely on a compulsory license to survive and grow.

f. The FTC, Sports, CBS, and Bonneville/Northern all argue that, as a matter of policy, it does not make sense to expand the scope of the cable compulsory license and thereby extend the distortionary effects section 111 already has on the distant signal programming market. The FTC recites these distortionary effects, including the fact that copyright owners receive less remuneration from the compulsory license royalties than they would in the free market, that because of this theoretically the quality of their programming suffers and some programs are not produced at all, and that broadcasters, who are competitively disadvantaged, may not be able to afford to purchase the better quality programming that satellite delivery services can purchase at the lower compulsory licensing rates.

These commentators point out that this particular argument has been offered at one time or another by the Copyright Office, the NTIA, the Justice Department, and the FCC as a reason for the elimination of the cable compulsory license altogether. With such criticism of section 111 open for Congressional consideration, Sports and CBS argue, it would not promote sound administrative policy to expand the facilities that qualify for the license.

Bonneville/Northern further argues that the current compulsory licensing scheme poses several problems for the relationship between television

[3] The Sports commentator argues that the Supreme Court in *Goldstein* v. *California*, 412 U.S. 546, 564 (1973) (interpreting the Copyright Act of 1909), mandates that the Copyright Act should be interpreted against the technological background existing at the time the statute was enacted. Accordingly, Sports suggests that the cable compulsory license cannot be construed to apply to a media that did not exist in 1976. Comment No. 17 at 3–4. CBS cites to *Teleprompter Corp.* v. *CBS Inc.*, 415 U.S. 394, 414 (1974), (interpreting the Copyright Act of 1909) for the same proposition. Comment No. 18 at 9.

networks and their affiliates regarding exclusive licensing arrangements for local areas. This commentator relates how the Canadian Satellite Communications Company (CanCom) distributes United States originated network television signals throughout Canada via satellite, and that programming is available to certain cable systems in Alaska several hours in advance of its broadcast by the local network affiliates there. Bonneville/Northern contends that such "prerelease" can have a debilitating effect on the network affiliates' ability to obtain advertisers, resulting in fragmentation of the affiliates' advertising base and reduction in quality of its programming. The commentator argues that the section 111 license should not be "expanded" to SMATV and MMDS operators who can then increase this negative effect of the compulsory license. Comment No. 19 at 5–7.

3. Arguments in favor of the view that MMDS operations qualify as cable systems under section 111.

a. Comments in favor of the view that MMDS operations qualify as cable systems under section 111 were filed by five commentators representing MMDS owners and operators, by MPAA/Music, by Tempo Enterprises, a satellite carrier (Tempo), and by two broadcasting entities, Turner and PBS. In general, the same arguments cited above with respect to SMATV operations are also cited in favor of the view that MMDS operations qualify as cable systems. However, some commentators relate facts unique to the MMDS technology in making certain of those arguments. Only those comments distinguishing MMDS from SMATV and/or traditional cable systems will be mentioned below.

b. With respect to argument "1.b." above, MMDS operators also contend that MMDS facilities are functionally equivalent to cable systems, and they point out that they are in many aspects technologically similar to cable systems. The MMDS operators refer to their facilities as "wireless cable systems," a media that they contend includes Instructional Television Fixed Service (ITFS) and Operational Fixed Microwave Service (OFMS), other multiple channel microwave services for which the FCC has allocated airwaves. One MMDS operator describes the technology as follows:

> * * * the MDS, ITFS and OFS stations which will provide channel capacity to the wireless cable system will be co-located at a single transmission site analogous to the cable headend. From that transmitter/headend, microwave signals capable of being received thirty or more miles away will be transmitted in an omnidirectional pattern to combined MDS/ITFS/OFS reception equipment installed on the rooftops of the single family residences and multiple dwelling units ("MDUs") of subscribers. In the case of single family homes, separate cables will run from the rooftop MDS/ITFS/OFS antenna and from any subscriber-provided VHF/UHF antenna to an addressable set-top descrambler/channel selector. In the case of MDUs (where rooftop VHF/UHF master antennas will presumably already be in place), the two rooftop antennas will be connected by separate cables to a "mini-headend" within the building. A single cable will then connect the mini-headend to the individual units.

Comment No. 4 at 6–7.

The MMDS commentators argue that, from a technological perspective, the secondary transmission service that is provided by MMDS is identical to the service provided by a coaxial cable system: Each service makes secondary transmissions of signals from a centralized headend to subscribers, and each provides its subscribers with the equipment necessary to receive the signals in their homes. The only difference between wireless cable and coaxial cable services, they contend, is that wireless cable connects its subscribers with the cable headend via microwave transmissions, rather than using the more expensive medium of coaxial cable. The MMDS commentators argue that this difference is without significance for copyright purposes.

Several commentators also note that many traditional cable systems already use microwave technology in one or more components of their operations. And other traditionally wired systems are adding an MMDS component. Such systems, they argue, are the technological equivalent of an MMDS facility with a "hard-wired" component. See Comment No. 35 at 1–2. These hybrid facilities, which integrate coaxial cable and microwave components for the purpose of reaching more subscribers more efficiently, are discussed in the comments received in the second comment phase of this proceeding. The commentators indicate that, in the future, the line between traditional cable and MMDS will be technologically blurred to the point that for many facilities, there will be no discernable difference in the technological components of traditional cable systems and MMDS facilities other than the fact that each "started" with a different type of facility. *Id.* at 3; Comment No. 32.

c. With respect to argument "1.d." above, one commentator representing MMDS operators points to the Senate Report to the Copyright Act of 1976, which notes that Congress intended that the cable system definition encompass systems operating in non-contiguous states, territories, and possessions that "may not meet the customary definition of a cable system * * * (but) for purposes of this legislation, shall be regarded as conventional systems despite the necessary differences in technology and operating procedures." Comment No. 9 at 4, quoting S. Rep. No. 473, 94th Cong., 1st Sess. 83 (1975). The commentator contends that this language demonstrates Congress's willingness to acknowledge that advancements in television signal delivery technology might be incorporated in the cable compulsory license. However, the quoted language in context clearly refers to delivery of signals by facilities operating in the noncontinental United States.

The same commentator also quotes from the cable hearings in the 1970's a statement by then Register of Copyrights Barbara Ringer, who observed that section 111 "deals with all kinds of secondary transmissions, which usually means picking up electrical energy signals, broadcast signals, off the air and retransmitting them simultaneously by one means or the other—usually cable but sometimes other communication channels, like microwave and apparently laser beam transmissions that are on the drawing boards if not in actual operation." Comment No. 9 at 4, quoting, Hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House Judiciary Committee on H.R. 2223, 94th Cong., 1st Sess. 1820.

Another commentator argues that recent case law supports a reading of the definition of "cable system" that would include MMDS as a facility that uses "other communications channels" to transmit secondary signals to subscribers. Turner points to the Eighth Circuit's decision in *Hubbard Broadcasting, Inc.* v. *Southern Satellite Systems, Inc.*, 777 F.2d 393 (8th Cir. 1985), *cert. denied*, 479 U.S. 1005 (1986), in which the court determined that the definition of "transmit"

> is broad enough to include all conceivable forms and combinations of wired or wireless communications media, including but by no means limited to radio and television broadcasting as we know them. Each and every method by which the images or sounds comprising a performance or display are picked up and conveyed is a transmission * * *

Id. at 401. quoting H.R. Rep. No. 1476, 94th Cong., 2d Sess. 64 (1976).

d. With respect to argument "i.e." above, commentators representing

MMDS owners and operators argue in their reply comments that there is no disputing that MMDS operators may retransmit broadcast signals without objection from the FCC, and that section 111(c) does not require an affirmative authorization to do so, but only non-objection from the FCC. They also argue that section 325 of the Communications Act of 1934, which requires a broadcaster to secure the permission of another broadcaster before retransmitting any programming from that second broadcaster's television signal, does not prevent MMDS facilities from retransmitting television broadcast signals.

The Microband Companies, Incorporated (Microband), Pennsylvania Pay Television, Inc. (PPTV), and the National Rural Telecommunications Cooperative submit that there is nothing in the language or legislative history of section 111(c) to support the contention that the FCC must affirmatively and expressly authorize the secondary transmission made by a particular cable system for that system to qualify for a compulsory license. They argue to the contrary that the clear meaning of section 111(c) is that the compulsory license is available so long as the secondary transmission comports with the FCC's rules, regulations, and authorizations. Comment No. 23 at 8; Comment No. 30 at 2; Comment No. 35 at 6. Tempo adds that MMDS operations should be treated similarly to traditional cable systems with respect to section 111(c): "a traditional cable system that retransmits broadcast signals in violation of the FCC's rules and regulations is subject to a suit for infringement." Comment No. 29 at 4. Tempo suggests that it is for the FCC and the courts, and not the Copyright Office, to determine whether a particular retransmission is "permissible" for purposes of section 111(c) of the Copyright Act.

In their comments and reply comments, Microband and Microwave Communications Association, Inc. (MCA) carefully lay out the FCC rulings that, in effect, brought MMDS into being. Microband traces the origins of MMDS to three FCC decisions in the early 1980's: First, the FCC decided to reallocate to the MDS from the ITFS the eight 6 MHz microwave channels in the 2596–2644 MHz band. Second, the FCC authorized the licensees of the other twenty 6 MHz ITFS channels in the 2500–2686 MHz band to lease excess capacity on those channels (previously reserved for public education purposes) to commercial operators. Third, the FCC modified its rules to permit licensees of the three 6 MHz channels at 2650–2656 MHz, 2662–2668 MHz, and 2674–2680 MHz, allocated to the private Operational Fixed Service to employ those channels to distribute video programming to their customers. Comment No. 4 at 4–5; Comment No. 16 at 2–3. As a result of these decisions, it became possible for the first time for companies such as Microband to plan "wireless cable systems" capable of satisfying the public demand for multiple channels of alternatives to local broadcast programming.

Microband stresses in its reply comments that throughout the history of the multipoint distribution service, the FCC has continuously emphasized the flexible nature of the service and the wide variety of programming it can distribute. In fact, under the FCC's rules, unless otherwise restricted in the applicable instrument of authorization, MDS stations "may render any kind of communications service." 47 CFR 21.903(b) (1985). Microband concludes that, given this broad language and the fact that the FCC has long been aware that MDS stations have been used for the secondary transmission of broadcast signals, the Copyright Office cannot conclude that the retransmission of broadcast signals by MMDS facilities is not permissible under the FCC rules.

Lastly, Microband argues that section 325(a) of the Communications Act does not render MMDS facilities ineligible for a cable compulsory license under section 111(c). First, Microband argues that MMDS operations are not "broadcasting stations" for purposes of section 325(a), based on a 1979 FCC ruling and FCC dicta in a related 1986 decision. That issue was decided finally by an FCC decision issued after the comment period in this proceeding closed. The decision will be discussed in part IV herein. Second, Microband argues that even if an MDS station is a broadcasting station, section 325(a) would not render the station's retransmission activities impermissible, it would merely require the station to acquire the consent of the broadcast station it chooses to retransmit. Comment No. 23 at 10–11.

PPTV argues that the issue of whether MMDS facilities are "permitted" is really a non-issue. It suggests that the FCC has in fact never "specifically authorized" cable broadcast retransmission, but has only restricted cable from making certain retransmissions. PPTV contends that, with no "must-carry" rules in effect, no FCC rules even arguably "authorize" conventional cable broadcast retransmission.

d. With respect to argument "1.f." above, MCA takes the same position as NCTA that MMDS is, in fact, a local distribution medium because, like traditional cable systems, MMDS facilities transmit local and distant signals within a particular local service area. Comment No. 16 at 5. Another representative of MMDS and MDS operators points out that the overwhelming majority of subscribers to MDS and MMDS service are private homes, typically located in areas where, because of local franchising disputes or expense, coaxial cable has not yet been installed. Comment No. 20. This fact would also demonstrate the local nature of MMDS operations.

4. Arguments opposing the view that MMDS operations qualify as systems under section 111.

a. The three major networks, Bonneville/Northern (CBS affiliates), NAB/INTV, and Sports take the position that MMDS operations do not qualify as cable systems under section 111. The FTC, while staying neutral on the legal issue, believes that policy concerns favor an interpretation of the definition that excludes MMDS services. Generally, these commentators make the same arguments regarding MMDS operations as they did above regarding SMATV facilities. However, the commentators do make several unique arguments concerning the FCC's treatment of MMDS facilities and also concerning the language of the cable system definition as it is applied to MMDS facilities. Only these new arguments will be discussed below.

b. As noted above, ABC, supported by the NBC Affiliates (Comment No. 27), argues that the plain implication from the language of section 111(c) is that Congress "wanted to do more than avoid encouraging 'cable systems' to violate any limitations or prohibitions that the FCC might impose. It required affirmative permissibility, rather than absence of violations." Comment No. 13 at 13. Applying this stricture to MMDS facilities, ABC maintains that MMDS plainly does not qualify for the compulsory license because the FCC has never considered whether distant signal retransmission by such a facility is "permissible" as a matter of communications policy. *Id.* at 22–23. Sports echoes this argument and notes that a basic question exists as to whether MMDS can retransmit distant signal programming contrary to the policy determination made in the FCC's Sports Rule at 47 CFR 76.67. Sports argues that if MMDS facilities can do so, affected sports interests should be entitled to seek an adjustment in the

cable royalty rates pursuant to section 801(b)(2)(C) of the Copyright Act. Comment No. 17 at 1314, n. 13.

Sports makes the additional comment that probably § 325(a) of the Communications Act of 1934 bars an FCC determination that an MMDS facility's retransmission of television broadcast signals is permissible, because that provision requires that a broadcasting station may not "rebroadcast" the programming of another broadcasting station without the express authority of the originating station. Sports notes that neither the FCC nor the courts have determined whether an MMDS facility is a "broadcasting station" under section 325(a), but that the FCC, at the time their comment was filed with the Copyright Office, was currently considering the issue in CC Docket No. 86–179.

c. NAB/INTV, Sports, and CBS argue that the language in the section 111(f) definition of cable system referring to transmissions made by "other communications channels" does not indicate Congress's willingness to consider facilities that utilize newly developed technology as cable systems eligible for a cable compulsory license. Sports argues that the language limits the technologies which may qualify for the cable compulsory license, because Congress chose to modify the term "secondary transmissions" with a phrase listing certain limited means by which the transmissions must be made. Comment No. 33 at 2. Sports, CBS and NAB/INTV all argue that the language was merely intended to afford the cable industry flexibility in the technology which it might employ to retransmit broadcast signals, and not to extend compulsory licensing to a new industry not investigated by Congress. Comment No. 33 at 3; Comment No. 36 at 3; Comment No. 22 at 3.

d. Several commentators opposing the view that an MMDS facility qualifies as a cable system argue that even if such a facility meets the definition in section 111(f), an MMDS facility cannot qualify for a § 111 compulsory license under section 111(c) of the Copyright Act because the carriage of retransmitted signals by an MMDS facility is not "permissible under the rules, regulations, or authorizations of the (FCC)." One commentator argued that a pending FCC inquiry in CC Docket No. 86–179 would clarify the issue.

The main outcome of the inquiry was the FCC's determination that MDS licensees could henceforth choose whether to provide service on a "non-dominant" common carrier basis (for which the FCC takes a "forbearance from regulation" approach) or on a non-common carrier basis, subject to general requirements imposed on radio license applicants by title III of the Communications Act with the exception of the title III broadcasting obligations. Where a licensee offers multiple channels (as do MMDS operators), it may elect a different status for each particular channel for which it is licensed. Report and Order in CC Docket No. 86–179, 2 F.C.C. Rcd. 4251, 4252 (1987).

The FCC found that this flexible approach to election of status worked well with respect to its authorization of domestic fixed satellite transponder sales and should succeed for similar reasons for MDS, given its evolution to date.

On the Issue of whether an MMDS facility is a "broadcasting" entity that is prohibited from retransmitting the signal of a broadcast station without that station's consent, pursuant to section 325(a) of the Communications Act, the FCC determined that "MDS will be subject to Title II regulations generally, but not to those aspects of the statute or our rules that are applicable specifically to broadcasters." This result was based on the FCC's determination in another case that "point-to-multipoint subscription services not receivable on conventional television sets without converters or decoders, and which are characterized by private contractual relationships, are properly classified as non-broadcast services." *Subscription Video*, 2 F.C.C. Rcd. 1001, 1005 (1987).

5. Question 2: Assuming a SMATV system or MMDS entity qualifies as a "cable system" under the Act, can the operations be accommodated within the present definition of "cable system" in § 201.11(a)(3)? Should the regulation be modified in order to apply to SMATV and MMDS operations, and if so, what policies are suggested?

Generally, those commentators opposing the view that SMATV and/or MMDS operations are eligible as cable systems under § 111 did not answer this question; one (NBC) merely stated that the present regulation need not be modified.

Seven commentators, MPAA/Music, NCTA, Tempo, Turner Broadcasting, the representative of Holiday Corp. (Holiday) (which is the owner/operator of many SMATV facilities), one MMDS operator, and PBS, argue that the Copyright Office's regulation concerning the definition of cable system, formerly 37 CFR 201.11(a)(3) and now 201.17(b)(2), should be amended to delete the reference to "individual" cable systems being defined pursuant to the FCC's definition of such systems.

Certain commentators also suggest that the regulations concerning the definition of cable system should be amended to clarify that SMATV/MMDS facilities qualify as cable systems and the terms under which they so qualify. Comment No. 2 at 3; Comment No. 9 at 7; Comment No. 21 at 7.

6. Question 3: If the SMATV or MMDS qualifies as a "cable system" under the Act, how should the portion of the definition of "cable system" in 17 U.S.C. 111(f) and 37 CFR 201.11(a)(3) (now 201.17(b)(2)) concerning transmitting signals to (a) "subscribing members," (b) "of the public," (c) "who pay for such service" be interpreted as regarding typical SMATV and MMDS operations? In order for a particular operation to qualify as a "cable system" must there be a separate charge to the subscriber for the retransmission service? If not, how shall the gross receipts from subscribers be identified? Is it permissible under the Act to report "zero" gross receipts because the retransmission service fees are subsumed with other services as part of cooperative fees and the like?

The great majority of commentators, including representatives of SMATV and MMDS facilities, MPAA/Music, Tempo, NCTA, and PBS agree that the statutory criteria of "subscribing members of the public who pay for such service" is met in situations in which payment is made indirectly. That is, in situations where the management of a multiple dwelling unit buildings pay bulk subscription rates to a SMATV or MMDS facility for providing the retransmission of broadcast signals to an identifiable group of individual recipients, and the management charges the ultimate recipients of the signals either directly or indirectly through condominium fees, rent, lodging fees, or otherwise, the facility will still qualify as a cable system eligible for a compulsory license.

Microband and a commentator representing several MMDS facilities argue that such treatment of bulk subscriptions is warranted because many traditional cable systems that service multiple dwelling units regularly report bulk subscription receipts as gross receipts in this way, so affording SMATV and MMDS facilities similar treatment would not significantly diverge from present licensing practices.

The commentator representing Holiday Corporation agrees. First, Holiday argues that Congress, in drafting the Copyright Act, used precise language to differentiate direct and indirect charges, where it intended that the distinction be relevant. For instance,

the section 111(a)(1) exemption is only available where no direct charge is made for service. Second, Holiday notes that copyright case law holds that indirect payment for the public performance of certain copyrighted works demonstrates use of the works "for profit" for proving copyright infringement. Holiday contends that these cases support a determination that indirect subscription payments made by individuals who receive retransmitted broadcast signals to the management of a particular multiple dwelling unit are sufficient for a finding that the facility serving those individuals serves subscribing members of the public who pay for such service. Holiday does not distinguish a bulk billing situation from a situation in which the facility is actually owned and operated by the management of the multiple dwelling unit. Comment No. 17 at 15–16.

Two commentators argue that a SMATV or MMDS facility cannot be eligible for a compulsory license if there is no direct charge to the ultimate recipient of the retransmission service, because to be a subscriber, one must pay a separate, identifiable fee for service. Comment No. 2 at 4; Comment No. 18 at 10.

Several commentators, including two representatives of SMATV facilities, NCTA, and PBS, contend that a facility may not report "zero" or "de minimis" gross receipts and qualify for a compulsory license by paying the minimum fee. Comment No. 2 at 4; Comment No. 8 at 5; Comment No. 21 at 8; Comment No. 24 at 7. NCTA and NSCA maintain that the notion of subscription implies that consumers have a choice whether to subscribe or not to subscribe. Thus, if the management of a multiple dwelling unit or the facility providing retransmission service to that management attempts to prorate some portion of the condominium fee, rent, lodging fee, or some other such fee, as gross receipts for purposes of calculating a cable compulsory license royalty fee, the ultimate recipients of the signals must have a real option of *not* receiving the retransmission service and thereby paying a smaller condominium fee, rent, lodging fee, etc. If that is not the case, the management or facility will either have to report a bulk subscription fee, or will be ineligible to obtain a compulsory license.

The commentator for Holiday suggests that where a hotel charges lodgers only indirectly for retransmission service, and the service is provided as an amenity to lodgers and not as a source of revenue to the hotel, the gross receipts should either be the cost to the hotel of providing the service to its guests (the "cost equation") or should be a figure arrived at by applying standard accounting principles to prorate the cost of the retransmission service. Holiday suggests that this could be accomplished by applying the percentage of the hotel's total revenue from lodging fees that the cost of providing distant signal retransmission service bears to the total cost of guest room services. Comment No. 7 at 15–16.

Another commentator, representing a SMATV facility, suggests that where there is no clearly defined amount flowing to the operator of a retransmission service from a multiple dwelling unit, the operator should pay the minimum fee or use some "national average basic subscriber rate" to be determined by the Copyright Office. Comment No. 1 at 3. Tempo argues that any time the management of a particular multiple dwelling unit is the entity that owns and operates a facility, the gross receipts will inevitably generate only the minimum fee royalty, so no real problem exists with respect to attributing some amount for gross receipts. Comment No. 11 at 7.

Finally, two commentators, representing MMDS facilities and Tempo, argue that the vast majority of cases represent arrangements whereby the ultimate recipients of retransmitted television signals pay a separate fee for such service to the facility providing the service. In fact, the MMDS representatives contend that most subscribers to MMDS retransmissions reside in single family dwellings in areas that are unserved by traditional cable systems due to franchising disputes or the cost efficiency of providing cable in that area. Thus, they maintain that the subscribership issue is not a problem in most cases. Comment No. 4 at 15; Comment No. 15 at 2; Comment No. 11 at 6.

7. Question 4: Assuming SMATV and MMDS operations do fall within the Copyright Act's definition of "cable system," how should an "individual cable system for filing purposes be determined? If several SMATV or MMDS operations under common ownership fall within the same geographic region should the operations be treated separately or as one individual system? If SMATV or MMDS operations are to be grouped for filing purposes, what standards should be identified in the Copyright Office regulations to determine the groupings? What hardships would be imposed on SMATV and MMDS operators if they were required to group their systems?

Four commentators representing the owners and operators of SMATV facilities argue that two or more SMATV facilities in contiguous communities under common ownership or control should not be considered as one cable system. National Cable Systems, Inc. argues that because SMATVs use private rights of way they cannot arrange their distribution plants as they please; this prevents their intentional grouping or fragmentation of subscribers to avoid paying higher copyright royalty rates. These commentators conclude that since they cannot so abuse the compulsory licensing system, they should not be subject to the contiguous communities grouping requirement. Comment No. 1 at 4. Holiday contends that while traditional cable systems under common ownership or control operating in contiguous communities are "functionally" one cable system, commonly owned SMATV facilities operating in contiguous communities are not, because such facilities have nothing in common except perhaps the same program service. Comment No. 7 at 17. Jones Spacelink, Inc. adopts both of the above arguments, and further contends that a *de facto* grouping by ownership rather than operational status will have the harsh result of denying small operators the chance to use the minimum fee provisions in section 111 and of requiring SMATV operators to aggregate distant signals on one statement of account which were not commonly delivered to all subscribers. Comment No. 10 at 6–7.

The other commentators addressing this question, NSCA, MPAA/Music, NCTA, two commentators representing owners and operators of MMDS facilities, and PBS, all agree that the common ownership/contiguous communities rule should be applied to SMATV and MMDS facilities in the same manner as it is applied to traditional cable systems.

Discussing this question, which arises from the second sentence in the section 111(f) definition of cable system, NCTA urges the Copyright Office to acknowledge and address NCTA's 1983 petition asking the Copyright Office to commence a proceeding to revisit the Office's construction of that second sentence.

8. Question 5: If the SMATV or MMDS qualifies as a "cable system" under the Act, who is the "owner" of the system for purposes of completing the Statement of Account where the reception and redistribution equipment is owned by an apartment complex, but the installation, maintenance, and

coordination of the programming service is supplied by another entity?

The eleven commentators addressing this issue are almost unanimous in taking the position that the entity that provides the secondary transmission service, markets the television signals to its ultimate recipients, and collects fees for the service—usually the entity that operates and maintains the SMATV or MMDS facility—should be considered the owner of the system for purposes of securing a cable compulsory license by filing statements of account and royalty fees with the Copyright Office. National Cablesystems, Inc. notes that this view of ownership is consistent with the situation often found at traditional cable systems where a particular system leases back cable hardware from the local telephone company or utility. Comment No. 1 at 4. The commentators agree that mere ownership of SMATV or MMDS equipment by a particular multiple dwelling unit is insufficient to render the owner or manager of the unit the "owner" of the facility under the Copyright Act when another entity is contracting with that owner or manager to provide secondary transmission service for a fee.

MPAA/Music advise the Office to avoid a determination of who is the owner of a SMATV or MMDS facility under the compulsory license for now, and instead make case-by-case determinations as ownership questions arise. Comment No. 6 at 5.

PBS takes the position that either the owner of the distribution equipment or the entity that provides equipment maintenance and programming service, at their election, can be designated the "owner" for purposes of section 111. PBS adds that, should the parties fail to reach an agreement on who is the owner, then the burden to file should fall on the owner of the equipment because that party is more comparable to the owner of a traditional cable system. Comment No. 21 at 9.

The NSCA originally argued that the owner of a SMATV or MMDS facility should be the party that owns the reception and redistribution equipment, because the definition of cable system focuses upon the physical aspects of a facility. However, in its reply comments, NSCA states that it would not oppose the view that the owner is the entity that provides retransmission service and maintains the facility, so long as the Copyright Office clarifies that fact in its regulations to give clear notice as to where the facility's responsibilities under section 111 lie. Comment No. 24 at 11.

B. The Satellite Carrier Issue

1. The Comments.

On May 19, 1988, the Copyright Office reopened this inquiry into the definition of cable systems to include issues relating to the eligibility of satellite carriers to operate under section 111 of the cable compulsory license. The Office received comments from thirteen parties representing a variety of interests, including copies of briefs and submissions to the court involving litigation with the Satellite Broadcast Network (SBN). Viewpoints regarding the eligibility of satellite carriers contrasted sharply, and many commentators suggested that the Copyright Office should not act to resolve the issue or, in the alternative, that the issue was mooted by resolution of the SBN litigation and passage of the Satellite Home Viewer Act. The Copyright Office, however, feels that it is still necessary to resolve this issue. While the district court decision in the SBN case provides a helpful guideline, the decision is nonetheless confined to the particular circumstances of that case and the Copyright Office is not bound by it in deciding whether all satellite carriers do or do not fit the definition of a cable system for purposes of the Copyright Act.

Furthermore, while the new Satellite Home Viewer Act now provides satellite carriers with a compulsory license, the Act does not answer the question of whether satellite carriers formerly qualified for the cable compulsory license. When the Act expires in six years, it may be necessary to again examine whether satellite carriers fit the definition of a cable system. Now that the issue is before the Copyright Office, the Office wishes to resolve rather than postpone a decision and face the possibility of having to revisit this matter when the Satellite Act expires.

Arguments made by parties opposed to the position that satellite carriers are cable systems for § 111 purposes generally followed the same path. The most frequently stressed point was that satellite carriers do not fit the literal terms of the definition of a cable system found in 17 U.S.C. 111(f). That section defines a cable system as:

> a facility, located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, or other communications channels to subscribing members of the public who pay for such service.

It is argued that satellite carriers, such as SBN, do not satisfy this definition because they are not "a facility, located in any State * * * (that) makes secondary transmissions * * * to subscribing members of the public." Although satellite carriers may have certain "uplink" facilities located in various states, the facilities that make the secondary transmissions to the public, as required by the definition, are satellites located in orbit above the earth (generally at the equator). Thus, satellite carriers fail to meet the local (state) requirements of the section 111(f) definition.

Aside from not having their transmitting facilities located in any state, it is argued that satellite carriers are an anathema to the local structure and intention of the cable compulsory license. § 111, taken as a whole, demonstrates that Congress intended to create a compulsory license only for local entities. There are numerous references to cable systems as local facilities. For example, § 111 refers to agreements between a cable system and a television broadcast station "in the area in which the cable system is located," and to television stations "within whose local service area the cable system is located." Similarly, the definition of "cable system" refers to the rules applicable to cable systems "in contiguous communities." Finally, the retransmission of Canadian broadcast signals depends on whether "the community of the cable system is located more than 150 miles from the United States-Canadian border." These references would have no meaning when applied to the nationwide retransmission facilities employed by satellite carriers.

Furthermore, not only does the Copyright Act contain references hinting at the intended local nature of cable systems, but an examination of the history and purpose in creating section 111 confirms such a conclusion. Congress's rationale for creating the compulsory license was due to the fact that "it would be impractical and unduly burdensome to require every cable system to negotiate with every copyright owner whose work was retransmitted by a cable system." H. Rep. No. 1476, 96th Cong., 2d Sess. 89 (1976). This rationale was based upon the fact that the cable industry, for which Congress was creating the license, was comprised of thousands of local entities. Satellite carriers providing national retransmission service are few in number and will not experience the difficult transaction costs currently faced by numerous (particularly small)

cable systems all across the country. In sum, the compulsory license was created to address local retransmission concerns, not national ones. Even the FCC has said:

(We) are unaware of anything in the legislative history of (the 1976 Act) to suggest that Congress intended that satellite distributors might themselves be defined as cable television systems under the compulsory licensing provisions of the law or that the law was intended to permit a direct broadcasting satellite service to operate free from copyright obligations.

Scrambling of Satellite Television Signals, 2 F.C.C. Rcd. 1669, 1698 (1987).

Another major focus of those commentators opposing inclusion of satellite carriers within the parameters of a cable system was 111(c)(1) of the Copyright Act which conditions the availability of the compulsory license on whether a cable system's retransmissions are "permissible under the rules, regulations, or authorizations of the Federal Communications Commission." It is argued that retransmissions by satellite carriers are only "permissible" under the FCC's rules and regulations if there has been an affirmative decision by the FCC to regulate them or grant them exempt status. However, the FCC has never affirmatively granted satellite carriers permission to make secondary transmissions of broadcast signals to home dish owners, nor has it decided that satellite carriers should be exempt from regulation. Rather, the FCC has stated recently that it is "concerned with the policy considerations that such satellite operations raise," and "has not declared, in any affirmative fashion," that they are permissible or exempt under its rules. See *Scrambling of Satellite Television Signals*, 2 F.C.C. Rcd. at 1698, 1708 n. 244 (1987). Without an FCC determination one way or the other, satellite carriers cannot comply with the requirement of § 111(c)(1) and therefore cannot obtain the cable compulsory license.

Commentators opposing inclusion of satellite carriers within the cable compulsory license relate § 111's statement about permissibility of retransmission of signals to arguments about the communications policy surrounding adoption of the compulsory license. In 1972, the FCC adopted a complex set of rules governing retransmission of broadcast signals by cable systems. See *Cable Television Report and Order*, 36 F.C.C. 2d 143 (1972). In reliance upon these regulations, Congress dropped complex regulatory language that had pervaded prior copyright bills creating the cable compulsory license. Congress was willing to rely on the FCC's regulation of the cable industry, and hinged the availability of the compulsory license on whether an entity's carriage was "permissible" under those rules. Thus, there was a perfect fit between the copyright and communications aspects of cable regulation. Because satellite carriers operate outside the ambit of cable regulation, it is obvious that Congress did not intend that the type of retransmission service they offer could qualify for the compulsory license.

As a final argument for their position, commentators opposing satellite carrier inclusion argued for a narrow construction and application of the compulsory license. Citing principles of statutory construction, they argued that since compulsory licenses are a limitation on the usual rights granted to a copyright owner, they must be narrowly construed to fit the limited circumstances of their existence. Compulsory licenses exist "in derogation of the otherwise recognized * * * property rights of copyright owners," and are to be narrowly and strictly construed. Copyright Office, Interim Regulations, *Compulsory License for Cable Systems*, 49 FR 14944, 14950–51 (1984). The Copyright Office has also noted that "(g)eneral arguments in support of a 'broad and liberal' construction of § 111 seem misplaced when it is recognized that this section is itself an exception to the broad principle of the Copyright Act that authors and other owners of copyright have the exclusive right to control public performances of their works." Final regulations, *Compulsory License for Cable Systems*, 45 FR 45270, 45272 (1980). Attempts to put national retransmission services such as satellite carriers within the definition of a cable system are an undeniably broad and liberal reading of the compulsory license and should not be countenanced when it can be demonstrated that such services were never within the contemplation of the Congress.

Commentators supporting satellite carrier's inclusion in the definition of "cable system" attempt to counter all of the above posited arguments. As to the position that satellite carriers are not located "in any State," the commentators argue that there is nothing in the statutory language that suggests that Congress wanted the compulsory license to be limited to systems operating exclusively within a single state, or that a satellite carrier's interstate service precludes it from being a "cable system." In fact, many conventional high-density cable systems operate across state borders, and limiting the license to those systems serving a single state would write such systems out of the Act. Furthermore, it is illogical to reason that Congress would have wanted to restrict the license to systems operating within a single political jurisdiction when, from the copyright perspective, there is no meaningful distinction between an entity located entirely within one state and an entity that crosses state lines. The logical reason for Congress's use of the language "located in any State, Territory, Trust Territory or Possession" was to convey the intent that the compulsory license cover only retransmission of broadcast signals to subscribers residing within the United States. Satellite carrier retransmissions are clearly limited to this purpose and therefore comply with the statutory language.

Commentators supporting satellite carriers' position also refute the claim that the compulsory license is for cable systems which operate on a local basis. The term "local" does not appear in the definition of a cable system. While there admittedly is certain location sensitive language in the non-definitional portions of the Copyright Act (such as the "local service area" of a cable system), such language hardly proves that Congress intended that use of the compulsory license be limited to "local systems" serving discrete, identifiable communities. Rather, the location sensitive language is directed towards the computational aspects of the royalty calculation, and has nothing to do with defining the scope of eligibility for the compulsory license. Thus, satellite carriers cannot be excluded from the benefits of the license on the basis that they do not operate locally.

Regarding arguments that retransmissions by satellite carriers are not permissible under the rules of the FCC, commentators for satellite carriers stated that unless the FCC says otherwise, the retransmission service provided to home dish owners must be regarded as permissible. While the FCC has not affirmatively sanctioned retransmission by satellite carriers, there is nothing in the Copyright Act which requires an affirmative finding of permissibility. It is clear that the FCC is aware of the activities of satellite carriers with respect to the home dish market (having discussed the issue in its 1987 *Scrambling Report*), and it has, at least for the time being, determined that it will not restrict their operation. The Copyright Office is obliged to accept this situation at face value and, since there is no pronouncement that satellite carriers' activities are impermissible

under the FCC rules, must accord satellite carriers with permitted status.

Satellite carrier commentators continued their refutation of opposing arguments by noting that, for purposes of § 111, there are no meaningful distinctions between satellite carriers and conventional, high-density cable systems. The only real difference between satellite carriers and traditional cable operators is that satellite carriers rely primarily on satellite transmissions, rather than coaxial cable, to distribute programming to subscribers. The § 111 definition of "cable system" plainly authorizes cable systems to use "other communications channels" (beside coaxial cable) to distribute their signals, and therefore there is absolutely no basis under the definition to distinguish between an entity that reaches its subscribers through satellite transmissions and one that reaches its subscribers through coaxial cable.

Satellite carrier commentators also pushed for an expansive reading of the compulsory license. They concluded that Congress's open-ended definition of a "cable system" which includes "other communications channels" demonstrates a clear intent that the Act be construed to accommodate new technologies. Thus, pronouncements that the cable license must be "narrowly construed" have little application when the statutory language was phrased in such a way as to accommodate for the emergence of new technologies. Even the leading cases interpreting the cable license have eschewed arguments of narrow construction and taken a flexible approach. See *e.g. WGN Continental Broadcasting Co.* v. *United Video. Inc.*, 693 F.2d 622 (7th Cir. 1982); *Eastern Microwave* v. *Doubleday Sports. Inc.*, 691 F.2d 125 (2d Cir. 1982), *cert. denied*, 107 S. Ct. 643 (1986). It would improperly narrow Congress's broad definition of a cable system to rule that satellite carriers cannot qualify for the compulsory license. A statute must be given "a sweep as broad as its language." *United States* v. *Price*, 383 U.S. 787, 801 (1966).

Finally, the commentators argued that a satellite carrier can qualify as both a passive carrier and a cable system under the Copyright Act. Intermediary transmitters make no public performance of the transmitted broadcasts and are, accordingly, exempt from copyright liability. Such is the situation when satellite carriers provide signal service to cable systems. But when a carrier serves a combination of home viewers (a public performance) and cable systems, it has no choice but to identify itself as both a cable system and a passive carrier. There is no legal or logical reason to prohibit a single entity from using its facilities to serve both cable systems and home viewers.

2. District Court Decision

In litigation with the networks over retransmission of network affiliates to the home dish market, SBN claimed that the retransmissions were permissible under the cable compulsory license, since it fit the Act's definition of a cable system, and paid royalties to the Copyright Office for its carriage of the three commercial networks. The United States District Court for the Northern District of Georgia has ruled on the sufficiency of SBN's claims and found them wanting. *Pacific & Southern Co., Inc.* v. *Satellite Broadcast Network, Inc.*, 694 F. Supp. 1565 (N.D. Ga. 1988). The court addressed the arguments of satellite carrier inclusion in the Act's definition of cable systems submitted (in some cases verbatim) to the Copyright Office in this proceeding, and held that SBN did not qualify for the compulsory license. The court found, *inter alia*, that (1) SBN's operations did not fit the literal terms of the definition of cable system found in 111(f), and (2) SBN's retransmissions were not permissible under the rules and regulations of the FCC.

The court held SBN to a very strict and literal interpretation of the § 111(f) definition. Finding the terms of the compulsory license to be "unambiguous," the court focused on § 111(f)'s requirement that the retransmission facility must be located in "any State." 694 F. Supp. at 1569–70. The court read the definition as requiring the retransmission facility to be located in only one state, and that the facility receiving the broadcast signal must also retransmit that signal from the same state. SBN failed both requirements because its receiving facilities were located in three separate states (Illinois, Georgia, and New Jersey), and its satellite, which made the actual retransmissions of the network signals, was in orbit above the earth and therefore not located in any state.

The court also found that SBN did not satisfy § 111(c)'s requirement that "the carriage of the signals compromising the secondary transmission (be) permissible under the rules, regulations, or authorizations of the Federal Communications Commission." *Id.* at 1571. "Permissible" requires consent either expressly or formally, and the FCC stated in its *Scrambling Report* that it had not "declared in any affirmative fashion" that the retransmission activities of satellite carriers such as SBN were permissible under its rules. The court also dismissed SBN's claim that it was exempt from FCC regulation, holding that SBN was a cable system for purposes of the Cable Act and therefore subject to regulation. The court concluded its discussion by holding that SBN's retransmission activities constituted an infringement of the plaintiffs' copyrights.

3. Position of the Copyright Office

Although technically the Copyright Office would not be bound by the interpretation of the Georgia District Court, the Office is inclined to agree that satellite carriers, such as SBN, do not qualify as "cable systems" under the definition appearing in § 111(f). Satellite carriers generally have receiving facilities in more than one state and, more importantly, the facility that retransmits broadcast signals (i.e. the satellite) is not located in any state. This reading of the definition of a cable system under the Copyright Act comports with the legislative intent at the time of creation and passage of the compulsory license. Since the Office finds that satellite carriers do not fit the definition of a "cable system" found in the Act, it is not necessary to rule on whether the retransmissions of satellite carriers are permissible under the rules and regulations of the FCC.

At the outset, the Copyright Office is persuaded that the cable compulsory license should be construed according to its terms, and should not be given a wide scale interpretation which could, or will, encompass any and all new forms of retransmission technology. An overbroad interpretation exceeds the intent of Congress in creating the compulsory license as a response to a specific legislative policy issue. Compulsory licenses are limitations to the exclusive rights normally accorded to copyright owners and, as such, must be construed narrowly to comport with their specific legislative intention. See, *Compulsory License for Cable Systems*, 49 FR 14944, 14950 (1984). In order to effect the limited purposes of a statutory compulsory license, the Copyright Office reads and interprets the statute according to its plain meaning and, in accordance with judicial precedence, will only resort to the legislative history of the Copyright Act when it finds the language of the statute ambiguous.

The Copyright Office finds no ambiguities with the definition of "cable system" found in § 111(f). A plain reading of the section requires a cable system to have a facility "located in any State" which "receives signals transmitted or programs broadcast by

television broadcast stations" and also "makes secondary transmissions of such signals or programs" to the public. The Copyright Office agrees with the position that this language requires the receiving and transmitting facility to be located in the same state. Such an interpretation meshes with other provisions of the license which discuss such items as the "local service" area of a primary transmitter and other language sensitive to locality. Satellite carriers amount to a national retransmission service and, as such, do not have any one facility located in a state which both receives and retransmits signals or programming. The satellites which perform the retransmission service are located in orbit above the earth, apparently not even over the United States.

Commentators favoring inclusion of satellite carriers within the definition of cable systems made much of the language in section 111(f) which allows the retransmission to be made by "other communications channels," but their emphasis on this aspect of the definition is misguided because it ignores the first part of the definition which requires the facility receiving and retransmitting signals to be located in the same state. A plain reading of section 111(f) does not reach to the types of facilities and retransmission service offered by satellite carriers, and even an extensive examination of the legislative history of the compulsory license fails to reveal any evidence suggesting that Congress intended the compulsory license to extend to such types of retransmission service. The Copyright Office therefore finds that satellite carriers retransmitting signals to the home dish market do not qualify for the compulsory license because they do not come within the definition of a cable system found in section 111(f).

4. Refunds

The Copyright Office has had a practice for some time of accepting statement of accounts and royalty payments from satellite carriers, and filing them for what they were worth without pronouncing whether the carriers qualified for or received the compulsory license. Given the Office's finding that satellite carriers do not qualify for the compulsory license, satellite carriers may obtain refunds of monies submitted by contacting the Licensing Division of the Copyright Office. Refunds would only be made on a request basis, and requests must be received by the Office no later than 90 days from the date of publication of final regulations. Requests for refund should be sent to the Licensing Division, Copyright Office, Library of Congress Washington DC 20557.

III. The FCC Cable Report

On December 21, 1990, the FCC released its Report and Order in Docket No. 89-35, *Definition of a Cable Television System* in which it clarified its interpretation of the statutory term "cable system" as defined in the Cable Communications Policy Act of 1984. Although the definition of a cable system appearing in the Cable Act differs from that of section 111, of the Copyright Act, the FCC's discussion and conclusions are still of significant value, since entities regulated as cable systems by the FCC are presumptively cable systems under the Copyright Act's definition, which generally encompasses the FCC's concept of cable system in 1976.

A cable system is defined in section 602(b) of the Cable Act and in § 76.5(a) of the FCC's rules as:

> a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community * * *

These same sections exclude from the definition—

> a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public right-of-way.

When the Commission adopted its regulations implementing the Cable Act, it concluded that if multiple unit dwellings are involved, the distinction between a cable system and other types of video distribution systems rested solely on whether or not the facilities used any public right-of-way. Two subsequent federal district court decisions, however, questioned and criticized this interpretation and led the Commission to open its definition of a cable system proceeding.

In the comment period to the proceeding, the Commission sought opinion on whether facilities serving multiple unit dwellings that do not use public rights-of-way might in some instances be cable systems and likewise whether facilities connected only by radio or infrared transmissions and making use of no other interconnecting cables or wires could be cable systems within the Act's definition. After analyzing the comments, the Commission concluded that the term "cable system," as used in the 1984 Cable Act, refers only to video delivery systems that employ cable, wire, or other physically closed or shielded transmission paths to provide service to subscribers and only those that use such technology outside individual buildings. Thus, such facilities as MMDS, which do not use closed transmission paths, are not cable systems under the Act. Furthermore, SMATV and MATV systems that use wire or cable only within the premises of a single multiple unit building are not cable systems, nor are they cable systems when they serve more than one multiple unit dwelling via radio or infrared facilities. Finally, if multiple unit dwellings are connected to each other by physically closed transmission paths, such SMATV and MATV systems are cable systems unless the buildings are under common ownership, control or management and do not use public rights-of-way.

In examining the applicability of the cable definition to MMDS and other radiating technologies, the Commission focused on the "closed transmission path" language of the definition. While noting that the term was not defined in the Act, the Commission stated:

> The original Senate version of the Cable Act made explicit that, by referring to a 'closed' transmission medium, the drafters contemplated that cable system facilities would use physically closed or shielded conducting media or 'transmission paths,' rather than radio waves alone. While the original Senate version of the Cable Act was not passed, we have no basis for thinking that the Senate and House did not share a common understanding of the virtually identical terms 'closed transmission path' and 'closed transmission media' (which itself was defined as a 'transmission path') that were used in their respective definitions of cable systems * * * In the absence of any evidence in the legislative history to the contrary, the Senate language is highly probative of congressional intent underlying the statute's use of the term 'closed transmission path' to define a cable system."

Report and Order at 2. The Commission went on to note that "Our interpretation is further supported by passages in the Senate and House Reports that use virtually identical language when referring to types of video delivery systems, including MATV, SMATV, MDS, DBS, and STV, that both bodies understood to be different from cable systems." *Id.* Congress's understanding of a cable system also made sense in the context of the Commission's regulation of video delivery systems prior to enactment of the Cable Act, which explicitly excluded such systems as MDS. In short, the FCC concluded that the Congress did not intend to include

such services as MDS and MMDS within the definition of a cable system, under the 1984 Cable Act.

Turning to the inclusion of SMATV and MATV facilities within the definition of a cable system, the Commission again applied the closed transmission path test and concluded that "neither MATV nor SMATV systems as such are covered by the Cable Act as cable systems, but that such facilities may become cable systems if they consist of multiple buildings interconnected by cable." *Id.* The legislative history of the Cable Act and Commission precedent generally exempted MATV and SMATV systems from treatment as cable systems, despite the fact that they often used cable or wires throughout single multiple unit dwellings. However, where SMATV and MATV systems use cable or wire to interconnect more than one multiple unit dwelling, the FCC confirmed that the entity could be regulated as a cable system unless it fell within the private cable exemption.

The private cable exemption, which appears in the Cable Act definition, provides that "a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public right-or-way" (sic) is not a cable system. 47 CFR 76.5(a) (1990). Prior to the Commission's *Report and Order*, it focused solely on whether a system crossed a public right-of-way in determining whether an SMATV or MATV qualified as a cable system. However, following an adverse court decision, the Commission noted its mistake and stated that "the exception is not available unless the multiple unit dwellings served by a video programming delivery system are commonly owned, controlled or managed and there is no crossing of a public right-of-way involved." *Report and Order* at 4 (emphasis in original). The Commission also determined that a public right of way was not crossed, for purposes of the exemption, when radio or infrared waves were beamed from building to building, but only when closed transmission paths were involved. *Id.* at 5. In sum, the FCC's interpretation of the definition of a cable system appearing in the 1984 Cable Act excludes wireless systems such as MDS and MMDS, but allows SMATV and MATV to qualify as cable systems unless they either serve only one multiple unit dwelling or fall within the private cable exemption.

IV. Copyright Office Conclusions

A. Eligibility Under Section 111

1. MMDS Operations

(a) *Eligibility.* After careful examination of language and legislative history of section 111, a thorough consideration of the comments in this proceeding, and the recent report of the FCC interpreting the definition of a cable system appearing in the Cable Act, the Copyright Office is inclined to rule that MDS and MMDS operations are not cable systems within the meaning of section 111 and therefore do not qualify for the cable compulsory license.

The Copyright Office bases its proposed conclusion on the terms of the section 111 definition of a cable system placed in the context of the regulatory framework at the FCC. The legislative history to section 111 makes it clear that there is a significant "interplay between copyright and the communications elements" of section 111, requiring the Office to consider the qualifications of MDS and MMDS as cable systems with an eye towards how those systems were treated as a matter of communications policy at the time of passage of the Copyright Act. H.R. Rep No. 1476, 94th Cong., 2d Sess. 89 (1976). The recent *Report and Order* of the FCC discussing its treatment of these systems and its approach to the 1984 Cable Act definition of a cable system is, therefore, quite insightful to the Copyright Office's inquiry.

As it must, the Copyright Office's analysis begins with the definition of a cable system itself appearing in section 111. The section provides that:

> A 'cable system' is a facility, located in any State, Territory, Trust Territory or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables or other communications channels to subscribing members of the public who pay for such service.

17 U.S.C. section 111. The definition thus includes five elements that must be satisfied in order to qualify as a cable system. There must be (1) a facility, that is (2) located in any State, Territory, Trust Territory or Possession, that (3) receives the signals or programs from an FCC licensed broadcast station, and then (4) makes retransmission of those signals via wires, cables, or other communications channels, to (5) subscribing members of the public who pay for such service. All five of the conditions must be met.[4] While the Copyright Office acknowledges that MDS and MMDS facilities arguably might meet most of these conditions, it finds such facilities wanting regarding the requirement that retransmission of signals be accomplished via wires, cables, or other communications channels.

By definition, MDS and MMDS systems, also known as "wireless cable," do not make use of wires and cables in making secondary transmissions of broadcast signals to subscribers. The remaining question for the Copyright Office was, therefore, whether the phrase "other communications channels" appearing in section 111(f) was broad enough to encompass wireless systems. Several commentators argued that Congress did not contemplate the inclusion of "wireless cable" when it enacted the copyright law, and did not envision the phrase "other communications channels" to include any future retransmission systems that did not have the same technological characteristics as traditional cable systems. Other commentators argued that the phrase "other communications channels" should be read broadly, and, that placement of this phrase in the definition after the words "wires" and "cables," indicates Congress intended to bestow the compulsory license upon other types of retransmission delivery systems aside from so-called traditional cable systems.

The Copyright Office concludes that Congress did not intend to extend the cable compulsory license to every video delivery system capable of retransmitting broadcast signals to subscribers. The cable compulsory license was the subject of intensive debate and controversy from 1966 to 1976. Nothing in the legislative history suggests that Congress intended an open-ended definition of the entities qualifying for the license. To the contrary, the compulsory license is hedged and qualified by strict limitations. For example, the local service area of a station is defined by FCC regulations in effect on April 15, 1976. Aspects of the definition of distant signal equivalent, which is one of the

[4] The Office also notes that section 111(c) requires that carriage of distant signals be "permissible under the rules regulations, or authorizations of the Federal Communications Commission." 17 U.S.C. 1119(c). While many commentators devoted a significant amount of discussion to whether MDS and MMDS transmissions were permissible under the FCC's rules, the Copyright Office need not reach this issue since it finds that such facilities do not meet the terms of section 111(f).

factors in computing royalties payable by cable systems, are fixed by the rules of the FCC in effect on the date of enactment (October 19, 1976). The carriage of the signal must be permissible under the existing rules of the FCC, but the amount of royalties varies depending upon whether the carriage was permitted by FCC rules before June 25, 1981, when the FCC eliminated its distant signal carriage rules. Section 111 of the Copyright Act unmistakably reflects interplay between copyright and communications policies, and Congress legislated In 1976 based upon the existing cable industry, which had been framed by the regulatory policies of the FCC.

The Office's proposed conclusion, based on the communications regulatory status of MDS and MMDS at the time of passage of the Copyright Act, and Congress's description of a cable system in the 1984 Cable Act, is that the phrase "other communications channels" should not be read to encompass video delivery systems that do not primarily retransmit broadcast signals via physically closed transmission paths such as cable or wires. Because MDS and MMDS do not make secondary transmissions to subscribers via closed path transmissions, they would not be cable systems under the section 111(f) definition.

As noted above, there is a significant interplay between copyright and communications elements embodied in section 111. When Congress passed the Copyright Act in 1976, its understanding of the regulation of the cable industry was naturally based on FCC policy and precedent. The FCC's 1965 definition of a cable system, in effect while the Copyright Act was passed, defined a cable system as "redistribut(ing) * * * signals by wire or cable * * * " While the reference to "by wire or cable" was dropped by the FCC in 1977, the Commission specifically stated that the change was not to be "interpreted to include such non-cable television broadcast station services as Multipoint Distribution Systems * * *." *First Report and Order in Docket 20561*, 63 FCC 2d 956 (1977). Regulation of cable systems from a communications standpoint, therefore, was limited to traditional, wire-based, closed path transmission services. It is therefore reasonable to conclude that the copyright compulsory license was adopted to apply to those same types of services then regulated by the FCC as cable systems. A broad reading of the phrase "other communications channels" in section 111(f) to include systems, such as MDS and MMDS, which were not regulated by the FCC as cable systems would be contrary to the express congressional purpose of adopting a compulsory license for the cable industry.

The conclusion that the 1976 Congress did not envision the cable compulsory license applying to wireless retransmission services is bolstered by the definition of a cable system appearing in the 1984 Cable Act. Once again, Congress was acting against a background of years of Commission regulation in the cable area. It defined a cable system as "a facility consisting of a set of closed transmission paths * * *," demonstrating that it intended the Act to apply to traditional, wire-based cable systems. 47 CFR 76.5(a)(1990).

The Copyright Office acknowledges that it is not bound by FCC precedent, nor the definition of a cable system appearing in the Cable Act, in interpreting the definition of a cable system for section 111 purposes. However, the Congress did not act within a vacuum when it drafted section 111, but rather adopted a compulsory licensing scheme for an industry which was already defined and regulated by the FCC. It also seems apparent that Congress continued its understanding of a cable system when it formulated a regulatory scheme in the 1984 Cable Act, an understanding which considered a cable system to consist of a set of closed transmission paths. Were the Copyright Office to interpret section 111 in such a way as to include MDS and MMDS systems within the compulsory licensing scheme, it would be ignoring years of communications regulatory policy regarding the cable industry. The Copyright Office therefore proposes that MDS and MMDS facilities are not cable systems for cable compulsory license purposes because they do not make secondary transmissions of broadcast signal via wires, cables, or other sets of closed transmission paths.

The Copyright Office, in reaching this preliminary conclusion, expresses no opinion whether Congress should amend the Copyright Act to extend a compulsory license to MDS and MMDS operations. Congress in 1988 created a separate statutory license for satellite carrier retransmissions to the hone dish owners. After legislative consideration, Congress may decide that other video delivery systems should have the privilege of a compulsory license, but it may set different conditions and would presumably tailor the compulsory license to the particular industry.

(b) Refunds, The Copyright Office has had a practice for some time of accepting statements of account and royalty payments from MMDS operators without pronouncing whether MMDS facilities qualified for compulsory licensing. The Copyright Office also acknowledges that it has presumably received filings from MMDS operators without realizing that such operators were filing as an MMDS facility, since the statement of account form does not require MMDS facilities to identify themselves as such. Given the Office's proposal that MMDS facilities do not qualify for compulsory licensing, refunds of monies submitted may be obtained by contacting the Licensing Division of the Copyright Office. Refunds would be made only on a requested basis, and requests must be received no later than 90 days from date of publication of final regulations. Requests for refund should be sent to the Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

2. SMATV Operations

Although the Copyright Office finds that MDS and MMDS systems do not qualify for compulsory licensing under section 111 of the Copyright Act, it is inclined to rule that SMATV operations, under certain conditions, may satisfy the requirements to be considered cable systems. Such a position is based upon the following considerations: (1) The Office agrees with the majority of commentators, who represent SMATV operations, copyright interests, and broadcasters, that at least some SMATV operators meet the explicit requirements set out in the definition of a cable system in section 111(f). (2) SMATV operations utilize cable technology and are inherently localized tranmission media of limited availability; they therefore satisfy the purpose underlying enactment of section 111 that Congress created the cable compulsory license to benefit retransmitting media that are local in scope. (3) The Office believes that although the legislative history of section 111 does not directly address SMATV operations (they were not in existence in 1976), there is nothing in that history that would preclude a determination by the Copyright Office that SMATV operations may qualify as cable systems under the Act. (4) Congress created the cable compulsory license based on an understanding of the cable industry in 1976, which it largely derived from FCC regulatory practices. (5) The FCC leaves open the possibility that it may regulate certain SMATV operations as cable systems. (6) Although most SMATV's are exempt from the FCC's regulation of cable systems, SMATV systems can be

deemed affirmatively authorized by the FCC to retransmit broadcast signals and are therefore eligible for a compulsory license under section 111(c), since certain SMATV operations may be regulated as cable systems.

As with MDS and MMDS, analysis of SMATV's qualifications for compulsory licensing focuses on whether or not a SMATV operation meets the definitional requirements of 111(f). Clearly, a SMATV meets the first three parts of the definitional test by being: (1) "A facility," (2) "located in any State, Territory, Trust Territory, or Possession," (3) "that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission." The Copyright Office also believes that the fourth requirement—that broadcast signals be retransmitted by "wires, cables, or other communications channels"—is also satisfied. By their nature, SMATV's use cable and wire primarily to deliver braodcast signals collected from the satellite dish to multiple unit dwellings. Finally, on the issue of whether SMATV operations serve "subscribing members of the public who pay for (retransmission of broadcast signals)," the Office is convinced that most SMATV facilities do serve such subscribers, and has determined that appropriate regulations can be drafted to ensure that only SMATV facilities that meet that requirement will be eligible for a compulsory license.

The *Pacific & Southern* decision, discussed above in relation to satellite carriers, also offers guidance on the issue of whether SMATV facilities qualify as cable systems under the 111(f) definition. Because a SMATV system, like a cable system, generally consists of one facility (or several facilities physically joined) located in a state, which facility both receives signals and retransmits such signals by wires, cables, or other communications channels, a SMATV facility would qualify as a cable system under the criteria established in the decision.

While the Copyright Office does not agree with commentators who contend that Congress intended that the definition of cable system be applied broadly in the future to include any and all video delivery facilities that are analogous to cable systems and could arguably justify a compulsory license for the same policy reasons (*see* II.A.l.d, *supra*), nor does the Office find that Congress intended to restrict the compulsory license solely to the specific cable system technology of 1976. The Office acknowledges that several courts, cited to by commentators in this proceeding, have found, with respect to the passive carrier exemption in 111(a)(3), that Congress did not intend to freeze the compulsory license in a way that would discourage technological development and implementation. Keeping these factors in mind, in deciding how to interpret the definition of cable system for purposes of implementing 111, the Office must look to the specific technology in question to determine whether it would logically fit within the very specific compulsory licensing scheme set out in 111, and whether anything in the legislative history of 111 would preclude that technology from being a cable system.

The Office disagrees with those who argue that the very existence of § 111(a)(1), the "MATV exemption" to copyright liability, indicates Congress's intent to differentiate types of retransmission facilities and to exclude facilities such as SMATV systems from eligibility for the cable compulsory license. See II.A.2.d., *supra*. That exemption was intended to ensure that residents of multiple dwelling units had access to local television signals via master antenna television systems when such signals could not be received over the air.

The Copyright Office agrees with one commentator who notes that at the time Congress created the compulsory license, the FCC regulated the cable industry as a highly localized medium of limited availability, and that stations which were retransmitted into distant markets by cable systems had little incentive to seek or ability to obtain program rights in those distant markets. See II.A.1.f, *supra*. This suggests that congress, a cognizant of the FCC's regulations and the market realities, created a compulsory license for cable systems of local, not national scope. The very language and structure of § 111 supports this conclusion. The Office finds that SMATV facilities, which utilize the same technology as traditional cable systems, are inherently localized transmission media of limited availability and this supports a finding that they qualify as cable systems under section 111.

Finally, in light of the *Pacific & Southern* decision, and certain arguments made by commentators, the Copyright Office must address the issue arising under 111(c) whether the carriage of distant signals by SMATV facilities is permissible under the rules, regulations, or authorizations of the Federal Communications Commission." No commentator argues that SMATV operations are not authorized by the FCC to retransmit broadcast signals. Those parties that address the issue contend that in a 1983 order issued by the FCC the Commission treated SMATV service as falling within the long-established MATV exemption from its cable regulations.[5] The Office agrees with this conclusion.

Although the Copyright Office proposes that SMATV facilities should be eligible for a cable compulsory license based upon the considerations addressed above, it must acknowledge that SMATV operations do not easily fit into the mechanics of the overall licensing scheme. Because the royalty formula established in section 111 references the FCC's regulation of cable systems, and the FCC did not regulate typical SMATV systems as cable systems, the Office must establish specific regulations to accommodate the difference in how the two types of facilities were historically regulated and specify strict limitations on how SMATV facilities can secure a compulsory license. Those proposed regulations will be discussed below.

B. Proposed Amendment to Copyright Office Regulations

1. Definition of Cable System: 37 CFR 201.17(b)(2)

In accordance with the policy decisions set forth above regarding the eligibility of SMATV facilities, and the ineligibility of MMDS facilities and satellite carriers under 111, the Office proposes to amend § 201.17(b)(2) of its regulations to provide that SMATV facilities may qualify as cable systems, and provide that satellite carriers and MDS/MMDS facilities do not qualify as cable systems. The Office would also create new regulations, described below, to establish the circumstances under which SMATV facilities qualify for a cable compulsory license.

A majority of commentators suggest that the regulation defining a cable system should also be amended to eliminate the subdefinition of an "individual" cable system in the fourth sentence of § 201.17(b)(2). See II.A.5., *supra*. Commentators contend that the subdefinition has always been confusing, since the Copyright Act and the Cable Act have distinct, different definitions of the term "cable system," and there is no definition of an "individual" cable system in FCC

[5] *Earth Satellite Communications, Inc.*, 95 FCC 2d 1223, 1224 (1983), *recon. denied*, FCC 84-206, released May 14, 1984, *aff'd sub non. New York State Commission on Cable Television* v. *FCC*, 749 F. 2d 804 (D.C. Cir. 1984).

precedent. The Copyright Office agrees with these commentators. Accordingly, we propose to delete the fourth sentence of § 201.17(b)(2).

Regarding the last sentence of the Copyright Office regulation defining a cable system, which addresses the statutory language in the second sentence of the section 111(f) definition of the term, NCTA requests that the Copyright Office address a petition that organization filed with the Office in 1983. The petition requested that the Office commence a proceeding to change the regulation to provide that two or more cable systems would have to be "in contiguous communities under common ownership or control and operating from one headend" before they would be required to file as one individual cable system. The Office is currently addressing this issue in another proceeding, and there is no need to examine the issue here. See, *Notice of Inquiry*, 54 FR 38390 (1989).

2. Proposed SMATV Regulations

Although the Copyright Office proposes to rule that SMATV facilities may fit the definition of a cable system for purposes of section 111, the Office acknowledges that the fit is not an easy one. The nature of SMATV operations presents unique problems for calculating royalty fees and filing statements of account pursuant to 37 CFR 201.17. To accommodate these problems, the Office proposes the following regulations.

The language contained in the proposed amendments represents a refinement of § 201.17 of 37 CFR to accommodate some of the technical and practical "quirks" posed by SMATV facilities seeking to come within the ambit of the cable compulsory license. It should be noted, however, that these amendments are quite substantive in nature, and SMATV systems will be required to comply strictly with them. Failure to do so will eliminate the possiblity of qualifying for the license.

In deciding to include SMATV's within the section 111 definition of a cable system, the Office was faced with the problem of fitting SMATV's into all of the statutory provisions of section 111 and regulations promulgated thereunder. It is quite evident that Congress did not consider the special circumstances presented by SMATV systems when it passed the Copyright Act in 1976, and therefore much of the reasoning behind particular aspects of the compulsory license simply have no application. Furthermore, there were particular issues involving SMATV's, addressed in the Notice of Inquiry, which were not addressed by either the statute or the current regulations. The amendments to § 201.17 proposed today represent the effort of the Copyright Office to make the cable compulsory license work for SMATV systems, while at the same time preserving the basic features of the statutory license.

Addressing the proposed changes sequentially, it is necessary to adapt the definition of "gross receipts" found in § 201.17(b)(1) to enable SMATV systems to calculate their gross receipts for filing purpsoes. As pointed out by many of the commentators, SMATV's do not often make a direct charge to their subscribers. For example, an apartment building which owns and operates a SMATV for the benefit of its tenants may not directly charge the tenants for the SMATV service. Rather, the cost of the signals provided may be included in a semiannual apartment or condo fee, or may be absorbed and charged indirectly to the tenants in some other fashion. Furthermore, unique ownership arrangements of SMATV systems make the current methods of calculating gross receipts difficult if not impossible to apply. For example, often the owner of an apartment building or hotel does not own or operate the SMATV located on its premises, and receives service from a distributor or other third party. Thus, the building owner would not be charging its tenants or guests for receiving the signals. However, there still occurs a public performance of copyrighted works contained in the signals received by the SMATV. This public performance of copyrighted works occurs with the permission and consent of the owner of the building, whether or not he owns or operates the cable system. The amended definition of gross receipts appearing at § 201.17(b)(1) takes these circumstances into account.

The proposed amendment of the gross receipts regulation to provide for SMATV facilities covers two different possibilities. In the first instance, the gross receipts will include any amounts attributable to the basic service of providing secondary transmissions of primary broadcast transmitters. This aspect of the regulation will most likely cover the situation where the owner of the SMATV is making a charge, either directly or indirectly, to its subscribers. For example, if the owner of a hotel provides broadcast signals to its guests via its SMATV and includes a charge for this service in the room fee, the hotel owner is required to identify the total fees received which are attributable to the SMATV service and report the total amount as gross receipts. Naturally, in the case of a hotel operator, gross receipts would vary depending on how many guests it had in a given time period and how many of them had the service provided to their room. In many cases, the SMATV operator will not make a separate charge for the secondary transmission service. In appropriate cases, we propose that the SMATV's will report only their cost of receiving the signals. This reporting method applies only where the SMATV merely makes a charge, either directly or indirectly, to cover its costs for providing secondary transmissions of broadcast signals, or where there is no charge for the service. For example, it is possible that the owner of an apartment building absorbs the cost of providing secondary transmissions, or passes the cost along to its tenants without seeking to make a profit from providing the service. In such cases, the owner is required to report his cost of receiving the signals for secondary transmission to the tenants as being gross receipts. This is the result even though the apartment owner may not collect any monies at all for providing secondary transmissions of broadcast signals, but instead pays for the cost for receiving the signals out of its own pocket.

If a SMATV cannot report gross receipts under one of these methods, it is not eligible for the cable compulsory license.

The definition of "subscriber" is proposed to be added as clause (11) of § 201.17(b). A special definition is required to clarify the meaning of "subscriber" as it appears in the compulsory license, and avoid reliance upon the common parlance of the term by SMATV systems. Thus, a "subscriber" is any person or entity who receives secondary transmission of primary broadcast transmitters for viewing by that person or entity. It is not necessary that such person/entity pay for the privilege of viewing the signals, or that there otherwise be a *quid pro quo* between the provider/cable system and the subscriber. Therefore, when an apartment building operator provides its tenants with broadcast signals via a SMATV facility free of charge, those tenants are still considered to be subscribers of the signals. This is so whether or not the tenants have the option of receiving the signals in their apartments.

The question of who should be the "owner" of a SMATV facility for filing purposes presented numerous problems for the Copyright Office. Many of the commentators addressing the issue suggested that the owner should be the entity which provided the signals and maintained the facility. They noted that ownership of the physical property had no real meaning for copyright purposes when another party undertook to supply

the facility with broadcast signals for ultimate dissemination to subscribers. Adopting the position that signal distributors should be the "owner" of the cable system for compulsory licensing purposes, however, creates the potential for many anomalous results. For instance, it is often the case that a satellite carrier is the signal distributor for SMATV's. Allowing the satellite carrier to designate itself as the owner of the cable system for filing purposes, and hence the party obtaining the license, effectively would make the satellite carrier the cable system. However, the Office has already declared in this proceeding that satellite carriers do not and cannot qualify for the cable compulsory license.

Another problem with delineating distributors as owners of a cable system relates to the amended definition of gross receipts. It is the Office's position that all monies charged either directly or indirectly to subscribers must be reported as gross receipts. If distributors of broadcast signals were held responsible for obtaining the license, they would naturally report as gross receipts the bulk rate charged to the SMATV facility for providing the signals. This figure would always represent the minimum amount reportable (cost) and would never reflect any premiums above cost charged by the building owner to its subscribers (since the owners of these facilities would not be the owner of the cable system for reporting purposes).

To resolve these issues and be better able to administer the cable compulsory license according to the congressional intent, the Office proposes to delineate as the "owner" of the cable system the individual or entity who is responsible for making, or permitting to be made, the secondary transmission of broadcast signals. Thus, the Office has focused on the point where public performance of copyrighted works is made—most frequently in the rooms or apartments belonging to the owner of the building. This performance of the copyrighted works contained in the broadcast signals is either made by, or with the permission of, the building owner. It is, therefore, the building owner who is the cable system "owner" for compulsory license purposes, and that individual or entity is responsible for filing the statement of account.

The remaining proposed amendments to the compulsory license regulations are self explanatory. Statement of Account forms will be amended to provide space for SMATV facilities to identify themselves as such. This is necessary for purposes of examining the statements of account to assure that SMATV's are complying with the regulations specifically designed for them. Section 201.17(e)(6)(iii)(B) is amended to assist SMATV facilities in calculating their subscriber numbers. Although many different individuals may occupy the dwelling unit over the course of an accounting period, all fees collected from an individual dwelling unit for the retransmission of broadcast signals shall be considered attributable to a single subscriber.

Several issues raised in the Notice of Inquiry have not resulted in amendment of the compulsory license regulations. Of particular note is the language of § 210.17(b)(2) governing contiguous cable systems filing as a single system. The Office acknowledges that the intent of the rule may not apply to SMATV facilities, but the contiguous system language comes directly from the statute. While this language may work a particular hardship on SMATV facilities, only Congress has the power and authority to amend the statute. Consequently, until such an amendment is legislated, the Copyright Office has no choice but to apply the regulation to SMATV's in the same fashion as it does for "traditional" cable systems currently operating under the compulsory license.

SMATV facilities which file as SA3 Long Form systems (gross receipts of $292,000 or more) will be required to comply with the signal carriage and market quota regulations applied by the FCC to cable systems, even though the SMATV would not have been subject to such regulation under the FCC rules in effect on June 24, 1981. Thus, SMATV facilities operating within specified markets are subject to the 3.75% rate for distant signals if they carry signals in excess of the distant signal quota for that market, based on a legal fiction that SMATV's were subject to the FCC's former cable carriage rules. The former FCC rules have no relevance for SMATV facilities, however, except for copyright compulsory license purposes.

The Copyright Office has received numerous filings from SMATV operators for prior accounting periods. The Office has had a practice of accepting those filings without ruling on their sufficiency or adequacy. As the preamble to this rulemaking makes abundantly clear, SMATV facilities can only qualify for the cable compulsory license if they comply exactly with the new regulations. SMATV facilities filing statements of account during prior accounting periods did not have the guidance or knowledge of the new rules. It would therefore work an undue hardship on these systems to require them to amend statements of account for all prior applicable accounting periods. However, those SMATV facilities which wish to amend for prior accounting periods may do so under the new regulations after they are issued in final form, and the Office will process those statements of account accordingly.

List of Subjects in 37 CFR Part 201

Cable systems; Cable compulsory license; Satellite master antenna television systems.

Proposed Regulations

In consideration of the foregoing, part 201 of 37 CFR, chapter II, would be amended in the manner set forth below.

PART 201—[AMENDED]

1. The authority citation for part 201 would continue in part to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702.

§ 201.17 [Amended]

2. Section 201.17(b)(1) would be amended by adding the following after the second sentence of the subsection:

* * * * *

(b) * * *

(1) * * * Gross receipts for cable systems operating as satellite master antenna television (SMATV) facilities shall include all fees received, including indirect charges, which are attributable to the basic service of providing secondary transmissions of primary broadcast transmitters. In no case shall gross receipts for SMATV facilities be less than the cost of obtaining the signals of primary broadcast transmitters for subsequent retransmission by the SMATV facility.

* * * * *

3. Section 201.17(b)(2) would be amended as follows:

(i) By revising the third and fourth sentences to read as follows:

* * * * *

(b) * * *

(2) * * * The owner of the cable system on the last day of the accounting period covered by a Statement of Account is responsible for depositing the Statement of Account and remitting the copyright royalty fees.

* * * * *

(ii) By removing the word "individual" appearing before the term "cable system" appearing in the fifth sentence of the subsection.

4. A new paragraph (b)(11) would be added to § 201.17 to read as follows:

* * * * *

(b) * * *

(11) For satellite master antenna television (SMATV) facilities only, a "subscriber" is any individual or entity who receives secondary transmissions of primary broadcast transmitters for viewing of the copyrighted works contained therein.

* * * * *

5. Section 201.17(e)(2) would be amended by adding the following after the first sentence:

* * * * *

(e) * * *

(2) * * * For satellite master antenna television (SMATV) facilities only, the "owner" of the cable system is the individual or entity who owns the building wherein the secondary transmissions of primary broadcast transmitters for viewing are received.

* * * * *

6. Section 201.17(e)(3) would be amended by adding the following to the end of the subsection:

* * * * *

(e) * * *

(3) * * * If the system is a satellite master antenna television (SMATV) facility, then that fact should be so designated.

* * * * *

7. Section 201.17(e)(6)(iii)(B) would be amended by adding the following after the last sentence:

* * * * *

(e) * * *

(6) * * *

(iii) * * *

(B) * * * In the case of a cable system operating as a satellite master antenna television (SMATV) facility, each individual dwelling unit (for example, hotel room or apartment) shall be considered one subscriber.

* * * * *

Dated: June 27, 1991.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 91-16413 Filed 7-10-91; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OPH-009-P]

RIN: 0938-AE24

Health Maintenance Organizations; Group Specific Ratings

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to amend the regulations governing payment for basic health services under the community rating system in Federally qualified health maintenance organizations (HMOs) by implementing certain changes made by the Health Maintenance Organization Amendments of 1988 (Pub. L. 100-517). The changes broaden the definition of community rating, place some restrictions on the use of group specific ratings for small groups, and require HMOs using group specific rates to disclose the method and data used in calculating the rates of payment.

DATES: To ensure consideration, comments must be mailed or delivered to the appropriate address, as provided below, and be received by 5 p.m. on September 9, 1991.

ADDRESSES: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: OPH-009-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following locations:

Room 309-G, Hubert H. Humphrey Building 200 Independence Avenue, SW. Washington, DC or

Room 132, East High Rise Building 6325 Security Boulevard Baltimore, MD.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. In commenting, please refer to OPH-009-P. Comments will be available for public insection as they are received, beginning approximately three weeks after publication, in room 309-G of the Department's office at 200 Independence Avenue, SW., Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5 p.m., (202) 245-7890.

FOR FURTHER INFORMATION CONTACT: Patricia Wright-Gaines, (202) 619-0092.

SUPPLEMENTARY INFORMATION:

Background

A health maintenance organization (HMO) is a managed health care plan that provides or arranges for the delivery of comprehensive, coordinated medical services to voluntarily enrolled members on a prepaid basis. Most individual and family enrollments in HMOs are based on affiliations with public or private entities, such as employers, and premiums are established annually through contracts between HMOs and these entities. The enrollees who become members of the HMO through a particular entity are known as a "group" of enrollees. HMOs also enroll non-group individuals and families as well as group conversions (subscribers who are no longer affiliated with the entity contracting with the HMO, but who continue to receive health care benefits from the HMO).

Title XIII of the Public Health Service Act (the Act) specifies the requirements an organization must meet to receive Federal qualification as a HMO. Section 1302(8) of the Act requires that HMOs fix their health services payments (premiums) under a community rating system. Community rating is a system of rating where the rate is established prospectively, and the same rate is charged for the same benefits to all individuals or groups regardless of age, sex, or the actual or projected cost experience of the insured. The statute describes the types of community rating systems that may be used by HMOs to fix rates of payments for health services provided to individuals and families.

Prior to the Health Maintenance Organization Amendments of 1988 (Pub. L. 100-517), enacted on October 24, 1988, section 1302(8) of the Act described two community rating systems that HMOs could use to fix rates. The first system is known as "traditional community rating." Traditional community rating is a method of prospectively establishing premiums for a package of health care benefits, and provides that rates must be fixed on either a per person or a per family basis, and must be equivalent for all individuals and for all families of similar composition regardless of the demographic composition and cost experience of the insured. It is based on a composite, or average, amount which is the per member/per month rate required for the HMO to cover its costs. The composite amount is derived by dividing the total projected cost (or "revenue requirement") of providing services to the total enrolled population by the number of enrolled members. The result of this division is then further

divided by 12 to achieve an average monthly cost.

When the composite amount is converted into a premium rate structure, that is, the actual premium that would be charged for single (one member), double (two members) and family contracts (more than two members), for a particular group, no adjustments are allowed to account for the demographic composition of the group, or its actual or projected cost experience. The HMO is "at risk" in that, for the period of the contract, it assumes financial responsibility for the health care services that are included in the benefits package and are furnished to the plan's enrollees.

Under traditional community rating, it is only permissible to vary rates across groups to reflect the projected average family size and contract mix (e.g., the percentage of single, double and family contracts) of the group, or for certain differences in administrative costs associated with the size of the group. This traditional method is used to spread the total cost of services across all enrollees of the health plan. Thus, enrollees who have a higher frequency and volume of services (referred to as the utilization rate), and have correspondingly higher health care costs, are subsidized by enrollees who have a lower utilization rate for services and are lower cost enrollees. In this way, traditional community rating equalizes access to the HMO by individuals and families regardless of their actual or projected health care utilization.

The second system, known as "community rating by group," provides that, within certain specified limits, rates can vary by group. The one type of community rating by group that was authorized under section 1302(8) of the Act is referred to in these regulations as "community rating by class." Under community rating by class, an HMO may classify all of the members of the HMO into classes based on factors approved by the Secretary that the HMO determines predict the differences in the use of health services, such as age or sex. The HMO then determines the revenue requirements for providing services to the members of each class based upon the projected utilization of health care services of that class across all groups. For each group, the HMO establishes a composite per member/per month rate based on a weighted average reflecting the number of people from each class who are expected to be enrolled from that group. This rate is the same for all individuals in the group and all families of similar composition in the group. The actual premiums for individuals, doubles and families in the group are derived just as they are under traditional community rating by utilizing average family size, contract mix, and any adjustments in administrative costs due to group size.

The community rating method of establishing health services payments is contrasted with another common rating method used in the insurance industry, experience rating, which is not allowed under the HMO statute. Under experience rating, the insurer is not "at risk," and the amount paid by the group for that period. At the end of a benefit period, the amount paid by a group is compared to the actual costs of their health care services. If there is a difference between costs and premium revenues, an adjustment is made to enable the insurer to recover its full costs of coverage and the employer to pay no more than its actual costs for the group's health care services. This adjustment may take the form of a cash settlement between the employer and the insurer at the end of the year. The settlement may result in the insurer refunding money to the employer if premium revenues exceed actual costs. Alternatively, if costs exceed premium revenues, the employer pays the insurer. Under experience rating, another commonly used method for leveling the revenue/cost equation is adjusting future rates over a one to three year period for the purpose of either adding an amount necessary to recover past losses or reducing rate levels to compensate for overpayments by the employer.

Legislative Changes

Public Law 100–517 amended certain provisions of title XIII of the Act relating to the definition and use of community rating in establishing health services payments. Specifically, section 6(b) of Public Law 100–517 broadened the definition of community rating in section 1302(8) of the Act to include another option for community rating by group in addition to community rating by class. The legislative history of the amendment refers to the new method as "adjusted community rating." However, in this regulation, we have chosen to refer to the new option available under community rating by group as "group-specific community rating" rather than "adjusted community rating." This will avoid confusion with the "adjusted community rating" which is a statutory term used in the methodology for establishing payment amounts for the Medicare risk program under section 1876 of the Social Security Act.

Under group-specific rating, the HMO may establish premiums for the individuals and families of a specific group on the basis of the HMO's anticipated revenue requirements for providing services to that group only, rather than to the total enrolled population. This determination of rates is based on the relationship of the HMO's specific revenue requirements for providing health care services to the group compared to the HMO's revenue requirements for the entire membership. The information used by the HMO in determining its revenue requirements must be related to the specific patterns of health care use by the group. Thus, the HMO may rely on measures such as demographic factors, (i.e., age and sex), utilization and intensity patterns (that is, the frequency and volume of services, and the level of effort or complexity of particular health services arising from either the type of human resources or technological resources invested) of various service categories, such as inpatient, outpatient, and outpatient surgery, and/or other measures which are commonly accepted predictors of health care use.

By allowing flexibility in the choice of measures of health care use, we are recognizing that the accuracy and stability of utilization and intensity patterns decreases as the size of the group decreases. As group size decreases, demographics become a more reliable predictor of future use of services. Thus, an HMO may adopt a methodology for developing its composite rate which relies on a weighted average of different measures that predict health care use. The HMO must fully describe the method of measuring that it will use and must apply it consistently across all groups subject to group-specific ratings.

Implicit in the concept of comparing the HMO's group-specific revenue requirements to the HMO's overall revenue requirements is that the group must have received services from the HMO for at least one year in order for the HMO to have comparative data. Once the HMO determines the ratio of the HMO's revenue requirements for the group compared to the entire membership, this value, usually expressed as a percentage, is multiplied by the composite amount for the entire membership to determine the group-specific composite amount. The actual premiums for the group are then derived just as they are under traditional community rating by applying a standard formula utilizing average family size, contract mix, and any

adjustments in administrative costs due to group size.

Use of the group-specific community rating method of setting premiums does not change the requirement that an HMO determine rates prospectively and continue to be "at risk" for the health care services it contracts to provide to the group. As with other forms of community rating, for a given contract period prospectively established rates are not subject to subsequent adjustment based on the actual use of health care services by the enrollees from the group. Information on the actual use of health care services can be used when establishing rates in future years, but only to compare the HMO's revenue requirements for the group to the entire membership and not to recover past losses. Also, as with traditional community rating, while rates may be based on the revenue requirements of particular groups, there is still a certain amount of cost shifting between groups. One aspect of this cost shifting is actually mandated by the statute.

In order to protect small groups from dramatic increases in premiums, and thus assure continued access to HMOs without significant financial barriers, the amendment to section 1302(8) placed certain restrictions on the use of group-specific rating for groups of less than 100 employees. The law provides that premiums determined under the group-specific rating method for groups of less than 100 persons cannot be greater than 110 percent of the premiums that would be fixed for the individuals and families of a group under one of the other two methods of community rating. Thus, the larger groups served by the organization absorb the costs that may not be charged to the smaller groups. Additionally, the law requires that HMOs using group-specific rating must, on request of the entity with which it contracts to provide services to the group, disclose to the entity the method and data used in calculating the premiums for the group.

Provisions of the Proposed Regulations

The current regulations at 42 CFR 417.104, "Payment for basic health services," specify the methodologies HMOs must use in fixing basic health services payments for HMO members. The regulations also specify certain other requirements HMOs must meet in fixing the payments. Section 417.104(b) provides for two methods of fixing rates, community rating and community rating by group. Only one approach to community rating by group, community rating by class, is currently authorized in the regulations. We are proposing to amend the current regulations by adding to § 417.104 a second method of fixing rates under community rating by group, group-specific community rating, and by adding certain other requirements included in section 1302(8) of the Public Health Service Act for HMOs that use group-specific community rating.

We are, therefore, proposing the following changes to the existing regulations:

- We are proposing to amend § 417.104(b) to indicate that there are now three methods for fixing rates of payments on a community rating basis. Additionally, we are proposing to cross-reference § 417.107(b), which requires each HMO to assume full financial risk on a prospective basis for the provision of basic health services. Apparently recognizing a possibility that the amendment permitting group-specific community rating might by misinterpreted as following experience rating, both the Senate and House Reports on the statutory amendment to section 1302(8) of the Act made clear that this was not the case. The Committee reports specify that an HMO using the new community rating method would continue to be "at risk" for the health care services it contracts to provide to the group, and that all rates must be prospective. Thus, rates are not subject to year end adjustment based on the actual use of health care services by the enrollees from the group. (See Sen. Rep. No. 304, 100th Cong. 2nd Sess. 8–9 (1988), and H.R Rep. No. 417, 100th Cong. 1st Sess. 8–9 (1987)). Accordingly, to avoid any misunderstanding, we propose to cross-reference the existing requirement, which applies to all forms of community rating.
- We are proposing to revise § 417.104(b)(2) to reflect the statutory provision allowing two types of community rating by group: community rating by class and group-specific rating, and to renumber this section so that community rating by class is addressed under (b)(2)(i) and group-specific community rating is addressed under (b)(2)(ii).
- We are proposing to implement in § 417.104(b)(2)(ii) the statutory provision authorizing the use of group-specific community rating. This allows an HMO to base its rates on the revenue requirements for providing services to the group as compared to the revenue requirements for providing services to the entire membership. We are proposing to allow HMOs some flexibility in calculating the composite amount upon which the actual premium will be based. A range of information on a group's prior health care use may be used in the methodology for developing the group's composite rate, such as use according to the demographic characteristics of the group and/or the use of various categories of services. Other measures which are commonly accepted predictors of health care use may be used if approved by the Secretary. If the HMO chooses to use demographic characteristics, it is limited to those factors that have been approved for use under community rating by class. In addition, the HMO must adopt a standard methodology for calculating a group's composite rate and the methodology must be applied consistently across all groups subject to this rating option.
- We are also proposing to incorporate in § 417.104(b)(2)(ii) the statutory provision that places a limitation on the rates allowed for small groups. We are proposing to incorporate in this section the statutory provision that requires HMOs using group-specific community rating to disclose to an individual entity, upon request, the method used to calculate the rates of payment and the data used in determining the rates charged to the entity.
- We are proposing to incorporate in § 417.104(b)(2)(iii) a statement that use of community rating by group in no way permits an HMO or employer to require enrollees to pay different rates according to the age and/or sex of the enrollee. Congress noted in its Conference Report on the Health Maintenance Organization Amendments of 1988 that the brief description of community rating by class in the Committee reports accompanying the legislation (i.e., that it allows for adjustments for factors such as age and sex distribution of enrollees), had been misunderstood as possibly allowing discrimination based on age or sex. The Report states that the reference to "age and sex" was only in relation to putting employees in classes (i.e., as one step in the process of calculating the community rate) and does not alter the current statutory requirement in section 1302(8)(C) that premium rates "be equivalent for all individuals in the same group and for all families of similar composition in the same group." Thus, HMOs and employers may not charge different rates to men and women, or to persons of different ages. The rates developed under community rating by class must instead be based on the composite of all the classes in the group.
- We are proposing to modify § 417.104(e) to include a requirement for Secretarial review of both methods of

community rating by group, as well as a requirement for the Secretary to approve the specific factors used in community rating by class and/or the measures used in group-specific community rating. Under existing regulations, this paragraph addresses only community rating by class. Because some judgment is involved in determining whether the methodology and the specific measures used in group-specific community rating are consistent with Congressional intent, we believe that prior approval by the Secretary is appropriate. We are also proposing to revise the footnote that accompanies § 417.104(e) to update the HCFA contact point for additional information.

Regulatory Impact Analysis

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would likely result in—

- An annual increase in costs on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- 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.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all HMOs are treated as small entities.

This proposed rule would amend the regulations governing payment for basic health services under the community rating system in Federally qualified HMOs by implementing certain changes made by the Health Maintenance Organization Amendments of 1988 (Pub. L. 100–517). The changes broaden the definition of community rating, place some restrictions on the use of group-specific ratings for small groups, and require HMOs using group-specific rates to disclose the method and data used in calculating the rates of payment.

Because the provisions of this proposed rule merely provide HMOs with a third method for fixing rates of payment on a community rating basis, we have determined that this proposed rule, in itself, would not produce any effects that would meet any of the criteria of E.O. 12291 or have a significant effect on a substantial number of small entities. Therefore, we have not prepared a regulatory impact analysis under E.O. 12291 or a regulatory flexibility analysis under the RFA.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule would have a significant impact on the operations of a substantial number of small rural hospitals. The provisions of this regulation apply only to HMOs. We have determined, and the Secretary certifies, that this proposed rule would not affect a significant number of small rural hospitals and, therefore, have not prepared a rural impact statement.

Paperwork Reduction Act of 1980

These changes do not impose information collection requirements. Consequently, they need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Response to Public Comments

Because of the large volume of public comments that we usually receive on notices of proposed rulemaking, we cannot acknowledge or respond to them individually. However, we will address all public comments received on this document when these proposed regulations are issued in final form.

List of Subjects in 42 CFR Part 417

Administrative practice and procedure, Health maintenance organization (HMO).

42 CFR 417.104 would be amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

Subpart A—Federally Qualified Health Maintenance Organizations

1. The authority citation for Part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 1395(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97–248 (42 U.S.C. 1395mm note); 31 U.S.C. 9701; and secs. 215 and 1301 through 1318 of the Public Health Service Act (42 U.S.C. 216 and 300e through 300e–17), unless otherwise noted.

2. Section 417.104 is amended by revising paragraphs (b) and (e) to read as follows:

§ 417.104 Payment for basic health services.

* * * * *

(b) *Community rating system.* Under a community rating system, rates of payment for health services are established on a prospective basis. The HMO must assume full financial risk as set forth in § 417.107(b). Therefore, an HMO may not retrospectively adjust rates based on actual utilization, intensity of services, revenue requirements of a particular group, or on any other basis. These rates may be determined according to either traditional community rating, as described in paragraph (b)(1) of this section or community rating by group, as described in paragraph (b)(2) of this section. An HMO may fix its rates of payment under the systems described in paragraph (b)(1), (b)(2)(i), or (b)(2)(ii) of this section, or under all three systems, but an HMO may use only one such system for fixing its rates of payment for any one group.

(1) *Traditional community rating.* A system of fixing rates of payment for health services may provide that the rates shall be fixed on a per person or per family basis and may vary with the number of persons in a family. Except as otherwise authorized in this paragraph, these rates must be equivalent for all individuals and for all families of similar composition. Rates of payment may be based on either a schedule of rates charged to each subscriber group or on a per-member-per-month (or per-subscriber-per-month) revenue requirement for the HMO. In the former event, rates may vary from group to group if the projected total revenue from each group is substantially equivalent to the revenue which would be derived if the schedule of rates were uniform for all groups. In the latter event, the payments from each group of subscribers shall be calculated to yield revenues substantially equivalent to the product of the total number of members (or subscribers) expected to be enrolled from the group and the per-member-per-month (or per-subscriber-per-month) revenue requirement for the HMO. Under the system described in this paragraph, rates of payment may not vary because of actual or anticipated utilization of services by individuals associated with any specific group of subscribers. These provisions do not preclude changes in the rates of payment which are established for new enrollments or re-enrollments and which do not apply to existing contracts until the renewal of these contracts.

(2) *Community rating by group.* A system of fixing rates of payment for

health services may provide that the rates be fixed for individuals and families by group. If an HMO chooses to fix rates of payment for individuals and families by group, it must use either a system of community rating by class or a system of group specific community rating. Except as otherwise authorized in this paragraph, such rates must be equivalent for all individuals in the same group and for all families of similar composition in the same group.

(i) *Community rating by class.* If an HMO fixes rates of payment on the basis of community rating by class, it must:

(A) Classify all of the members of the organization into classes based on factors which the HMO determines predict the differences in the use of health services by the individuals or families in each class and which have not been disapproved by the Secretary,

(B) Determine its revenue requirements for providing services to the members of each class established under paragraph (b)(2)(i)(A) of this section, and

(C) Fix the rates of payment for the individuals and families of a group on the basis of a composite of the organization's revenue requirements determined under paragraph (b)(2)(i)(B) of this section for providing services to them as members of the classes established under paragraph (b)(2)(i)(A) of this section. The Secretary will review the factors used by each HMO to establish classes under paragraph (b)(2)(i)(A) of this section. If the Secretary determines that any such factor may not reasonably be used to predict the use of the health services by individuals and families, the Secretary will disapprove the factor for that purpose.

(ii) *Group specific community rating.* If an HMO fixes the rates of payments for the individuals and families on the basis of group specific community rating, it must:

(A) Identify the measures which the HMO will use to compare the group's experience to the experience of the entire membership. These measures, which must be ones which the HMO determines predict the differences in the use of health services by a group, may only include: (*1*) Measures of prior utilization and intensity of services; (*2*) the demographic factors approved under § 417.104(b)(2)(i) for use in community rating by class; and (*3*) other measures which are commonly accepted predictors of health care use, and which are specifically approved by the Secretary for use in community rating by group;

(B) Develop a ratio (or ratios) which compares the specific group to the entire membership according to the measures;

(C) Determine the organization's revenue requirements (expressed in the form of a composite, or average, monthly amount) for providing services to the entire membership based on the established measures;

(D) Identify the methodology it will use to calculate its group specific revenue requirements, or composite, by applying the ratio or ratios developed in § 417.104(b)(2)(ii)(B) to the HMO-wide composite;

(E) Apply the methodology consistently to all groups subject to group specific community rating. However, where the application of the methodology to individuals and families of a group of less than 100 persons results in rates greater than 110 percent of the rate that would be fixed for such individuals and families under paragraph (b)(1) or (b)(2)(i) of this section, the HMO must fix the rate at an amount not to exceed the 110 percent amount;

(F) Upon request, disclose to the entity with which it contracts, the method used in calculating the rates of payment and the data used in determining the proposed rate for that group.

(iii) Nothing in these regulations should be construed as authorizing or permitting an HMO or an employer to require enrollees to pay different rates according to the age and/or sex of the enrollee.

* * * * *

(e) *Review procedures for evaluating the community rating by group systems under paragraph (b)(2).*[1] An HMO may establish or revise a community rating system under paragraph (b)(2) of this section after it receives written approval from the Secretary. The HMO may revise factors used to establish classes under community rating by class and/or measures it uses to predict differences in the use of health services by a group under group specific community rating after it receives written approval from the Secretary. The Secretary will give approval to the factors used under community rating by class if he or she concludes that the factors can reasonably be used to predict the use of health services by individuals and families. The Secretary will give approval to the measures used under group specific community rating if he or she determines that the measures the HMO proposes can reasonably be used to predict the use of health services by a group.

(1) An HMO must make a written request to the Secretary that includes a description of its proposed methodology and a list of the factors to be used in the community rating by class system under paragraph (b)(2)(i) of this section, and/or the measures to be used in group specific community rating under paragraph (b)(2)(ii) of this section.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: October 11, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: April 3, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-16241 Filed 7-10-91; 8:45 am]

BILLING CODE 4120-01-M

[1] Further information entitled "Guidelines for Rating by Class" may be obtained by submitting a request to the Director, Office of Prepaid Health Care, Health Care Financing Administration, 330 Independence Avenue, SW., Washington, DC 20201.

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 415

Regulations for Administering Entitlements to Colorado River Water in the Lower Colorado River Basin

AGENCY: Bureau of Reclamation (Interior).

ACTION: Advance notice of intent to propose rulemaking; correction.

SUMMARY: The Bureau of Reclamation (Reclamation) published an advance notice of its intent to engage in rulemaking in the **Federal Register** on April 22, 1991 (56 FR 16291). The proposed rule would provide regulations for administering entitlements to Colorado River Water in the Lower Colorado River Basin. That notice contained some typographical errors warranting correction. This correction notice highlights the errors, makes clarifying revisions, and reprints the complete text of the April 22, 1991, advance notice in its corrected and revised form. Parties interested in the process or desiring an informational copy of the preliminary draft Regulations may contact the individual named under **"FOR FURTHER INFORMATION CONTACT."**

COMMENTS: When the proposed Regulations are available for public review and comment, an announcement

will be made in the **Federal Register** inviting formal written comments. If sufficient public interest exists, a series of public meetings will be held in Arizona, California, and Nevada.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Ensminger; Division of Water, Land, and Power; Lower Colorado Region; Bureau of Reclamation; P.O. Box 427; Boulder City, Nevada 89005; telephone 702-293-8536 or FTS 598-7536.

SUPPLEMENTARY INFORMATION: This notice revises and supersedes the advance notice published in the **Federal Register** on April 22, 1991 (56 FR 16291). Under **SUPPLEMENTARY INFORMATION,** in that notice, the 4th sentence in the 4th paragraph (now the 5th) has been revised to read "Requests for delivery of Colorado River water exceeded the lower basin apportionment of 7.5 million acre-feet (maf) in 1990 and may exceed 7.5 maf per year in the future." Paragraphs 3 and 4 have been combined. The last sentence in the 5th paragraph (now the 6th) has been revised to read "It is therefore necessary for Reclamation to establish Regulations which will provide for monitoring and accounting for water use and help ensure that nonbeneficial use, nonuse, non-reporting of use, and unauthorized use of entitlements are eliminated." The words "non-use" and "of entitlements" were added for clarification.

The first sentence of the 6th paragraph (now the 7th) contained a typographical error. The phrase " * * * will not be new requirement for a formal, written statement * * *" has been corrected to read " * * * will not be new requirements, but a formal written statement * * * " The complete text in its revised and corrected form follows.

The Secretary of the Interior (Secretary), pursuant to the Boulder Canyon Project Act of December 28, 1928, and the Supreme Court opinion rendered June 3, 1963, and decree entered March 9, 1964, in the case of *Arizona* v. *California et al.*, was vested with the authority and given responsibility to manage the mainstream of the Colorado River and to administer entitlements to and contracts for the use of its waters in the Lower Colorado River Basin. As the Agency which has been designated to act in the Secretary's behalf with respect to these matters, Reclamation intends to develop, propose, and implement the Regulations referred to above.

Entitlements to divert and consumptively use Colorado River Water either have been acquired in accordance with State law and exercised by actual diversion and application to an approved use, established by contract with the Secretary, or created through reservation by the Secretary for use of Federal establishments under Federal law.

The water supply available for consumptive use from the Colorado River has been apportioned among the seven Colorado River Basin States and the Republic of Mexico. Each of the Lower Basin States of Arizona, California, and Nevada is entitled to a specific apportionment of Colorado River water on a permanent basis. In addition, these States are entitled to share surplus water when it is available. Requests for delivery of Colorado River water exceeded the lower basin apportionment of 7.5 million acre-feet (maf) in 1990 and may exceed 7.5 maf per year in the future. While these needs may be met in some years when surplus water conditions exist, in many years water deliveries will have to be limited to the basic apportionment of 7.5 maf.

All Colorado River water used must by law be put to beneficial consumptive use. Beneficial use is the basis, measure, and limit of the right to use Colorado River water. Management of the lower Colorado River has entered an era of limits in which all legitimate requests for water will not always be fulfilled. It is therefore necessary for Reclamation to establish Regulations which will provide for monitoring and accounting for water use and help ensure that non-beneficial use, non-use, non-reporting of use, and unauthorized use of entitlements are eliminated.

The proposed Regulations, except for the imposition of an administrative fee, will not be new requirements, but a formal written statement of existing management and operational requirements and guidelines. The proposed Regulations will enhance Reclamation's ability to eliminate illegal water diversions by unauthorized users and help ensure that Colorado River water consumptively used in Arizona, California, and Nevada is in fact used by the intended users, is put to valid beneficial use, and that such use does not exceed authorized amounts. The proposed Regulations will specify the procedures that must be followed to obtain a contract for Colorado River water and will not infer that a water entitlement is available to an applicant.

Dated: July 5, 1991.

Donald R. Glaser,

Acting Commissioner.

[FR Doc. 91-16457 Filed 7-10-91; 8:45 am]

BILLING CODE 4310-09-M

Bureau of Land Management

43 CFR Part 3800

[AA-680-00-4130-02]

RIN 1004-AB36

Mining Claims Under the General Mining Laws; Surface Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management proposes to amend its financial guarantee (bonding) policies found in the surface management regulations at 43 CFR subpart 3809. The proposed rule would require submission of financial guarantees for reclamation for all operations greater than casual use, create additional financial instruments to satisfy the requirement for a financial guarantee, and amend the noncompliance section of the regulations to require the filing of plans of operations by operators who establish a record of noncompliance. In addition, the proposed rule would remove § 3809.1-8 on existing operations, which is no longer applicable because all activities that were in operation in 1980 and continue in operation have now complied with this section.

DATES: Comments should be submitted by September 9, 1991. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rulemaking. Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard Deery, (202) 208-4147.

SUPPLEMENTARY INFORMATION: The existing regulations of the Bureau of Land Management (BLM) do not require operators to post bonds for operations that constitute casual use or, because they disturb 5 acres or less, are conducted under a notice under 43 CFR 3809.1-3. Administration of the surface management program under these regulations for the past 10 years has led BLM to conclude that bonding or other financial or surety arrangements would be useful additions to the tools available to land managers to protect against unnecessary or undue degradation of the land caused by operations under section

3809.1-3 disturbing 5 acres of land or less (notice-level operations). In addition, because surety bonds have become increasingly unavailable, it is necessary to establish alternative financial guarantee arrangements.

Mandatory Financial Guarantees for All Operations

The posting of a financial guarantee would be made mandatory under this proposed rule for all operations other than casual use. The requirement for a financial guarantee would be extended to operations proceeding under a notice in accordance with § 3809.1-3, those operations that disturb 5 acres or less per calendar year. All other provisions of the notice would remain unchanged. A notice-level operator would be required to certify the existence of a financial guarantee in the amount of $5,000.

Operators proceeding under a plan of operations in accordance with § 3809.1-4 (plan-level) wou1a be required to provide the authorized officer with a financial guarantee sufficient to cover the performance of the reclamation required by § 3809.1-3(d) and under the approved reclamation plan required by § 3809.1-5(c)(5). The financial guarantee would be required to take into account the cost of completing the reclamation should the operator fail to reclaim. To reduce the impacts on the industry, bond amounts would be capped at $1,000 per acre for exploration activities and $2,000 for mining activities. The proposed rule would define both categories of activity. Comments are specifically requested on the adequacy of these definitions. These bond caps would be intended to be in effect for 3 years after promulgation of the final rule, and their adequacy would be reeevaluated at that time. The final rule is also expected to include provision for variations in or phasing in of its effective date, if determined necessary by the respective State Directors of the BLM to cooperate with State agencies pursuant to the negotiation and implementation of cooperative agreements or the pendency of State legislation and regulations relating to financial guarantees.

The exception to the caps will be those portions of operations that make use of cyanide or other leachates, which would be required to post a financial guarantee in an amount equal to 100 percent of the cost of reclamation.

The purpose of the financial guarantee would be to ensure performance of the reclamation. For notice-level operations, the requirement of a financial guarantee would be satisfied by the filing of a certification of the existence of a financial guarantee in the specified amount. Failure to submit the certification with the notice would cause the notice to be rejected as incomplete. In contrast to the certification requirements placed on notice-level operations, operators proposing plan-level activities would be required to submit the financial guarantee itself, rather than just a certification, to BLM. It would be reviewed by the authorized officer and approved or rejected.

Once submitted to the authorized officer, financial guarantees would be required to remain available until the authorized officer has released the operator from any further responsibility for the reclamation. Any failure to complete the required reclamation could result in the attachment of the guarantee. All guarantees described in a certification by notice-level operators would be subject to periodic physical inspection by the authorized officer in order to verify the existence of the financial guarantee. Failure to have the financial guarantee promised by the certification might subject the individual making the filing to criminal prosecution under the appropriate Federal statutes.

Diversification of Instruments Available for Financial Guarantees

The proposed regulations significantly expand the number and types of instruments available to the operator when filing a financial guarantee. The existing regulations allow BLM to hold only three types of guarantees: cash, surety bonds, and negotiable United States securities. In lieu of these instruments, existing regulations also allow BLM to acknowledge and honor a State-held bond.

Use of all of the financial instruments provided for in the existing regulations would be retained under this proposal. Additional instruments would be made available by providing for acceptance by the authorized officer of all available financial instruments within a State. State Directors would consult with the appropriate State authorities to identify and publish a list of acceptable instruments. The purpose of this broadening would be to provide operators with options other than cash, surety bonds, or negotiable United States securities, because the traditional surety bonds have been too limited in availability. In doing so operators may be able to structure financial guarantees in a fashion that would not be excessively costly or damaging to a firm's liquidity and thus harm its ability to continue exploration and development activities on Federal Lands or to reclaim disturbed land.

The traditional surety bond is generally no longer available. This lack of availability was clearly documented in the 1988 General Accounting Office report, GAO/PEMD-88-17, Surface Mining: Cost and Availability of Reclamation Bonds. This report investigated the availability of surety bonds as required by the Surface Mining Control and Reclamation Act of 1977. The report found that surety bonds were much harder to obtain than when the existing regulations were promulgated, because of tightening of requirements in the surety industry during the 1980's, and that even when obtainable they required large amounts of collateral. The report concluded that small and mid-sized coal operators face a liquidity crisis when forced to use high cost alternatives to surety bonds or to offer large amounts of collateral to obtain a surety bond. Available data suggest that the same conclusions would be reached in any study of the locatable mineral industry.

While the proposed rule would broaden the types of acceptable financial instruments, it would not include any proposals for BLM managed bond pools, insurance funds, reclamation sinking funds, and the like. Such forms of guarantee would require legislation. However, public comments are invited on these forms of guarantee and their potential applicability to the locatable mineral industry. It is possible that the State of Alaska's recently enacted bond pool may provide a suitable model for other States or for a Federal version. The proposed rule also does not provide for self-bonding. However, the BLM is considering self-bonding as a potential tool. Readers are referred to the self-bonding rules of the Office of Surface Mining Reclamation and Enforcement at 30 CFR 800.23. Public comments are invited on the potential adoption of self-bonding.

Noncompliance

The proposed rule would amend the noncompliance section to define when an operator has established a record of noncompliance, to require the filing of a mandatory financial guarantee with BLM, and to require all existing and subsequent notice-level activity to be conducted under an approved plan of operations. These changes would incorporate language required by Public Law 99-500, October 18, 1986, 100 Stat. 1783-243, and Public Law 99-591, October 30, 1986, 100 Stat. 3341-243.

The principal author of this proposed rule is Richard Deery of the Division of Mining Law and Salable Minerals, assisted by the staff of the Division of Legislation and Regulatory Management, BLM.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rule would not cause a taking of private property.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 et seq. The collection of this information will not be required until it has been approved by the Office of Management and Budget.

List of Subjects in 43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental affairs, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

Under the authorities cited below, part 3800, subchapter C, chapter II, title 43 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS (AMENDED)

1. The authority citation for part 3800 is revised to read as follows:

Authority: Act of April 25, 1812 (43 U.S.C. 2); Act of September 28, 1850 (43 U.S.C. 1201); Act of July 4, 1966 (30 U.S.C. 21); Lode Law of 1866 (30 U.S.C. 22 *et seq.*); Placer Act of 1870 (30 U.S.C. 36); General Mining Law of 1872, as amended (30 U.S.C. 21 *et seq.*); Stockraising Homestead Act (43 U.S.C. 299); Act of December 22, 1928 (43 U.S.C. 1068 *et seq.*); Act of April 23, 1932 (43 U.S.C. 154); Act of June 18, 1934 (25 U.S.C. 463); Act of July 16, 1946, Reorganization Plan No. 3 (43 U.S.C. 1457); Act of April 8, 1948 (62 Stat. 162); Alaska Public Sale Act of 1949 (43 U.S.C. 687b–687b–4); Act of July 23, 1955 (30 U.S.C. 621 *et seq.*); Wilderness Act 16 U.S.C. 1131–1136; Wild and Scenic Rivers Act (16 U.S.C. 1271–1287); Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a); Mining in the Parks Act of 1976 (16 U.S.C. 1901); Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); National Materials and Minerals Policy, Research, and Development Act of 1980 (30 U.S.C. 1601); and Freedom of Information Act, 5 U.S.C. 552. 43 U.S.C. 1782, unless otherwise noted.

Subpart 3809—Surface Management [Amended]

2. The authority citation for 43 CFR subpart 3809 continues to read as follows:

Authority: Secs. 2319 (30 U.S.C. 22); 2478 (43 U.S.C. 1201) of the Revised Statutes, and the Federal Land policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

3. Section 3809.0–5 is amended by redesignating paragraphs (c), (d), (e), (f), (g), (h), (i), (j), and (k) as (d), (e), (f), (h), (i), (j), (k), and (*l*), and adding paragraphs (c) and (g) to read as follows:

§ 3809.0–5 Definitions.

* * * * *

(c) *Exploration operations* means all activities not expressly described as mining operations, for purposes of determining appropriate bond amounts.

* * * * *

(g) *Mining operations* means any one of the following or any combination of the following activities:

(1) Any combination of underground excavation or removal of overburden from a mineral deposit by strip, open pit, dredge, placer, or quarry methods that leads to the direct removal of minerals from the exposed deposit;

(2) Operations removing overburden by trenching or test-pitting to expose possible indications of mineralization; or

(3) Recovery of mineral values by surface or in-situ leaching methods.

* * * * *

§ 3809.1–8 [Reserved]

3. Section 3809.1–8 is removed in its entirety and the designation reserved for future use.

4. Section 3809.1–9 is revised to read as follows:

§ 3809.1–9 Financial guarantees.

(a) No financial guarantee shall be required for operations that constitute casual use under § 3809.1–2 of this subpart.

(b) No operation conducted under a notice in accordance with § 3809.1–3 shall be initiated until the operator provides to the authorized officer a certification that a financial guarantee exists to ensure performance of reclamation in accordance with the requirements of 3809.1–3(d) of this subpart. The financial guarantee shall be for $5,000 and may be in any of the forms described in paragraph (k) of this section. The financial guarantee may also be met by providing evidence of an appropriate instrument held by a State agency pursuant to State law or regulations so long as the coverage would be equivalent to that required by this section. The certification shall accompany the notice submitted to the proper BLM office. Failure to submit a complete certification will render the notice incomplete and it will be returned by the authorized officer. The funds guaranteed by the certification shall be available, until released by the authorized officer, for the performance of such reclamation as required by § 3809.1–3 of this subpart. Such reclamation shall include all reasonable measures identified as the result of the consultation required by the authorized officer under § 3809.1–3(c).

(c) The certification submitted by the operator, mining claimant, or its agent shall include:

(1) The name, home address, and office and home telephone numbers of the operator, mining claimant, or agent;

(2) A statement that the individual submitting the certification will be responsible for the required reclamation;

(3) A statement that the authorized officer will be notified at the completion of reclamation operations to arrange for a final inspection;

(4) A statement that the financial guarantee in the amount of $5,000 exists, followed by a complete description of the financial guarantee and its location;

(5) A statement that the financial guarantee in the amount of $5,000 is to be delivered to the authorized officer within 45 days of a demand for its surrender, following failure to complete reclamation, unless an additional period of time not to exceed 45 days is granted in writing by the authorized officer;

(6) A statement acknowledging that surrender of the financial guarantee will not release the operator, mining claimant, or agent from personal responsibility to ensure completion of the reclamation should the amount of the guarantee be insufficient to complete all required reclamation; and

(7) A statement acknowledging that non-existence of the financial guarantee or the failure to provide the guarantee upon demand for its surrender by the authorized officer may result in prosecution under 18 U.S.C. 1001, 43 U.S.C. 1733, or other appropriate authorities.

(d) Each statement required by paragraph (c) of this section within the certification shall be initialed and dated by the individual submitting the certification. Failure to initial all statements will result in the certification

and the notice being returned as incomplete by the authorized officer.

(e) At any time the authorized officer may require the operator to demonstrate the existence of the guarantee set out in the certification.

(f) Each operator who conducts operations under an approved plan of operations as described in § 3809.1–5 of this subpart shall furnish a financial guarantee in an amount specified by the authorized officer. In determining the amount of the guarantee, the authorized officer shall consider the estimated cost of reasonable stabilization and reclamation of areas disturbed, including the cost to the BLM of conducting the reclamation, using either contract or government personnel.

(g)(1) The maximum amount of a financial guarantee for exploration operations held by the authorized officer shall be $1,000 per acre.

(2) The maximum amount of a financial guarantee for mining operations held by the authorized officer shall be $2,000 per acre.

The maximum financial guarantee amounts in subparagraphs (g) (1) and (2) of this section shall not apply to financial guarantees required of operators who have failed to take necessary actions on a notice of noncompliance and are subject to the provisions of § 3809.3–2(e).

(h) Operators who utilize cyanide or other leachates will be required to post a financial guarantee equal to 100 percent of the authorized officer's estimate of the costs of reclamation required by State or Federal regulations and included in the reclamation plan, including neutralization, for those portions of the operation that utilize cyanide or other leachates. The affected areas include leach heaps, pads or dumps, or those parts of an operation discharging cyanide-bearing tailings and fluids to impoundments or ponds. This requirement will only apply to those portions of the operations encumbered by the listed facilities. All other portions of the operation will be subject to the provisions of this subpart as may be appropriate. The various forms of vat leach facilities, metal recovery facilities, and refining facilities will not be included in this category.

(i) The authorized officer may accept evidence of an existing financial guarantee pursuant to State law or regulations and held by a State agency for the same area covered by the plan of operations, upon a determination that the coverage would be equivalent to that provided in this section. The operator proposing a plan of operations may offer for the approval of the authorized officer any of the financial instruments listed in paragraph (k) of this section. In addition to those instruments, an operator proposing a plan of operations may offer a first-lien security interest for mining equipment. The authorized officer may reject any of the submitted financial instruments, but will do so by decision in writing, with a complete explanation of the reasons for the rejection, within 30 days of the offering.

(j) In the event that an approved plan is modified in accordance with § 3809.1–7 of this subpart, the authorized officer shall review the initial financial guarantee for adequacy and, if necessary, adjust the amount of the financial guarantee to cover the estimated cost of reasonable stabilization and reclamation of areas disturbed under the plan as modified.

(k) Provided that the State Director has determined that it is a legal financial instrument within the State where the operation is proposed, the financial guarantee may take the form of any of the following:

(1) Surety bonds, including third party surety bonds.

(2) Cash in an amount equal to the required dollar amount of the financial guarantee deposited and maintained in a Federal depository account of the United States Treasury, as directed by the authorized officer.

(3) Irrevocable letters of credit from a bank or financial institution organized or authorized to transact business in the United States.

(4) Certificates of deposit or savings accounts not in excess of the maximum insurable amount as set by the Federal Deposit Insurance Corporation.

(5) First mortgages, first deeds of trust, or first-lien security interests for mining or non-mining fee simple real property, excluding personal property.

(6) United States Government, State and Municipal bonds or negotiable government securities having a market value at the time of deposit of not less than the required dollar amount of the financial guarantee.

(7) Investment-grade rated securities having a rating of AAA or AA or an equivalent rating issued by a nationally recognized securities rating service.

(l) In place of the individual bond on each separate operation, a blanket financial guarantee covering statewide or nationwide operations may be furnished at the option of the operator, if the terms and conditions are determined by the authorized officer to be sufficient to comply with these regulations.

(m) When all or any portion of the reclamation has been completed in accordance with the approved plan, the operator may notify the authorized officer that such reclamation has occurred and may request a reduction in the financial guarantee or BLM approval of the adequacy of the reclamation, or both. Upon any such notification, the authorized officer will promptly inspect the reclaimed area with the operator. The authorized officer shall then notify the operator, in writing, whether the reclamation is acceptable. When the authorized officer has accepted as completed any portion of the reclamation, the authorized officer shall authorize that the financial guarantee be reduced proportionally to cover only the remaining reclamation to be accomplished, or may use the balance of the guarantee to cover other proposed activities.

(n) When a mining claim is patented, the authorized officer shall release the operator from the portion of the financial guarantee that applies to operations within the boundaries of the patented land. The authorized officer shall release the operator from the remainder of the financial guarantee, including the portion covering approved means of access outside the boundaries of the mining claim, when the operator has completed acceptable reclamation. However, existing access to patented mining claims, if across Federal lands, shall continue to be regulated under the approved plan and shall include a financial guarantee. The provisions of this subsection do not apply to patents issued on mining claims within the boundaries of the California Desert Conservation Area (see § 3809.6 of this subpart).

§ 3809.3–1 [Amended]

5. Section 3809.3–1 is amended by revising paragraph (b) to read as follows:

* * * * *

(b) After the publication date of these regulations, the Director, BLM, shall conduct a review of State laws and regulations in effect or due to come into effect relating to unnecessary or undue degradation of lands disturbed by exploration for, or mining of, minerals locatable under the mining laws. Each State Director will consult with the appropriate State authorities to determine which of the financial instruments in 3809.1–9(k) are legal tenders under State law. Each State Director will publish a notice identifying all legal financial guarantees that may be accepted by the authorized officer. This list shall be maintained and published on not less than an annual basis.

§ 3809.3-2 [Amended]

6. Section 3809.3-2 is amended by revising paragraph (e) to read as follows:

* * * * *

(e) Failure of an operator to take necessary actions on a notice of noncompliance will obligate the operator to submit a plan of operations under § 3809.1-5 of this subpart for all existing and subsequent operations that would otherwise be conducted pursuant to a notice under § 3809.1-3 of this subpart. Such operator shall file with the authorized officer a financial guarantee to be held by BLM for the full cost of reclamation for all proposed and existing disturbance as a condition of approval of any subsequent plans. Financial guarantees held by the State will not be acceptable. This requirement shall apply to all activities in the State and continue in force for a period of not less than one calendar year, but not more than three calendar years, after the failure to take the necessary actions. The duration of the requirement shall be determined by the State Director.

Dated: August 28, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

Note: This document was received by the Office of the **Federal Register** on July 3, 1991.

[FR Doc. 91-16303 Filed 7-10-91; 8:45 am]

BILLING CODE 4310-84-M

Notices

Federal Register
Vol. 56, No. 133
Thursday, July 11, 1991

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

Forms Under Review by Office of Management and Budget

July 5, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Extension

• National Agricultural Statistics Service.
Supplemental Qualifications Statement.
On occasion.
Individuals or households; 172 responses; 516 hours.
Larry Gambrell, (202) 447-7737.

New Collection

• Federal Crop Insurance Corporation.
Self-Certification Replant Worksheet.
FCI-552.
On occasion.
Individuals or households; Farms; 400 responses; 100 hours.
Bonnie L. Hart, (202) 245-5046.

• Federal Crop Insurance Corporation.
Peanut Computation Sheet.
FCI-74-B.
On occasion.
Individuals or households; Farms; 50 responses; 100 hours.
Bonnie L. Hart, (202) 245-5046.

New Collection

• Federal Crop Insurance Corporation.
Upland/ELS Cotton Program—Identification of Cotton Production.
FCI-530.
On occasion.
Individuals or households; Farms; 600 responses; 300 hours.
Bonnie L. Hart, (202) 245-5046.

Federal Crop Insurance Corporation.
• Collector's Contact Report.
FCI-3.
On occasion.
Individuals or households; Farms; 600 responses; 300 hours.
Bonnie L. Hart, (202) 245-5046.

Federal Crop Insurance Corporation.
• Summary of Harvested Production.
FCI-74-C.
On occasion.
Individuals or households; Farms; 100 responses; 100 hours.
Bonnie L. Hart, (202) 245-5046.

New Collection

• Federal Crop Insurance Corporation.
Tabulation of Production Records from Individual Load.
Certificates—Florida Citrus Production Sheet.
FCI-63-B and FCI-63-C.
On occasion.
Individuals or households; Farms; 42,000 responses; 42,000 hours.
Bonnie L. Hart, (202) 245-5046.

• Federal Crop Insurance Corporation.
Request for Actuarial Change and Request for Actuarial Change.
Continuation Sheet.
FCI-5 and FCI-5-A.
On occasion.
Individuals or households; Farms; 2,000 responses; 2,000 hours.
Bonnie L. Hart, (202) 245-5046.

New Collection

• Rural Electrification Administration.
Alternative Sources of Power.
On occasion.
Small businesses or organizations; 10 responses; 60 hours.
Daphne L. Brown, (202) 382-9551.

New Collection (Emergency)

• Rural Electrification Administration.
Discounted Prepayments on REA Notes in the Event of a Merger of Certain REA Borrowers.
On occasion.
Small businesses or organizations; 29 responses; 203 hours.
Daphne L. Brown, (202) 382-9551.

Reinstatement

• Food and Nutrition Service.
WIC Program Regulations-Reporting and Recordkeeping Burden.
Recordkeeping; Monthly; Semi-annually; Annually.
Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 7,736,884 responses; 992,064 hours.
Michael T. Buckley, (703) 756-3730.

• Farmers Home Administration.
7 CFR 1944-A, Section 502 Rural Housing Policies, Procedures, and Authorizations.
FmHA 410-4, 1910-5, 440-34, 1944-3, 4, 6, 6A, 12, 5, 36, 410-7. On occasion.
Individuals or households; Businesses or other for-profit; Small businesses or organizations; 2,225,655 responses; 1,339,166 hours.
Jack Holston, (202) 382-9736.

Larry K. Roberson,
Deputy Departmental Clearance Officer.

[FR Doc. 91-16459 Filed 7-10-91; 8:45 am]
BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

[Docket No. 91-102]

Availability of Environmental Assessments and Findings of No Significant Impact Relative To Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that five environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative

to the issuance of permits to allow the field testing of genetically engineered organisms. The assessments provide a basis for the conclusion that the field testing of these genetically engineered organisms will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on these findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, betwen 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Specialist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write Clayton Givens at this same address. The documents should be requested under the permit numbers listed below.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation of interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit applications, APHIS assessed the impact on the environment of releasing the organisms under the conditions described in the permit applications. APHIS concluded that the issuance of the permits listed below will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants as well as a review of other relevant literature, provide the public with documentation of APHIS review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of the following permits to allow the field testing of genetically engineered organisms:

Permit No.	Permittee	Date issued	Organism	Field test location
91-077-01	Harris Moran Seed Company.	06-18-91	Cantaloupe plants genetically engineered to contain the cucumber mosaic virus (CMV) coat protein gene.	Solano County, California.
91-079-01	DNA Plant Technology Corporation.	06-18-91	Tomato plants genetically engineered to express a staphylococcal Protein A gene and an antifreeze gene.	Contra Costa County, California.
91-107-06	Calgene, Incorporated	06-18-91	Cotton plants genetically engineered to express to the herbicide bromoxynil.	Washington County, Mississippi; Lee County, South Carolina.
91-052-02	Montana State University	06-19-91	Potato plants genetically engineered to express a cecropin B analog gene intended to confer resistance to potato ring rot bacteria, bacterial soft rot, and common scab.	Lake and Gallatin Counties, Montana.
91-123-01 (renewal of 90-135-02, issued on 08-15-90)	Amoco Technology Company.	06-20-91	Tobacco plants genetically engineered to express a eukaryotic gene important for primary metabolism and a kanamycin resistance gene.	Fayette County, Kentucky.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 5th day of July 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-16541 Filed 7-10-91; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 91-098]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of Permit To Field Test a Genetically Engineered Organism

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of a genetically engineered organism. The assessment provides a basis for the conclusion that the field testing of the genetically engineered organism will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, Room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Specialist,

Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Clayton Givens at this same address. The documents should be requested under the permit number listed below.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the organism under the conditions described in the permit application. APHIS concluded that the issuance of the permit listed below will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by the applicant as well as a review of other relevant literature, provide the public with documentation of APHIS, review and analysis of the environmental impacts associated with conducting the field tests.

An environmental assessment and a finding of no significant impact have been prepared by APHIS relative to the issuance of the following permit to allow the field testing of genetically engineered organisms:

Permit	Permittee	Date issued	Organism	Field test location
91-067-01	Pioneer Hi-Bred International, Incorporated	06-10-91	Sunflower plants genetically engineered to contain a sulphur-rich storage protein gene from Brazil nuts.	Yolo County, California.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 5th day of July 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-16542 Filed 7-10-91; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Exemption; Timber Sales, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of Exemption from Appeal, Amador Ranger District Give-A-Hoot Helicopter Insect Salvage, Amador Ranger District, Eldorado National Forest.

SUMMARY: The Forest Service is exempting from appeal the decision to sell dead and dying trees that are being killed by the combined effects of severe drought and bark beetles. The project objectives are: (1) Enhance and protect the Mokelumne Special Area through the removal of existing dead and dying insect killed trees and re-introduce fire into the area using prescribed burning, (2) Rehabilitate spotted owl habitat in AM-04 through the removal of dead and dying trees and the site preparation and reforestation of openings 2 acres or larger in size, (3) Provide some protection for Spotted Owl Habitat Area (SOHA) AM-06 by removing pockets of dead and dying insect killed trees and reforesting created openings, (4) Reduce severe fire hazards and fuel loading, and (5) Recover value and volume of dead timber that would otherwise be lost.

The Amador Ranger District Give-A-Hoot Helicopter Insect Salvage Sale Environmental Assessment (EA) is currently being prepared for the compartments within the proposed project area on the Amador Ranger District, Eldorado National Forest, which is located east of the community of Jackson, California. The analysis area is approximately 11,500 acres (gross) with at least 6600 acres visibly adversely affected at this time. Up to 50 percent or more of the trees in some stands within the analysis area are dead or dying. The Forest is proposing one timber sale using both tractor and helicopter harvest systems. It is estimated that up to 30 million board feet (MMBF) could be salvaged from this analysis area.

The management direction for all the compartments in this proposal is established in the Eldorado National Forest Land and Resource Management Plan, approved by the Regional Forester on January 6, 1989, which includes intensive forest management practices on commercial lands. There is no new road construction proposed with this sale. Two bridges would need minimal reconstruction to permit better access for lowboy trailers. No previously identified roadless areas are affected by this project.

There are higher than normal levels of tree mortality occurring throughout the Eldorado National Forest as a result of five years of below normal precipitation. The drought has had the greatest effect on reducing vigor and weakening natural defense mechanisms of over-stocked and over-mature stands, predisposing them to attack by bark beetles. Both mixed conifer, consisting of pine and true fir, and true fir stands are experiencing mortality. Within the mixed conifer stands, generally 6000 feet elevation or less, tree mortality is occurring in small groups (generally less than one acre) of pine due to attack by ips and Western pine bark beetles. Areas in drainages and above 6000 feet elevation are predominantly white fir with some red fir. High stocking density, Cytospora canker, Scolytus beetles and other weakening agents (eg., Fomes annosus) are contributing to tree mortality. Attack of trees by these

agents is evidenced by top and side branch killing and general decline of the live crown. Areas affected are generally extensive with few definite centers of concentrated infestation. The rapid deterioration rate of dead timber requires that it be removed as soon as possible if the timber is to be utilized, its value to be recovered, and the objectives of the project realized.

Five pairs of spotted owls, within and adjacent to SOHAs AM-04 and AM-06, and one resident single owl are located in the analysis area and are within the current SOHA network on the Eldorado. The project area will be surveyed to meet the March 12, 1991 "Protocol for Surveying for Spotted Owls in Proposed Management Activity Areas and Habitat Conservation Areas." The district wildlife biologist determined the integrity of SOHA AM-04 is being threatened to a greater extent by the insect outbreak than by the proposed salvage activities. Approximately 50 percent of the territory AM-04 is now unsuitable, due in large part to tree mortality from insect attack. Because no other suitable habitat exists near AM-04, the opportunity to practice assertive land management principles to improve and benefit the resources was proposed by the interdisciplinary team. Mitigation measures are being proposed to reduce adverse effects to spotted owls. Mitigation measures include leaving additional snags within SOHAs and the use of limited operating periods.

Approximately 1,964 acres of old-growth exist in the analysis area. Of the 1,964 acres, approximately 110 acres of old-growth will be entered under this salvage proposal.

Regional entomologists have analyzed the situation and have found no economical or practical means to control the insect epidemic at the Forest level. Although salvage harvesting will not control the insect epidemic, it would: (1) Enhance and protect the Mokelumne Special Area, (2) Rehabilitate Spotted Owl Habitat Area AM-04, (3) Remove dead and dying insect killed trees in Spotted Owl Habitat Area AM-06, (4) Reduce fire hazards and fuel loading, and (5) Recover valuable timber that would otherwise deteriorate. The excessive numbers of dead trees producing heavy fuel concentrations make wildfire control extremely difficult.

It is extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses which would make the sales economically infeasible because of higher than normal harvesting costs. Through timber sales, fuel treatments can be accomplished (or deposits collected to accomplish them) to a degree that could not be funded otherwise. It is also important to harvest the dead and dying timber when there is the potential to get the highest return to the government and collect Knutson-Vandenburg (K-V) funds to restore forest values being affected by extensive tree mortality.

The Forest Supervisor has determined through preliminary environmental analysis, which included public scoping, that there is good cause to expedite this project. The decision for the analysis area is scheduled to be issued in July 1991. If the project is delayed because of appeals (delays can be up to 100 days, with an additional 15-20 days for discretionary review by the Chief of the Forest Service), it is likely that the project could not be implemented during the normal operating season or during the winter operating season. This would result in a loss of value of the timber due to deterioration. The total estimated value of the standing dead mortality is $1,500,000, of which approximately $375,000 would be returned to counties from 25 percent receipt funds. This loss of timber value would create the potential that the sales would not sell due to the significant harvest costs. In addition, the other project objectives would not be achieved if the dead timber was not removed. Further, there is significant increased public awareness of the significance of the increased insect mortality.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeals the decision relating to the harvest and restoration of the lands affected by drought-induced timber mortality in the Give-A-Hoot Helicopter Insect Salvage analysis area on the Amador Ranger District, Eldorado National Forest. The environmental document being prepared will address the effects of the proposed actions on the environment, document public involvement and address the issues raised by the public.

EFFECTIVE DATE: This decision will be effective July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111 at (415) 705-2648, or to the Acting Forest Supervisor, Eldorado National Forest, 100 Forni Road, Placerville, CA 95667, (916) 622-5061.

SUPPLEMENTARY INFORMATION: The Cooperative Forestry Assistance Act of 1978 authorizes the Secretary of Agriculture to enhance the growth and maintenance of forests, promote the stability of forest-related industries and employment associated therewith, aid in forest fire prevention and control, conserve the forest cover on watersheds, and protect recreational opportunities and other forest resources.

The environmental analysis for this proposal will be documented in the Amador Ranger District Helicopter Insect Salvage EA. Public participation in the analysis was solicited through a public meeting held February 22, 1991 in Jackson, California, a news release issued also in February of 1991, a public field meeting held on March 19, 1991, and through mailings to publics owning property adjacent to the Forest, holders of special-use permits and those others known to be interested in timber management on the Eldorado National Forest. Comments received were considered in the issues, range of alternatives, and the management requirements and mitigation measures developed. The project files and related maps are available for public review at the Amador Ranger District, Pioneer, California, and in the Forest Supervisor's Office, Placerville, California.

The analysis indicates that up to 30 million board feet, primarily pine and true fir, valued at up to $1,500,000, have been currently killed by the combined effects of drought and bark beetle attack. Up to 70 percent of the merchantable volume, can be lost by the second year if true fir is left as standing dead. (USDA Circular 962 was used as a reference for the volume loss calculation and it describes decay rates in timber killed by fire. Pacific Southwest Research Station personnel have stated that the decay in timber killed by insects would be equivalent or greater.) Delaying harvest or not harvesting this timber could result in a loss of up to $375,000 in National Forest Receipts to Counties, as well as employment opportunities generated from harvest, milling and sale of the timber in El Dorado, Amador, Placer and/or Alpine Counties.

Based on the analysis completed thus far, the environmental assessment will document that salvage harvesting can be conducted while protecting other resource values, such as wildlife habitat, soil productivity, watershed values, proposed Wild and Scenic rivers and creeks, visual quality, air quality, recreation, cultural resources, and public safety. No wetland, wilderness areas, roadless areas, or threatened or endangered species would be affected by the proposed projects. Delays for any reason could jeopardize chances of

accomplishing recovery and rehabilitation of the damaged resources funded with K-V monies. These delays would result in volume and value losses, and increase the chances of wildfire due to the large quantity of standing and down fuels. In addition, there is significant potential to increase the publics concern related to failure to harvest the insect mortality as soon as possible.

Dated: July 3, 1991.

David M. Jay,

Deputy Regional Forester.

[FR Doc. 91-16495 Filed 7-10-91; 8:45 am]

BILLING CODE 3410-11-M

Lake of the Sky Interpretive or Information Facility; Lake Tahoe Basin Management Unit, Placer County, CA; Intent To Prepare a Revision to the Lake of the Sky Interpretive Center Draft Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare a revision to the draft environmental impact statement (RDEIS) for its proposal to construct either an interpretive or information facility on the site commonly known as the "Sixty-four Acre Tract". This site is located adjacent to the northwest corner of Lake Tahoe in Tahoe City, California. The facility would be constructed in cooperation with the State of California, Department of Parks and Recreation.

Construction of either an interpretive or information facility on the Sixty-four Acre site would implement direction in the Lake Tahoe Basin Management Unit's Land and Resource Management Plan. The Record of Decision for the Lake Tahoe Basin Land and Resource Management Plan Final Environmental Impact Statement was signed by the Pacific Southwest Regional Forester on December 2, 1988.

The Forest Supervisor has now decided to prepare a RDEIS instead of supplementing the original draft environmental impact statement as reported in the notice of intent published in the June 7, 1991, **Federal Register** (Vol. 56, No. 110). The analysis documented in the original draft environmental impact statement did not disclose adequate site specific information for a meaningful analysis about the proposed action (40 CFR 1502.9(a)), therefore supplementing the original DEIS would not meet the intent of section 102(2)(C) of the National Environmental Policy Act.

The original notice of intent to prepare the draft environmental impact statement (DEIS) was published in the May 2, 1989, **Federal Register** (Vol. 54, No. 83 . The notice of availability for the Lake of the Sky Interpretive Center DEIS was published in the **Federal Register** on March 16, 1990. The comment period closed on April 30, 1990.

Since 1987, considerable scoping, public workshops, and analyses were completed in response to this proposal. Specific public meetings were held in March, 1990, which were designed to explain and receive comments on the DEIS. Both the DEIS and the public meetings precipitated a large number of comments from the public, Federal, State and local agencies. The RDEIS will document this public involvement, and address the issues raised by both the public and the agencies.

The Forest Supervisor has decided to accept written comments and suggestions concerning the re-analysis and proposed RDEIS. The public will be informed of the availability of the RDEIS by a notice of availability in the **Federal Register**, notification through the California State Clearinghouse, and news releases issued to the media. Those individuals who commented on the DEIS will be contacted to determine if they would like a copy of the RDEIS.

The results of the scoping and the comments received on the DEIS indicate that there are significant issues to be analyzed in depth and documented in the RDEIS. These are: Social and economic effects on the nearby parcels of land; effects of additional traffic (including noise, air quality, and traffic flow) created by the proposal on the existing highways; the size and purpose; i.e., interpretation or information, of the proposed facility; availability and impacts of parking; effects of construction and use of the proposed pier; and public safety and sanitation.

The RDEIS will document variations of the original alternatives presented in the DEIS. The four alternatives that were formulated and discussed in detail in the DEIS were: (1) The "Lakeshore Site", located on the east side of State Highway 89 near the shoreline of Lake Tahoe; (2) the "Riverside Site", located on the west side of State Highway 89 near the Truckee River; and (3) the Regional/Urban Design Assistance Team (R/UDAT) recommendation. The R/UDAT was retained by the North Tahoe Community to study and make planning recommendations for the area. The fourth alternative was not to develop the facility at all, which is referred to as the "No Action Alternative".

The Forest Service expects that the RDEIS will be filed with Council on Environmental Quality and made available to the public and other commenting entities in November, 1991. Following public comment, a final environmental impact statement (FEIS) will be prepared. The Forest Service expects the FEIS will be issued in June 1992.

Comments are invited from the public, and from state and local agencies which are authorized to develop and enforce environmental standards. In addition, Federal agencies having jurisdiction by law or special expertise with respect to any environmental effects for which comments have not been specifically requested are also invited to respond.

The Forest Service believes it is important to provide reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements, which also applies to this RDEIS, must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period on the RDEIS so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. Comments on the RDEIS should be specific and should address the adequacy of the statement or the merits of the alternatives discussed (40 CFR 1503.3).

FOR FURTHER INFORMATION CONTACT: Written comments and suggestions concerning the re-analysis and the proposed RDEIS should be sent to the responsible official, Robert E. Harris, Forest Supervisor, Lake Tahoe Basin Management Unit, 870 Emerald Bay Road, suite 1, South Lake Tahoe, California, 96150, by August 12, 1991.

Questions concerning the proposed action and the proposed RDEIS should be directed to Jackie L. Faike, Interpretive Program Services Manager (916) 573-2600.

Dated: June 28, 1991.

Robert E. Harris,

Forest Supervisor.

[FR Doc. 91-16448 Filed 7-10-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-357-007]

Carbon Steel Wire Rod From Argentina; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by petitioners, the Department of Commerce is conducting an administrative review of the antidumping duty order on carbon steel wire rod from Argentina. The review covers shipments of this merchandise to the United States during the period from November 1, 1989, through October 31, 1990. Preliminary results of the review indicate that no manufacturers or exporters in Argentina made any shipments of the subject merchandise to the United States during the period of review.

Interested parties are invited to comment on the preliminary results of this, administrative review.

EFFECTIVE DATE: July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1989, the Department published in the **Federal Register** the final results of its last administrative review, covering the period from November 1, 1987, to October 31, 1988, of the antidumping duty order on carbon steel wire rod from Argentina (54 FR 49322). On November 13, 1990, we published in the **Federal Register** a notice of opportunity to request an administrative review of this order for the period from November 1, 1989 through October 31, 1990 (55 FR 47370). On December 7, 1990, Atlantic Steel Co., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co., petitioners, requested an administrative review of Acindar Industria de Acero, S.A. ("Acindar") for this order. We initiated the review, covering the period beginning on November 1, 1989, and ending on October 31, 1990, on December 17, 1990, (55 FR 51742). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act"). This review covers all exporters of carbon steel wire rod from Argentina to the United States.

Scope of the Review

Imports covered by this review are shipments of carbon steel wire rod. This merchandise is currently classifiable under HTS item numbers 7213.20.00, 7213.31.30, 7313.49.00, 7213.39.00, 7213.41.30, and 7213.50.00. The HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

Preliminary Results of the Review

In response to the Department's questionnaire, Acindar stated that no shipments of the subject merchandise were made during the period of review. Further, on May 13, 1991, we requested the Customs Information Exchange ("CIE") to report to the Department any shipments of the subject merchandise made by this respondent to the United States during the period of review. We received no report of any such shipments from the CIE.

As a result of our review, we preliminarily determine that the following dumping margins exist:

Manufacturer/exporter	Time period	Ad valorem margin (percent)
Acindar	11/01/89-10/31/90	[1] 119.11
All Other	11/01/89-10/31/90	[1] 119.11

[1] No shipments during the period. Rates noted are the final rates from the most recent administrative review.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each export directly to the Customs Service.

Furthermore, a cash deposit of estimated antidumping duties based on the above margins shall be required for Acindar upon publication of the final results of this review. For any shipments of this merchandise produced or exported by the remaining known producers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for those firms. For any future entries of this merchandise from a new producer and/or exporter not covered in this or prior administrative reviews, whose first shipment occurred after October 31, 1990, and which is unrelated to the reviewed firms or any previously reviewed firm, the Customs Service will require a cash deposit of 119.11 percent *ad valorem*. These deposit requirements are effective for all shipments of carbon steel wire rod from Argentina which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the final results of this administrative review.

Public Comment

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested parties may request a hearing within 10 days of publication. Any hearing, if requested, will be held no later than 44 days after the date of publication of this preliminary notice or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Commerce Department's regulations (19 CFR .353.22).

Dated: June 26, 1991.

Eric I. Garfinkel,

Assisstant Secretary for Import Administration.

[FR Doc. 91-16554 Filed 7-10-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-504]

Erasable Programmable Read Only Memory Semiconductors From Japan; Request for Comments on Proposed Revision on the Agreement Suspending the Antidumping Investigation

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

ACTION: Request for comments on proposed revision on the agreement suspending the antidumping investigation on erasable programmable read only memory (EPROM) semiconductors from Japan.

PUBLIC COMMENT: The following is a copy of the Department's proposed revision on the agreement suspending the antidumping investigation on EPROMSfrom Japan. The original agreement suspending the antidumping investigation on EPROMS from Japan was published in the **Federal Register** on August 6, 1986 (51 FR 28253). All comments should be submitted in writing (ten copies) no later than July 22, 1991 to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

EFFECTIVE DATE: July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas Futtner or Steven Presing, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3814 or (202) 377-4106.

Dates: July 5, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary For Compliance.

Proposed Modified Suspension Agreement: Erasable Programmable Read Only Memory Semiconductors From Japan

Pursuant to the provision of sections 734(b) and 734(d) of the Tariff Act of 2930, as amended (19 U.S.C. 1673c(b), 1673c(d)) (the "Act"), and § 353.18 of the Department of Commerce (the "Department") Regulations (29 CFR 353.18) (1990), the Department and the signatory producers/exporters or erasable programmable read only memory semiconductors ("EPROMS") from Japan enter into this revised suspension agreement ("the Agreement"). This Agreement revises and supersedes the suspension agreement covering EPROMSfrom Japan signed on July 30, 1986. On the basis of this revised suspension agreement, the Department shall continue to suspend its antidumping investigation initialed on October 21, 1985 (50 FR 43603, October 28, 1985), with respect to EPROMS from Japan subject to the terms and provisions set forth below.

I. Product Coverage

The following merchandise is subject to this Agreement:

(1) EPROMS produced in Japan, whether in the form of processed wafers, unmounted die, mounted die, or assembled devices however packaged (ceramic, plastic, or other) ("merchandise subject to this Agreement").

(2) Processed wafers and dice produced in Japan and assembled into finished EPROMS, or other merchandise of the same class or kind, in another country prior to importation into the United States.

Finished EPROMS are currently classifiable under item numbers 8542.11.00586, 8542.11.00595 and 8542.11.00602 of the Harmonized Tariff Schedules of the United States ("HTS"). Unassembled EPROMS, including processed wafers and mounted and unmounted die, are currently classifiable under HTS item number 8542.11.00014.

II. U.S. Import Coverage

The signatory producers/exporters collectively are the producers and resellers in Japan which currently account for substantially all (not less than 85 percent) of the merchandise imported into the United States, as provided in the Department's regulations. The Department may at any time during the period of this Agreement require additional producers/exporters in Japan to sign this Agreement in order to ensure that no less than substantially all imports into the United States are covered by this Agreement.

III. Basis for the Agreement

In order to satisfy the requirements of section 734(b) of the Act, each signatory producer/exporter of semiconductors from Japan, individually, agrees to make any necessary price revisions to eliminate completely any amount by which the foreign market value of its merchandise exceeds the United States price. For this purpose, the foreign market value will be determined in accordance with section 773 of the Act, and U.S. price in accordance with section 772 of the Act.

IV. Monitoring of the Agreement

A. General Monitoring Provisions

1. The Department will monitor entries of EPROMS from Japan to ensure compliance with section III of this Agreement.

2. Each signatory producer/exporter agrees to supply the Department with any information and any documentation which the Department may require to ensure that the signatory producer/exporter is in full compliance with the terms and conditions of this Agreement.

3. The Department may conduct administrative reviews under section 751 of the Act, upon request or upon its own initiative, to ensure that exports of EPROMS from Japan are at prices consistent with the terms of this Agreement. The Department may perform verifications pursuant to administrative reviews conducted under section 751 of the Act.

4. The Department may also request the U.S. Customs Service to direct ports of entry to forward an Antidumping Report of Importations for entries of semiconductors during the period this Agreement is in effect.

B. Specific Monitoring Provisions

1. The signatory producers/exporters shall collect and maintain transaction specific data by representative product type, on the quantity and value of sales of the merchandise subject to this Agreement to the United States and in the home market. The signatory producers/exporters will make adjustments to United States price and home market price in accordance with sections 772 and 773 of the Act and the Department's current practice. Cost of production information shall also be collected and maintained, by representative product type, in accordance with section 773(e) of the Act and the Department's current practice. In addition, the signatory producers/exporters shall collect and maintain data, by representative product type, on the total quantity and value of sales: (1) To the United States; (2) in the home market; (3) to countries other than the United States; and (4) on a country-by-country basis, to the five largest countries other than the United States. All information will be collected and maintained on a continuous basis for the most recent four quarters completed beginning after the effective date of this Agreement. Cost and price data would be collected no later than 60 days from the end of the relevant quarter except as provided in section VI(C) of this Agreement.

2. Each of the individual signatory producers/exporters will review the price and cost data collected under section IV(B)(1) of this Agreement to ensure that its exports of EPROMS from

Japan are at prices consistent with the terms of this Agreement.

3. The Department will review publicly available data as well as Customs Form 7501, entry summaries, and other official import data from the Bureau of the Census, on a monthly basis, to determine whether there have been imports that are inconsistent with the provisions of Section III of this Agreement.

4. The Department will monitor Bureau of the Census IMI15 computerized records, which include the quantity and value of each entry. Because these records do not provide other specific entry information, such as the identity of the signatory producer/exporter which may be responsible for such sales, the Department may request the U.S. Customs Service to provide such information. The Department may request other additional documentation from the U.S. Customs Service.

V. Violation of the Agreement

A. *Violation* means noncompliance with the terms of this suspension agreement caused by an act or omission of a signatory producer/exporter, except, at the discretion of the Secretary, an act or omission which is inadvertent or inconsequential. Prior to making a determination of a violation, the Department will provide the signatories 10 days within which to provide comments.

B. If the Department determines that this Agreement is being or has been violated or no longer meets the requirements of sections 734(b) or (d) of the Act, the Department will take such action as it determines is appropriate under section 734(i) of the Act and § 353.19 of the Department's regulations. In the event that the Department determines there is a violation under section 734(i) of the Act and issues an antidumping order, a signatory may request in writing a changed circumstances review and, in response to such request, the proceedings in accordance with § 353.22(f) of the Department's regulations, including an expedited action at the Secretary's discretion, may be conducted.

VI. Other Provisions

A. For purposes of section IV(B) of this Agreement, the representative product types of EPROMS are specified in the annex to this Agreement as the items for which the signatories will collect and maintain cost and price information. These items are representative of the EPROMS currently exported to the United States by the signatory producers/exporters. The Department reserves the right to revise the annex to ensure that the representative product types for which the signatories will collect and maintain cost and price information are representative of the types of EPROMS exported to the United States by the signatories and to prevent product selective dumping by the signatories. After notifying the signatories of the proposed changes to the list of representative product types, the Department will provide the signatories 10 days within which to provide technical comments on the intended changes.

B. If the Department has reason to believe that the signatories are not complying with section III of this Agreement, the Department may request the signatories to submit the price and cost information maintained under section IV(B)(1) of this Agreement. The signatories will submit this information to the Department in accordance with the provisions of subpart C of part 353 of the Department's regulations within 14 days of receipt of such a request.

C. Transitional Rule—The signatories will be required to collect and maintain data on a continuous basis for the period beginning August 1, 1991 and ending on December 1, 1991. If, under section VI(B) of this Agreement, the Department requests the signatories to submit price and cost information during this period, the signatories will be required to submit information for the period from August 1 through the date of the Department's request. This information will be submitted to the Department within 14 days of receipt of such a request. Information collected during the period August 1 through September 30, 1991, will be maintained by the signatories until January 1, 1993. Information collected during the period October 1 through December 1, 1991, will be maintained by the signatories until March 1, 1993. For the period beginning after December 1, 1991, data will be collected and maintained as described in section IV(B)(l) of this Agreement.

D. In reviewing the operation of this Agreement for the purpose of determining whether this Agreement has been violated or is no longer in the public interest, the Department will consider imports into the United States from all sources of the merchandise described in Section I of this Agreement. For this purpose, the Department will consider factors including, but not limited to, the following: volume of trade, pattern of trade, whether or not the reseller is an original equipment manufacturer, and the reseller's purchase price.

E. The Department will notify the signatories of any relevant amendments to the antidumping law and the Department's corresponding regulations. In addition, upon request, the Department will advise any signatory producer/exporter on the Department's methodology for calculating its United States price and foreign market value.

F. In entering into this Agreement, the signatory producers/exporters do not admit that any sales of the merchandise subject to this Agreement have been made at less than fair value.

G. For purposes of sections IV(B)(2) of this Agreement, each signatory will compare, by representative product type, its home market price with its United States price of the merchandise subject to this Agreement. However, if its sales in the home market are at prices less than its cost of production, each of the signatory producers/exporters will compare, by representative product type, its United States price of the merchandise subject to this Agreement with its constructed value of the merchandise in accordance with section 773(e) of the Act and § 353.50 of the Department's regulations.

VII. Termination

Absent a likelihood of dumping, the Department expects to terminate this suspended investigation and Agreement by August, 1996.

VIII. Definitions

For purposes of this Agreement, the following definitions apply:

A. U.S. Price—means the price at which merchandise is sold by the producer or reseller to the first unrelated party in the United States, including the amount of any discounts, rebates, price protection or ship and debit adjustments, and other adjustment affecting the net amount paid or to be paid by the unrelated purchaser, as determined by the Department under section 772 of the Act.

B. Foreign Market Value—means foreign market value as defined in section 773 of the Act and the corresponding sections of the Department's regulations.

C. Date of Sale—is the date on which the essential terms of sale, specifically price and quantity, are finalized to the extent that they are outside the parties' control, normally the date of confirmation of sales.

IX. Effective Date

The effective date of this revision on the agreement suspending the antidumping investigation on EPROMS

is the date of publication in the Federal Register.

[FR Doc. 91-16555 Filed 7-10-91; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

Announcement of Meeting of National Conference on Weights and Measures

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the 76th Annual Meeting of the National Conference on Weights and Measures will be held July 14 through 19, 1991, at the Four Seasons Hotel, Philadelphia, Pennsylvania. The meeting is open to the public.

The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States, and private sector representatives. The interim meeting of the conference, held in January 1991, as well as the annual meeting, bring together enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations to discuss subjects that relate to the field of weights and measures technology and administration.

Pursuant to section 2(5) of its Organic Act (15 U.S.C. 272(5)), the National Institute of Standards and Technology acts as a sponsor of the National Conference on Weights and Measures in order to promote uniformity among the States in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the States of commercial weighing and measuring.

DATES: The meeting will be held July 14-19, 1991.

LOCATION OF MEETING: Four Seasons Hotel, Philadelphia, PA.

FOR FURTHER INFORMATION CONTACT: Albert D. Tholen, Executive Secretary, National Conference on Weights and Measures, P.O. Box 4025, Gaithersburg, Maryland 20885. Telephone: (301) 975-4009.

Dated: July 8, 1991.

John W. Lyons,

Director.

[FR Doc. 91-16562 Filed 7-10-91; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

In accordance with a memorandum of understanding with the Department of State, the National Marine Fisheries Service, on behalf of the Secretary of State, publishes for public review and comment a summary of an application received by the Secretary of State requesting permits for foreign fishing vessels to operate in the Exclusive Economic Zone under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*). Specifically, the Union of Soviet Socialist Republics has submitted an application to conduct a joint venture (JV) for *Illex* squid in the Northwest Atlantic Ocean. The application requests 3,000 metric tons of *Illex* squid be made available for the JV. The large stern trawler/processors VNUKOVO and PETROZAVODSK are identified as the vessels that will receive *Illex* squid from U.S. vessels. Send comments on this application to: NOAA—National Marine Fisheries Service, Office of Fisheries Conservation and Management, 1335 East West Highway, Silver Spring, Maryland 20910.

and/or, to one or both of the Regional Fishery Management Councils listed below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, room 2115, 320 South New Street, Dover, DE 19901 302/674-2331.

For further information contact John D. Kelly or Robert A. Dickinson (Office of Fisheries Conservation and Management, 301/427-2337).

Dated: July 5, 1991.

David S. Crestin,

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

[FR Doc. 91-16548 Filed 7-10-91; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Joint Venture Program; Proposal From NERAC, Inc.

AGENCY: National Technical Information Service, Commerce.

ACTION: Notice of intent.

SUMMARY: As a result of the National Technical Information Act of 1988, codified at 15 U.S.C. 3704b, the National Technical Information Service (NTIS) established a joint ventures program designed to encourage private sector organizations to enter into partnerships with NTIS to disseminate its acquired information to the business, academic and industrial communities more effectively. NTIS described this program in the **Federal Register**, Volume 54, No. 112, June 13, 1989 (54 FR 25149) and solicited comment. This notice announces that NTIS is considering a joint venture prospectus submitted by NERAC, Inc. to enter into a non-exclusive joint venture to co-produce Published Searches®, subject-specific bibliographies containing summaries of completed research derived from government and private sector bibliographic databases.

DATES: This action is effective on August 12, 1991.

ADDRESSES: Comments may be sent to: Dr. Joseph Clark, Deputy Director, National Technical Information Service, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Janet Geffner, Joint Ventures Coordinator, at the address given above: telephone (703) 487-4648.

SUPPLEMENTARY INFORMATION:

A. NTIS' Joint Venture Program

The National Technical Information Act of 1988 (codified at 15 U.S.C. 3704b(a)(1)(4)) empowers the Secretary of Commerce, acting through the Director of the National Technical Information Service, to enter into contracts, cooperative agreements and joint ventures to further its mission of disseminating Federally-funded scientific and technical information to the business, industrial and academic communities. The joint ventures program enables NTIS, in conjunction with private sector partners, to develop new and improved products and services for information users. A joint venture is a formal agreement requiring NTIS and a private sector partner to work together to achieve a common goal with both partners investing resources and sharing benefits. The objectives of the Joint Ventures Program is to establish cooperative joint-risk, joint-reward efforts with private organizations that will:

- Lead to significant improvement, beyond which NTIS can accomplish alone, in disseminating to U.S. business and industry the scientific, technical and business information that NTIS collects.

• Indicate that NTIS can recover its costs

• Increase NTIS revenue and amortize its fixed costs over a large base.

• Create opportunities for private sector information organizations to gain access to and create new and useful products from the information that NTIS collects.

Joint ventures have the following characteristics:

1. The combined NTIS/private sector effort results in:

• A new or improved product or service beyond which NTIS can do on its own, which provides added value to the information user; or

• Broader dissemination of the information NTIS acquires; or

• Greater transfer of government-developed information or technology to the industrial community.

2. The joint venture requires both NTIS and the private sector partner to invest resources (either monetary or other), take risks and share in the resulting revenues.

3. The joint venture enables NTIS to recover its costs.

To obtain NTIS Joint Venture Guidelines, contact Janet Geffner at the above address.

B. Proposed Joint Venture Agreement With NERAC, Inc.

The National Technical Information Service (NTIS) is considering a joint venture prospectus submitted by NERAC, Inc. to enter into a non-exclusive joint venture to prepare new and update current Published Search® titles from government and private sector bibliographic databases. Under the prospectus, the joint venture partner will bear the responsibility and costs for reproducing copyrighted citations from the databases as well as accessing, using and maintaining the retrieved citations.

Joseph F. Caponio,

Director, National Technical Information Service.

[FR Doc. 91-16503 Filed 7-10-91; 8:45 am]

BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange, Inc. Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity Exchange, Inc. (COMEX or Exchange) has applied for designation as a contract market in Dubai sour crude oil futures. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before August 12, 1991.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the COMEX Dubai sour crude futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, at (202) 254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the COMEX in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contract, or with respect to other materials submitted by the COMEX in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC, 20581, by the specified date.

Issued in Washington, DC on July 5, 1991.

Gerald Gay,

Director.

[FR Doc. 91-16435 Filed 7-10-91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF91-172-000]

Kamine Beaver Falls Cogen Co. Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

June 28, 1991.

On June 19, 1991, Kamine Beaver Falls Cogen Co., Inc. of 1620 Route 22 East Union, New Jersey 07083, 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 Beaver Falls, New York. The facility will consist of a combustion turbine generator, a supplementary fired heat recovery boiler and an extraction/condensing steam turbine generator (STG). Steam extracted from the STG will be used in a paper making process including repulping and drying. The primary energy source will be natural gas. The net electric power production capacity will be 79.9 megawatts. Installation of the facility will begin in January 1992.

Any person desiring to be heard or objecting to the granting of qualifying status 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 must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16461 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF91-171-000]

Kamine Natural Dam Cogen Co. Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

June 28, 1991.

On June 19, 1991, Kamine Natural Dam Cogen Co., Inc. of 1620 Route 22 East, Union, New Jersey 07083, 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 Gouverneur, New York. The facility will consist of a combustion turbine generator, a supplementary fired heat recovery boiler and an extraction/condensing steam turbine generator (STG). Steam extracted from the STG will be used in a paper making process including repulping and drying. The primary energy source will be natural gas. The net electric power production capacity will be 55.75 megawatts. Installation of the facility will begin November 1991.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20436, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16462 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER91-499-000 et al.]

Pacific Gas and Electric Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company

[Docket No. ER91-499-000]

July 1, 1991.

Take notice that on June 24, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing a notice of cancellation of PG&E's obligation to provide transmission service for power sales made by the Western Area Power Administration to Lawrence Livermore National Laboratory pursuant to Contract No. 14-06-200-2948A. PG&E requests an effective date of June 18, 1991.

Comment date: July 15, 1991, in accordance with Standard Paragraph E end of this notice.

2. Consumers Power Company, The Detroit Edison Company, The Toledo Edison Company

[Docket No. ER91-291-000]

July 1, 1991.

Take notice that on The Toledo Edison Company on June 27, 1991, filed revised cost information to reflect actual 1990 sales of short term and non-displacement power as requested by the Commission Staff in regard to Amendment No. 9 to the "Operating Agreement Among Consumers Power Company, The Detroit Edison Company and The Toledo Edison Company".

Copies of the filing were served upon the Ohio Public Utilities Commission and the Michigan Public Service Commission.

Comment date: July 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas & Electric Corporation

[Docket No. ER91-500-000]

July 1, 1991.

Take notice that on June 24, 1991, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing a Notice of Cancellation of a rate schedule agreement between Central Hudson and Green Mountain Power for the sale and purchase of capacity and associated energy, supplemental power and residual energy.

Central Hudson states that this contract was canceled on February 28, 1991.

Comment date: July 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Philadelphia Electric Company, Susquehanna Electric Company

[Docket No. EL91-42-000]

July 1, 1991.

Take notice that on June 24, 1991, Philadelphia Electric Company (PECo) and Susquehanna Electric Company (SECo), tendered for filing with the Federal Energy Regulatory Commission (FERC) a request for approval of historical recalculations of its monthly Fuel Adjustment Charge (FAC) for the period February 1, 1989 through October 30, 1990 to account for errors in the development of certain cost components under PECo's FERC-approved Rate Schedule. Furthermore, in the event that the FERC determines that the inclusion in the FAC of certain costs is not specially permitted by PECo and SECo's current FAC language, PECo requests approval to apply specific FAC language changes retroactively to January 30, 1987, the date of PECo's first QF Contract. PECo and SECo also request, to the extent necessary, waiver of the requirements of 18 CFR 35.3 and 35.14.

The reason for this filing is to remove uncertainty regarding the propriety of the FAC recalculations.

Copies of the filing were served upon the public utility's one jurisdictional customer, Conowingo Power Company, the Maryland Public Service Commission, the Maryland People's Counsel, and the Pennsylvania Public Utility Commission.

Comment date: July 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service Corporation

[Docket No. ER91-151-000]

July 1, 1991.

Take notice that Central Vermont Public Service Corporation (CVPS) on June 25, 1991, tendered for filing five additional supplements to the rate schedule that was tendered for filing in this docket on December 7, 1990. The supplements provide for the sale of short-term energy to Franklin Electric Light Company and Vermont Public Service Power Authority. CVPS has also tendered for filing an amendment to the rate schedule that permits transactions to be entered into through March 31, 1991.

CVPS requests the Commission to waive its notice of filing requirements to permit the supplements to become effective in accordance with their terms.

Comment date: July 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Arkansas Power & Light Company

[Docket No. ER91-503-000]

July 1, 1991.

Take notice that Arkansas Power & Light Company (AP&L) tendered for filing on June 26, 1991, a proposed Agreement for Wholesale Power Service (Agreement) between AP&L and Farmers Electric Cooperative Corporation (Customer). The proposed Agreement supersedes and replaces an existing agreement for the Customer's power requirements. The proposed Agreement reduces the rates that would have become effective under the existing agreement and extends the term of service until at least December 31, 2000.

The proposed Agreement will effect a savings for the Customer.

Comment date: July 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER91-505-000]

July 1, 1991.

Take notice that on June 27, 1991, Pacific Gas and Electric Company (PG&E) filed the South of Tesla Transmission Principles (SOTP) pursuant to section 205(c) of the Federal Power Act and Part 35 of the Commission's regulations as ordered by the Commission on June 12, 1991, Pacific Gas and Electric Company, 55 FERC ¶ 61,417 (1991).

The SOTP is a contract between PG&E and Transmission service to the Transmission Agency of Northern California (TANC) with respect to transmission service.

Comment date: July 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company

[Docket No. ER91-120-000]

July 1, 1991.

Take notice that New England Power Company (NEP) on June 27, 1991 filed four executed amendments to Service Agreements for transmission service between NEP and the Boston Edison Company, Littleton Electric Light & Water Department, Templeton Municipal Lighting Plant, and Ipswich Municipal Light Department. NEP states that the purpose of these amendments is to accommodate purchases from L'Energia, Inc.'s (L'Energia) facility to be located in Lowell, Massachusetts.

NEP requests waiver of the Commission's notice requirements so that the Service Agreement amendments can be accepted by the Commission, to become effective upon commercial operation of L'Energia's facility, which is anticipated for April, 1992. As good cause for the request for waiver, NEP states that Commission acceptance of the transmission arrangements is necessary for L'Energia to secure continued financing of the project.

Comment date: July 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Metropolitan Edison Company

[Docket Nos. ER90-388-002 and ER90-522-001]

July 1, 1991.

Take notice that on June 24, 1991, Metropolitan Edison Company tendered for filing its Refund Compliance Report in the above referenced docket.

Comment date: July 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. American Bituminous Power Partners, L.P.

[Docket No. QF87-494-004]

July 2, 1991.

On July 2, 1991, American Bituminous Power Partners, L.P. (Applicant), 18872 MacArthur Boulevard, suite 400, Irvine, California 92715-1448, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations.

The facility, which will be located near Grant Town, in Marion County, West Virginia, will be waste-fired and will have a net power production capacity in excess of 80 MW up to a level of approximately 85 MW. The Applicant is seeking Commission recertification of the facility as a qualifying small power production facility in accordance with the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990, Public Law No. 101-575, 104 Stat. 2834 (1990).

Comment date: July 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. Texas-New Mexico Power Company

[Docket No. ES91-42-000]

July 3, 1991.

Take notice that on June 28, 1991, Texas-New Mexico Power Company filed an application with the Federal Energy Regulatory Commission pursuant to § 204 of the Federal Power Act seeking authorization to issue not more than $150 million of Debentures via negotiated placement.

Comment date: July 26, 1991, in accordance with Standard Paragraph F 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. 91-16463 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-1627-000]

Tennessee Gas Pipeline Co.; Intent To Prepare a Draft Environmental Impact Statement for the Proposed West-East Crossover Project and Request for Comments on Environmental Issues

July 5, 1991.

SUMMARY: Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare a draft environmental impact statement (DEIS) on the natural gas facilities proposed by Tennessee Gas Pipeline Company (Tennessee) in the above referenced docket for the West-East Crossover Project.

Tennessee, pursuant to section 7(c) of the Natural Gas Act, and 18 CFR 157.7(a) of the Commission's regulations, is seeking a certificate of public convenience and necessity for authorization to construct and operate approximately 222.5 miles of new 30-inch-diameter pipeline, and approximately 33,675 horsepower (hp) of new and additional compression at three sites.

The purpose of the proposed project is to connect Tennessee's three main

supply lines (Lines 100, 800, and 500). The linkage of the supply lines would allow Tennessee to shift up to 535 million cubic feet of gas per day (MMcfd) from the western main supply lines (Lines 100 and 800), which have excess gas reserves and capacity shortages, to the eastern main supply line (Line 500), which has declining gas reserves and a capacity surplus. Tennessee states that this will significantly increase the flexibility and reliability of its system, and that the project will enhance service and supply options for Tennessee's customers in an open-access environment.

Tennessee proposes to place the proposed facilities in service by the fourth quarter of 1992. The total estimated cost of the proposed facilities is $204,201,000.

By this notice, the FERC staff is requesting comments on the scope of the analysis that should be conducted for this DEIS. All comments will be reviewed prior to the preparation of the DEIS and significant environmental issues will be addressed. Comments should focus on potential environmental effects, alternatives to the proposal (including alternate routes), and measures to mitigate adverse impact. Written comments must be submitted by August 9, 1991 in accordance with the "Scoping and Comment Procedures" provided at the end of this notice.

Proposed Facilities

The general location of the facilities proposed in Docket No. CP91-1627-000 is shown on figure 1.[1]

The proposed pipeline would begin at Tennessee's existing Line 100, near its intersection with the Bear Creek Storage Line in Winn Parish, Louisiana. It would traverse Winn, Caldwell, Catahoula, Franklin, and Tensas Parishes in Louisiana before crossing the Mississippi River and traversing Claiborne, Copiah, Simpson, Smith, and Jasper Counties in Mississippi. The proposed pipeline would terminate at Tennessee's existing Compressor Station 538 on its Line 500 in Jasper County.

Tennessee proposes to construct a new 16,500-hp compressor station at milepost (MP) 0.0, in Winn Parish, Louisiana, and a new 11,000-hp compressor station at MP 140, in Copiah County, Mississippi. Tennessee also proposes to add 6,175 hp of compression to its existing Compressor Station 834, located approximately 2.5 miles west of Turkey Creek Lake, at approximate MP 52.8 in Franklin Parish, Louisiana. No additional compression is proposed at existing Compressor Station 538.

Construction Procedures

In general, Tennessee proposes to use an 85-foot-wide construction right-of-way. Following construction, a 50-foot-wide permanent right-of-way would be maintained. Approximately 40 acres would be acquired for each new compressor station, although Tennessee anticipates clearing only 5 acres during construction at each site.

Prior to construction, Tennessee would survey and stake the right-of-way. The right-of-way would be cleared and salable timber would be cut in log lengths and stacked along the right-of-way. Unsalable timber would be burned. Following grading of the right-of-way, the ditch centerline would be staked.

Construction of the proposed pipeline would generally follow standard pipeline construction methods. Tennessee anticipates using a combination of rotary-wheel-type ditching machines, backhoes, rippers, clamshells, and draglines, with soil conditions determining the specific method used. The ditch would be excavated to a depth sufficient to provide at least the minimum depth of cover required by U.S. Department of Transportation (DOT) specifications. No blasting is anticipated, but if it should be required, all necessary precautions would be taken. Ditchline breakers would be installed on step slopes. The ditch would be backfilled using material excavated from the ditch or, if excavated material is unsuitable, with material imported as padding.

Special construction techniques such as boring or tunneling would be used at railway and major roadway crossings. The Ouachita and Tensas Rivers in Louisiana, the Mississippi River, and the westernmost crossing of Bayou Pierre in Mississippi would be crossed using directional drilling. Drilling staging areas would be located far enough from the river edge to maintain riparian vegetation along both banks of each river. Long wetland areas would be corssed using the "push-ditch" method. In the push-ditch method, excavation and backfill equipment would work from wetland buggies within the construction right-of-way. Wetland buggies are equipped with wide-tracks, balloon tires, or pontoons to facilitate construction in muddy areas. The pipe would be strung, welded, and weighted, then pulled into place by winch and cable from barges or other equipment within the right-of-way. Excess soil would be disposed of in a manner which would not obstruct water flow or alter the wetland hydrology.

Before placing any segment of new pipeline into service, Tennessee would hydrostatically test it according to company and DOT specifications. Tennessee would obtain the appropriate Federal and state discharge permits before testing is conducted.

After pipeline installation and testing is completed, the work areas would be final graded and all drainage ditches, terraces, roads, and fences would be restored to their former condition. Potholes, ruts and depressions would be filled, and erosion control and revegetation measures would be implemented. Pipeline markers and warning signs would be erected at roads, streams and other points as appropriate. All surplus materials and construction equipment would be removed.

Environmental Issues

Based on preliminary analysis of the application and the environmental information provided by Tennessee for the proposed facilities, the FERC staff has identified the following issues that will be specifically addressed in the DEIS.

Geology and Soils:
- —Erosion control
- —Right-of-way restoration and maintenance
- —Impact on exploitable material resources
- —Geological hazards

Water Resources:
- —Effect on potable water supplies
- —Effect on surface water quality
- —Impact on wetland hydrology
- —Impact of stream and river crossings on water flow
- —Impact of river crossings on levees
- —Impact of crossing Turkey Creek Lake, Mississippi River, and other significant water bodies

Biological Resources:
- —Impact on wetlands
- —Impact of habitat alteration
- —Short and long term effects of right-of-way clearing and maintenance
- —Impact on threatened and endangered species
- —Impact on fisheries
- —Impact on Boeuf State Wildlife Management Area

Cultural Resources:
- —Effect on properties listed on or eligible for the National Register of Historic Places

Land Use:
- —Impact on residences
- —Impact on Natchez Trace Parkway
- —National Park and Mississippi

[1] Figure 1 is not being printed in the Federal Register, but copies are available from the Commission's Public Reference Branch, telephone (202) 208-1371. Copies of figure 1 are attached to each mailed copy of this notice.

designated scenic road (U.S. Highway 61)
—Impact on state natural areas, scenic rivers, and other public interest areas

Air Quality:
—Effect of compressor station operation on air quality

Noise:
—Effect of compressor station operation on nearby noise-sensitive receptors

Alternatives:
—Route variations to avoid sensitive areas
—Use of Tennessee's existing pipelines including the Muskrat Line and other existing or other proposed pipelines

Comments are solicited on any additional topics of environmental concern from residents and others in the project area. After comments in response to this notice are received and analyzed and the various issues investigated, the FERC staff will prepare a DEIS for the West-East Crossover Project. The DEIS will be based on the FERC staff's independent analysis of the proposal and, together with the comments received, will constitute part of the record to be considered by the Commission in this proceeding.

Cooperating Agencies

The following agencies are requested to indicate whether they wish to be cooperating agencies in production of the DEIS:

Advisory Council on Historic Preservation.
Department of Agriculture:
Soil Conservation Service.
Department of Commerce:
National Oceanic and Atmospheric Administration.
Department of Defense:
U.S. Army Corps of Engineers.
Department of Energy.
Department of the Interior:
U.S. Fish and Wildlife Service.
U.S. Geological Survey.
Bureau of Indian Affairs.
Department of State.
Department of Transportation:
Federal Highway Administration.
Federal Railroad Administration.
Environmental Protection Agency.

These, or any other Federal, State, or local agencies desiring cooperating agency status should send a request describing how they would like to be involved to Ms. Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426. The request should reference Docket No. CP91-1627-000 and should be received by August 9, 1991. An additional copy of the request should be sent to the FERC project manager identified at the end of this notice. Cooperating agencies are encouraged to participate in the scoping process and to provide information to the FERC. Cooperating agencies are also welcome to suggest format and content modifications to facilitate ultimate adoption of the DEIS. However, the FERC will decide what modifications will be adopted in light of production constraints.

Scoping and Comment Procedures

Public scoping meetings will be conducted by FERC staff at the following locations:

Date, Time, and Location

July 24, 1991—7 p.m.—Holiday Inn-Downtown, 200 E. Amite, Jackson, MS 39201
July 25, 1991—7 p.m.—Best Western, 700 W. Court St., Winnfield, LA 71483

The scoping meetings are primarily intended to obtain input from state and local governments and the public. Federal agencies have formal channels for input into the Federal process (including separate meetings where appropriate) on an interagency basis. Federal agencies are expected to transmit their comments directly to the FERC and not use the scoping meetings for this purpose.

Interested groups and individuals are encouraged to attend the meetings and present oral comments on the environmental impacts which they believe should be addressed in the DEIS. Anyone who would like to make an oral presentation at the meeting should contact the project manager identified at the end of this notice to have his or her name placed on the list of speakers. Priority will be given to those persons representing groups. A second list of speakers will be available at the public meeting. A transcript will be made of the meetings and comments will be used to help determine the scope of the DEIS.

Written comments are also welcome to help identify significant issues or concerns related to the proposed action, to determine the scope of the issues, and to identify and eliminate from detailed study the issues that are not significant. All comments on specific environmental issues should contain supporting documentation and rationale. Written comments must be filed on or before August 9, 1991, reference Docket No. CP91-1627-000, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of these comments should also be sent to the project manager identified below.

The DEIS will be mailed to Federal, State, and local agencies, public interest groups, interested individuals, newspapers, libraries, and the parties in this proceeding. A 45-day comment period will be allocated for review of the DEIS.

Any person may file a motion to intervene on the basis of the staff's DEIS (18 CFR 380.10(a) and 385.214). After these comments are reviewed, any new issues are investigated, and modifications are made to the DEIS, a final EIS (FEIS) will be published by the staff and distributed. The FEIS will contain the FERC staff's responses to comments received on the DEIS.

Copies of this notice have been distributed to Federal, State, and local agencies, public interest groups, libraries, newspapers, Tennessee, and other interested individuals. Organizations and individuals receiving this Federal notice have been selected to ensure public awareness of this project and public involvement in the review process under the National Environmental Policy Act. Any subsequent information published regarding the West-East Crossover Project will be sent automatically to the appropriate Federal agencies. However, to reduce printing and mailing costs and related logistical problems, the information will only be distributed to those organizations, State and local agencies, and individuals who return the attached appendix to this notice by August 9, 1991.

Additional information about the proposal is available from Ms. Laura Turner, Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, room 7312, 825 North Capitol Street, NE., Washington, DC 20426, telephone (202) 208-0916.

Lois D. Cashell,
Secretary.

Appendix

Information Request

I wish to receive subsequent published information regarding the environmental analysis being conducted for the West-East Crossover Project.

Name/Agency

Address

City State Zip Code

[FR Doc. 91-16465 Filed 7-10-91; 8:45 am]
BILLING CODE 6717-01-M

[Project Nos. 2232-269 et al.]

Hydroelectric Applications; Duke Power Company, et al.

Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. Type of Application: Application to Increase the Capacity of a Commercial Marina.

b. Project No: 2232-269.

c. Date Filed: June 12, 1991.

d. Applicant: Duke Power Company.

e. Name of Project: Catawba-Wateree Project.

f. Location: Catawba County, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. sec. 791(a)-825(r).

h. Applicant Contact: John E. Lansche, Associate General Counsel, Duke Power Company, 422 South Church Street, Charlotte, NC 28242-0001. (704) 373-4871.

i. FERC Contact: Dan Hayes, (202) 219-2660.

j. Comment Date: August 12, 1991.

k. Description of Project: Duke Power Company, licensee for the Catawba-Wateree Project has requested that the Commission grant approval for a non-project use of project property to The Boat Rack, Inc., (grantee) to allow expansion of an existing marina. The grantee proposes to construct an additional 36 boat slips.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

2a. Type of Action: Proceeding Pursuant to Reserved Authority to Determine Whether Modifications to License are Appropriate.

b. Project No: 2916-004.

c. License issued: March 10, 1981.

d. Licensee: East Bay Municipal Utility District.

e. Name of Project: Lower Mokelumne River Project.

f. Location: Amador, Calaveras, and San Jaoquin Counties, California.

g. Authorization: Section 10(a)(1) of the Federal Power Act and Articles 12 and 15 of the project license.

h. Licensee Contact: Mr. John A. Myers, East Bay Municipal Utility District, P.O. Box 24055, Oakland, CA 94623, (415) 285-1121.

i. FERC Contact: John A. Schnagl, (202) 219-2661.

j. Comment Date: August 19, 1991.

k. Description of Proceeding: In response to concerns raised by the California Department of Fish and Game (Cal Fish and Game) and the California Sportfishing Protection Alliance (Alliance) with respect to the effects of Project No. 2916 on fish and wildlife resources in the Mokelumne River, Commission staff requested information pertinent to those concerns from the licensee, Cal Fish and Game, the U.S. Fish and Wildlife Service, and the California Regional Water Quality Resources Control Board, and the California State Water Resources Control Board. The responses indicate that the issues are complex and stem from the competition for the finite water supplies by fishery resources, irrigation, and municipal water supply for the east bay area including the City of Oakland, California. This proceeding is initiated to determine if modifications in project facilities or operations are appropriate for the conservation and development of fish and wildlife resources in the Mokelumne River.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

3a. Type of Filed: Surrender of Exemption.

b. Project No.: 9759-004.

c. Date Filed: June 6, 1991.

d. Applicant: Centreville Hydro, Inc.

e. Name of Project: Centreville Dam.

f. Location: On the Prairie River near Centreville, in St. Jcseph County, Michigan.

g. Filed Pursuant to: Federal power Act, 16 U.S.C. § 791(a)-825(r).

h. Applicant Contact: Gregory P. Sirna, 3656 Kenbrooke Ct., Kalamazoo, MI 49007, (616) 375-2979.

i. FERC Contact: Julie Bernt, (202) 219-2814.

j. Comment Date: August 19, 1991.

k. Description of Application: The proposed project would consist of: (1) an existing earth embankment and concrete apron over a rock and timber crib dam approximately 13 feet high; (2) an existing 40 acre reservoir; (3) an existing powerhouse containing proposed 80-kW and 45-kW hydropower units; (4) an existing tailrace; and (5) a proposed 500-footlong transmission line.

The applicant states that it is impossible for it to comply with the terms and conditions of the Michigan Department of Natural Resources.

1. This notice also consists of the following standard paragraphs: B and C.

4a. Type of Application: Preliminary Permit.

b. Project No : 10155-001.

c. Date filed: April 15, 1991.

d. Applicant: Marvin C. Ferris.

e. Name of Project: Dunbarton Dam.

f. Location: On the Battenkill River in the Town of Greenwich, Washington County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)-825(r).

h. Applicant Contact: Marvin C. Ferris, P.O. Box 209, Greenwich, NY 12834, (518) 692-2354.

i. FERC Contact: Charles T. Raabe (202) 219-2811.

j. Comment Date: September 3. 1991.

k. Description of Project: The proposed project would consist of: (1) An existing 12-foot-high, 150-foot-long concrete gravity-type dam; (2) a reservoir having a surface area of 5 acres and a storage capacity of 500,000 cubic feet at normal maximum surface elevation 309 feet m.s.l.; (3) a gated intake structure having a trash rack; (4) a concrete canal; (5) a proposed powerhouse containing a 75-kW generating unit and a 175-kW generating unit each operated at a 12-foot head for a total installed capacity of 250-kW; (6) a tailrace; (7) a 250-foot-long, 440-v underground transmission line; and (8) appurtenant facilities.

Applicant estimates that the average annual generation would be 1,150,000 kWh and that the cost of the studies under the terms of a preliminary permit would be $35,000. The dam is owned by Mark Four, Inc.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2

5a. Type of Application: Preliminary Permit.

b. Project No.: 11130-000.

c. Date filed: April 18, 1991.

d. Applicant: Kodiak Electric Association, Inc.

e. Name of Project: Leanne Lake Hydropower Project.

f. Location: In Leanne Lake basin and another unnamed basin of Kizhuyak Bay on Kodiak Island, Alaska. T28S, R22W in sections 19, 20, 30, and 31. T29S, R23W in section 1.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r)

h. Applicant Contact: E. Woody Trihey, P.E., Principal, Trihey & Associates, P.O. Box 4964, Walnut Creek, CA 94596, (415) 689-8822.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219-2827.

j. Comment Date: September 10, 1991.

k. Description of Project: The proposed project would consist. of: 1) a 10-foot-high dyke enlarging the existing Leanne Lake to 0.2-square-miles; 2) a 20-foot-high dyke creating a 0.1-square-mile reservoir in an unnamed basin to the north of Leanne Lake; 3) a 8,940-foot-long siphon line connecting Leanne Lake with a proposed penstock; 4) a 1,000-foot-long siphon line connecting the unnamed reservoir with the penstock; 5) a 5,000-foot-long penstock connecting the two siphon lines with the powerhouse; 6) a powerhouse containing

two, 2-MW generators; 7) a 600-foot-long transmission line interconnecting with an existing Alaska Energy Authority transmission line; and 8) appurtenant facilities.

No new access roads will be needed to conduct the studies. The approximate cost of the studies under the permit would be $300,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6a. Type of Application: Preliminary Permit.

b. Project No.: 11134-000.

c. Date filed: April 29, 1991.

d. Applicant: Malad Hydro Partnership.

e. Name of Project: Malad High Drop Hydropower Project.

f. Location: On the Malad River in Gooding County, Idaho. T6S, R14E in section 30. T6S, R13E in sections 25, 26, and 35.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. Applicant Contact: Ms. Helen Chenoweth, Malad Hydro Partnership, 1843 Broadway, Suite 102, Boise, Idaho 83706, (208) 345-2670.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219-2827.

j. Comment Date: August 23, 1991.

k. Description of Project: The proposed project would consist of: 1) two existing dams to be rehabilitated and raised to 6 feet; 2) a 5,440-foot-long, 43-foot-wide canal; 3) a 700-foot-long buried pipe; 4) a 2,800-foot-long penstock; 5) a powerhouse containing a generator unit with a rated capacity of 5.85 MW; 6) a transmission tap into an existing overhead transmission line; and 7) appurtenant facilities.

The applicant estimates the annual energy production at 21,000 MWh. No new access roads will be needed to conduct the studies. The approximate cost of the studies under the permit would be $100,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7a. Type of Application: Preliminary Permit.

b. Project No.: 11133-000

c. Date Filed: April 29, 1991.

d. Applicant: Douglas E. Sherman.

e. Name of Project: Madrid Hydroelectric Project.

f. Location: On the Grasse River, St. Lawrence County, Town of Madrid, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)-825(r).

h. Applicant Contact: Douglas E. Sherman, 9 Bridge Street, P.O. Box 24, Madrid, NY 13660, (315) 322-4321.

i. FERC Contact: Mary C. Golato (tag) (202) 219-2804.

j. Comment Date: August 2, 1991.

k. Description of Project: The proposed project would consist of the following facilities: (1) an existing dam 250 feet long and approximately 9 feet high; (2) an existing reservoir having approximately 100 acres in surface area, an elevation of 255 feet mean sea level and a storage capacity of 800 acre-feet; (3) a new concrete intake structure; (4) a proposed powerhouse containing two turbine-generating units at 260 kilowatts (kW) each for a total installed capacity of 520 kW; (5) a proposed transmission line 200 feet long; and (6) appurtenant facilities. The dam is owned by the Town of Madrid, New York. The applicant estimates that the average annual generation is about 3,200,000 kilowatthours. The cost of the studies under permit is estimated to be $18,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8a. Type of Application: Preliminary Permit.

b. Project No: 11138-000.

c. Date filed: May 1, 1991.

d. Applicant: Stukel Mountain Hydroelectric Associates.

e. Name of Project: Stukel Mountain Hydroelectric Pumped Storage Project.

f. Location: On the US Bureau of Reclamation Irrigation "D" Canal near the town of Merrill, in Klamath County, Oregon. The project would occupy lands administered by the U.S. Bureau of Land Management. T40S, R10E, sections 11, 14, 23, 24, 25, and 26; T40S, R11E, sections 29, 30, 31 and 32 Willamete Base and Meridian.

g. Filed Pursuant to: Federal Power Act, Section 30 16 USC §§ 791(a)-825(r).

h. Applicant Contact: Mr. Bart M. O'Keeffe, P.O. Box 60565, Sacramento, CA 95860, (916) 971-3717. Mr. Louis Rosenman, LeBeouf, Lamb, Leiby & MacRae, 1333 New Hampshire Avenue, NW, Washington, DC 20036, (202) 457-7500.

i. FERC Contact: Ms. Deborah Frazier-Stutely (202) 219-2842.

j. Comment Date: August 23, 1991.

k. Competing Application: Project No. 11136-000, Filed May 1, 1991.

l. Description of Project: The proposed project would consist of: (1) A 220-foot-high, 9,500-foot-long earth dam; enlarging (2) an existing lake to 200 acres with a storage capacity of 24,000 acre-feet, and a water surface elevation of 5,590 feet msl, to be utilized as the upper reservoir; (3) an intake structure; (4) a 26-foot-diameter, 940-foot-deep shaft joining; (5) a 34-foot-diameter, 13,500-foot-long buried tunnel; (6) an underground powerhouse containing three pump-turbines with a combined installed capacity of 750,000 kW, producing an estimated average annual energy output of 1,916,000 MWh; (7) a 90-foot-high, 9,000-foot-long earth dam creating; (8) a reservoir with a surface area of 560 acres, with a storage capacity of 24,000 acre-feet and a water surface elevation of 4,170 feet msl, to be utilized as the lower reservoir; (9) a 47-inch-diameter, 1.5-mile-long water supply pipeline used to initially fill the lower reservoir with water from the "D" or "G" canals; (10) a pumping station; and (11) a 230-kV or 500-kV transmission line tying into an existing or proposed transmission line. The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $2,000,000. No new roads will be needed for the purpose of conducting these studies.

m. Purpose of Project: Project power would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

9a. Type of Application: Preliminary Permit.

b. Project No.: 11141-000.

c. Date Filed: May 3, 1991.

d. Applicant: Red Rock Hydro Associates.

e. Name of Project: Red Rock.

f. Location: On the Des Moines River in Marion County, Iowa.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)825(r).

h. Applicant Contact: David K. Iverson, 191 Main Street, Annapolis, MD 21401, (301) 268-8820.

i. FERC Contact: Charles T. Raabe (tag) (202) 219-2811.

j. Comment Date: August 12, 1991.

k. Competing Application: Project No. 11140-000, Date Filed: May 3, 1991, Due Date: August 5, 1991.

l. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Red Rock Dam and would consist of: (1) A new intake structure; (2) two 21-foot-diameter steel penstocks; (3) a powerhouse containing two generating units with a total installed capacity of 30-MW; (4) a tailrace; (5) a ½-mile-long transmission line; and (6) appurtenant facilities.

Applicant estimates that the average annual energy production would be 110,000,000 MWh and that the cost of the studies to be performed under the terms of the permit would be $100,000. Project energy would be sold to Iowa Power Corporation.

m. This notice also consists of the following standard paragraphs: A8, A10, B, C, D2.

a. Type of Application: Preliminary Permit.

b. Project No.: 11147-000.

c. Date Filed: May 13, 1991.

d. Applicant: Jennings Randolph Hydro Associates.

e. Name of Project: Jennings Randolph Dam Project.

f. Location: On the North Branch of the Potomac River in Garrett County, Maryland and in Mineral County West Virginia.

g. Filed Pursuant to: Federal Power Act. 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: David K. Iverson, Synergics, Inc., 191 Main Street, Annapolis, MD 21401, (301) 268-8820.

i. FERC Contact: Ed Lee (dmt) (202) 219-2809.

j. Comment Date: August 16, 1991.

k. Description of Project: The applicant proposes to utilize an existing dam under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A 2,300-foot-long penstock; (2) a powerhouse containing two generating units having a total installed capacity of 13 MW; (3) a 5,500-foot-long, 138-kV transmission line; and (4) appurtenant facilities. Applicant estimates that the cost of the work to be performed under the terms of the permit would be $100,000 and that the project average annual energy output would be 49.5 GWh. Energy produced at the project would be sold to Potomac Edison Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11a. Type of Application: Preliminary Permit.

b. Project No.: 11155-000.

c. Date filed: June 3, 1991.

d. Applicant: Might Development Corporation.

e. Name of Project: Uniontown.

f. Location: On the Ohio River in Posey County, Indiana and Union County, Kentucky.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)-825(r).

h. Applicant Contact: Mr. William N. Myhre, 1735 New York Avenue, Suite 500, Washington, DC 20006-4759, (202) 662-8422.

i. FERC Contact: Charles T. Raabe (202) 219-2811.

j. Comment Date: August 23, 1991.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Uniontown Dam and would consist of: (1) a 1,400-foot-long intake channel; (2) a powerhouse containing four 14.3-MW pit-bulb turbine-generator units each operated at a 13.5-foot head and at a flow of 15,000 cfs for a total installed capacity of 57.2-MW; (3) a 13.8/69-kV switchyard; (4) two new cellular overflow weirs; (5) a tailrace; (6) a 9.5-mile-long, 69-kV transmission line; and (7) appurtenant facilities.

Applicant estimates that the average annual energy generation would be 304,000 MWh and that the cost of the studies to be performed under the terms of the permit would be $180,000. Project energy would be sold to southern Indiana Gas & Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12a. Type of Application: Preliminary Permit.

b. Project No.: 11154-000.

c. Date Filed: May 30, 1991.

d. Applicant: The Water Works and Sewer Board of the City of Birmingham, Alabama.

e. Name of Project: Locust Fork Reservoir.

f. Location: On the Locust Fork of the Black Warrior River near Trafford in Blount County, Alabama.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. § 791(a)-825(r).

h. Contact Person: Mr. William H. Wingate, Jr., General Manager, 3600 First Avenue North, Birmingham, AL 35203, (205) 251-3261.

i. FERC Contact: Ms. Julie Bernt, (202) 219-2814.

j. Comment Date: August 23, 1991.

k. Description of Project: The proposed project would consist of: (1) a new 70-foot-high concrete dam; (2) a new reservoir with a normal maximum water surface elevation of 395 feet, a storage volume of 50,000 acre-feet and a water surface area of 1,900 acres; (3) a 200-foot-long, 15-foot-diameter steel penstock; (4) a powerhouse containing one generating unit rated at 6.5 MW; and (4) a 2-mile-long transmission line. Access to the dam site during the study phase would be along existing unimproved roads. In order to facilitate field studies, borings and slit-trenches will be required. All appropriate measures will be taken to minimize any disturbance to land or water and all altered or disturbed areas will be restored. The applicant estimates the average annual energy production to be 34 GWh and the cost of the work to be performed under the preliminary permit to be $695,000.

l. Purpose of Project: The power produced would be sold to a local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

Standard Paragraphs

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed

under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only, those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027 (810 1st), at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: July 5, 1991, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16466 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-1252-002 et al.]

Questar Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Questar Pipeline Company

[Docket No. CP91-1252-002]

July 1, 1991.

Take notice that Questar Pipeline Company, on June 20, 1991, tendered for filing and acceptance First Revised Sheet Nos. 1, 10, and 50 and Original Sheet Nos. 1 through 64 to Original Volume Nos. 2 and 2-A of its FERC Gas Tariff. Questar states that this filing is made in compliance with the Commission's May 22, 1991, order authorizing abandonment and issuing blanket certificate as amended by the Commission's June 17, 1991, order granting clarification and denying rehearing.

Questar requests an effective date of June 18, 1991, for the proposed tariff sheets and states that this filing has been served upon each person in the official service list compiled by the secretary in this proceeding.

Comment date: July 15, 1991, in accordance with Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Co.

[Docket No. CP91-2356-000]

July 1, 1991.

Take notice that on June 28, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-2356-000 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 for Orange & Rockland Utilities, Inc., a local distribution company, 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 an agreement dated October 24, 1990, under its Rate Schedule IT, it proposes to transport up to 50,000 dt per day equivalent of natural gas. Tennessee indicates that it would transport 50,000 dt equivalent on an average day and 18,250,000 dt equivalent annually. Tennessee further indicates that the gas would be transported from Louisiana, Offshore Louisiana, Texas, Massachusetts, New Jersey, and New York, and would be redelivered in Massachusetts, New Jersey, West Virginia, Pennsylvania, and New York.

Tennessee advises that service under Section 284.223(a) commenced June 4, 1991, as reported in Docket No. ST91-9053.

Comment date: August 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. KN Energy, Inc.

[Docket No. CP91-2329-000]

July 2, 1991.

Take notice that on June 24, 1991, KN Energy, Inc. (KN), P.O. Box 281304, Lakewood, Colorado 80228-9304, filed in Docket No. CP91-2329-000 a request pursuant to § 57.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate sales taps for the delivery of gas to end users, under its blanket certificate issued in Docket Nos. CP83-140-000, CP83-140-001 and CP83-140-002 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.

KN states that the proposed taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on its peak day and annual deliveries.

Comment date: August 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

4. Colorado Interstate Gas Co., Tennessee Gas Pipeline Co., Tennessee Gas Pipeline Co., Tennessee Gas Pipeline Co., Texas Eastern Transmission Corp., Sea Robin Pipeline Co.

Docket Nos. CP91-2334-000[1], CP91-2335-000, CP91-2336-000, CP91-2337-000, CP91-2339-000, CP91-2341-000

July 2, 1991.

Take notice that the above referenced companies (Applicants) filed in the above referenced dockets, prior notice requests pursuant to § 57.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice

[1] These prior notices requests are not consolidated.

requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: August 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. Related [4] Dockets	Applicant [1] (date filed)	Shipper name	Peak day [2] average annual	Points of [3]		Start up date	Rate schedule
				Receipt	Delivery		
CP91-2334-000 (6-25-91)	Colorado Interstate Gas Company, P.O. Box 1087, Colorado Sprints, Colorado 80944.	Amoco Energy Trading Corporation.	50,000 10,000 3,650,000	WY, OK, KS, CO	OK	03-05-91, TI-1	ST91-7853-000 CP86-589-000
CP91-2335-000 (6-25-91)	Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252.	Southern Gas Company, Inc.	25,000 25,000 9,125,000	OLA, LA, OTX, TX, PA, MS, AL, KY.	OH, PA, WV, KY, NY.	04-24-91, IT	ST91-8789-000 CP87-115-000
CP91-2336-000 (6-25-91)	Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252.	CMS Gas Marketing.	50,000 50,500 18,150,000	TX, LA, MS, NJ, WV, TN, NY, MA, PA.	TX, LA, MS, NJ, TN, WV, OH, PA, KY, NY,.	05-19-91, IT	ST91-9045-000 CP87-115-000
CP91-2337-000 (6-25-91)	Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252.	Salmon Resources Ltd.	25,000 25,000 9,125,000	NY	MA, NY, WV, OH, PA.	06-01-91, IT	ST91-9037-000 CP87-115-000
CP91-2339-000 (6-25-91)	Texas Eastern Transmission Company, 5400 Westheimer Court, Houston, Texas 77056-5310.	North Canadian Marketing Corporation.	145,261 145,261 53,020,265	OLA, LA, AL, AR, IL, IN, KY, MO, MS, NJ, NY, OH, PA, TN, TX, WV.	IN, KY, LA, NJ, NY, OH, PA, TX, WV.	05-08-91, IT-1	ST91-8831-000 CP88-136-000
CP91-2341-000 (6-25-91)	Sea Robin Pipeline Company, P.O. Box 2563, Birmingham Alabama 35202-2563.	Total Minatome Corporation.	100,000 100,000 36,500,000.	OLA	LA	04-01-91, ITS	ST91-9095-000 CP88-824-000

[1] In Docket No. CP91-2335-000, Tennessee requests, among other things, a waiver of the first-come, first-serve provisions of its open access tariff. The waiver will allow Southern to preserve the place in the queue that it has for the Section 311 transportation being converted to transportation under Tennessee's blanket authorization.

[2] Quantities are shown in Mcf for Colorado and Sea Robin; dt for Tennessee; and MMBtu for Texas Eastern.

[3] Offshore Louisiana and offshore Texas are shown as OLA and OTX, respectively.

[4] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Northern Natural Gas Co.

[Docket No. CP91-2353-000]

July 2, 1991.

Take notice that on June 27, 1991, Northern Natural Gas Company (Northern), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-2253-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authority to install and operate nine delivery points as jurisdictional facilities to accommodate natural gas deliveries to Iowa Electric Light and Power Company (Iowa Electric) for use in nine Iowa communities, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern requests authority to install and operate nine new delivery points for Iowa Electric in order to accommodate natural gas deliveries under Northern's CD-1, SS-1, PS-1, FT-1, and IT-1 Rate Schedules for redelivery to the communities of Albion, Green Mountain, La Moille, Melbourne, Mount Auburn, Newhall, Rowley, Springbrook, and Union Grove, Iowa which, it is stated, do not currently have gas service. It is indicated that Iowa Electric has requested installation of the delivery points due to the expansion of its distribution system into new areas. It is also indicated that the new delivery points would be served from total firm entitlements currently assigned to the communities of Marshalltown, Vinton, Oelwein, DeWitt, and Tama, Iowa.

Northern states that Iowa Electric has not requested that any firm entitlements be assigned to the proposed delivery points. Northern indicates that the installation and operation of the new delivery points would increase Northern's peak day and annual volumes by 5,190 Mcf and 311,400 Mcf, respectively. However, Northern also states that the volumes proposed to be delivered to Iowa Electric would be within the currently authorized level of firm entitlements for Iowa Electric.

Northern states that the proposed facilities would be financed in accordance with Paragraph 2 of the General Terms and Conditions of Northern's FERC Gas Tariff, Third Revised Volume No. 1 and would cost an estimated $321,600.

Comment date: August 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Company, United Gas Pipe Line Company, United Gas Pipe Line Company, El Paso Natural Gas Company, Williams Natural Gas Company

[Docket Nos. CP91-2349-000, Docket No. CP91-2350-000, Docket No. CP91-2351-000, Docket No. CP91-2354-000, Docket No. CP91-2355-000]

July 2, 1991.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

[2] These prior notice requests are not consolidated.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: August 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No.	Applicant	Shipper name	Peak day annual [1]	Points of		Start up date, rate schedule	Related dockets [2]
				Receipt	Delivery		
CP91-2349-000 6-27-91	United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478.	Equitable Resources Marketing Company.	257,500 257,500 93,987,500	LA, Off LA, TX, MS...	LA, TX, FL, MS, AL, Off TX.	6-7-91, ITS	CP88-6-000 ST91-9058-000
CP91-2350-000 6-27-91	United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478.	Eagle Natural Gas Company.	25,750 25,750 939,875,000	LA, Off LA, TX, MS, AL.	LA, MS,	5-28-91, ITS	CP88-6-000 ST91-8977-000
CP91-2351-000 6-27-91	United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478.	Pennzoil Gas Marketing Company.	206,000 206,000 75,190,000	TX, LA, Off LA, MS, Off TX.	LA, TX, AL, MS, FL, Off LA.	5-24-91, ITS	CP88-6-000 ST91-8943-000
CP91-2354-000 6-27-91	El Paso Natural Gas Company, P.O. Box 1492, El Paso, TX 79978.	Westar Transmission Company.	150,000 30,000 10,950,000	Any point of interconnection existing from time to time on El Paso's facilities, except those requiring transportation by others to provide service under this agreement.	TX	5-1-91, T-1	CP88-433-000 ST91-8784-000
CP91-2355-000 6-27-91	Williams Natural Gas Company, P.O. Box 3288, Tulsa, OK 74101.	Universal Resources Corporation.	5,000 dth 5,000 dth 1,825,000 dth	CO, KS, MO, OK, TX, WY.	KS, MO, TX,	5-1-91, FTS	CP86-631-000 ST91-8885-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

7. Paiute Pipeline Company

[Docket No. CP91-2322-000]

July 3, 1991.

Take notice that on June 21, 1991, Paiute Pipeline Company (Applicant), P.O. Box 94197, Las Vegas, Nevada, filed in Docket No. CP91-2322-000 an abbreviated application pursuant to section 7(b) and 7(c) of the Natural Gas Act and part 157 of the Federal Energy Regulatory Commission's Regulations for an order granting:

(1) A certificate of public convenience and necessity

(a) Authorizing Applicant to construct and operate approximately 3.26 miles of new loop and replacement pipeline, to requalify approximately 31.94 miles of existing pipeline for higher operating pressures, to install, uprate and restage, and/or relocate compression facilities at Applicant's four existing mainline compressor stations, and to install, relocate, replace, and/or upgrade various pressure regulating, measurement, and delivery point

facilities, in order to expand Applicant's existing transmission system capacity primarily to accommodate 59,540 Dt per day of new firm transportation contract entitlements, including 31,285 Dt per day of new mainline, flowing gas transmission capacity, under thirteen executed, long-term service agreements;

(b) Authorizing Applicant to construct and operate truck loading and unloading facilities at its liquefied natural gas (LNG) storage facility to permit the delivery to and the withdrawal from the LNG storage facility by truck;

(2) Amendment of the certificate of public convenience and necessity issued in Docket No. CP90-767 so as to authorize the reallocation and modification of Applicant's existing maximum storage capacity and daily delivery obligations among Applicant's four existing contract storage service customers under Rate Schedule LGS-1 and four executed, replacement service agreements;

(3) Permission and approval to abandon a tap facility and 0.61 mile of pipeline that have become obsolete, or will become obsolete as a result of the construction activities proposed herein;

(4) Permission and approval to abandon by sale and conveyance to Southwest Gas Corporation-Northern Nevada (Southwest-Northern Nevada) and Sierra Pacific Power Company (Sierra) six pipeline laterals and adjoining facilities; and

(5) Any waivers of the regulations required to allow self-implemented transportation for system expansion shippers to continue under Applicant's blanket transportation certificate for the respective terms of the expansion transportation service agreements, without being subject to the existing prior notice and protests procedure.

Further, Applicant requests that the Commission acknowledge, to the extent deemed necessary, that Applicant's total daily firm transportation service obligation during each period from April 1 through October 31, upon the in-service date of its proposed capacity project, will be increased from 115,720 Dt to 138,780 Dt.

Applicant states that it proposes to achieve three objectives by its application. First, Applicant proposes to expand its system capacity to complement the system capacity expansion proposed by Northwest Pipeline Corporation (Northwest) in Docket No. CP91-780-000, in which proceeding, Applicant asserts, Northwest is seeking authorization to increase the quantity of gas that it can deliver to Applicant's system by 31,285 Dt per day. Applicant indicates that it intends by its proposal to satisfy requests that it has received for additional firm transportation service on its system, within the bounds of complementing Northwest's capacity expansion proposal. Second, Applicant states that it is proposing to effect various modifications to its transmission system so as to better conform the capabilities of its system at specific locations with the needs of its existing and anticipated, expansion project firm service customers. Third, Applicant states that with the abandonment by sale to Sierra and Southwest-Northern Nevada of several of Applicant's pipeline lateral segments, Applicant proposes to improve and to simplify the efficient, day-to-day operation of its system as a total transportation system.

Applicant states that it held an open season process which provided an equitable and nondiscriminatory method for potential customers to make long-term commitments for firm transportation service which subsequently would be made available by means of an appropriately designed system facility expansion that would complement Northwest's planned system expansion. That process resulted in thirteen long-term firm transportation service agreements for 59,540 Dt per day of new firm transportation contract entitlements, including 31,285 Dt per day of new mainline, flowing gas transmission capacity, and four long-term replacement service agreements for contract storage service rendered to its existing customers under Rate Schedule LGS-1.

The following table sets forth the contract entitlement quantities contained in the thirteen new firm transportation service agreements under which Applicant will render service upon completion of the proposed system expansion:

Shipper	Type	Daily reserved capacity (Dt)	Summer daily reserved capacity (Dt)
Basic Inc	End-user	850	627
CP National	LDC	17,908	10,399
Caesars Tahoe (Desert Palace, Inc.)	End-user	300	221
CYANCO	End-user	2,000	1,474
Eagle-Picher	End-user	1,680	1,238
Gold Fields	End-user	1,100	811
Harrah's Tahoe	End-user	500	369
Harvey's Resort	End-user	380	280
High Sierra	End-user	225	166
Sierra	LDC	105,774	63,044
Southwest-Northern California	LDC	11,148	7,011
Southwest-Northern Nevada	LDC	87,692	52,956
United Engine & Machine	End-user	250	184
Total		229,807	138,780

Applicant states that each of the thirteen firm transportation service agreements is for a primary term of ten years from the date of commencement of service. Applicant further states that the services would be rendered under Applicant's Rate Schedule FT-1 and that the initial rates for service would be Applicant's applicable maximum rates under such rate schedule which would be in effect at the time of the commencement of service.

Applicant further states that Applicant and its four existing LNG storage service customers have agreed to reallocate and revise the customers' maximum storage capacity and daily delivery quantities for service rendered under Rate Schedule LGS-1 in order to maximize such customers' abilities to make use of the overall firm service capacity that will be available to them upon completion of Northwest's and Applicant's capacity expansion projects. In addition, Applicant states that in reallocating the storage capacity and daily delivery quantities, Applicant has utilized a revised heat content factor of 1,028 Btu per cubic foot in establishing the new capacity quantities. Applicant

asserts that this new heat content factor is based on actual, historical operating experience and reflects the average heat content of natural gas delivered into Applicant's system by Northwest. The revised and reallocated maximum storage capacity and daily delivery quantities for which Applicant seeks authorization to implement are as follows:

Customer	Storage capacity	Daily delivery capacity
CP National	86,267 Dt	6,535 Dt
Sierra	463,034 Dt	35,078 Dt
Southwest-Northern California	45,936 Dt	3,480 Dt
Southwest-Northern Nevada	354,635 Dt	26,866 Dt
Total	949,872 Dt	71,959 Dt

As part of its proposed capacity expansion construction project, Applicant proposes to relocate and rebuild its CP National delivery point city gate facilities. Applicant states that as a result of relocating such city gate facilities, applicant has determined that, for pressure maintenance and siting reasons, and to accommodate the increase in contract entitlement for CP National, the existing segment of pipeline from the present city gate facilities to the location of the proposed rebuilt city gate facilities should also be relocated. Applicant thus proposes to construct a new replacement pipeline segment between the two points, and to abandon in place the existing segment between the two points.

Applicant further requests permission and approval to abandon and remove its Maximum Security Prison tap facilities located in Carson City County, Nevada. Applicant states that this tap has served as a delivery point to Southwest-Northern Nevada, but that Southwest-Northern Nevada has informed Applicant that its existing load requirements served by the tap have been connected to other portions of its distribution system and are now being served by through other existing delivery points from Applicant. Therefore, Applicant asserts that the tap is no longer required.

Applicant proposes to construct and operate facilities at its LNG storage facility located near Lovelock, Nevada which will permit Applicant to receive deliveries of LNG from trucks for injection into Applicant's storage facility, and which will permit Applicant to withdraw quantities of LNG from storage for loading into trucks for transportation to satellite LNG facilities that may be constructed by Applicant's LNG storage customers. Applicant states that the purpose of its proposal is to provide its LNG storage service customers with additional options for meeting their peak demand or other requirements. Applicant further states that its LNG storage facility, as it is presently constructed and operated, cannot be operated in a liquefaction mode and a vaporization mode at the same time. Applicant states that its proposed installation of truck loading and unloading facilities will permit deliveries to and withdrawals from the storage facility of LNG irrespective of whether the plant itself is being operated in a liquefaction or vaporization mode.

Applicant requests that the Commission grant permission and approval for Applicant to abandon by sale and conveyance to Southwest-Northern Nevada and Sierra six pipeline laterals and adjoining facilities along Applicant's system. Specifically, Applicant proposes to abandon by sale to Southwest-Northern Nevada its Elko, Gabbs, Yerington, and Lovelock Laterals. Applicant also proposes to abandon by sale to Sierra its Reno and Fort Churchill Laterals. Applicant states that the proposed abandonments include all appurtenant facilities and adjoining downstream pipeline lateral segments. Applicant states that the conveyance of the lateral facilities to Sierra and Southwest-Northern Nevada will permit Applicant to accurately measure and monitor on a daily and real-time basis the quantities of gas that it is delivering at all pints on its system, and thus will provide Applicant with better control of the gas flows on its system. In addition, Applicant states that it has concluded that the lateral segments would be more efficiently and effectively operated as distribution facilities. Applicant states that converting the lateral segments to distribution lines will facilitate the abilities of Southwest-Northern Nevada and Sierra to meet growth and development of their market areas and will permit more flexible operations by them, to the benefit of consumers on their systems.

Applicant states that it has designed its proposed capacity expansion construction project in order to accommodate its customers' expansion service requests in conjunction with Northwest's expansion, as well as to relieve existing system operational constraints and to enhance the efficiency of Applicant's overall system operations as a transportation-only pipeline. Applicant intends its construction project to complement and to coincide with Northwest's capacity expansion project proposed in Docket No. CP91-780-000. Accordingly, Applicant indicates that its plan is to have its capacity expansion project completed and in-service by the end of 1992 or early 1993, concurrently with Northwest's expansion project.

Applicant estimates that the total cost of its proposed construction activities to be $10,674,632. Applicant states that it intends to finance it project costs through ongoing regular financing programs and internally generated funds.

Comment date: July 24, 1991, in accordance with Standard Paragraph F at the end of the notice.

8. Mississippi River Transmission ANR Pipeline Co.

[Docket Nos. CP91-2365-000, CP91-2371-000, CP91-2372-000]

July 3, 1991.

Take notice that Applicants filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificate pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation

[3] These prior notice requests are not consolidated.

service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: August 19, 1991, in accordance with Standard Paragraph G at the end of the notice.

Applicant: Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, MO 63124
Blanket Certificate Issued in Docket No. CP89-1121-000

Docket No. (date filed)	Shipper name (type shipper)	Peak day,[1] average annual	Points of		Start up date, rate schedule	Related [2] dockets
			Receipt	Delivery		
CP91-2365-000 (07-01-91)	BridgeGas U.S.A. (marketer).	1,000 1,000 365,000	OK	OK	05-31-91, ITS	ST91-9052-000

Applicant: ANR Pipeline Company, 500 Renaissance Center, Detroit, MI 48243
Blanket Certificate, Issued in Docket No. CP88-532-000

Docket No. (date filed)	Shipper name (type shipper)	Peak day,[3] average annual	Points of		Start up date, rate schedule	Related dockets
			Receipt	Delivery		
CP91-2371-000 (07-01-91)	Triumph Gas Marketing Co. (marketer).	1,000 1,000 365,000	LA, Offshore LA	LA, Offshore LA	05-01-91, FTS-1	ST91-8848-000
CP91-2372-000 (07-01-91)	Triumph Gas Marketing Co. (marketer).	1,500 1,500 547,500	LA, Offshore LA	WI	05-01-91, FTS-1	ST91-8849-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.
[3] Quantities are shown in Dth unless otherwise indicated.

9. Williston Basin Interstate Pipeline Co.

[Docket No. CP91-2338-000]

July 3, 1991.

Take notice that on June 25, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP91-2338-000 an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon the authority to provide sales service to Northern Gas Company (Northern) under Williston Basin's Rate Schedule X-1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin states that by order issued February 25, 1977, in Docket No. CP75-227, Montana-Dakota Utilities Co. (MDU) now MDU Resources Group, Inc., predecessor in interest to Williston Basin, was authorized to sell and deliver to Northern Gas Company (Northern) an annual quantity of natural gas equal to 6,000 Mcf per day pursuant to an agreement dated January 28, 1975, between Northern and MDU. Williston Basin further states that Northern Utilities, Inc., then an affiliate of Northern (today Northern and Northern Utilities, Inc. are one and the same), was to sell an equivalent amount of natural gas back to MDU for purposes of supplying its Sheridan system.

Williston Basin states that on February 13, 1985, in Docket No. CP82-487-000, *et al.*, Williston Basin was authorized to acquire and operate the interstate facilities previously owned and operated by MDU as well as to provide the certificated service previously provided by MDU. The sale and delivery of natural gas to Northern was to be governed by Rate Schedule X-1 of Williston Basin's FERC Gas Tariff, Original Volume No. 2, it is stated.

Williston Basin states that on October 31, 1985, pursuant to Section 4 of the Natural Gas Act, Williston Basin filed with the Commission in Docket No. RP86-10-000 a set of revised tariff sheets reflecting, among other things, a proposal to cancel Rate Schedule X-1 because no service was being provided or was anticipated under that rate schedule. Williston Basin further states that on May 31, 1991, the Commission issued an order in Docket No. RP86-10-000 directing Williston Basin to file the instant application for abandonment of Rate Schedule X-1.

Comment date: July 24, 1991, in accordance with Standard Paragraph F at the end of this notice.

10. Algonquin Gas Transmission Co.

[Docket No. CP91-38-001]

July 2, 1991.

Take notice that on June 24, 1991, Algonquin Gas Transmission Company (Algonquin) 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP91-38-001 pursuant to section 7(c) of the Natural Gas Act to amend the certificate of public convenience and necessity issued November 30, 1990, in Docket No. CP91-38-000 authorizing Algonquin to sell natural gas on a firm basis to Bay State Gas Company (Bay State) and Yankee Gas Services Company (Yankee) under proposed Rate Schedule LFS for a limited term of one year. Algonquin requests authorization to sell natural gas to Bay State under Rate Schedule LFS for a limited term of one year commencing November 1, 1991, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Algonquin states that Providence Gas Company (Providence), a Rhode Island LDC, chose to permanently convert its Rate Schedule F-4 entitlement from Algonquin to firm transportation service under Rate Schedule AFT-1 pursuant to § 284.10 of the Commission's

Regulations. It is stated that Providence's conversion, effective November 1, 1990, resulted in the availability of up to 12,808 MMBtu per day (MMBtud) and 4,674,920 MMBtu annually of natural gas to Bay State and Yankee.

As it did last year, Algonquin states that it canvassed its firm sales customers to solicit nominations for the purchase of the supply made available by Providence's conversion. Algonquin submits that this process resulted in Bay State executing a service agreement under Rate Schedule LFS for the entire supply released by Providence. In this petition to amend its certificate, Algonquin proposes to sell on a firm basis up to 12,808 MMbtud to Bay State at Texas Eastern Transmission Corporation's (Texas Eastern) Lambertville, New Jersey delivery point to Algonquin.[4] Algonquin states that it will transport and deliver the subject gas to Bay State at existing points of delivery on its system pursuant to existing Rate Schedule AIT-1. Algonquin states that the proposed Rate Schedule LFS service to Bay State will be available for one year commencing November 1, 1991.

Algonquin proposes to charge a three part rate for Rate Schedule LFS service which will consist of a demand charge ($10.5060) and a commodity charge ($2.7157) reflecting Algonquin's average cost of gas on a rolled-in basis subject to PGA adjustment; and the commodity charge under Rate Schedule AIT-1. It is stated that such rates are based on Algonquin's Docket No. RP90-22 motion rates and the currently effective cost of gas as reflected in docket No. TQ91-5-20-000.

With the exception of extending the service to November 1, 1992, and providing service to one customer instead of two, Algonquin states that the provisions of Rate Schedule AIT-1 and the Form of Service Agreement are identical to those contained in its tariff sheets accepted by the Commission in its April 22, 1991, Letter Order. Algonquin urges the Commission to authorize Rate Schedule LFS service to be effective November 1, 1991, so as to offer the maximum benefit to Bay State. In the event the authorization is issued after October 1, 1991, Algonquin requests that the Commission waive its regulations to the extent necessary to accept the related tariff sheets for effectiveness at the later of November 1, 1991, or at the time service proposed herein is authorized and Algonquin has accepted the certificate.

It is states that authorization of Algonquin's proposal herein will enable Bay State to diversity its supply options. Algonquin states that this winter it will allow Bay State to displace expensive supplemental fuels such as propane-air and liquified natural gas, thus providing service at a more economical price for the benefit of its customers. According to Algonquin, Rate Schedule LFS service will also allow Bay State to preserve its firm contract quantities and storage quantities until later in the heating season, potentially avoiding shortfalls if a colder than normal winter occurs.

Comment date: July 23, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

11. Northern Natural Gas Co.

[Docket No. CP91-2352-000]

July 3, 1991.

Take notice that on June 27, 1991, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP91-2352-000 pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate one (1) new delivery point as a jurisdictional facility to accommodate natural gas deliveries to Iowa Southern Utilities (Iowa Southern) for use in the communities of Rock Creek Estates, Lynnville and Sully, Iowa under the blanket certificate issued in Docket No. CP82-401-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it requests authority to install and operate one (1) new delivery point for Iowa Southern in order to accommodated natural gas deliveries under Northern's CD-1, SS-1, PS-1 and FT-1 Rate gas deliveries under Northern's CD-1, SS-1, PS-1 and FT-1 Rate Schedules for redelivery in Iowa. Iowa Southern has requested installation of the delivery point due to the expansion of its distribution system into new areas. The proposed deliveries to Iowa Southern will be served from the total firm entitlements currently assigned to the community of Grinnell, Iowa. Iowa Southern has not requested that any firm entitlements be assigned to the proposed delivery point.

Comment date: August 19, 1991, 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 a 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 therefore, 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

[4] Algonquin states that this is one of its principle receipt points from Texas Eastern.

authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16467 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-161-019]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 5, 1991.

Take notice that ANR Pipeline Company (ANR) on July 1, 1991 tendered for filing as part of its Original Volume No. 1-A of its FERC Gas Tariff, the following tariff sheets.

Fifth Revised Sheet No. 16
Sixth Revised Sheet No. 17
Third Revised Sheet No. 21
Fourth Revised Sheet No. 26
Sixth Revised Sheet No. 38
First Revised Sheet No. 39
Third Revised Sheet No. 43
Fourth Revised Sheet No. 48
Seventh Revised Sheet No. 58
Original Sheet No. 58A
Fourth Revised Sheet No. 61
Third Revised Sheet No. 62
Fourth Revised Sheet No. 66

ANR states that the above referenced tariff sheets are being filed to implement a tariff provision allowing a charge to recover costs of third party transportation incurred by ANR on behalf of individual customers. ANR also states that this filing is in response to the decision of the United States Court of Appeals for the District of Columbia Circuit, issued on April 26, 1991, in *ANR Pipeline Co.* v. *FERC*, Nos. 89-1753 and 90-1298. ANR has requested that the Commission accept the tendered tariff sheets to become effective August 1, 1991.

ANR states that copies of the filing were served upon all of its Volume No. 1-A customers, interested state commissions and parties to this proceeding.

Any person desiring to protest said filing should file a protest 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 of the Commission's Rules and Regulations. All such protests should be filed on or before July 12, 1991. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-16469 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-146-001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 5, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on July 1, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the tariff sheets:

Proposed to be effective July 1, 1991

Third Revised Sheet No. 20
Sheet Nos. 23-24 (Reserved)
First Revised Sheet No. 100
First Revised Sheet No. 121
First Revised Sheet No. 131
First Revised Sheet No. 632
First Revised Sheet No. 633
First Revised Sheet No. 634
First Revised Sheet No. 653
First Revised Sheet No. 671
First Revised Sheet No. 695
First Revised Sheet No. 696

Algonquin states that it is making this instant filing in compliance with Ordering Paragraph B of the Commission's May 31 Order in Docket No. RP90-146-000 authorizing Algonquin to implement a mechanism for the tracking of Account No. 858 costs, Transmission and Compression by Others. Algonquin states that such filing contains the calculation necessary to prevent double recovery of T&C costs already contained in Algonquin's currently effective base tariff rates as well as a narrative of the operation of the T&C tracker. Algonquin states that the adjustment required to update the T&C costs and to adjust for the T&C rates contained in the base tariff rates will reduce the T&C component of the sales demand rate by $0.0560 per MMBtu while increasing the T&C component of the Commodity rate by $0.3730 per MMBtu. Algonquin further states that it is satisfying the remaining conditions of Ordering Paragraph (B) by concurrently filing an Interim PGA filing in Docket No. TF91-4-20-000.

Algonquin states that due to the additional presentation of information regarding T&C costs on the affected rate sheets and as noted in the Interim PGA, it has become necessary to move the rates for Rate Schedules I-1 and E-1 from Sheet Nos. 21 and 22, respectively, to Original Sheet No. 25. The above listed tariff sheets are being filed for the sole purpose of revising any rate sheet references to include Sheet No. 25. No other changes are intended or proposed.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to protest said filing should file a protest 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 such protests should be filed on or before July 12, 1991. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 91-16468 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-7-22-000]

CNG Transmission Corporation;

July 3, 1991

Take notice that CNG Transmission Corporation (CNG) on June 28, 1991, pursuant to section 4 of the Natural Gas Act, the Stipulation and Agreement approved by the Commission on October 6, 1989, in Docket Nos. RP88-217-000, *et al.*, section 12.9 of the General Terms and Conditions of CNG's FERC Gas Tariff, and Order Nos. 528 and 528-A, filed the following revised and original tariff sheets to First Revised Volume No. 1 on CNG's FERC Gas Tariff:

Fifth Revised Sheet No. 44
Sixth Revised Sheet No. 44
Second Sub. Second Revised Sheet No. 45
Second Sub. Third Revised Sheet No. 45
Third Revised Sheet No. 46
Second Revised Sheet No. 50
Second Revised Sheet No. 54
First Revised Sheet No. 55
Original Sheet No. 56
Second Revised Sheet No. 208
Original Sheet No. 208A
First Revised Sheet Nos. 212B-212F

CNG states that the proposed effective dates for the tariff sheets are

as follows: Fifth Revised Sheet No. 44—May 1, 1991; Sixth Revised Sheet No. 44—July 29, 1991; Second Sub. Second Revised Sheet No. 45—May 21, 1991; Second Sub. Third Revised Sheet No. 45—June 20, 1991; Third Revised Sheet No. 46—February 15, 1991; and Second Revised Sheet No. 50—February 1, 1991. The proposed effective date for the remaining tariff sheets is July 29, 1991.

CNG states that the purpose of this filing is to flow through changes in take-or-pay costs allocated to CNG by four of its pipeline suppliers. CNG proposes the filing to reflect the changes in the allocation of take-or-pay costs proposed by:

(1) Texas Gas Transmission Corporation (Texas Gas) in its May 24, 1991 filing in Docket No. TM91-2-18-000;

(2) Texas Eastern Transmission Corporation (Texas Eastern) in its May 22, 1991 filing in Docket No. TM91-7-17-000;

(3) Texas Eastern in its May 31, 1991 filing in Docket No. TM91-7-17-000;

(4) Tennessee Gas Pipeline Company (Tennessee) in its May 2, 1991 filing in Docket No. RP91-29-005; and

(5) Tennessee in its May 31, 1991 filing in Docket No. RM91-29-006.

CNG further states that the filing also complies with the Commission's June 19, 1991 order in CNG Transmission Corporation, Docket Nos. TM91-6-22-000, *et al.* CNG states that it is also filing to correct an error on Original Sheet No. 54.

CNG states that copies of the filing were served upon CNG's customers as well as interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 11, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16472 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-151-002]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff and Compliance Filing

July 5, 1991.

Take notice that on July 1, 1991, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Sub Fifteenth Revised Sheet No. 8
Sub Fifteenth Revised Sheet No. 9

The above tariff sheets are proposed to be effective June 1, 1991.

Carnegie states that it is filing the above tariff sheets to correct the winter commodity base rates reflected on the revised tariff sheets previously filed in the captioned docket on May 30, 1991. Carnegie states that the base rates for the winter commodity component under Carnegie's Rate Schedules LVWS, LVIS, and CDS were incorrectly stated on prior tariff sheets as the result of a mathematical error, and that since the error involved only winter commodity rates, no billing adjustments are due any of its customers. Carnegie states that the above tariff sheets also reflect corresponding revisions to the adjusted sales rates for the LVWS, LVIS, and CDS winter commodity components to include these base rate corrections.

Carnegie states that it is also submitting these tariff sheets to comply with the Commission's letter order issued June 20, 1991, in Docket No. TF91-3-63-000. In that letter order, the Commission directed Carnegie to refile revised tariff sheets in the captioned docket to conform the pagination to the tariff sheets refiled in Docket No. TQ91-63-000.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest 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 such protests should be filed on or before July 12, 1991. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-16470 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 5, 1991.

Take notice that on July 2, 1991, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Seventeenth Revised Sheet No. 8
Seventeenth Revised Sheet No. 9

Carnegie states that pursuant to its Purchased Gas Adjustment clause in Article 23 of its FERC Gas Tariff, it proposes to adjust its rates effective September 1, 1991 to reflect: a $.1642 per Dth increase in the commodity components of its LVWS and CDS Rate Schedules; a $.1602 per Dth increase in the commodity component of its LVIS Rate Schedule; and a $.1211 per Dth decrease in the Demand components of its LVWS and CDS Rate Schedules. Carnegie also proposes to decrease its DCA charge by $.0041 per Dth, and to assess a $.0320 surcharge to the commodity components, and a $.0109 surcharge to the demand components of its sales rates.

Carnegie's filing indicates that its actual costs of purchased gas exceeded its projected costs by more than 103 percent during the September through November 1990 and March through April 1991 test intervals established at 18 CFR 154.306. In its filing, Carnegie explains why costs in excess of the 103 percent level were incurred, and requests that it be permitted to recover all of its purchased gas costs incurred during the applicable deferral period.

Carnegie states that copies of its filing were served on all of its jurisdictional customer 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 §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211. All such motions or protests should be filed on or before July 25, 1991. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-16471 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-10-21-000]

Columbia Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

July 3, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on June 28, 1991, tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, as shown on the Appendix attached to the filing, to be effective on January 6, 1991 and July 29, 1991.

Columbia states that by this filing, it proposes to (1) flow through the Order No. 500 take-or-pay costs billed to Columbia by Texas Gas Transmission Corporation (Texas Gas) in Docket No. RP91-134, from its upstream pipeline supplier, Texas Eastern Transmission Corporation (Texas Eastern) in Docket Nos. RP91-72, RP91-73, RP91-74 and RP91-75 pursuant to Order Nos. 528 and 528A; (2) flow through Transcontinental Gas Pipe Line's PSP charges for the Annual Recovery Period May 1, 1991 through April 30, 1992; (3) reflect the elimination of Fixed and Commodity Litigant Producer Settlement Payment (LPSP) charges authorized through April 30, 1991; (4) flow through additional LPSP charges to be billed by Transco to Columbia effective June 1, 1991; and (5) recalculate the allocation percentages and charges based on the daily total firm entitlements by removing Piedmont Natural Gas Company (Piedmont), whose service commenced November 9, 1990.

Columbia states that copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions, and upon each person designated on the official service list compiled by the Commission's Secretary in Docket Nos. RP88-187, RP89-181, RP89-214, RP89-229, TM89-3-21, TM89-4-21, TM89-7-21, RP90-26, TM90-2-21, TM90-5-21, TM90-6-21, TM90-7-21, TM90-8-21, TM90-10-21, TM90-12-21, TM90-13-21, TM91-2-21, RP91-41 and RP91-90.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 11, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16473 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ91-4-21-000 and TM91-11-21-000]

Columbia Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

July 3, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 1, 1991, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective August 1, 1991.

First Revised Substitute Eleventh Revised Sheet No. 26
First Revised Substitute Eleventh Revised Sheet No. 26A
First Revised Substitute Eleventh Revised Sheet No. 26B
First Revised Tenth Revised Sheet No. 26C
First Revised First Revised Sheet No. 26D
Tenth Revised Sheet No. 163

Columbia states that the instant filing represents Columbia's scheduled quarterly Purchased Gas Adjustment (PGA) covering the period August 1, 1991 through October 31, 1991.

Columbia further states that the purpose of the subject tariff sheets is to reflect the following; (1) A current purchased gas cost adjustment applicable to sales rate schedules; (2) a continuation of certain surcharges which were accepted by the Commission to be effective through April 30, 1991; (3) a transportation fuel charge adjustment; and (4) a transportation cost recovery adjustment.

Columbia states that copies of the filing were served upon Columbia'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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 11, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16474 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 3, 1991.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on July 1, 1991 certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective August 1, 1991.

ESNG states that such tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and sections 21.2 and 21.4 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth thereon reflect a decrease of $0.0030 per dt in the Commodity Charge and a decrease of $0.0109 per dt in the Demand Charge, all as measured against ESNG's previously scheduled PGA filing in Docket No. TQ91-2-23-000, et al. as filed on March 28, 1991 and approved to be effective on May 1, 1991.

ESNG states that copies of the filing have been served upon its 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 rule 211 and rule 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 July 11, 1991. 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. 91-16475 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 619-038 California]

Pacific Gas and Electric Co.; Availability of Environmental Assessment

July 3, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application requesting approval to temporarily draw down the Grizzly Forebay Reservoir below the minimum level required by article 13. The project is located in Plumas County, California. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that approval of the amendment of license 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 Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16464 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-188-000]

El Paso Natural Gas Co.; Change in Rates

July 3, 1991.

Take notice that on July 1, 1991, El Paso Natural Gas Company (El Paso) tendered for filing tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Volume No. 1-A, and Third Revised Volume No. 2. El Paso proposes an effective date of August 1, 1991.

El Paso states its settlement in Docket No. RP88-44-000, et al., obligates it to file a new general system wide rate change to be effective no later than January 1, 1992. To ensure compliance with the settlement when it becomes effective, El Paso is filing tariff sheets to supersede certain of those tariff sheets approved at Docket No. RP88-44-000, et al. El Paso requested all necessary waivers to permit the filing of the tariff sheets in anticipation of the effectiveness of the settlement.

El Paso further notes that based upon the test period cost of service and the projected throughput quantities employed in the notice, El Paso projects a deficiency of approximately $101 million in annual revenues compared to the rates established in the settlement at Docket No. RP88-44-000, et al. Notwithstanding such deficiency, El Paso has proposed to increase rates by an amount sufficient to eliminate only a portion of such revenue shortfall. El Paso states that the increased rates proposed are designed to increase revenues only by approximately $56 million annually. El Paso states that it has changed its gas cost cap for sales under Rate Schedules MRP and IS-1, and the Weighted Average Cost of Gas (WACOG) for sales under the WACOG option of Rate Schedules ABD-1 and PA-1.

El Paso states that a copy of the notice of change has been served upon El Paso's interstate pipeline system transportation and sales customers and all interested state regulatory 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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations.

All such motions or protests should be filed on or before July 10, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16476 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-187-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 3, 1991.

Take notice that on July 1, 1991, Florida Gas Transmission Company (FGT) tendered for filing as part of Second Revised Volume No. 1 of its FERC Gas Tariff revised tariff sheets to effectuate changes in the rates and terms applicable to its jurisdictional services. FGT states that it is required under the terms of two settlement agreements (Stipulations) approved by the Commission in Docket Nos. RP89-50, et al., under which FGT was authorized to construct and operate facilities designed to add approximately 100,000 Mcf/day of incremental mainline capacity into the State of Florida (the "Phase II facilities"), to file a new rate case to be effective within 120 days of the in-service date of its Phase II facilities. FGT states further that because it expects the Phase II facilities to be placed in service before January 1, 1992, it has submitted the instant rate filing in compliance with its obligations under the Stipulations.

FGT proposes an effective date of August 1, 1991 for the applicable tariff sheets in anticipation that the Commission will exercise its authority under section 4(e) of the Natural Gas Act to suspend the effective date for such sheets. FGT requests that the Commission permit the revised sheets to become effective on the earlier of January 1, 1992, or the first day of the month following the month in which FGT's Phase II facilities are placed in service.

FGT states that the July 1, 1991 filing reflects rates and charges necessary to recover annual operating costs which FGT expects to incur in performing services under its existing rate schedules, utilizing a base period ended March 31, 1991, adjusted for known and measurable changes anticipated to occur during the nine-month period ending December 31, 1991. The proposed rates are based on an overall cost of service, exclusive of gas costs, of $153.4 million (which reflects a return on equity of 15.5 percent), and a projected annual throughput of 353,050,604 MMBtu across the entire system. As part of the instant rate filing, FGT also proposes to make certain modifications to its FERC Gas Tariff.

In addition, FGT states that in conjunction with this rate filing, it will file on or before July 15, 1991 for certificate and any related authorizations necessary under section 7 of the Natural Gas Act to restructure its services, and to implement certain new services. FGT states further that because the instant rate filing and the upcoming certificate application are interrelated, it moves that the instant rate filing and the related certificate

filing be consolidated for Commission review and decision.

FGT states that the interrelated filings are designed to facilitate FGT's transition in the open access environment in a manner that achieves the Commission's comparability policy goals, while permitting FGT to maintain the operational integrity of its system and to continue to render sales services to those who elect to continue to rely upon FGT for their sales requirements. As proposed, FGT states that the service restructuring outlined above will allow FGT's services to be more responsive to market forces, will make FGT's sales and transportation services comparable, and will permit those that choose to secure their own gas supplies, instead of purchasing their gas supply requirements from FGT, to utilize the FGT system in a manner that corresponds to FGT's utilization of the system in the exercise of its merchant function.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 10, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16476 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

July 5, 1991.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on July 1, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) a quarterly PGA filing, which includes Twenty-Ninth Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective August 1, 1991. The revised tariff sheet reflects no change in the average cost of purchased gas resulting in a Weighted Average Cost of Gas of $1.0691. It also reflects a Deferred Gas Cost Adjustment of ($.0443) in accordance with the Federal Energy Regulatory Commission's regulations.

Kentucky West states that, effective August 1, 1991, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $1.0501 per dth, inclusive of all taxes and any other production-related cost add-ons that it would pay under these contracts.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its 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 §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 12, 1991. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-16478 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-15-000]

Mid Louisiana Gas Co.; Proposed Change of Rates

July 3, 1991.

Take notice that Mid Louisiana Gas Company ("Mid Louisiana") on June 28, 1991, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheet to become effective September 1, 1991:

	Superseding
Eighty-Third Revised Sheet No. 3a.	Eighty-Second Revised Sheet No. 3a.

Mid Louisiana states that the purpose of the filing of Eighty-Third Revised Sheet No. 3a is to reflect a $0.01469 per MCF decrease in its current cost of gas.

This filing is being made in accordance with Section 19 of Mid Louisiana's FERC Gas Tariff. Mid Louisiana states that copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a Petition to Intervene or Protest 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 such petititons or protests should be filed on or before July 23, 1991. 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 Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16479 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-189-000]

Midwestern Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 3, 1991.

Take notice that on July 1, 1991, Midwestern Gas Transmission Company (Midwestern) filed an original and ten (10) copies of the following tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff to be effective August 1, 1991:

Third Revised Sheet No. 1
Twenty-eight Revised Sheet No. 5
Twenty-third Revised Sheet No. 6
Third Revised Sheet No. 10
Third Revised Sheet No. 11
Third Revised Sheet No. 20
Second Revised Sheet No. 23
Second Revised Sheet No. 24
Second Revised Sheet No. 25
Second Revised Sheet Nos. 26 Through 29
Third Revised Sheet No. 30
Fifth Revised Sheet No. 45
Fifth Revised Sheet No. 54
Second Revised Sheet No. 69

Second Revised Sheet No. 70
Second Revised Sheet No. 71
Second Revised Sheet No. 72
Second Revised Sheet No. 73
Second Revised Sheet No. 74
Third Revised Sheet No. 90
Second Revised Sheet No. 91
Second Revised Sheet No. 92
Second Revised Sheet No. 93
Second Revised Sheet Nos. 94 Through 109

Midwestern states that the filing proposes a change in its currently effective sales and transportation rates which would result in a non-gas revenue increase of $5,499,839, premised on a base period ending on March 31, 1991 and a test period, reflecting known and measurable changes, ending on December 31, 1991. Midwestern states that the increased rates are required to reflect increases in operation and maintenance expenses, and the cost of capital (and related tax increases) over the costs embedded in Midwestern's currently effective rates. In addition, Midwestern also projects changes in throughput over that embedded in its current rates.

Midwestern also filed other tariff sheets: (1) Allowing its SR-1 customers to choose either a volumetric rate design or a two-part structure, (2) implementing an Account No. 858 tracker, (3) revising its PGA to eliminate any uncertainty with regards to its ability to classify as demand costs for PGA purposes certain fixed purchased gas transitional costs and demand charges associated with a Gas Inventory Charge that may be billed to Midwestern by Tennessee Gas Pipeline, and (4) to conform its tariff to its current one-part demand rate structure.

Midwestern states that a copy of its filing was served on each of its customers and affected state commissions pursuant to § 154.16(b) of the Commission's Regulations.

Any person desiring to be heard or to protest this 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 July 10, 1991. 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. 91-16480 Filed 7-10-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP91-40-007, TM91-3-59-003]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 5, 1991.

Take notice that Northern Natural Gas Company (Northern), on June 27, 1991, tendered for filing changes in its FERC Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff).

Northern is filing the revised Tariff Sheets Sub 7 Revised Tenth Revised No. 4H (to be effective June 1, 1991) and Second Sub Twelfth Revised Sheet No. 4H (to be effective July 1, 1991) to reflect the demand portion of the TCR surcharge authorized in Docket No. RP91-40-002 by Commission Order dated June 19, 1991, in the GS Fixed Cost Recovery Rate.

Northern states that copies of the filing were served upon Northern's jurisdictional sales customers and interested state commission.

Any person desiring to protest said filing should file a protest 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 such protests should be filed on or before July 12, 1991. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 91-16481 Filed 7-10-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP91-181-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 1, 1991.

Take notice that Northern Natural Gas Company (Northern) on June 27, 1991, tendered for filing to become part of Northern's Ferc Gas Tariff, Third Revised Volume 1 and Original Volume 2, the following tariff sheets, with a proposed effective date of July 26, 1991:

Third Revised Volume No. 1

Fourth Revised Sheet No. 70B

Original Volume No. 2

Sixth Revised Sheet No. 1I.2

Northern states that the purpose of the filing is to amend provisions of its PGA clause concerning the collection of unrecovered gas costs and disbursement to provide for a termination surcharge in the event of the termination or suspension of its PGA.

Northern further states that copies of the filing have been mailed to each of its gas utility 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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 9, 1991. 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 in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 91-16482 Filed 7-10-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP91-140-003]

Questar Pipeline Co.; Compliance Filing

July 5, 1991.

Take notice that Questar Pipeline Company, on July 1, 1991, tendered for filing and acceptance tariff sheets to Original Volume Nos. 1, 1-A and 3 of its FERC Gas Tariff to implement revised base rates that are in compliance with ordering paragraph (F) to the Commission's May 31, 1991, order in the referenced Docket (the May 31 order). Questar submitted the following revised tariff sheets to be effective November 1, 1991:

2nd Sub Fourteenth Revised Sheet No. 12 (Volume No. 1)

Substitute Fifth Revised Sheet No. 5 (Volume No. 1-A)
Substitute First Revised Sheet No. 5A (Volume No. 1-A)
Substitute Sixth Revised Sheet No. 8 (Volume No. 3)

Questar states that the proposed revised base rates would increase sales, transportation and gathering revenues by approximately $9.0 million based on the 12-month period ended December 31, 1990, as adjusted. This is a $3.8 million decrease from the $12.8 million increase sought in Questar's original April 30, 1991, rate filing in Docket No. RP91-140-000.

Questar states that the revisions to the base rates requested in this filing are necessary to comply with the May 31 order and to reflect the actual outcome of Questar's recent debt issue.

Questar indicates that the principal elements of the revision to base rates are:

1. The classification of fixed gas supply costs to the commodity component of Rate Schedule CD-1 rates.

2. Modifications to the Transmission and Gathering Divisions' cost of service from Questar's Clay Basin Storage Division as approved in Docket No. CP91-1252.

3. A decrease in Questar's proposed overall return on rate base as a result of reflecting the actual outcome of Questar's recent debt offering.

Questar states that copies of the filing were served upon those listed on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest 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 such protests should be filed on or before July 12, 1991. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-16483 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-186-000]

Southern Energy Co., Petition for Authorization To Change Depreciation Rate

July 3, 1991.

Take notice that on June 28, 1991, Southern Energy Company ("Southern Energy") filed a petition pursuant to sections 4 and 9 of the Natural Gas Act seeking authority to change the depreciation rate applicable to its liquefied natural gas (LNG) terminalling and regasification facilities at Elba Island, Georgia from 4.5% to 3.2%, effective August 1, 1991.

In support of its petition, Southern Energy states that under the minimum bill provisions of its effective tariff, it has recovered from its sole customer, Southern Natural Gas Company, only its debt service and certain other non-equity related costs since LNG shipments were suspended by its foreign supplier in early 1980.

In order to mitigate the continued deferral of its equity depreciation, and the attendant uncertainties regarding ultimate recovery thereof, Southern Energy deems it appropriate during the pendency of its suspended operations, to adjust its depreciation rate to a level commensurate with the debt amortization recovered through its minimum bill charges to Southern Natural. Southern Energy maintains that these adjustments in its stated depreciation rate are appropriate in order to bring its book depreciation into line with the debt amortization recovered through its minimum bill charges to Southern Natural. Thereby, Southern Energy states that it will no longer be placed in the untenable position of deferring, subject to challenge, recovery of its equity depreciation. Meanwhile, Southern Energy maintains that its ratepayers will be assured of getting full credit for actual return of plant investment attributable to debt amortization recovered under the minimum bill.

Southern Energy further states the granting of this application will not change current revenues, nor those applicable to past periods, under its minimum bill. Also, Southern Energy submits that these prospective changes in depreciation rate, which are being made without prejudice to the appropriate accounting treatment to be afforded prior unrecovered equity depreciation, should in no way influence the ultimate resolution by the Commission of the equity depreciation issues under review in Docket No. FA90-19-000.

Any person desiring to be heard or to protest said filing would file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 285.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 10, 1991. Protests will be considered by the Commission in determining the appropriated action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16484 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-190-000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

July 5, 1991.

Take notice that on July 1, 1991, Southern Natural Gas Company (Southern) tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective August 1, 1991:

First Revised Sheet No. 3OZ.03
First Revised Sheet No. 3OZ.04
First Revised Sheet No. 3OZ.25

Southern states that the purpose of this filing is to make certain revisions to its transportation tariff to streamline the procedures through which a shipper notifies Southern of changes in its election to process gas transported on Southern's system upstream of Toca, Louisiana.

Southern states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interest 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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 12, 1991. 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 in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-16485 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[CP80-65-066, CP84-441-032 and RP90-159-001]

Tennessee Gas Pipeline Co.; Tariff Filing

July 5, 1991.

Take notice that on June 28, 1991 Tennessee Gas Pipeline Company (Tennessee) filed the following tariff sheets to its FERC GAS Tariff:

Third Revised Volume No. 1

(Docket Nos. CP80-65 and CP84-441)

First Revised Sheet Nos. 97-100
Original Sheet No. 100A
First Revised Sheet Nos. 101-105
First Revised Sheet Nos. 116-121
First Revised Sheet Nos. 123-125
Original Sheet No. 125A
First Revised Sheet No. 355
Original Sheet No. 355A
First Revised Sheet Nos. 374-377
Original Sheet Nos. 377A-D
First Revised Sheet Nos. 378-385

(Docket No. RP90-159)

First Revised Sheet No. 77
First Revised Sheet No. 85

Tennessee states that the purpose of this filing is to comply with the Commission's letter order in Docket Nos. CP80-65 and CP84-441, issued May 31, 1991 by renumbering the accepted tariff sheets from Tennessee's FERC Gas Tariff, Second Revised Volume No. 1 to Tennessee's currently effective Third Revised Volume No. 1. Tennessee further states that the filing is also being made to renumber the tariff sheets accepted by the Commission's letter order in Docket No. RP90-159, issued August 31, 1990, from Tennessee's currently effective Third Revised Volume No. 1.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers on its system and affected stated regulatory commissions.

Any person desiring to protest said filing should file a protest 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 such protests should be filed on or before July 12, 1991. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-16486 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-4-17-000, TM91-9-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 3, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 1, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of tariff sheets listed on appendix A attached to the filing.

The proposed effective date of these revised tariff sheets is August 1, 1991.

Texas Eastern states that the tariff sheets are being filed pursuant to Section 23, Purchased Gas Cost Adjustment, and Section 26, Electric Power Cost (EPC) Adjustment, contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. This filing constitutes Texas Eastern's regular quarterly PGA filing to be effective August 1, 1991 pursuant to 18 CFR 154.308. Texas Eastern states that in compliance with Section 154.308(b)(2) of the Commission's Regulations, a report containing detailed computations for the derivation of the current adjustment to be applied to Texas Eastern's effective rates in enclosed in the format as prescribed by FERC Form No. 542-PGA (Revised) and FERC's Notice of Criteria for Accepting Electronic PGA Filings dated April 12, 1991.

Texas Eastern states that the PGA changes proposed in this filing include a Demand current adjustment of $0.003/dth and a Commodity current adjustment of $(0.0177)/dth based upon the change in Texas Eastern's projected quarterly cost of purchased gas from Texas Eastern's May 1, 1991 quarterly filing in Docket No. TQ91-3-17. The PGA surcharge rates included on the tariff sheets filed include the United Gas overrun charges found appropriate for inclusion in Texas Eastern's PGA by FERC order dated June 3, 1991 in Docket Nos. TA91-1-17-002 and TM91-1-17-001. Such surcharge rates were filed on March 4, 1991 in Texas Eastern's annual PGA compliance filing.

Texas Eastern states that the filing also constitutes Texas Eastern's semiannual adjustment to reflect changes in electric power costs pursuant to section 26. These changes in rates for Sales and Transportation services are based upon the projected annual electric power cost incurred in the operation of transmission compressor stations with electric motor prime movers for the 12 months beginning August 1, 1991 and to also reflect the EPC Surcharge which is designed to clear the balance in the Deferred EPC Account as of April 30, 1991.

Texas Eastern states that on June 20, 1991, Texas Eastern filed tariff sheets reflecting the flow-through of CNG Transmission's storage costs in Tex s Eastern's Rate Schedules SS-2 and SS-3. Texas Eastern is filing concurrently rates unde the CD-1 Adjustment Program as authorized by the Commission's order issued June 21, 1991 in Docket No. CP88-180-009 and CP88-180-014. The tariff sheets included in this instant PGA filing are based upon the assumption that the Commission will approve the aforementioned filings now before the Commission prior to acceptance of this instant PGA filing. In the event such filings are altered in any way, Texas Eastern states that is will file revised tariff sheets in this instant PGA filing.

Texas Eastern states that copies of its filing have been served on all Authorized Purchasers of Natural Gas from Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 11, 1991. 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 a file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16487 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

July 5, 1991.

Take notice that Trunkline Gas Company (Trunkline) on July 1, 1991, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Eighty-Fourth Revised Sheet No. 3-A

The proposed effective date of this revised tariff sheet is September 1, 1991.

Trunkline states that the revised tariff sheet reflects a commodity rate increase of 0.27¢ per Dt. This increase includes:

(1) A (3.60¢) per Dt decrease in the projected purchased gas cost component; and

(2) a 3.87¢ per Dt increase in the surcharge to recover the Current Deferred Account Balance at April 30, 1991 and related carrying charges.

Trunkline states that this filing is made in accordance with § 154.305 (Annual PGA filing) of the Commission's Regulations and pursuant to Section 18 (Purchased Gas Adjustment Clause) of Trunkline's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Trunkline's jurisdictional sales rates effective September 1, 1991.

Trunkline further states that it has identified and isolated the carrying charges associated primarily with transportation and exchange imbalance activity unrelated to the transportation and/or exchange of Trunkline's gas purchases or supply gas. Trunkline proposes to exclude these carrying charges from its surcharge calculation, without prejudice to their subsequent collection upon final determination respecting the allocation and recovery of these costs in Trunkline's next generally applicable section 4 rate filing.

Trunkline states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 25, 1991. 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 in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-16488 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-10-011]

Williston Basin Interstate Pipeline Co.; Compliance Filing

July 5, 1991.

Take notice that on July 1, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing certain revised tariff sheets to First Revised Volume No. 1 and Orignial Volume Nos. 1-A and 2 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets were filed in compliance with the Commission's "Order Affirming in Part and Modifying in Part Initial Decision" issued August 3, 1990 and "Order Granting in Part and Denying in Part Rehearing" issued May 31, 1991 in the above-referenced proceeding as more fully described in the filing.

Any person desiring to protest said filing should file a protest 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 such protests should be filed on or before July 12, 1991. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-16489 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-141-002]

Williston Basin Interstate Pipeline Co.; Compliance Filing

July 5, 1991.

Take notice that on July 1, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing certain revised tariff sheets to First Revised Volume No. 1 and Original Volume Nos. 1-A, 1-B and 2 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets were filed in compliance with the Commission's "Order Accepting and Suspending Tariff Sheets, Rejecting Tariff Sheets and Establishing Hearing Procedures" issued May 31, 1991, as more fully described in the filing.

Any person desiring to protest said filing should file a protest 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 such protests should be filed on or before July 12, 1991. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-16490 Filed 7-10-91; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL RESERVE SYSTEM

Ben and Gail Barton; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 7, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Ben and Gail Barton, Byron, Illinois to acquire 74.7 percent of the voting shares of Byron Bancshares, Inc., Byron,

Illinois, and thereby indirectly acquire Byron Bank, Byron, Illinois.

Board of Governors of the Federal Reserve System, July 5, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-16454 Filed 7-10-91; 8:45 am]

BILLING CODE 6210-01-F

Community Independent Bancorp, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 7, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Community Independent Bancorp, Inc., West Salem, Ohio; to engage *de novo* in certain general insurance agency activities in a town having a population of less than 5,000 including: life insurance and credit life and disability insurance related to extensions of credit by the Company's affiliate bank. Company may also elect to sell specific catastrophic insurance, annuities, and property and casualty insurance, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. The First National Bankshares, Inc., Tucumcari, New Mexico; to acquire First Security Trust Company, Tucumcari, New Mexico, a *de novo* trust company, and thereby engage in agency, or custodial nature (trust) activities, pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 5, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-16455 Filed 7-10-91; 8:45 am]

BILLING CODE 6210-01-F

Summit Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 7, 1991.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Summit Bancorp, Inc., Johnstown, Pennsylvania; to acquire 16.6 percent of the voting shares of The First National Bank of Lilly, Lilly, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. E.S. Control Holding, S.A., Luxembourg; to become a bank holding company by acquiring 14.61 percent of the voting shares of Espirito Santo Bank of Florida, Miami, Florida.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Mid-America National Bancorp, Inc., Chicago, Illinois; to become a bank holding company by acquiring 98.48 percent of the voting shares of Mid-America National Bank of Chicago, Chicago, Illinois.

2. Southwest Company, Sidney, Iowa; to acquire 23.33 percent of the voting shares of Standard Bancorporation, Inc., Lincoln, Nebraska, and thereby indirectly acquire Standard Bank and Trust, Independence, Missouri.

Board of Governors of the Federal Reserve System, July 5, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-16456 Filed 7-10-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Coordinated Service Delivery for Children With Disabilities Grant Announcement

Pursuant to section 1110 of the Social Security Act, the Assistant Secretary for Planning and Evaluation (hereafter the Assistant Secretary), in cooperation with the Office of Special Education and Rehabilitation Services (OSERS) of the Department of Education, is seeking applications from not-for-profit or for-profit organizations or entities to assist states and localities in identifying and utilizing all available sources of funding to improve the integration and coordination of services for infants, toddlers, children and youth with disabilities.

The Departments of Education (ED) and Health and Human Services (HHS) administer programs which provide a

wide range of educational, health, mental health and social services for infants, toddlers, children and youth with disabilities and their families. To be most effective, these programs require coordination among public, private, and voluntary providers and funding sources. Both Departments are committed to collaborative efforts which foster the development of family-centered, coordinated, school and community-based systems of services. To achieve this goal, the Departments are jointly implementing an initiative that includes technical assistance and consultation to state agencies and community programs responsible for systems development in health, education, social and mental health services.

Children with disabilities and their families often need health, education, social and mental health services. However, assuring children with disabilities access to these various services can be a difficult prospect for families, educators, health and social service professionals, and advocates. Health, education, social and mental health services are often provided in a fragmented manner, which can result in inadequate access, lack of coordination and duplication of service efforts. This fragmentation is especially problematic with respect to financing; services are financed through a variety of mechanisms, including private insurance, public programs, out-of-pocket expenditures and charity. Coordination and integration of these multiple services and funding sources would enhance the effectiveness of service delivery.

The primary goal of this initiative is to provide technical assistance to states and localities to support the coordinated provision and financing of health, education, social and mental health services for children with disabilities as integral components of early intervention and educational systems. Such technical assistance and consultation are to be provided in coordination with existing efforts to assure that they are not duplicative and to maximize the effect of the initiative.

A. Type of Application Requested

1. Background

a. Idea

Parts B and H of the Individuals with Disabilities Education Act (IDEA), formerly called the Education of the Handicapped Act (EHA), provides grants through the U.S. Department of Education to assist states in the planning and implementation of programs for children with disabilities.

The Program for Infants and Toddlers with Disabilities is a formula grant program with funding based on census data for all infants through two year olds, authorized by part H of IDEA. The program is designed to assist states in planning, developing and implementing coordinated, comprehensive, multidisciplinary, interagency statewide systems of early intervention services for children with disabilities and their families. Fourteen statutory components provide the framework for a statewide early intervention system. Early intervention services are those designed to meet the developmental needs of each child eligible under part H and the needs of the family related to enhancing the child's development. The determination of appropriate services is reflected in the individualized family service plan. Thus, for all participating states under part H, all eligible children with disabilities and their families must be assured the availability of early intervention services.

Part B of IDEA authorizes formula grants to states and, through states, to local educational agencies (LEAs) and intermediate educational units to assist them in meeting the special educational needs of children with one or more of thirteen (13) specified disabilities. In order to be eligible for funding under this program, state educational agencies (SEAs), LEAs and intermediate educational units are responsible for insuring that all children ages 3–21 with disabilities have available to them a free appropriate public education (FAPE), and that the procedural protections set forth in part B of the Act are extended to these children and their parents. FAPE includes, among other factors, special education and related services provided at no cost to parents in preschool, elementary and secondary schools, in conformity with an individualized education program (IEP). Thus, each child with a disability is entitled to receive specially designed instruction and such developmental, corrective or other supportive services, detailed in an IEP, as are required to assist a child to benefit from that instruction.

b. Chapter 1

The Chapter 1 Program, which was reauthorized under the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, provides financial assistance to state educational agencies for state operated and supported programs and projects designed to supplement special education or early intervention services to infants, toddlers, children and youth with disabilities.

The Chapter 1 State Operated or Supported Programs for Handicapped Children program provides assistance for programs and projects designed to improve and expand education and training for children with disabilities being served in (1) state-operated facilities, (2) state-supported programs, such as community-based day care centers for children with disabilities, and (3) local educational agency programs that provide services to children with disabilities who transfer from state operated facilities to programs operated by local educational agencies. Grants are provided to state educational agencies and, through them, subgrants are distributed to state agencies and local educational agencies.

c. Medicaid

Medicaid is a shared Federal/state program that provides coverage of health services for certain low-income individuals. While the Federal Government sets broad guidelines for the program, each state administers its own program and has considerable flexibility in establishing eligibility, benefits and reimbursement policies. As a consequence, there is wide variation among the states in terms of benefits offered, the amount, duration and scope of coverage, eligibility categories, and reimbursement levels.

Medicaid is a categorical, means-tested entitlement program. To qualify for program benefits, individuals must fit into certain groups—such as the aged, blind or disabled, or members of families with dependent children—and have low income and resources.

Medicaid covers a broad range of medical and remedial services. Federal law requires states to offer some services and permits states to offer from among more than 30 optional services. Medicaid is required to finance medically necessary and reasonable health services for Medicaid eligible individuals subject to Medicaid's responsibility to pursue third party resources. (These services include those for Medicaid-eligible children provided under an IEP.) States are required to cover Early and Periodic Screening, Diagnosis and Treatment (EPSDT) for individuals under age 21. In addition to screening and diagnostic services, EPSDT includes any medically necessary treatment that a state does not otherwise offer under its Medicaid program, but which can be covered under Federal Medicaid law.

Medicaid services may be provided by a range of health professionals in a variety of settings, including a child's home or school.

d. Other Programs

The Department of Health and Human Services (HHS) funds many programs that offer health, mental health and social services to many individuals. Of particular interest to children with disabilities and their families are those services funded by Title V Maternal and Child Health (HCH) Block Grants.

The MCH Block Grant program provides grants to states to fund a variety of health programs for low-income women and children. The state agency administering the MCH program must participate in the coordination of activities with the Medicaid/EPSDT and other Medicaid program activities, and with supplemental food programs for mothers, infants, and children, related education programs and other health and developmental disability programs.

Thirty percent of each state's MCH Block Grant funds are directed to the state's Programs for Children with Special Health Care Needs (CSHCN), previously the Crippled Children's program. In the Omnibus Reconciliation Act of 1989, Congress directed the CSHCN programs to develop systems of services, and promote and provide services to children with special health care needs and their families that are family-centered, community-based and coordinated.

The goal of this new emphasis is for state CSHCN programs to assume a major leadership role in implementing health service programs at the state and community level and to integrate health services with a variety of other services, including early intervention, educational, vocational, mental health, social and family support services.

2. Issues

a. Funding/Reimbursement

While IDEA obligates states and localities to coordinate and provide services, grants from the Department of Education support only a fraction of the total costs associated with implementing parts H and B. Congress has charged states to use all potential sources of support, including public funds, to assure that infants, toddlers and children have access to comprehensive services under IDEA. The Senate report accompanying the original act, Public Law 94–142, encourages states to "utilize all sources of support for comprehensive services for handicapped children." The Education for the Handicapped Amendments Act of 1986, Public Law 99–457, states that EHA funds "may not be used to satisfy a financial commitment for services which would have been paid for from another public or private source." The Act also clarifies that Public Law 94–142 cannot be construed as permitting a state to reduce medical or other available assistance, or to alter Title V Maternal and Child Health Block Grant or Medicaid eligibility with respect to the provision of a free appropriate public education. In conformance with these provisions, Federal regulations at 34 CFR 300.301 and section 1903(c) of the Social Security Act allow Medicaid funds to be used to reimburse for "health-related services."

The courts have also upheld the states' rights to use other public funds for certain health related services under IDEA. In *Bowen* v. *Massachusetts* the Supreme Court affirmed the decision of a lower court that held that the EHA did not modify Medicaid to prohibit funding of special education services that are health related. The court held that it was incorrect to look at whether the services being provided were called "special education" or "medical assistance" and that, in making reimbursement decisions, HHS must consider the nature of the services provided, not just what they are called and who provides them.

In addition to Medicaid and MCH, other Federally funded programs that may be available to support components of IDEA services include Head Start, Community and Migrant Health Centers, Vocational Rehabilitation, Alcohol and Drug Abuse and Mental Health Services Block Grants, Preventive Health and Health Services Block Grants, Social Services Block Grants. State and localities operate many general and community assistance programs that provide services to children with disabilities. Finally, many private and charitable organizations, such as the March of Dimes and the United Way, fund services for children with disabilities and their families. While this list is by no means inclusive, it provides an example of the range and depth of potential funding sources and programs that are available to support and provide services for children with disabilities.

In spite of legislative and judicial encouragement, and in the face of constrained budgets for educational services, only a small number of states are using alternative funds to support part B activities to assure access to services mandated by IDEA. States that choose to participate in part H are using many sources of funds, as required by § 303.522 of the part H regulations. Even though states are beginning to use many funding sources, the identification and coordination of resources requires extensive knowledge and networking. In addition, many states are reluctant to venture into new territory or are simply unaware of the funding opportunities.

b. Coordination

Each school-age child with one of thirteen specified disabilities must have an individualized education program (IEP), develped in consultation with the family, that specifies all the special education and related services that are required for the child. Therefore, schools are often a "natural" setting for coordinating and providing education, health, social and mental health services for children with disabilities. Identifying infants and toddlers with disabilities before they enter the formal school system can be a greater challenge, as addressed through services provided by the part H program. Service delivery under the part H program can be home-based or center-based, and requires interagency cooperation in the identification, referral, evaluation, intervention, and monitoring of children with disabilities. The individualized family service plan (IFSP) required under part H also provides a mechanism for coordinating services.

Individualized care plans are also developed for children and their families under other program auspices, e.g., State Programs for Children with Special Health Care Needs. These service plans are often developed for the same individuals but may not necessarily be coordinated, creating the potential for duplication of services and gaps in continuity of care.

It has become obvious that meeting the complex needs of infants, toddlers, children and youth with disabilities requires the collaboration and coordination of many individuals and service providers. In order to provide an effective system of early identification and intervention, part H programs need the cooperation and collaboration of many agencies, providers and services to effectively meet the needs of children with disabilities. In the same way, part B programs need the assistance and cooperation of multiple entities in order to assure adequate funding for and the appropriate components of a free appropriate education for children with disabilities.

One of the major challenges facing schools and families is arranging for and assembling an array of services, despite the fragmented nature of service delivery. Generally, a large number of agencies and personnel are involved in providing services to individuals and their families. This problem is exacerbated by the fact that many children with disabilities and their families lack adequate financial

resource and transportation and have diverse cultural needs and preferences.

3. Purpose

The Department of Health and Human Services and the Department of Education are embarking on a service coordination initiative which emphasizes the involvement of the early intervention system and the schools in coordination and provision of a variety of health, education, social and mental health services for preschool and school-age children with disabilities. The initiative focuses on assisting state agencies in coordinating available services and funding sources to assure improved access to needed education, health, mental health and social services.

The Senate Appropriations Committee has demonstrated its concern for coordination efforts by directly HHS and ED to develop a joint policy statement assuring uniform procedures to enable the Medicaid, part B and part H programs to help children with disabilities and their families obtain their full entitlement under Federal programs. The recent change in the focus on the CSHCN program similarly reflects Congressional interest in developing a community-based system of services using all available resources.

The purpose of the coordinated service delivery initiative between OSERS of ED and ASPE of HHS, in collaboration with many operating divisions within HHS, is to:

(1) Stimulate and support integrated services planning within the states, in cooperation with existing technical assistance/consultation efforts, on behalf of children with disabilities and their families;

(2) Provide states with the information and tools necessary to maximize all available sources of support (public, private and voluntary) for services needed for children with disabilities under part H, part B, CSHCN and other related programs;

(3) Demonstrate the commitment of HHS and ED to improve services and systems for children and families through effective interagency collaboration.

4. Application

This grant announcement seeks applications from organizations or entities that will develop and provide technical assistance on behalf of children with disabilities and their families. One grant will be awarded to conduct this technical assistance initiative.

a. Applicant Qualifications

Because of the wide variation among Medicaid and other public programs, technical assistance applicants must be familiar with many state education and health care systems and must demonstrate the ability to anticipate or determine the kinds of information states will request and in what form. Applicants must also demonstrate familiarity with the merits of various technical assistance approaches. Applicants must demonstrate knowledge and expertise with education, health, mental health and social services and technical assistance issues and systems. In addition, the applicant should provide evidence of knowledge and understanding of a wide range of funding sources, financial disbursement and accounting practices at the Federal, state and local levels. Finally, applicants must demonstrate an understanding of the importance of and the techniques used in evaluating the process and outcome of an intervention.

b. Content and Organization of Application

The application must begin with a cover sheet followed by the required application forms and an abstract (of not more than two pages) of the application. Failure to include the abstract may result in delays in processing the application.

Each application must include a proposal for developing and implementing a technical assistance initiative which will help states identify and access potential sources of funding, and develop coordinated health, education, mental health and social service delivery programs in the early intervention context and in school-based settings. The objectives of the initiative, the proposed implementation plan and the proposed technical assistance approach must be clearly described and justified.

The application must include a plan for identifying states and localities in need of technical assistance, identifying a system for determining specific state or local needs and for publicizing the availability of their services. Due to the wide variation among state and local programs, each state and locality will have different technical assistance needs. The application must include a description of how the proposed technical assistance approach will assure that the varying needs of many communities will be addressed. The application must demonstrate that the applicant has appropriate staffing and organizational experience to conduct the technical assistance initiative.

The technical assistance grantee will administer a limited number of "sub-grants" to states to support localities in the coordination of education, mental health and social service programs and services.While the primary grantee is bound to adhere to Federal requirements for notice and competition in awarding the sub-grants, the applicant must describe and justify the objectives of the sub-grants, how they propose to administer the sub-grant program, the number of potential sub-grantees and the criteria for selecting sub-grantees. The applicant must also establish a mechanism for evaluating the performance of sub-grantees.

The sub-grants should support interagency planning, program planning, staff training and development of billing systems, but additional activities related to coordinated financing will be considered. We suggest that the focus of the sub-grants be on assisting local education agencies and the communities in which they are located to assume major responsibility for planning, designing and implementing service delivery systems; the applicant must describe how this goal will be accomplished. If an alternative focus is recommended by the applicant, (a) it must be described and justified; and (b) material regarding the alternative must be presented in addition to the focus anticipated by HHS and ED in this solicitation.

Because we believe that many states will find this technical assistance invaluable, the grantee must organize forums to highlight best practices, identify additional technical assistance and materials which should be developed and identify Federal and state policies which could be modified to better support coordinated program planning and service delivery. The application must include a proposal on how best to organize these forums.

By committing funds to this project, HHS and ED signal their interest in understanding the effect of providing technical assistance and sub-grants to states and localities on service delivery for children with disabilities. Therefore, the application must include a description of how the applicant will evaluate the technical assistance initiative. The applicant must evaluate the implementation, operation and impact of the three components of this grant: The technical assistance initiative, the sub-grant program and the forums. To support and justify these process and outcome evaluations, the application must include clearly articulated goals and objectives for each intervention and must describe how the

evaluation will be structured to determine if and how the goals and objectives are achieved.

Targets of the evaluation of the technical assistance activities shall include the needs assessment methods and information, the technical assistance information and materials, and the technical assistance delivery methods. The evaluation shall assess the extent to which objectives are met and the effect of the technical assistance system on the use of alternative funding sources and services to meet the educational needs of children with disabilities. The evaluation of the subgrants and the forums must include a mechanism for assessing the extent to which they meet stated objectives. In addition, the evaluation of the forums must include follow-up activities to assess any continuing impact of the information received.

Finally, applications must include a detailed schedule and budget proposal for the technical assistance, the sub-grants, the forum and the evaluation components of this solicitation. Grant applications will be considered only if the applicant commits to the technical assistance, the sub-grant, the forum and the evaluation components.

B. Reports and Plans

The recipient of the grant shall prepare reports describing their procedures, findings and other relevant information in a form that will maximize the dissemination and use of such procedures, findings and information. The grantee must prepare and disseminate technical assistance materials for use by states. The grantee must package the proceedings of the information-sharing forums. The grantee must also complete an interim and final evaluation report for review and use by the Federal government.

The grantee shall deliver these materials, as appropriate, to the Regional and Federal Resource Centers, the National Early Childhood Technical Assistance Center, the Clearinghouses, and the Technical Assistance to Parents Programs (TAPP), as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities and such other networks as the Federal government determines to be appropriate. The grantee must also make these materials available to the Federal government in sufficient quantities to allow for widespread distribution both during and after the grant period.

C. Applicable Regulations

1. "Grants Programs Administered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR part 62).

2. "Administration of Grants" (45 CFR part 74).

D. Effective Date and Duration

The grant awarded pursuant to this announcement is expected to be made on or about September 30, 1991.

In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately. The closing date for applications is specified in section G.

The grant will be awarded initially for a 12 month period with second and third year funding subject to consideration of performance, completion of objectives, and the government's determination to continue the project.

E. Statement of Funds Available

$650,000 has been set aside for one grant to be awarded in FY 1991. $350,000 of the total grant funds must be used for the sub-grant program. The amount of the second and third year awards will be the same as in the first year; the allocation formula between the technical assistance component and the sub-grants will also be the same. Receipt of grant funding does not preclude the applicant from seeking additional funds from other sources.

Funds will be obligated fully at the time of award of the grant.

Nothing in this application should be construed as committing the Assistant Secretary to make an award.

F. Application Processing

1. Applications will be initially screened for relevance to the interests and needs defined in section A. If judged relevant, the application will be reviewed by a government review panel, augmented by outside experts where appropriate. Three (3) copies of each application are required. Applicants are encouraged to send an additional seven (7) copies of their application to ease processing, but applicants will not be penalized if these extra copies are not included.

2. Applications will be judged according to the criteria set forth in item 5 below.

3. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the application.

4. Applications should be as brief and concise as possible. Applicants are encouraged to respond within 25 double-spaced typed pages exclusive of forms, abstract, curriculum vitae, and proposed budget. They should neither be unduly elaborate not contain voluminous supporting documentation.

5. *Criteria for Evaluation.* Evaluation of applications will employ the following criteria. The relative weights are shown in parentheses.

a. *Clarity and Understanding.* The understanding and knowledge of Federal programs, such as IDEA, Medicaid and title V, and state and local funding programs; the familiarity with state-specific issues in education, health, mental health and social services. (10 points)

b. *Technical Soundness.* The quality of the design of the proposal; the clarity of the statement of objectives, methods and proposed implementation plan; the appropriateness and soundness of the proposed approaches; extent to which the budget is adequate to undertake project activities and costs are reasonable in relation to objectives of the project. (30 points)

c. *Experience and Qualifications of Personnel.* Quality, availability and commitment of personnel with appropriate training and experience; key staff's experience in this or related areas and indications of ability to conduct similar large scale, innovative projects; demonstration of relationship with state-level education, health and social service officials; indication of the ability of key staff to develop appropriate TA materials, to conduct training, and to administer grants; a reasonable allocation of staff resources as indicated by percentage of time estimated to accomplish the work. (25 points)

d. *Management.* Quality of the plan (including a performance measurement system) which provides evidence of sound management structures and procedures; evidence of efficient and timely use of human, physical and financial resources; milestones for completion of activities; quality of management charts and the extent to which the charts facilitate an understanding on the management plan and staffing arrangements. (10 points)

e. *Evaluation.* Quality of the evaluation plan for the technical assistance component, the sub-grant program and the forums. (20 points)

f. *Resources/Facilities/Equipment.* The appropriateness and availability of resources, facilities and equipment proposed for use in the conduct of the work. (5 points)

G. Deadline for Submittal of Applications

The closing date for submittal of applications under this announcement is August 26, 1991. Applications must be postmarked or hand-delivered to the application receipt point no later than 5:30 pm on August 26, 1991.

Hand-delivered applications will be accepted Monday through Friday, excluding Federal holidays, prior to and on August 26, 1991 during the working hours of 9 am to 5 pm in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW in Washington, DC. When hand-delivering an application, call (202) 245-1794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as meeting the deadline if it is either: (1) Received at, or hand-delivered to, the mailing address on or before August 26, 1991, or (2) Postmarked before midnight of the deadline date, August 26, 1991 and received in time to be considered during the competitive review process within two weeks of the deadline date.

When mailing applications, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the August 26, 1991 deadline are considered late applications and will not be considered or reviewed in the current competition. HHS will send a letter to this effect to each late applicant.

HHS reserves the right to extend the deadline for all proposals due to natural disasters, such as floods, hurricanes or earthquakes; due to acts or war; if there is widespread disruption of the mail; or if HHS determines a deadline extension to be in the best interest of the Government. However, HHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

H. Disposition of Applications

1. *Approval, disapproval or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary will notify the applicants of the disposition of their application.

If approved, a signed notification of the grant award will be issued to the contact person listed on the checklist "As official in business office to be notified if an award is made."

I. Application Instructions and Forms

Copies of applications should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., room 426F, Hubert H. Humphrey Building, Washington, DC 20201. Phone (202) 245-1794. Questions concerning the preceding information should be submitted to the Grants Officer at the same address. Neither questions nor requests for applications should be submitted after August 26, 1991.

IMPORTANT—Application for Federal Assistance [Standard Form 424] must be on the revised form 4/88.

J. Federal Domestic Assistance Catalog

This announcement is not listed in the Federal Domestic Assistance Catalog.

K. Intergovernmental Review of Federal Programs

HHS has determined that this program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," because it is a program that is national in scope and does not directly affect state and local governments. Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. 12372.

Martin H. Gerry,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 91-16445 Filed 7-10-91; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

Clinical Studies of Safety and Effectiveness of Orphan Products; Limited Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to limit receipt of applications for Fiscal Year (FY) 1991 to competitive renewal applications only. No other applications are requested. Competition for FY 1991 funds will be limited to the competitive renewals and the remaining FY 1990 applications for clinical trials on safety and effectiveness of orphan products in rare diseases and conditions.

DATES: The closing dates for submission of competitive renewal applications are August 12, 1991, for project periods which will terminate before September 30, 1991; and September 1, 1991, for project periods which will terminate before June 30, 1992.

ADDRESSES: Application forms are available from, and completed applications should be submitted to: Robert L. Robins, State Contracts and Assistance Agreements Branch (HFA-520), Food and Drug Administration, Park Bldg., rm. 3-20, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6170.

Note: Applications hand-carried or commercially delivered should be addressed to Park Bldg., rm. 3-20, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Regarding the administrative and financial management aspects of this notice: Robert L. Robins, address above.

Regarding the programmatic aspects of this notice: Carol A. Wetmore, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, room 8-73, Rockville, MD 20857, 301-443-4903.

SUPPLEMENTARY INFORMATION: Due to insufficient funds, FDA's Office of Orphan Products Development (OPD) regrets to inform all interested parties that it will not publish an announcement soliciting new grant applications for FY 1991. Competition is being limited to competitive renewal applications and approved unfunded applications received in response to OPD's FY 1990 solicitation. FDA will support all awards for clinical studies covered by this notice under section 301 of the Public Health Service Act (42 U.S.C. 241). Subject to the availability of funds, OPD does anticipate soliciting grant applications early in FY 1992. FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

I. Mechanism of Support

A. Award Instrument

Support will be in the form of a grant. All awards will be subject to all policies and requirements that govern the research grant programs of the Public Health Service, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations promulgated

under Executive Order 12372 do not apply to this program.

All grant awards are subject to applicable requirements for clinical investigations imposed by sections 505, 507, 512, and 515 of the act (21 U.S.C. 355, 357, 360b, and 360e), section 351 of the Public Health Service Act, and regulations promulgated under any of these sections.

B. Eligibility

Eligibility to submit applications will be limited to those applicants currently receiving funds and whose current project period will end before June 30, 1992.

C Length of Support

The length of the study will depend upon the nature of the study. For those studies with an expected duration of more than 1 year, noncompetitive continuation of support beyond the first year will depend on: (1) Performance during the preceding year; and (2) the availability of Federal fiscal year appropriations.

II. Reporting Requirements

Quarterly program monitoring of each grantee will be conducted. This monitoring may be in the form of telephone conversations between the principal investigator and the project officer/grants management specialist. The monitoring may also take the form of site visits with appropriate officials of the grantee organization. The results of these reports will be duly recorded in the official grant file and may be available to the grantee upon request.

An annual Financial Status Report (SF-269) and program progress report is required. An original and two copies of these reports shall be submitted to FDA's Grants Management Officer within 90 days of the budget expiration date of the grant. The project officer will advise the principal investigator of the suggested format of the progress report at the appropriate time. Failure to file the Financial Status Report (SF-269) in a timely fashion will be grounds to withhold continuation support of the grant. A final Program Progress Report, Financial Status Report (SF-269) and Invention Statement must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award.

III. Review Procedure and Criteria

A. Review Method

Applications will be reviewed and evaluated for scientific and technical merit by experts in the subject field of the specific application. The applications will also be subject to a second level of review by a National Advisory Council for concurrence of the recommendations made bv the first-level reviewers.

B. Scientific/Technical Review Criteria

For the first level of review, the scientific and technical merit criteria are:

1. The soundness of the rationale for the proposed study;
2. The appropriateness and quality of the study design;
3. The adequacy of the evidence that the proposed number of eligible subjects can be recruited;
4. The qualifications of the investigator and support staff and resources available to them;
5. The adequacy of the justification for the request for financial support;
6. The adequacy of plans for complying with regulations for protection of human and animal subjects; and
7. The ability of the applicant to complete the proposed study within its budget and within time limitations stated in this request for applications.

IV. Submission Requirements

The original and six copies of the completed Grant Application Form PHS 398, with copies of all reprints critical to the review, should be delivered to Robert L. Robins (address above). Applications must be complete. No addendum material will be accepted. Final Institutional Review Board (IRB) approval will be accepted after the closing date, but will not be forwarded to the reviewers.

The following submission requirements must be met or the application will be returned to the applicant:

1. The title of the proposed study listed on the face page of the application must be the same as the original application.
2. The requirement for certification of IRB approval for studies involving the use of human subjects must show the IRB Approval Date (Item 4a.) and the Assurance of Compliance number (item 4b.) on the face page of the application. (Final IRB approval may be sent after submission but will not be forwarded to the reviewers.)
3. The application must contain one discrete clinical trial to determine safety and efficacy of an orphan product.
4. There must be supporting evidence that the product is available to the applicant in the form needed for the investigation.
5. There must be supporting evidence that a sufficient number of eligible patients are available for the study.
6. The study must be continuing under an active investigational new drug or investigational device exemption.
7. The outside of the mailing package and the top of the application face page should be labeled, "Response to RFA-FDA-OP-91-1."

V. Method of Application

A. Submission Instructions

Applications will be accepted during normal working hours, 8 am. to 4:30 pm., Monday through Friday, on or before the established closing dates.

Applications will be considered received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for funding and will be returned to the applicant.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on the method, applicants should check with their local post office.

B. Format for Application

Applications must be submitted on Grant Application Form PHS 398. The face page of the application must reflect the request for applications number RFA-FDA-OP-91-1. The title of the proposed study must be the same as the original application. Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b) (4)) and FDA's implementing regulations (21 CFR 20.61).

Information-collection requirements requested on Form PHS 398 and the instructions have been submitted by the Public Health Service to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925-0001.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services or by a court, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing re tricted

information shall not be used or disclosed except for evaluation purposes.

Dated: July 5, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-16502 Filed 7-10-91; 8:45 am]

BILL NG CODE 4160-01-M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meetings: Minneapolis District Office, chaired by John Feldman, District Director. The topic to be discussed is food labeling.

DATES: Thursday, July 18, 1991, 3 p.m. to 4 p.m.

ADDRESSES: Milwaukee County—University of Wisconsin Extension Office, 9668 Watertown Plank Rd., Wauwatosa, WI 53226.

DATES: Monday, July 29, 1991, 3:30 p.m. to 5 p.m.

ADDRESSES: University of Wisconsin, Extension Office, Agriculture and Extension Service Center, 1150 Bellevue St., Green Bay, WI 54302.

FOR FURTHER INFORMATION CONTACT: Steve Davis, Public Affairs Specialist, Food and Drug Administration, 517 East Wisconsin Ave., Milwaukee, WI 53202, 414-297-3097.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: July 5, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-16501 Filed 7-10-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511).

1. *Type of Request*: New; *Title of Information collection*: Application to Provide Community Supported Living Arrangements (CSLA) Services; *Form Number*: HCFA-332; *Use*: This form will be used by States seeking selection to participate to provide community supported living arrangements (CSLA) services for the mentally retarded or those with related conditions. The States must complete an application to be selected to participate in this program; *Frequency*: One-time; *Respondents*: State/local governments; *Number of Responses*: 50; *Average Hours per Response*: 80; *Total Estimated Burden Hours*: 4,000.

The HCFA has requested emergency review by the Office of Management and Budget. In keeping with the requirements for emergency reviews, we are attaching a copy of the forms and instructions. Comments may be sent to OMB at the address below for 7 days after the date of this notice.

2. *Type of Request*: New; *Title of Information collection*: Physician Financial Interest in Clinical laboratories Survey; *Form Number*: HCFA-R-8; *Use*: This survey will collect information on physician ownership/financial interest or compensation/remuneration arrangements. Responses will be used to implement prohibitions to referral of Medicare patients and payments for services to laboratories with such relationships with physicians, enacted in Public Law 101-239 as amended by Public Law 101-508; *Frequency*: One-time; *Respondents*: Business/other for profit, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses*: 320,000; *Average Hours per Response*: .5; *Total Estimated Burden Hours*: 160,000.

The HCFA has requested expedited review by the Office of Management and Budget. In keeping with the requirements for expedited reviews, we are attaching a copy of the forms and instructions. Comments may be set to OMB at the address below for 14 days after the date of this notice.

Additional Information of Comments: Call the Reports Clearance Officer on 301-966-2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building room 3208, Washington, DC 20503.

Dated: June 29, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Supporting Statement Application To Provide Community Supported Living Arrangements (CSLA) Services—HCFA-332

Justification

1. *Need and Legal Basis*

Section 4712 of OBRA '90 established an optional Medicaid State plan service, community supported living arrangements (CSLA) services for individuals with mental retardation or related conditions. Under this option, a minimum of two and a maximum of eight States will be selected by the secretary to provide the services included in this option. States must complete an application to be considered for selection. Under the law, the Secretary is required to develop criteria to review applications submitted by States proposing to provide CSLA services.

2. *Information Users*

The completed application is the vehicle by which HCFA will select the States to participate in providing this optional service. HCFA will review the applications to verify that all necessary assurances, protections and supporting documentation are properly comprised. Failure to collect this information would result in an inability to select participating States.

3. *Improved Information Technology*

The application has been designed to include all requirements dictated by law in a preprint format to aid the State in completion of the form.

4/5. *Duplication/Similar Information*

No other entity is collecting this same information. Because section 4712 of OBRA '90 established a new optional service, no other collection vehicle currently exists that could be easily modified for this purpose.

6. *Small Business*

The collection of information does not involve small businesses or entities.

7. *Less Frequent Collection*

This is a one-time submission and will be used for the selection of States to participate in providing CSLA services.

8. *General Collection Guidelines*

These requirements comply with all general information collection guidelines in 5 CFR 1320.6.

9. *Outside Consultations*

In developing this application, HCFA has consulted with agencies representing the mentally retarded and developmentally disabled including: the National Association of State Mental Retardation Program Directors, Inc., the National Association of Councils on Developmental Disabilities Councils, the Association for Retarded Citizens of the United States, the Joseph P. Kennedy Jr. Foundation, and the United Cerebral Palsy Associations, Inc. The application has been discussed in detail with other HCFA offices and the Office of the Assistant Secretary for Planning and Evaluation. There are no unresolved major issues concerning the application.

10. *Confidentiality*

Confidentiality has been assured in accordance with section 1902(a)(7) of the Social Security Act.

11. *Sensitive Questions*

There are no questions of a sensitive nature associated with these data collection.

12. *Cost Estimates*

Federal Costs

The estimated annual cost to the Federal Government is $231. The cost estimate is computed as follows.

Printing	$136
Postage	95
Total	231

State Costs

The estimated annual cost to the State governments is $40,000. The cost estimate is computed as follows.

$10×80 hours×50 respondents=$40,000.

13. *Estimate of Burden*

The reporting burden is 80 hours per application. Only one response per State is required, therefore the total burden is 4,000 hours.

14. *Change in Burden*

There are no changes in burden.

15. *Publication and Tabulation Data*

There are no plans to publish these data collection for statistical use.

Application Package for Section 1930 of the Social Security Act—Community Supported Living Arrangements (CSLA) Services for the Mentally Retarded and Developmentally Disabled (MR/DD)

U.S. Department of Health and Human Services, Health Care Financing Administration, Medicaid Bureau, Office of Medicaid policy, 6325 Security Boulevard, Baltimore, Maryland 21207

May 1991.

Public reporting burden for this collection of information is estimated to average 80 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to HCFA, Office of Financial Management, P.O. Box 26684, Baltimore, Maryland 21207; and the Office of Management and Budget, Paperwork Reduction Project (0938-), Washington, DC 20503.

Table of Contents

Item

Table of Contents

Summary

I. Availability of State Plan Services
- A. General
- B. Regulations
- C. Application Format and Completeness of Application Submitted by States Applying for Federal Funding of CSLA Services Programs
- D. Closing Date and Time for Applications
- E. Number of States Funded and Available Federal Financial Participation (FFP)

II. Criteria for Selection
- A. Adequacy of Program Design and Program Funding
- B. Identifying the Target Population
- C. Services and Providers
- D. Quality Assurance and Minimum Protections

III. Application Format
- A. Overview of Program Design and Organizational Structure of the CSLA Services Program
- B. Administration
- C. Identification of Target Population
- D. Description of CSLA Services
- E. Waivers of Title XIX
- F. Assurances and Supporting Documentation

IV. Conditions of Participation—General
- A. Voluntary Termination of Services
- B. Reporting Activities
- C. Availability of FFP
- D. Financial Penalty

Appendices
- Appendix A—Training Requirements
- Appendix B—Provider Financial Operating Standards
- Appendix C—Supporting Documents
- Appendix D—Maintenance of Effort

Summary

This notice announces that the Health Care Financing Administration is soliciting applications from States to provide community supported living arrangements (CSLA) services as an optional Medicaid State plan service in accordance with section 1930 of the Social Security Act.

Section 1930 of the Social Security Act establishes as an optional Medicaid State plan service, CSLA services for recipients with mental retardation (MR), developmental disabilities (DD), or related conditions. CSLA services represent a new approach in service systems for people with MR/DD. CSLA services programs offer highly personalized services that assist people with disabilities to live in homes they choose for themselves and are based on the concept of consumer choice and non-facility based services for recipients with all levels of disabilities.

CSLA services are available to recipients with mental retardation or a related condition who are otherwise eligible for Medicaid and are living in their own or their family's home, apartment, or other rental unit in which no more than three other recipients receiving these services reside. Recipients need not be at risk of institutionalization to be eligible for these services.

Under this option, a minimum of 2 and a maximum of 8 States, will be selected by the Secretary to provide personal assistance, training and habilitation services (necessary to assist the recipient in achieving increased integration, independence and productivity), 24-hour emergency assistance (as defined by the Secretary), assistive technology, adaptive equipment, support services (necessary to aid a recipient to participate in community activities), and other services as approved by the Secretary. Costs related to room and board and prevocational, vocational and supported employment services are specifically excluded from coverage. In order to implement this provision, States may request waivers of such provisions of title XIX as necessary, including comparability of amount, duration and scope of services and statewideness. Selection criteria, as outlined in this application package, will be used to review the applications of States submitted under section 1930 to provide CSLA services. As a criterion for participation, States must maintain a quality assurance program which includes requirements for provider survey and certification and for the protection of recipients from neglect, physical and sexual abuse and financial exploitation.

Additionally, the selection criteria will focus on the States' ability to target the appropriate population groups, to design and implement high quality programs, utilize appropriate providers, and to demonstrate the adequacy of the quality assurance programs. The applications will be reviewed

and rated by an objective review committee who will provide recommendations to the Administrator.

Federal financial participation (FFP) for the program is limited by statute to $5,000,000 for FY 91; $10,000,000 for FY 92; $20,000,000 for FY 93; $30,000,000 for FY 94 and $35,000,000 for FY 95 for all of the selected States combined. For subsequent fiscal years program funding, if any, will be determined by Congress.

I. Availability of State Plan Services

A. General

This special solicitation announces that HCFA is now accepting applications from State Medicaid agencies for proposals to provide CSLA services as an optional State plan service. Only the single State agency which administers the Medicaid program may submit the application; however, the proposals may be developed in cooperation with other interested groups.

The amendments made by section 1930 of the Social Security Act apply to CSLA services furnished on or after the later of July 1, 1991 or 30 days after publication of interim final regulations regarding the program. Section 1930 also specifies that the applications required to be submitted by States to provide the service must be received and approved prior to the effective date of the program. HCFA has decided to address these requirements by requiring that applications to provide CSLA services be submitted by August 1, 1991, using the format specified in this application package. State proposals must provide all of the required assurances and supporting documentation described herein. The proposals will be reviewed by an objective panel of experts. Particular emphasis will be given to those requirements identified as criteria for selection (described below in section II).

HCFA will select the States which will receive funding to provide CSLA services by October 1, 1991, prior to the effective date of the provision. The selected States will then be provided with a preprinted State plan amendment which they will complete and submit to HCFA to formally incorporate CSLA services into each Medicaid State plan. Authorization to provide the services will begin no earlier than the first day of the calendar quarter in which an approvable State plan amendment is submitted.

B. Regulations

The selected States may begin providing CSLA services no earlier than 30 days after publication by HCFA of interim regulations or the first day of the calendar quarter in which an approvable State plan amendment is submitted to HCFA, if that date is later than the effective date of the program. To the extent that the interim regulations, and ultimately the final regulations, contain requirements not in this application package or in the State plan preprint, States will be required to revise their programs to conform to the published regulations as a condition for continued funding.

C. Application Format and Completeness of Application Submitted by States Applying for Federal Funding of CSLA Services Programs

The application format outlined in sections III and IV of this application package is to be used by States in submitting their requests for FFP to fund the development of CSLA Programs for the MR/DD population in their State.

To be considered in the evaluation process, States must complete the Application Format (section III) and provide all necessary information and documentation as part of the Conditions for Participation (section IV). Section II outlines the selection criteria which will be used in the evaluation process.

Responses to items in the application package, including descriptions, documentation, and assurances are to be indicated directly on the application form. If additional space is necessary to respond to a particular item on the application form, attachment pages are to proceed directly after the item. Attachment pages should be labeled with the item number and each page of the attachment should be numbered sequentially.

DUE TO THE COMPETITIVE NATURE OF THIS PROCESS AND IN ORDER TO EXPEDITE THE SELECTION PROCESS, ALL REQUIRED INFORMATION AS INDICATED IN SECTIONS III AND IV OF THE APPLICATION PACKAGE MUST BE INCLUDED IN THE STATE'S APPLICATION. HCFA WILL NOT ACCEPT ADDITIONAL INFORMATION AFTER THE CLOSING DATE. STATES SUBMITTING INCOMPLETE APPLICATIONS WILL NOT BE CONSIDERED IN THE REVIEW PROCESS. THOSE SUBMITTING INCOMPLETE APPLICATIONS WILL BE NOTIFIED THAT THE APPLICATIONS WERE NOT CONSIDERED.

D. Closing Date and Time for Applications

The closing date for applications is August 1, 1991. Applications postmarked after that date will not be considered. Applications mailed through the U.S. Postal Service or a commercial delivery service will be "on time" if they are received on or before the closing date, or sent on or before the closing date and received in time for submission to the reviewing program officials. Applicants must obtain a legibly dated U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.

APPLICATIONS THAT DO NOT MEET THE ABOVE CRITERIA WILL BE CONSIDERED LATE APPLICATIONS AND WILL NOT BE CONSIDERED FOR FUNDING. THOSE SUBMITTING LATE APPLICATIONS WILL BE NOTIFIED THAT THE APPLICATIONS WERE NOT CONSIDERED AND THE LATE APPLICATION WILL BE RETURNED TO THE APPLICANT.

States interested in submitting applications must advise HCFA of their intent by July 1, 1991. The letter of intent must contain the name, address, and telephone number of the State contact person. States should mail their letters of intent to Linda Tavener at the address listed below.

Seven copies of the completed application should be mailed to: Linda Tavener, HCFA, Medicaid Bureau, Room 456 EHR, 6325 Security Blvd., Baltimore, MD 21207.

Questions concerning applications may be addressed to:

Linda Tavener, 301-966-5658
Terese Klitenic, 301-966-6117

E. Number of States Funded and Available FFP

The Health Care Financing Administration plans to fund up to 8 States to provide CSLA services. If fewer than 8 applications meeting the requirements specified in this document are received, the maximum number of acceptable applications will be funded. If more than 8 applications are determined to be worthy of funding, a ranked list of alternative applications will be maintained in the event that one or more of the original selectees withdraws from participation.

The monies specified by Congress for this service will be divided equally among the States whose applications are selected. If 8 States are selected, each State will have available as federal match one eighth of the allocated funds each year through FY 95.

Assuming that 8 States are funded, the Federal match available for each will be:

FFY 1991—$625,000
FFY 1992—$1,250,000
FFY 1993—$2,500,000
FFY 1994—$3,750,000
FFY 1995—$4,375,000.

No Federal monies beyond these amounts are available with respect to CSLA services during each of the fiscal years indicated. Federal program funding allocated for years prior to the effective date of this provision cannot be expended nor can monies unspent be applied to services provided in subsequent years.

HCFA reserves the right to change the relative level of funding awarded to any or all of the selected States based on the recommendation of the objective review committee. States which believe they are unable to operate under any potential reduction in funding may withdraw from participation.

II. Criteria for Selection

The applications will be reviewed and rated by an objective review committee. Based on the information contained in the Application Format (section III) and the Conditions of Participation (section IV), the criteria outlined below will be used to arrive at an award decision. HCFA reserves the right to select among the most qualified proposals in order to obtain a cross section of States to participate in the delivery of CSLA services. Such a cross section might include: Geographic or regional mix; various urban/rural population mixtures; States with different types of MR/DD system administrative organization; a mix of States with well-established and those with less developed (or non-existent) community service systems in general or supported living programs in particular; and, diverse types and breadths of target populations and client selection criteria.

A. *Adequacy of Program Design and Program Funding (30 points).* In the review process, preference will be given to States with innovatively designed programs focusing on client-centered care and community integration of CSLA services programs. These are programs in which recipients are afforded an informed choice of living arrangements, services, and providers, and in which recipient independence and productivity are fostered. Also, the State must demonstrate that its CSLA services program design can be implemented and designed with available funding by Medicaid and any other alternative funding sources. The State must demonstrate that necessary service delivery and quality care will be maintained through the course of the program from start-up through year five. States should clearly present the overall organizational structure of the program as well as the organizational design for recipient outreach, service delivery and recipient follow-up.

B. *Identifying the Target Population (20 points).* The State must demonstrate that it has a thorough knowledge and capability to identify its target population, to define how and why the target population will be selected and the population's need for services, to project the potential number of recipients it will serve at program start-up and during the course of the program as required by section 1930. If the target population is narrowly defined or targeted toward the less impaired, the State must fully justify this choice. The State must thoroughly describe its outreach efforts and its intake evaluation—these efforts should reflect a complete understanding of the types of recipients that will be included in the CSLA services program and the CSLA service needs of the target population.

C. *Services and Providers (30 points).* The State must demonstrate that it has a thorough knowledge and ability to develop and provide CSLA service programs which are designed for the needs of individual recipients in the target population. Given that Medicaid does not cover the whole range of services needed by this population, the State must demonstrate how its program will be integrated into the existing community resources such as education, employment and recreation. Programs which incorporate measures of recipient satisfaction, assurances of recipient choice in regard to services received and living arrangements, and recipient contact in monitoring the provision of services will be given preference in the selection process.

Additionally, the following elements must be clearly demonstrated:

1. How the State's proposed CSLA services program differs from traditional models of community based care (community ICF/MR, congregate living arrangements) for the target population;

2. The adequacy and appropriateness of facilities and other resources necessary to develop the CSLA program, including description of the adequacy of any collaborative arrangements and the extent to which the proposed program builds upon existing support and service delivery systems (both formal and informal) and the level of integration of the CSLA services program into the community;

3. Provider descriptions and provider responsibilities should be clearly linked to services they will provide;

4. The Individual Support Plan (ISP) should reflect provider responsibilities and recipient service needs and preferences. (The State should demonstrate the measures that will be taken to include recipient's preferences and decisions in the ISP).

5. Provider adequacy should be demonstrated; including adequacy of provider education, training, and realistic capacity to provide CSLA services. Also, the State must show that monitoring of provider services will occur and that all provider assurances, standards, and certifications are in place at the time of program start up.

6. Provider payment arrangements are in place to assure billing through the Medicaid Management Information System;

7. Provider payment methodologies should be efficient; and

8. Recipient monitoring and evaluation plans should be reflected as a component of the CSLA services program (including evidence that the program is adequately structured to meet recipient needs as they progress and change the program over time).

D. *Quality Assurance and Minimum Protections (20 points).* Applicants must demonstrate their ability to implement and run the Program within this schedule in an efficient manner, while assuring that quality care is maintained. Also the level of recipient participation in the development of all of the processes described below should be clearly specified. States which have integrated the recipient and recipient's preferences into these processes will be given priority.

The State should clearly demonstrate that procedures are in place to survey and certify providers, monitor program services, and maintain quality assurance standards. Recipient minimum protections standards should be clearly specified.

The Secretary will not approve a quality assurance plan under this subpart and allow a State to continue to receive FFP unless the State provides for public hearings on the plan prior to adoption and implementation of its plan under this section. Each State must therefore submit with this application evidence that public hearings have been held. Such evidence should consist of summaries or transcripts of the hearings. In addition, the State should provide evidence that the public comments have been considered and addressed in developing the final application. States must adequately document and describe the hearing process in order to be considered eligible to apply for the CSLA services program.

III. Application Format

A. Overview of Program Design and Organizational Structure of the CSLA Services Program

1. Overview of Program Design

Using no more than 4 single spaced pages the State should highlight key features of its application, interrelate materials in the application to policies and practices that the State may already have in place that are relevant to the delivery of CSLA services, and emphasize other points regarding its application that it believes would assist HCFA in evaluating the application. States may include information on the innovativeness of the program design and how the proposed program differs from traditional models of community care in the State for the target population.

2. Overview of Organizational Structure of the CSLA Program

a. States should provide a diagram of the organizational structure of the proposed program and its relationship to other agencies and programs involved in the implementation and delivery of CSLA services.

b. States should provide a flowchart of the recipient outreach, intake, services delivery, and recipient follow-up as proposed in the State's CSLA services program.

B. Administration

1. The State contact person for this application is _____ who can be reached by telephone at (_____) _____.

2. Line of authority for CSLA program operation:

Check one:

_____The CSLA Program will be operated directly by the Medical Assistance Unit of the Medicaid agency.

_____ The CSLA Program will be operated and overseen by _____, a separate agency of the State. A copy of the interagency agreement setting forth the authority and arrangements for this policy is on file in the Medicaid Agency.

_____ The CSLA Program will be operated and overseen by _____, a separate division within the Medicaid agency. A copy of the interagency agreement setting forth the authority and arrangements for this policy is on file in the Medical Assistance Unit at the Medicaid Assistance Unit at the Medicaid agency.

_____ Other (describe)

The CSLA Program will formally interact with the following programs funded under other State or Federal authorities (specify):

3. This document, together with appendices A and B, and all State attachments constitutes the State of _____'s application for the development of a CSLA Program as defined under section 1930 of the Social Security Act. The State assures that all material referenced in this application (including standards, licensure and certification requirements) will be kept on file at the Medicaid agency.

As director of the Single State Agency, I attest to the accuracy of the information provided in this application and the State's assurance to comply with the provisions of this application and subsequent Federal law and regulations related to these provisions as a condition of Medicaid payment.

**Signature: _____

Print Name: _____

Title: _____

Date: _____

**The Director of the Single State Agency

C. Identification of Target Population

States must specify the target population selected to participate in the CSLA services program, from start-up to year 5 of the program. Services may be made available to a developmentally disabled or mentally retarded recipient who is residing with the recipient's family or legal guardian in such recipient's own home or an integrated living environment in which no more that three other recipients of these services are residing.

In the definition and description of this population States should provide the following information:

1. Description of the target population (size, type of disabling condition, nature of disability, age, Medicaid eligibility group);

2. Description of why the population was selected;

3. Outreach efforts which are used to inform persons of the availability of the program;

4. The intake evaluation used to select persons for participation in the CSLA Program should be described, including information on who will perform the intake evaluation (training, etc. identified under description of providers). The intake evaluation documents, procedures and forms should be attached as part of the supporting documentation for this section of the application. Based on the intake evaluation, the ISP will be developed for each recipient.

5. Specify the types of community living arrangements in which a recipient must reside in order to receive CSLA services (e.g., with his or her family only, in an independent living arrangement; or both).

D. Description of CSLA Services

States must describe the CSLA services which will be provided to the target population as part of the CSLA services program. States shall have the discretion in defining such services so long as the scope and nature of the services proposed comport with the aims of section 1930(a) of the Act. Where appropriate, a State may employ definitions from its Home and Community Based Services Waiver (HCBSW) program. Services may include the following:

- Personal Assistance,
- Training and habilitation services (necessary to assist the recipient in achieving increased integration, independence and productivity),
- 24-hour emergency assistance is defined as the provision of ready access to assistance from a provider furnishing CSLA services or another entity in the event of a health care or other personal emergency. Such assistance can be furnished as an integral component of other services which are provided to the recipient (e.g., personal assistance) or via other means (e.g., through the use of Personal Emergency Response systems). As appropriate, the ISP shall describe how such assistance is to be furnished and the person(s) or entities which shall be responsible for the provision of such assistance.
- Assistive technology,
- Adaptive equipment, and
- Other services (as approved by the Secretary, except those services described in subsection (g) of section 1930 of the Social Security Act, e.g., room and board, prevocational, vocational and supported employment services).

For each service provided as part of the State's CSLA services program, the State should provide the following information:

1. Description of service (include a description of each provider specified on section F.1.b.).

2. Limitations the State plans to impose on the amount, duration, and scope of covered CSLA services.

3. The State should also indicate if it intends to place an overall dollar cap on the value of CSLA services that may be offered to any given program participant and a description of the action taken when such a limit is reached.

4. A description of the relationship between the coverage of CSLA services under the provisions of section 1930 and other programs operated by the State that serve the MR/DD population including those that furnish similar services to the target population;

5. A description of the integration and relationship of informal service delivery networks to the CSLA service program.

E. Waivers of Title XIX

1. If waivers of the requirements of title XIX are requested, specify the section of the statute to be waived. For each statutory waiver requested, provide an explanation of the need for the waiver and the alternative policies or procedures that will be in place to assure protection of recipient rights and programmatic accountability. Such waivers include (circle all that apply):

a. Section 1902(a)(1) of the Social Security Act (statewideness).

b. Section 1902(a)(10)(B) of the Social Security Act (comparability of services).

c. Section 1902(a)(23) (freedom of choice of providers).

d. Section 1902(a)(32) (direct payment to providers).

e. Other (specify).

F. Assurances and Supporting Documentation

Each State must provide the following specific assurances and supporting documentation. Failure to provide this information will affect the scoring of the application.

1. Quality Assurances

a. The State of _____ assures that it will survey and certify compliance or noncompliance of providers of services (surveys to be unannounced and at least one a year).

The following is a description of State procedures for complying with this assurance:

b. The State of _____ assures that it will adopt standards for survey and certification that include:

(1) Minimum qualification and training requirements for provider staff.

(2) Financial operating standards.

(3) A consumer grievance process.

The following documentation is provided in support of this assurance:

(1) A description of the minimum qualifications and training requirements for staff employed by each type of service provider (complete the chart contained in appendix A);

(2) A copy of the applicable financial operating standards for each provider (includes as appendix B);

(3) A description of the consumer grievance process, including State procedures for investigating and resolving grievances (describe below) in a timely manner.

c. The State of _____ assures that it will provide a system that allows for monitoring boards consisting of providers, family members, consumers and neighbors.

The following is a description of this system, including procedures for recruitment of board members; percentage of representation of providers, family members, consumers and neighbors; frequency of board meetings and specific authorities responsibilities of board members. Funding of staff positions in support of the board should also be described. If positions are voluntary this should also be indicated.

d. The State of _____ assures that it will establish reporting procedures to make available information on the implementation of this provision to the public.

The following is a description of those reporting procedures.

e. The State of _____ assures that it will provide ongoing monitoring of the health and well-being of each recipient of CSLA services.

The following is a description of the State's procedures for implementing this assurance including the qualifications of the individual(s) responsible for the monitoring; the frequency of monitoring encounters; and the type of monitoring encounters (home visits; telephone contacts; interviews with providers, family and neighbors (e.g., case-management may be used but is not required as a method of monitoring the health and well-being of the recipient). Documentation of the monitoring and any intervention is required as a result of the monitoring process.

f. The State of _____ assures that it will provide the CSLA services in accordance with an ISP. An ISP must, at a minimum, contain a description of:

(1) The individual needs and preferences of the recipient;

(2) The specific services which will be provided to meet those needs;

(3) The provider of each of the services; and

(4) The amount and frequency of each service.

The following is a description of the manner in which the ISP will be developed and maintained, including: A description of the individual(s) responsible for developing the plan; the frequency of review and revision of the plan; involvement of the recipient in choosing services, providers, place of residence, with whom the recipient lives, kinds of other support received and the individual(s) who provide(s) these supports. Recipients, assessors, and providers shall be involved in the development and implemen ation of the plan. The recourse of a recipient or legal guardian who is dissatisfied with the ISP should be described. Also, the State must show how it intends to balance between recipient choice and the State's

responsibility to protect the health and welfare of the recipients.

If applicable, the ISP form is attached.

g. The State of _____ assures that, prior to State requests for FFP under this subpart, this application and the State plan amendment implementing CSLA services as a State plan service will be reviewed by the State Planning Council established under section 124 of the Developmental Disabilities Assessment and Bill of Rights Act, and the Protection and Advocacy system established under section 142 of such Act.

The application should reflect consideration of the comments from these entities.

In support of this assurance the State must provide evidence of review of this application by both of those entities. Such evidence may consist of minutes of meetings, letters of support/recommendation or other documents which these entities may wish to submit. These documents should be included as appendix C.

2. Maintenance of Effort

The State of _____ assures that it will maintain current levels of public spending for the types of services authorized by this subpart, whether provided under a Medicaid wavier or demonstration program or under a solely State-funded program, in order to be eligible to continue to receive FFP for the provision of CSLA services under this subpart.

In support of this assurance, the State must provide a description of all of the publicly funded programs currently providing CSLA services in the State, regardless of whether or not those programs are receiving Federal funding. For each program, the State must specify the number of recipients served and the total cost of the services during the latest Federal fiscal year. This information should be provided using the chart contained in appendix D.

3. Minimum Protections Assurances

a. The State of _____ assures that recipients receiving CSLA services are protected from neglect, physical and sexual abuse and financial exploitation.

b. The State of _____ assures that a provider of CSLA services may not employ, contract with, or accept volunteer services from individuals who have been convicted of child or recipient abuse, neglect or mistreatment or of a felony involving physical harm to a recipient and that it will take all reasonable steps to determine whether applicants for employment by the provider have histories indicating involvement in child or recipient abuse, neglect, or mistreatment or a criminal record involving physical harm to a recipient.

c. The State of _____ assures that individuals or entities delivering CSLA services will not be unjustly enriched as a result of abusive financial arrangements (such as owner lease-backs).

d. The State of _____ assures that individuals or entities delivering CSLA services to recipients, or relatives of such individuals, are prohibited from being named beneficiaries of life insurance policies purchased by (or on behalf of) such recipients.

4. Minimum Protections—Supporting Documentation

The State Medicaid agency must assure provider compliance with the Minimum Protection assurances of section F. 3. of this application through methods other than reliance on State licensure processes or the State quality assurance programs described in section F. 1. of this application. The State Medicaid agency must furnish HCFA with the following information with regard to the Minimum Protection assurances.

a. A description of the agency, agencies, groups, or individuals responsible for assuring provider compliance with the Minimum Protection assurances.

b. A description of the qualifications of the individuals responsible for approving and monitoring providers of services.

c. A description of the specific procedures and methods used to monitor providers, including the frequency of monitoring reviews.

d. A description of the standards and criteria used to determine whether providers are complying with the Minimum Protection assurances.

e. A description of procedures for dealing with providers found to be out of compliance with the assurances, including procedures for obtaining compliance and corrective actions by the providers.

f. A description of procedures for terminating providers for continued non-compliance with the assurances.

These assurances are described and documented below:

5. Notification of Noncompliance

The State of _____ assures that it will notify the Secretary, in writing, of any cases of provider noncompliance with the Minimum Protection assurances described in item F. 3. for which corrective action or a satisfactory corrective action plan is not implemented within 30 days of the provider being formally notified of its noncompliance.

The Secretary will periodically review State quality assurance activities relative to providers of CSLA services to assure satisfaction of the Minimum Protection assurances and will recover FFP for services provided by providers found to be out of compliance with those standards and without an acceptable corrective action or a satisfactory action plan is not implemented 30 days after formal notification of noncompliance.

The State of _____ agrees to notify the Secretary of any provider which has not corrected its deficiency(ies) under F. 3. within the maximum time allowed by that State on the provider's corrective action plan. The maximum time allowed by the State on any provider's corrective action plan will not exceed 90 days.

IV. Conditions of Participation—General

A. Voluntary Termination of Services

A State may choose to delete CSLA services from its State plan by giving proper notification to recipients in accordance with 42 CFR part 431 subpart E and amending its State plan accordingly. In such a case, the Secretary may choose to offer another State the opportunity to provide CSLA services based on the rankings of the initial applications submitted.

B. Reporting Activities

1. States approved to provide CSLA services will be required to provide the information described in appendix D (Maintenance of Effort) on a yearly basis as a condition of continued funding.

2. States approved to provide CSLA services will be required to report on the number and characteristics of recipients services, types of services provided, and the costs incurred in providing the services. This reporting of information must be consistent with a data collection plan designated by HCFA.

3. These States agree to make all records relevant to this program available to DHHS and the comptroller general and cooperate with any potential DHHS evaluation of the CSLA services program.

D. Availability of FFP

1. As a condition for receiving FFP to provide CSLA services, the State must agree to limit its claims for FFP with respect to services provided during each Federal fiscal year to the amount specified by HCFA as its equal share of the funds made available by Congress.

This assurance is provided below:

As a condition for receiving FFP to provide CSLA services, the State of _____ agrees to limit its claims for FFP with respect to services provided during each Federal fiscal year to the amount specified by HCFA as its equal share of the funds made available by Congress for the CSLA services program.

2. The Secretary will not approve a quality assurance plan under this subpart and allow a State to continue to receive FFP unless the State provides for public hearings on the plan prior to adoption and implementation of its plan under this section.

Each State must therefore submit with this application evidence that public hearings have been held. Such evidence should consist of summaries or transcripts of the hearings.

In addition, the State should provide evidence that the public comments have been considered and addressed in developing the final application.

The documentation of the hearings and evidence that the public comments were considered and addressed in this application are provided below:

3. FFP will not be available for the cost of room and board or prevocational, vocational and supported employment services.

The State of _____ assures that it will not claim FFP for the cost of room and board or prevocational, vocational and supported employment services.

4. Any funds expended under this program for medical assistance will be in addition to funds expended for any existing services covered under the State plan, including any waiver services for which a recipient receiving services under this program is already eligible.

The State of _____ assure hat any funds expended under this program for medical assistance will be in addition to funds expended for any existing services covered under the State plan, including any

waiver services for which a recipient receiving services under this program is already eligible.

5. Describe how the program for section 1930 CSLA services you propose comports with Federal funding made available under this provision. Also describe how it interrelates with other funding streams.

6. The State of _____ assures that provider payment arrangements are in place to assure billing through the Medicaid Management Information System. Describe the steps the State has undertaken to assure these billing procedures are in place.

C. Financial Penalty

If the Secretary finds that a provider has not met an applicable requirement as described in section F. 3. (Minimum Protections), the Secretary will impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance.

APPENDICES

Appendix A—Provider Qualifications

Licensure and Certification Chart

The following chart illustrates the requirements for the provision of each service

Service	Provider Type	License	Certification	Training */Other Standard
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

* If the description of the training requirements is lengthy, use the following page.

Appendix A—Provider Qualifications (Training Requirements), Continued

Appendix B—Provider Financial Operating Standards

Appendix C—Supporting Documents

Appendix D—Maintenance of Effort

Name of program	Fiscal year & expenditures	No. of recipients
1		
2		
3		
4		
5		
6		
7		

HEALTH CARE FINANCING ADMINISTRATION

Response Required No Later Than October 1, 1991

Notice to Medicare Providers

Authority

The collection of the information requested on the attached survey is mandated by section 1877 of the Social Security Act. This section of the Medicare law was enacted by section 6204 of the Omnibus Budget Reconciliation Act (OBRA) of 1989, as amended by section 4207(e) of OBRA 1990. Section 1877(f) states, in part, that all entities that furnish Medicare covered clinical laboratory services in the United States must provide the Secretary of the Department of Health and Human Services with information concerning their ownership arrangements in the form, manner, and at such times as specified by the Secretary.

Timeliness and Penalty

Section 1877(f) requires that the information requested on the survey document be submitted by October 1, 1991. The law further states that any person who is required, but fails, to meet the reporting requirement is subject to a civil money penalty of not more than $10,000 for each day for which reporting is required to have been made.

You may wish to return this survey by certified mail with return receipt requested so that you will have documentation of meeting the statutory deadline. A preaddressed envelope is enclosed for your convenience. Please retain a copy of the completed survey for your files. A copy of the survey must be made available upon request to your carrier, the Health Care Financing Administration, or the Office of the Inspector General of the Department of Health and Human Service.

Who Must Complete the Survey

You were sent this survey document because billing records show that during 1990 you (or a patient of yours) claimed payment from Medicare for clinical laboratory services you furnished. If you believe this information is incorrect, or you no longer furnish clinical laboratory services, please call the carrier contact person shown below.

(CONTACT NAME IN BOLD TYPE)
(CONTACT TELEPHONE NUMBER)

If you are a physician in solo practice or part of a group of physicians who use an in-office laboratory, your survey answers should reflect only financial arrangements with that in-office laboratory. Any financial arrangements you or other members of your group may have with independent clinical laboratories, or hospital or other institutional-based clinical laboratories will be reported by those laboratories.

The survey form is designed to include explanations and instructions for completion within the body of the form. It should be carefully read and completed in the order in which the material is presented.

If you do not understand a question on the survey, what is required, or whether a particular exception applies, contact your carrier before completing and returning the survey.

Effect of Financial Arrangements on the Claims Process

The law prohibits physician referrals for covered services to clinical laboratories in which the referring physicians, or their immediate family members, have a financial relationship. Should such referrals be made, the clinical laboratory may not present, or cause to be presented a claim or bill to any individual, third party payer, or other entity for clinical laboratory services. Claims for payment for services provided in violation of these requirements will be denied, and civil money penalties may be imposed. The law specifies a penalty of not more than $15,000 for each service on such requests for payment. In addition, anyone entering into an arrangement or scheme to circumvent the prohibitions on referrals and billings by physicians and clinical laboratories with financial relationships will be subject to a civil money penalty of not more than $100,000 for each scheme.

The attached survey when completed will help identify situations covered by the prohibitions. However, there are exceptions that may apply to your particular situation, which will permit payment. You will receive revised billing instructions from your carrier before January 1, 1992, the effective date of these changes.

Revisions

The survey form is designed so it also can be used to update Medicare records on financial relationships between clinical laboratories and physicians. You must supply changes in this data no more than 180 days after the change occurs. However, even though 180 days is allowed for reporting purposes, there is no grace period on the underlying prohibition against physician referrals. Consequently, referrals and billings are prohibited from the effective date of the disqualifying arrangement. Eventually this financial relationship information will be obtained as part of the certification process. Until you are advised otherwise, use this survey form. Additional copies are available from your Medicare carrier.

BILLING CODE 4120-03-M

HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

FORM APPROVED
OMB# 0938-

CLINICAL LABORATORY FINANCIAL RELATIONSHIPS WITH PHYSICIANS CARRIER SURVEY

OFFICIAL USE ONLY

(Please type or print clearly using black ink)

This survey covers the information needed to identify the financial relationships between entities furnishing clinical laboratory services and physicians (or family members) that may affect processing and payment of claims for clinical laboratory services, under §1877 of the Social Security Act, effective January 1, 1992. Financial relationships are divided into two categories: Section B, Ownership/Investment Interest and Section C, Compensation/Remuneration Arrangements.

SECTION A. IDENTIFYING INFORMATION

1) This is an: a) Initial ☐ b) Revised filing ☐ *(check one)*

2) Enter the name and address of the entity that furnishes clinical laboratory services.

Name

Street Address

Mailing Address (if different)

City	County	State	Zip Code

3) Enter the name of the designated person to contact for any questions regarding information supplied on this survey.

Name

Telephone

4) Enter the laboratory's Medicare certification number, or enter not applicable (na) if this is a physician office laboratory that has not as yet been issued a certification number.

5) Enter your laboratory's provider identification number (PIN). This is the number used by the Medicare carrier for processing and paying claims.

6) Is the clinical laboratory a: (Please check one)

Sole Proprietorship ☐
Partnership ☐
Corporation ☐
Other *(specify)*

SECTION B. OWNERSHIP/INVESTMENT INTEREST OF PHYSICIANS AND THEIR IMMEDIATE FAMILY MEMBERS

The physician names and UPINs at the end of Section B will be used to identify claims that may be subject to the prohibitions of §1877 of the Social Security Act. Exceptions to the reporting requirements for certain ownership/investment interests are described in items 1 through 3 of this Section.

Definitions:

Ownership/Investment Interest may be through equity, debt or other means.

Physician includes all MDs, DOs, doctors of dental surgery or dental medicine, doctors of podiatric medicine, doctors of optometry, and chiropractors.

Unique Physician Identification Number (UPIN). You may obtain this number from the physician, or by reference to the UPIN directory, or from your Medicare carrier (use the name and telephone number shown in the covering notice).

Immediate Family Members of a physician are the physician's spouse; natural and adoptive parents; natural and adoptive children; natural and adoptive siblings, stepparents, stepchildren, stepsiblings, grandparents, spouses of grandparents, grandchildren, spouses of grandchildren, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law and sister -in-law. Do **NOT** identify these family members by name or category of relationship. Report their ownership/investment interest (or compensation/remuneration arrangement listed in Section C) under the physician's name and UPIN.

1) If no physicians or their family members have an ownership/investment interest in this clinical laboratory **check here** and go to Section C. ..... ☐

2) If this is a clinical laboratory located in a rural area (i.e., any area outside an urban area that is designated as a Metropolitan Statistical Area or a New England County Metropolitan Area), **check here** and go to Section C. ..... ☐

3) Is this clinical laboratory a corporation whose stock is listed on the NYSE, AMEX, or NASDAQ, and whose total assets exceed $100,000,000? *If no*, go to Section B4.

Yes ☐ **No** ☐

If yes, and the physician's (or their immediate family members) ownership/investment interest is represented by shares, bonds, diventures, notes, or other debt instruments of the corp that were purchased under terms generally available to the public, **check here** and do not list these pyhsicians in B6. ..... ☐

4) Complete the following information for each physician who has ownership/investment interest in this clinical laboratory (or who has an immediate family member who has an ownership/investment interest in the laboratory). Use the addendum page as needed. The effective date for the initial report is for ownership/investment interest as of October 1, 1991. For revised reports, check either the ADD of DEL column and show the effective date of the change.

PHYSICIAN NAME			UPIN	PHYSICIAN INTEREST		FAMILY INTEREST		ADD	DEL	EFFECTIVE DATE
LAST	FIRST	MI		YES	NO	YES	NO			

SECTION C: COMPENSATION/REMUNERATION ARRANGEMENTS WITH PHYSICIANS AND THEIR IMMEDIATE FAMILY MEMBER

The physician names and UPINs that you list at the end of Section C will be used to identify claims that may be subject to the prohibitions in §1877 of the Social Security Act. Exceptions to the reporting requirements for certain compensation arrangements are described in items 1 through 6 of this Section.

Definitions:

Compensation/Remuneration is any payment made directly or indirectly, overtly or covertly, in cash or in kind.

Physicians listed in Section B4 must be listed again, if applicable. Definitions and terms used in Section B also apply to Section C. Each exception shown below in items 1 through 6 should be applied separately. A physician who meets one of the exceptions (or who has an immediate family member who meets an exception) may still have to be listed based on another compensation/remuneration arrangement that does not meet an exception.

In order for any of the exceptions to apply, the amount of the remuneration may not be determined either directly or indirectly by the volume or value of referrals to the laboratory by the physician with the compensation/remuneration arrangement, and the remuneration must be commercially reasonable even if no referrals were made by the physician to the laboratory.

1) If no physicians or immediate family members of physicians have compensation/remuneration arrangements with the clinical laboratory, **check here** and go to Section D.. ..... ☐

2) If the remuneration is for identifiable services as a medical director or as a member of a medical advisory board pursuant to requirements of the Social Security Act, **check here** and do not report the physician in C7... ..... ☐

3) If the remuneration is for specific physician services furnished to a nonprofit blood center, **check here** and do not list the physician in C7.... ☐

4) If the remuneration is for identifiable physician services furnished to a person receiving hospice care, if such services are covered by Medicare as hospice care, **check here** and do not list the physician in C7.... ☐

5) If this clinical laboratory, or the entity of which it is a part, is a group practice and the compensation arrangement is for salary payments to members of that group practice, **check here** and do not list the physician in C7.... ☐

6) The rental of office space is not considered a compensation arrangement:

- There is a written agreement, signed by the parties for the rental or lease of the space, which identifies the space covered and dedicated to the use of the lessee, is for a term of at least one year, provides for periodic payments consistent with fair market value, and such payments do not vary based on the volume or value of any referral of business between the two parties, and the agreement would be considered reasonable even if no referrals were made between the parties.
- In addition, if a physician (or immediate family member) is in a position to make or influence referrals to the laboratory, and the physician (or immediate family member) has an ownership or investment interest in the space being rented, then the rented space must also be in the same building in which the physician practices.

If you have physicians meeting this exception, **check here** and do not list these physicians in Section C7.....☐

7) Complete the following information for each physician who has a compensation/remuneration arrangement with this clinical laboratory, and for each physician who has an immediate family member who has such a compensation arrangement. Use the addendum page as needed. The effective date for the initial report is for compensation/remuneration arrangements as of October 1, 1991. For revised reports, check either the ADD or DEL column and show the effective date of the change.

PHYSICIAN NAME			UPIN	PHYSICIAN COMPENSATION		FAMILY COMPENSATION		ADD	DEL	EFFECTIVE DATE
LAST	FIRST	MI		YES	NO	YES	NO			

SECTION D: NAME AND TITLE OF PERSON RESPONSIBLE FOR INFORMATION ON SURVEY.

I CERTIFY THAT I HAVE EXAMINED THE ABOVE INFORMATION AND THAT IT IS TRUE, ACCURATE AND COMPLETE. I UNDERSTAND THAT ANY MISREPRESENTATION, FALSIFICATION, OMISSION OR CONCEALMENT OF MATERIAL INFORMATION REQUIRED FOR PAYMENT OF FEDERAL FUNDS MAY SUBJECT ME TO CIVIL OR CRIMINAL LIABILITY UNDER APPLICABLE FEDERAL LAWS.

Signature	Date
Printed Name	**Title**

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing hte burden, to the Office of Financial Management, HCFA, P.O. Box 26684, Baltimore, MD 21207; and to the Office of Management and Budget, Paperwork Reduction Project (0938-*), Washington, D.C. 20503.

ADDENDUM PAGE

SECTION B: OWNERSHIP/INVESTMENT INTEREST OF PHYSICIANS AND THEIR IMMEDIATE FAMILY MEMBERS

PHYSICIAN NAME			UPIN	PHYSICIAN INTEREST		FAMILY INTEREST		ADD	DEL	EFFECTIVE DATE
LAST	FIRST	MI		YES	NO	YES	NO			

SECTION C: COMPENSATION/REMUNERATION ARRANGEMENTS WITH PHYSICIANS AND THEIR IMMEDIATE FAMILY MEMBERS

PHYSICIAN NAME			UPIN	PHYSICIAN COMPENSATION		FAMILY COMPENSTATION		ADD	DEL	EFFECTIVE DATE
LAST	FIRST	MI		YES	NO	YES	NO			

BILLING CODE 4120-03-C

HEALTH CARE FINANCING ADMINISTRATION

Response Required No Later Than October 1, 1991

Notice to Medicare Providers

Authority

The collection of the information requested on the attached survey is mandated by section 1877 of the Social Security Act. This section of the Medicare law was enacted by section 6204 of the Omnibus Budget Reconciliation Act (OBRA) of 1989, as amended by section 4207(e) of OBRA 1990. Section 1877(f) states, in part, that all entities that furnish Medicare covered clinical laboratory services in the United States must provide the Secretary of the Department of Health and Human Services with information concerning their ownership arrangements in the form, manner, and at such times as specified by the Secretary.

Timeliness and Penalty

Section 1877(f) requires that the information requested on the survey document be submitted by October 1, 1991. The law further states that any person who is required, but fails, to meet the reporting requirement is subject to a civil money penalty of not more than $10,000 for each day for which reporting is required to have been made.

You may wish to return this survey by certified mail with return receipt requested so that you will have documentation of meeting the statutory deadline. A preaddressed envelope is enclosed for your convenience. Please retain a copy of the completed survey for your files. This copy must be made available upon request to your fiscal intermediary, the Health Care Financing Administration, or the Office of the Inspector General of the Department of Health and Human Services.

Who Must Complete the Survey

You were sent this survey document because billing records show that during 1990 you claimed payment from Medicare for clinical laboratory services you furnished. If you believe this information is incorrect, or you no longer furnish clinical laboratory services, please call the fiscal intermediary contact person shown below.

(NAME OF CONTACT PERSON IN BOLD TYPE)
(TELEPHONE NUMBER)

The survey form is designed to include explanations and instructions for completion within the body of the form. It should be carefully read and completed in the order in which the material is presented.

If you do not understand a question on the survey, what is required, or whether a particular exception applies, contact your fiscal intermediary before completing and returning the survey.

Effect of Financial Arrangements on the Claims Process

The law prohibits physician referrals for covered services to clinical laboratories in which the referring physicians, or their immediate family members, have a financial relationship. Should such referrals be made, the clinical laboratory may not present, or cause to be presented a claim or bill to any individual, third party payer, or other entity for clinical laboratory services. Claims for payment for services provided in violation of these requirements will be denied, and civil money penalties may be imposed. The law specifies a penalty of not more than $15,000 for each service on such requests for payment. In addition, anyone entering into an arrangement or scheme to circumvent the prohibitions on referrals and billings by physicians and clinical laboratories with financial relationships will be subject to a civil money penalty of not more than $100,000 for each scheme.

The attached survey when completed will help identify situations covered by the prohibitions. However, there are exceptions that may apply to your particular situation, which will permit payment. You will receive revised billing instructions from your fiscal intermediary before January 1, 1992, the effective date of these changes.

Revisions

The survey form is designed so it also can be used to update Medicare records on physician financial arrangements with clinical laboratories. You must supply changes in this data no more than 180 days after the change occurs. However, even though 180 days is allowed for reporting purposes there is no grace period on the underlying prohibition againt physician referrals. Consequently, referrals and billings are prohibited from the effective date of the disqualifying arrangement. Eventually this financial relationship information will be obtained as part of the certification process. Until you are advised otherwise, use this survey form. Additional copies are available from your Medicare fiscal intermediary.

BILLING CODE 4120-03-M

HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

FORM APPROVED
OMB# 0938-

HOSPITAL AND FACILITY BASED CLINICAL LABORATORIES WITH FINANCIAL RELATIONSHIPS WITH PHYSICIANS FISCAL INTERMEDIARY SURVEY

OFFICIAL USE ONLY

(Please type or print clearly using black ink)

This survey covers the information needed to identify the financial relationships between entities furnishing clinical laboratory services and physicians (or family members) that may affect processing and payment of claims for clinical laboratory services, under §1877 of the Social Security Act, effective January 1, 1992. Financial relationships are divided into two categories: Section B, Ownership/Investment Interest and Section C, Compensation/Remuneration Arrangements.

SECTION A. IDENTIFYING INFORMATION

1) This is an: a) Initial ☐ b) Revised filing ☐ *(check one)*

2) Enter the name and address of the entity that furnishes clinical laboratory services.

Name

Street Address

Mailing Address (if different)

City	County	State	Zip Code

3) Enter the name of the designated person to contact for any questions regarding information supplied on this survey.

Name

Telephone

4) Enter the laboratory's Medicare certification number, or enter not applicable (na) if this is a physician office laboratory that has not as yet been issued a certification number.

5) Enter your laboratory's provider identification number (PIN). This is the number used by the Medicare carrier for processing and paying claims.

6) Is the clinical laboratory a: (Please check one)

Sole Proprietorship ☐
Partnership ☐
Corporation ☐
Other *(specify)*

SECTION B. OWNERSHIP/INVESTMENT INTEREST OF PHYSICIANS AND THEIR IMMEDIATE FAMILY MEMBERS

The physician names and UPINs at the end of Section B will be used to identify claims that may be subject to the prohibitions of §1877 of the Social Security Act. Exceptions to the reporting requirements for certain ownership/investment interests are described in items 1 through 3 of this Section.

Definitions:

Ownership/Investment Interest may be through equity, debt or other means.

Physician includes all MDs, DOs, doctors of dental surgery or dental medicine, doctors of podiatric medicine, doctors of optometry, and chiropractors.

Unique Physician Identification Number (UPIN). You may obtain this number from the physician, or by reference to the UPIN directory, or from your Medicare carrier (use the name and telephone number shown in the covering notice).

Immediate Family Members of a physician are the physician's spouse; natural and adoptive parents; natural and adoptive children; natural and adoptive siblings, stepparents, stepchildren, stepsiblings, grandparents, spouses of grandparents, grandchildren, spouses of grandchildren, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law and sister -in-law. Do **NOT** identify these family members by name or category of relationship. Report their ownership/investment interest (or compensation/remuneration arrangement listed in Section C) under the physician's name and UPIN.

1) If no physicians or their family members have ownership/investment interest in this clinical laboratory **check here** and go to Section C. ☐

2) If this is a hospital in Puerto Rico, **check here** and go to Section C. ☐

3) If this is a clinical laboratory located in a rural area (i.e., any area outside an urban area that is designated as a Metropolitan Statistical Area or a New England County Metropolitan Area), **check here** and go to Section C. ☐

4) If this is a hospital-operated clinical laboratory, do not list physicians whose only ownership/investment interest (or that of the physician's immediate family member) is in the hospital itself, rather than specifically in the clinical laboratory, and the physician is authorized to perform services at the hospital, **check here** and do not list the physician in B6. ☐

5) Is this clinical laboratory a corporation whose stock is listed on the NYSE, AMEX, or NASDAQ, and whose total assets exceed $100,000,000? *If no*, go to Section B6.

Yes **No**

If yes, and the physicians (or their immediate family members ownership/investment interest is represented by shares,bonds, debentures, notes, or other debt available to the public, check here and do not list these physicians in B6. ☐

6) Complete the following information for each physician who has ownership/investment interest in this clinical laboratory or who has a family member who has an ownership investment interest in the laboratory. Use the addendum page as needed. The effective date for the initial report is for ownership/investment as of October 1, 1991. For revised reports, check either the ADD or DEL column and show the effective date of the change.

PHYSICIAN NAME			UPIN	PHYSICIAN INTEREST		FAMILY INTEREST		ADD	DEL	EFFECTIVE DATE
LAST	FIRST	MI		YES	NO	YES	NO			

SECTION C: COMPENSATION/REMUNERATION ARRANGEMENTS WITH PHYSICIANS AND THEIR IMMEDIATE FAMILY MEMBERS

The physician names and UPINs that you list at the end of Section C will be used to identify claims that may be subject to the prohibition in §1877 of the Social Security Act. Exceptions to the reporting requirements for certain compensation arrangements are described in items 1 through 7 of this Section.

Definitions:

Compensation/Remuneration is any payment made directly or indirectly, overtly or covertly, in cash or in kind.

Physicians listed in Section B6 must be listed again, if applicable. Definitions and terms used in Section B also apply to Section C. Each exception described below in items 1 through 7 should be applied separately. A physician who meets one of the exceptions (or who has an immediate family member who meets an exception) may still have to be listed based on another compensation/remuneration arrangement that does not meet an exception.

1) If this reporting entity has no compensation/remuneration arrangements with physicians or their family members, **check here** and go to Section D. ..... ☐

2) If this is a hospital that has compensation arrangements with physicians or their family members which are unrelated to the furnishing of clinical laboratory services, **check here** do not list those physicians' names in Section C8. ..... ☐

3) If this is a hospital with employment or service arrangements with physicians or their family members that meet **ALL** of the following condition, an exception applies when:

   a) The arrangement is for an identifiable service, ***and***
   b) the amount of remuneration under the arrangement is consistent with fair market value of the services, ***and***
   c) the amount of the remuneration to the physician or the family member of the physician is not determined either directly or indirectly by the volume or value of any referral to the clinical laboratory by the physician, ***and***
   d) the remuneration agreement would be commercially reasonable even if no referrals were made to the hospital.

   If you have arrangements with physicians or their family members meeting all of the above conditions (a,b,c and d of this exception), **check here** and do not list these names in Section C8, ... ☐ **UNLESS** there is another arrangement that does not qualify for another exception in this Section.

4) If this is an entity other than a hospital that has service arrangements with physicians, that meet **ALL** of the conditions in Section C3 b), c), and d), check as applicable and do not list their names in Section C8 if **ONE** of the following conditions also applies: **UNLESS** there is another remuneration arrangement which does not qualify for an exception in this Section.

   a) The remuneration is for identifiable services as a medical director or as a member of a medical advisory board pursuant to requirements of the Social Security Act, ***or*** ..... ☐
   b) The remuneration is for identifiable physician services furnished to a person receiving hospice care, if such services are covered by Medicare as hospice care, ***or*** ..... ☐
   c) The remuneration is for specific physician services furnished to a nonprofit blood center. ..... ☐

5) If this is a hospital that has a remuneration arrangement with a physician, based on the hospital's recruitment of the physician to relocate to the area served by the hospital and to become a member of its medical staff, and BOTH of the following conditions are met, an exception applies when:

   - The physician is not required to refer patients to the hospital, ***and***
   - The amount of the remuneration is not determined either directly or indirectly by the volume or value of any referrals to the hospital's clinical laboratory by the physician.

   If you have physicians meeting this exception, **check here** and do not report these physicians in Section C8, **UNLESS** there is another remuneration arrangement that does not qualify for an exception in this Section. ☐

6) If this entity is a group practice and the compensation arrangement is for salary payments of members of the group practice, **check here** and do not report those physicians in Section C8, ... ☐

7) The rental of office space is not considered a compensation arrangement if it meets the following conditions:

   - There is a written agreement, signed by the parties for the rental or lease of the space, which identifies the space covered and dedicated to the use of the lessee, is for a term of at least one year, provides for periodic payments consistent with fair market value, and such payments do not vary based on the volume or value of any referral of business between the two parties, and the agreement would be considered reasonable even if no referrals were made between the parties.
   - In addition, if a physician (or immediate family member) is in a position to make or influence referrals to the laboratory, and the physician (or immediate family member) has an ownership or investment interest in the space being rented, then the rented space must also be in the same building in which the physician practices.

   If you have physicians meeting this exception, **check here** and do not list these physicians in Section C8. ..... ☐

8) Complete the following information for each physician who has a compensation/remuneration arrangement with this clinical laboratory and for each physician who has an immediate family member who has such a compensation arrangement. Use addendum page as needed. The effective date for the initial report is for compensation/remuneration arrangements as of October 1,1991. For revised reports, check either the Addition or Deletion column and show the effective date of the change.

PHYSICIAN NAME			UPIN	PHYSICIAN COMPENSATION		FAMILY COMPENSTATION		ADD	DEL	EFFECTIVE DATE
LAST	FIRST	MI		YES	NO	YES	NO			

SECTION D: NAME AND TITLE OF PERSON RESPONSIBLE FOR INFORMATION ON SURVEY.

I CERTIFY THAT I HAVE EXAMINED THE ABOVE INFORMATION AND THAT IT IS TRUE, ACCURATE AND COMPLETE. I UNDERSTAND THAT ANY MISREPRESENTATION, FALSIFICATION, OMISSION OR CONCEALMENT OF MATERIAL INFORMATION REQUIRED FOR PAYMENT OF FEDERAL FUNDS MAY SUBJECT ME TO CIVIL OR CRIMINAL LIABILITY UNDER APPLICABLE FEDERAL LAWS.

Signature	**Date**
Printed Name	**Title**

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing hte burden, to the Office of Financial Management, HCFA, P.O. Box 26684, Baltimore, MD 21207; and to the Office of Management and Budget, Paperwork Reduction Project (0938-*), Washington, D.C. 20503.

ADDENDUM PAGE

SECTION B: OWNERSHIP/INVESTMENT INTEREST OF PHYSICIANS AND THEIR IMMEDIATE FAMILY MEMBERS

PHYSICIAN NAME			UPIN	PHYSICIAN INTEREST		FAMILY INTEREST		ADD	DEL	EFFECTIVE DATE
LAST	FIRST	MI		YES	NO	YES	NO			

SECTION C: COMPENSATION/REMUNERATION ARRANGEMENTS WITH PHYSICIANS AND THEIR IMMEDIATE FAMILY MEMBERS

PHYSICIAN NAME			UPIN	PHYSICIAN COMPENSATION		FAMILY COMPENSTATION		ADD	DEL	EFFECTIVE DATE
LAST	FIRST	MI		YES	NO	YES	NO			

[FR Doc. 91-16535 Filed 7-10-91; 8:45 am]
BILLING CODE 4120-03-C

Notice of Hearing: Reconsideration of Disapproval of Texas State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on August 14, 1991, in room 1230, 1200 Main Tower Building, Dallas, Texas to reconsider our decision to disapprove Texas State Plan Amendment 90-37.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by July 26, 1991.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, Telephone: (301) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Texas State Plan amendment (SPA) number 90-37.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

An individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants. Texas submitted SPA 90-37 on February 1, 1991, requesting to add coverage for rehabilitative chemical dependency residential treatment facility services for recipients of Early Periodic Screening Diagnostic, and Treatment (EPSDT) services. Under this SPA, Texas would provide 24-hour supervised living arrangements (including room and board) under which the chemically dependent person would receive independent and group counseling and intensive therapeutic activities designed to initiate and promote the individual's status, free of chemicals of abuse.

The issue in this matter is whether Texas' proposal meets the requirements of subpart D in 42 CFR part 441. HCFA considers chemical dependency a mental disorder. According to Federal regulations, if the facilities that Texas proposes to use meet the requirements of subpart D in 42 CFR part 441, these facility services could be covered as inpatient psychiatric services for EPSDT patients under age 21, even if the State does not choose to include this inpatient benefit in its State plan. If the services do not meet these requirements, services provided to individuals under age 65 in these facilities would be subject to the institution for mental disease (IMD) exclusion. Medicaid coverage in IMDs, i.e., those with more than 16 beds, is limited to optional benefits for individuals age 65 and over and inpatient psychiatric services for individuals under age 21.

Texas indicates that the facilities that would be providing the chemical dependency services (including room and board) would be residential treatment facilities. HCFA informed the State that they were concerned that the residential treatment facilities could be IMDs because they provide treatment for chemical dependency. However, if an individual is in an IMD, under age 65 and not receiving the inpatient psychiatric benefit for individuals under 21 described in subpart D of 42 CFR part 441, no Medicaid payment can be made for services provided to the individual.

However, if a facility has 16 or fewer beds, it is not an IMD, and counseling and other covered services can be reimbursed. Medicaid cannot cover the cost of room and board when the facility has 16 or fewer beds unless the facility participates in Medicaid as a nursing facility, hospital, or as a psychiatric facility meeting the requirements in subpart D of 42 CFR part 441.

Texas did not provide the necessary information requested by HCFA about the nature of the facilities that would provide these services, including the bed size of the facilities. Since Texas proposed to cover chemical dependency services (including room and board) only in residential treatment facilities and would not indicate that they met the requirements and subpart D of 42 CFR part 441, HCFA disapproved the plan amendment.

Texas contends that these facility services should be covered under Medicaid because section 4719 of OBRA 90 indicates that rehabilitation services may be provided "in a facility, home, or other setting," and because section 4722 of OBRA 90 specifies that no service shall be excluded from Medicaid so.e y because it is provided as a treatment service for alcoholism or drug dependency. HCFA believes section 4719 of OBRA 90 does not provide a new basis for paying for institutional services under Medicaid; it merely specifies that rehabilitation services may be provided in an institution as well as in other settings. HCFA also believes section 4722 of OBRA 90 provides no new coverage under Medicaid; it indicates the general principle that a State may not exclude services because they are drug or alcohol treatment services.

The notice to Texas announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. Donald L. Kelley, M.D., F.A.C.S.
State Medicaid Director,
Texas Department of Human Services,
Post Office Box 149030, Mail Stop 000-W,
Austin, Texas 78714-9030

Dear Dr. Kelley: I am responding to your request for reconsideration of the decision to disapprove Texas State plan amendment (SPA) 90-37. Texas submitted SPA 90-37 on June 6, 1991 requesting rehabilitative chemical dependency residential treatment services.

The issue in this matter is whether Texas' proposal meets the requirements of subpart D at 42 CFR 441.

I am scheduling a hearing on your request for reconsideration to be held on August 14, 1991, in room 1230, 1200 Main Tower Building, Dallas, Texas. If this date is not acceptable, we will be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk may be reached at (301) 597-3013.

Sincerely,

Gail R. Wilensky,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: July 5, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-16533 Filed 7-10-91; 8:45 am]

BILLING CODE 4120-03-M

[BPO-93-NC]

[RIN 0938-AF04]

Medicare Program; Revised Procedures for Paying Claims From Providers of Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice announces the proposed implementation of a uniform payment policy and procedures for paying providers of services under Medicare Parts A and B. The proposed procedures would allow intermediaries and carriers to pay providers through direct deposits into providers' accounts if certain conditions are met.

The procedures are issued in response to requests from both contractors and HCFA regional offices to implement a policy for payment methods that will treat all payees uniformly. The revised methods of payment will be cost effective to the Medicare program. They will reduce the cost of administration, preparation, issuance, and control of hard copy checks, and at the same time accommodate providers' expressed need for earlier access to cash to cover operating expenses.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 12, 1991.

ADDRESSES: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO-93-NC, P.O. Box 26676, Baltimore, Maryland 21201.

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Attn.: Allison Herron, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

If you prefer, you may deliver your comments to one of the following locations:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Md.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPO-93-NC. Comments will be available for public inspection as they are received, beginning approximately 3 weeks after publicaion, in room 309-G of the Departmental offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 am. to 5 p.m. (202-245-7890).

FOR FURTHER INFORMATION, CONTACT: Louis Palmieri, (301) 966-7528.

SUPPLEMENTARY INFORMATION: Section 1815(a) of the Social Security Act provides the authority for the Secretary of Health and Human Services to pay providers of Medicare services at such time or times as the Secretary believes appropriate (but no less frequently than monthly). Under Medicare, HCFA, acting for the Secretary, contracts with fiscal agents (intermediaries and carriers) to pay claims submitted by providers who furnish services to Medicare beneficiaries. For purposes of this document, "provider" includes both "providers" and "suppliers" as defined in the Medicare regulation under 42 CFR 400.202. Currently, manual instructions provide details regarding the preparation and issuance of hard copy checks. (Section 1412 of the Medicare Intermediary Manual and section 4412 of the Medicare Carriers Manual, part I, Fiscal Administration.) There are no existing regulations that prescribe or describe details of the procedures for paying providers for their services.

Currently, hard copy checks are drawn on the commercial bank servicing the intermediary's or carrier's Medicare account and mailed to providers of services with a remittance notice that summarizes approved payments by HCFA. The intermediary or carrier must send the check by first class mail. HCFA underwrites the costs of postage. On the average, collected funds in the provider's bank account are received 3 days from the date that the hard copy checks are mailed by the intermediary or carrier.

HCFA has received requests from providers, intermediaries, carriers, and HCFA regional offices that we consider the implementation of a payment method other than hard copy checks (e.g., direct deposits) to accelerate the availability of funds that are due providers. They believe that use of the direct deposit method will: provide providers with cash earlier to cover their current operating expenses; in some instances eliminate significant cash flow problems of small providers; and reduce Medicare administrative costs.

We have considered these requests and as a result are proposing changes in the payment procedures. In determining whether to move to implementation of payment methods other than hard copy checks, we considered several questions: what effect would implementing a direct deposit system have on claims processing timeliness; what direct deposit methods are available and are they cost effective for the Medicare program; what other policy and procedures would need to be developed to ensure that there is a uniform policy for paying providers.

To measure whether our contractors process claims timely, we impose an administrative standard which requires that claims must be held for 14 days before payment. In addition, sections 1816(c) and 1842(c) of the Act require that 95 percent of "clean claims" must be paid within 24 days. The payment timeliness standards, which we implement through the Contractor Performance Evaluation Program (CPEP), have been changed periodically through legislation, most recently by the Omnibus Budget Reconciliation Acts (OBRA) of 1986 and 1987, and are subject to change each fiscal year. We announce the CPEP data and standards annually in the **Federal Register** (for example, 55 FR 18391, May 2, 1990). Because of the frequency of change, we believe that it is not appropriate to consider incorporating the specific payment time limits into any proposed revised payment procedures. We would require the individual Medicare intermediaries and carriers to ensure that the claims payment date is within the claims processing timeliness standards in effect when the payment is made.

In the banking community, there are two basic types of direct deposit methods: (1) A relatively low volume, nonrecurring and high cost method referred to as wire transfer; and (2) a relatively high volume, recurring, and low cost method referred to as electronic funds transfer. We have found that the customary bank charge for wire transfers ranges between $5.00 and $10.00 per transfer. The equivalent charge for an electronic transfer payment ranges from $.03 to $.10 each.

In response to the concerns of providers, we propose to direct intermediaries and carriers to make direct deposits of funds due certain providers on claims, when they have received a written request from a provider for payment, using electronic funds transfer or wire transfer methods. In the case of a request for a wire transfer, the provider must agree in the request to pay for the associated incremental costs. Since the cost of wire transfers is much more costly than the cost of electronic funds transfer, we propose to direct intermediaries and carriers to use the electronic funds transfer method for all direct deposits, using the same 3-day delay procedures

as used for hard copy checks as a cost effective measure. We would provide for an exception to the use of the electronic funds transfer method if wire transfer is specifically requested by the provider and/or there is a small volume of electronic payments. A provider of services must satisfy three requirements in order to qualify for direct deposit by electronic funds transfer or wire transfer. The provider must (1) be an electronic media claims biller; (2) accept electronic remittance notices in lieu of the current paper remittance notice; and (3) request electronic funds transfer or wire transfer in writing.

Direct deposit is intended as an incentive to encourage physicians and suppliers to become electronic media claims billers. This is consistent with HCFA's Report to Congress on Electronic Media Claims (Report No. RC-90-028, October 23, 1990). Although not required by the report, we have extended this incentive to part A providers of services who are electronic media claims billers in order to establish a consistent national policy that covers both intermediary and carrier operations regarding direct deposit.

We propose that intermediaries and carriers will make direct deposits to providers of services through the electronic funds transfer method, using the Automated Clearing House function of the Federal Reserve Banking System, if the provider requested direct deposit and if certain specified conditions are met. In those cases where the use of the Automated Clearing House is not feasible because of the small volume of electronic payments to be made, the intermediary or carrier may use wire transfers through either the Federal Wire or Bank Wire Systems. The providers of services must pay the cost of these wire transfers.

If the provider specifically requests wire transfer, we would require the provider to pay the associated costs of the wire transfer as stated earlier and be subject to other specified conditions that are discussed below in this notice. Since two direct deposit options are being offered, we believe that we must favor the method that is most cost effective for the Medicare program and lease costly to the provider. If the more costly method is elected, or if the more costly method is the only way to carry out the requested direct deposit, we do not believe the Medicare program should be charged directly or indirectly for the cost.

If an intermediary or carrier makes direct deposits, the settlement date (that is, the electronic funds transfer payment) must be delayed 3 working days beyond the date that the hard copy checks would have been issued. We have chosen the 3-day delay to minimize the loss of interest to the Medicare Trust Fund and to correspond to the average time it takes hard copy checks to be delivered via U.S. mail and be collected in the provider's bank account.

When payments are made using the electronic funds transfer or wire transfer method, intermediaries and carriers must maintain control of payments when calculating the 3-day delay to ensure that payments are made within the current claims processing timeliness standards. We believe this procedure is necessary in order to prevent the assessment of interest, as provided for by sections 1816(c)(2) and 1842(c)(2) of the Social Security Act.

As noted earlier, if the provider requests a wire transfer, the provider must agree in the written request to pay the associated incremental cost of wire transfers. The cost of the wire transfer may not be included on the provider's Part A cost report; that is, the provider may not charge the Medicare program directly or indirectly for the cost of the wire transfer—the provider must absorb the cost. In addition, the providers must agree, in requesting direct deposit, to bear the cost of the more costly wire transfer when the less costly method is not feasible due to the small claims volume.

For any provider that has not requested direct deposit, intermediaries and carriers would continue to make payments to the provider via hard copy check drawn on the commercial bank servicing the intermediary's or carrier's account. The hard copy check would continue to be sent using first class U.S. Postal Service only, with HCFA incurring the costs of postage. We would prohibit the pickup, next day delivery, or the use of a courier service for hard copy checks, except for emergency situations. For emergency situations, the provider must obtain prior approval for delivery of the hard copy check by other than regular first class mail. The provider may make an emergency request by telephone to the intermediary or carrier. However, the provider must follow up the telephone request with a written request to the intermediary or carrier.

Generally, these procedures are primarily directed at intermediaries and carriers over which HCFA exercises authority through instructions issued in the Medicare Intermediary Manual and the Medicare Carriers Manual. However, because of the effect on providers and the need for providers to request the use of direct deposit as a payment method, we are issuing these procedures in a proposed notice to allow opportunity for public comment. We will take into consideration any comments that we receive on these proposed procedures, announce any necessary changes as a result of these comments in a final notice, and issue appropriate revised instructions in the Medicare Intermediary Manual and Medicare Carriers Manual, part I, Fiscal Administration.

Response to Public Comments

Because of the large number of items of correspondence that we normally receive on a proposed document, we cannot acknowledge or respond to them individually. However, we will consider all comments that we receive by the date specified in the "Date" section of this notice and respond to them in the final notice that is issued following this notice with comment period.

Information Collection Requirements

This notice contains information requirements that are subject to review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to be 1/4 hour per provider to complete a request for direct deposit. A notice will be published in the **Federal Register** when approval is obtained. Other organizations and individuals desiring to submit comments regarding the burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions or
- 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.

In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory

Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider providers to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed notice will allow intermediaries and carriers to pay certain providers through direct deposit into providers' accounts. Since direct deposit will be on a request basis, we cannot determine how many providers will request this method of payment. However, since providers have requested us to consider direct deposit as an alternative method to hard copy checks, we believe that most, if not all, providers meeting the specified conditions will request direct deposit as the preferred method of payment.

We have determined that a regulatory impact analysis is not required for this notice with comment period, since these proposed changes would not have an effect on the economy of $100 million or more or meet any of the other E.O. 12291 criteria. Further, we have determined, and the Secretary certifies, that this notice with comment period would not have a significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals. We, therefore, have not prepared a regulatory flexibility analysis.

(Secs. 1815(a) and 1835(a) of the Social Security Act; 42 U.S.C. 1395g(a) and 1395n(a).)

(Catalog of Federal Domestic Assistance Program No. 13.713— Medicare—Hospital Insurance; and No. 13.714—Medicare Supplementary Medical Insurance)

Dated: May 20, 1991.

Gail A. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-16446 Filed 7-10-91; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

National Institute of Dental Research; Meeting of an Ad Hoc Working Group on Regional Centers for Research on Minority Oral Health

A meeting will be held on August 1, 1991, from 9 a.m. to 5 p.m., in Building 30, room 117, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, to discuss the initiation of regional centers to conduct research to improve the oral health of U.S. racial and ethnic minorities; the enhancement of the research capabilities and participation of members of racial and ethnic minorities in oral health research; and the development and strengthening of the minority oral health research capabilities of minority institutions and of the institutions which serve large minority populations. The meeting will be open to the public. Attendance will be limited to space available.

Further information concerning the meeting may be obtained by contacting the office of Dr. John D. Townsley, Extramural Program, National Institute of Dental Research, room 506, Westwood Building, Bethesda, Maryland 20892. Telephone 301/496-7807.

Dated: July 3, 1991.

Bernadine Healy,

Director, NIH.

[FR Doc. 91-16460 Filed 7-10-91; 8:45 am]

BILLING CODE 4140-01-M

National Center for Nursing Research; Meeting: Nursing Science Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Nursing Science Review Committee, National Center for Nursing Research, July 17-18, 1991, Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on July 17 from 8:30 a.m. to 9:30 a.m. Agenda items to be discussed will include a Report from the Director, NCNR, and an Administrative Report by the Scientific Review Administrator.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552(c)(6), title 5, U.S. Code and section 10(d)) of Public Law 92-463, the meeting will be closed to the public on July 17 from 9:30 a.m. to adjournment on July 18 for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. John Chah, Scientific Review Administrator, Nursing Science Review Committee, National Center for Nursing Research, National Institutes of Health, Building 31, room 5B19, Bethesda, Maryland 20892, (301) 496-0472, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: June 28, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-16531 Filed 7-10-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-91-952; FR-2859-D-01]

Delegation of Authority To Grant Exceptions to Debarment and Suspension Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This notice delegates to the Assistant Secretary for Housing—Federal Housing Commissioner, the Secretary's power and authority to grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction under a program administered by the Assistant Secretary upon a written determination stating the reason(s) therefore in accordance with 24 CFR 24.215.

EFFECTIVE DATE: June 24, 1991.

FOR FURTHER INFORMATION CONTACT: Frank Brown, Office of the Deputy Assistant Secretary for Multifamily Housing Programs, Department of Housing and Urban Development, 451 Seventh Street SW., room 6106, Washington, DC 20410. Telephone (202) 708-2495 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The final common rule on government-wide debarment and suspension, implementing Executive Order 12549 and published on May 26, 1988, at 53 FR 19161, designates the Secretary and specified designees of the Secretary as debarring and suspending officials. Departmental regulations implementing

this final common rule, at 24 CFR 24.215, provide that the Secretary or his designee may, upon a written determination stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549, grant an exception to permit a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction. This notice delegates to the Assistant Secretary for Housing—Federal Housing Commissioner the Secretary's authority to grant exceptions under 24 CFR 24.215 under a program administered by the Assistant Secretary.

Accordingly, the Secretary delegates as follows:

Section A: Authority Delegated

The Secretary delegates to the Assistant Secretary for Housing—Federal Housing Commissioner the authority under 24 CFR 24.215 to grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction under a program administered by the Assistant Secretary upon a written determination by the Assistant Secretary for Housing—Federal Housing Commissioner stating the reason(s) under 24 CFR 24.215 for deviating from the Presidential policy established by Executive Order 12549 and 24 CFR 200.

Section B: Authority Excepted

The following authority is excepted from the authority delegated in section A:

1. The authority to sue and be sued.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. § 3535(d)).

Dated: June 24, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91-16440 Filed 7-10-91; 8:45 am]

BILLING CODE 4210-32-M

Office of Administration

[Docket No. N-91-3289]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Office for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 25, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Applications for transfer of physical assets.

Office: Housing.

Description of the need for the information and its proposed use: These forms are completed and submitted to HUD by prospective purchasers of properties with mortgages either HUD-insured or HUD-held before the transfer. The information is needed by HUD for approval of a transfer of physical assets. HUD uses the information to ensure that the project is not placed in physical, financial, or managerial jeopardy by the transfer.

Form: HUD-9226.

Respondents: Businesses or other for-profit, and non-profit institutions.

Frequency of submission: On occasion.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	350		1		92		32,200

Total estimated burden hours: 32,200.

Status: Extension.

Contact: Judy Lemeshewsky, HUD, (202) 708-3944, Susan Gray, HUD, (202) 708-3944, Wendy Swire, OMB, (202) 395-6880.

Dated: June 25, 1991.

Proposal: Report prohibited actions by FHA Mortgagees.

Office: Housing.

Description of the need for the information and its proposed use: Public Law 101-625 mandates that the Secretary establish a procedure under which any person may file a request that HUD determine whether a mortgagee is engaged in certain prohibited activities.

Form number: None.

Respondents: Individuals or households.

Frequency of submission: On occasion.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	100		1		1		100

Total estimated burden hours: 100.
Status: New.
Contact: Roger G. Henderson, HUD, (202) 708-0502, Wendy Swire, OMB, (202) 395-6880.

Dated: June 25, 1991.

Proposal: Management Review Report for Unsubsidized Multifamily Housing Programs, and Management Review Worksheet.

Office: Housing.
Description of the need for the information and its proposed use: This information is used by coinsuring lenders to evaluate the adequacy of management at projects that apply for coinsured loans. The information is needed to periodically monitor and evaluate ongoing management operations and procedures at coinsured projects with regard to maintenance and security; financial management; leasing and occupancy; tenant management relations; and general management practices.
Form number: HUD-9838.
Respondents: Businesses or other for-profit.
Frequency of submission: On occasion.
Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Management Review Worksheet	450		1		7		3,150
Management Review Report	450		1		1		450

Total estimated burden hours: 3,600.
Status: Extension.
Contact: Richard C. Pace, HUD, (202) 708-0547, Wendy Swire, OMB, (202) 395-6880.

Dated: June 25, 1991.

[FR Doc. 91-16437 Filed 7-10-91; 8:45 am]
BILLING CODE 4210-01-M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-91-3268; FR-3052-N-02]

NOFA for the Public and Indian Housing Drug Elimination Progam—FY 1991

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of extension of time for submission of applications.

DATES: The application due date originally announced for July 26, 1991, is extended by this notice to August 9, 1991

SUMMARY: On June 19, 1991, HUD published a notice of funding availability for the Public and Indian Housing Drug Elimination Program, requesting applications by July 26, 1991. The purpose of this Notice is to extend the time for submission of applications until August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Malcolm E. Main, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-1197 or 708-3502. A telecommunications device for deaf persons (TDD) is available at (202) 708-0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The Public Housing Drug Elimination Grant program was authorized under chapter 2, subtitle C, title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended by section 581 of the Cranston-Gonzalez National Affordable Housing Act of 1990, approved November 28, 1990, Public Law 101-625.

An FY 1991 Notice of Fund Availability (NOFA) for the above-described program was published on June 19, 1991 (56 FR 28290). The original notice provided 37 days—until July 26, 1991—for applications in response to the NOFA. The Department has received numerous indications from prospective applicants that the allotted time for making application is too short to permit the preparation and presentation of the necessary materials.

In response to these complaints, the Department is extending, for an additional two-week period, the deadline for submission of applications for the FY 1991 funding round. It is hoped that this extension of time will expand the number and the quality of applications for funding that HUD receives.

Applications will now be due on or before 5:15 p.m. local time, on Friday, August 9, 1991. An original and two copies of the application must be received by the deadline at the local HUD field office with jurisdiction over Public Housing Agency (PHA) applicants, Attention: Assisted Housing Management Branch Chief (or, in the case of Indian Housing Authority (IHA) applicants, in the local HUD Office of Indian Programs, Attention: Office of Indian Programs Director). (A listing of the addresses of HUD field offices and Indian field offices is included as an appendix to the June 19, 1991 NOFA.)

Dated: July 5, 1991.

Joseph G. Schiff,
Assistant Secretary for Public and Indian Housing.

[FR Doc. 91-16439 Filed 7-10-91; 8:45 am]
BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-014-6321-11; GP1-278]

Lakeview District Multiple Use Advisory Council Meeting and Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Lakeview, OR, District Multiple Use Advisory Council Meeting and Tour.

SUMMARY: The Lakeview District Multiple Use Advisory Council will meet at 9 a.m. on Monday, August 5, 1991 for a float tour of the Klamath River Canyon and again at 8 a.m., Tuesday, August 6, 1991 for a followup meeting and discussion. All activities will begin at the Klamath Falls Resource Area Office at 2795 Anderson, #25, Klamath Falls, OR.

The following items will be discussed: Riparian management, cultural

resources vandalism and the impact of whitewater rafting on wildlife in the Klamath River Canyon and the Spencer Creek CRMP.

The public is invited to attend, however there is very limited space available on the Klamath River float tour. Anyone who plans to attend the float tour must contact the Lakeview District Office by close of business July 26, 1991.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, Public Affairs Officer, 1000 South Ninth Street, Lakeview, OR 97630, (503) 947-2177.

Terry H. Sodorff,

Acting District Manager.

[FR Doc. 91-16506 Filed 7-10-91; 8:45 am]

BILLING CODE 4310-33-M

[WY-040-91-4320-10]

Rock Springs District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Rock Springs District Advisory Council.

SUMMARY: This notice sets forth the schedule and agenda of a meeting of the Rock Springs District Advisory Council.

DATES: August 1, 1991, 9:30 a.m. until 4:30 p.m. and August 2, 1991, 8:30 a.m. until 12 noon.

ADDRESS: Pinedale Library, Community Room, 40 South Fremont Avenue, Pinedale, Wyoming 82941.

FOR FURTHER INFORMATION CONTACT: Marlowe E. Kinch, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, (307) 382-5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

August 1

1. Tour of BLM public land in the Pinedale Resource Area. Tour topics include: Cora Stock Driveway, Upper Green River Access, Boulder Lake Recreation Developments, and Continental Divide Snowmobile Trail Issues.

August 2

1. Introduction and opening remarks.
2. Review of minutes from last meeting.
3. Review of tour topics.
4. Coalbed methane development projects briefing.
5. Oil and Gas Program.
6. Currant Creek project update.
7. Wild Horse Program briefing.
8. Green River Resource Management Plan briefing.
9. Pinedale Resource Area wildlife briefing.
10. Public comment period.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11 a.m. and 12 noon, August 2, or file written statements for the Council's consideration. Anyone wishing to make an oral statement should notify the District Manager at the preceding address by July 30, 1991.

Depending on the number of persons wishing to make oral statements, a time limit person may be established by the District Manager.

Marlowe E. Kinch,

District Manager.

[FR Doc. 91-16507 Filed 7-10-91; 8:45 am]

BILLING CODE 4310-22-M

[ID-040-00-4320-10]

Salmon District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Grazing Advisory Board.

DATES: The meeting will be held Thursday, August 15, 1991, at 10 a.m.

ADDRESSES: The meeting will be held at the May Grange Hall, May, Idaho.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Law 92-463. The meeting is open to the public; public comments will be accepted from 1 to 1:30 p.m. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467 by August 13, 1991. The agenda items include discussion of the Challis Resource Management Plan (RMP), allotment evaluations, the 404 Permit process, the status of Lemhi grazing agreements, and any other issues dealing with grazing management in the Salmon District.

Summary minutes of the meeting will be kept in the Salmon District Office and will be available for public inspection and reproduction during regular business hours (7:45 a.m. to 4:15 p.m.) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to Roy Jackson, District Manager, Bureau of Land Management, Salmon District Office, P.O. Box 430, Salmon, Idaho 83467, phone (208) 756-5400.

Dated: June 28, 1991.

Robert W. Heidemann,

Associate District Manager.

[FR Doc. 91-16449 Filed 7-10-91; 8:45 am.]

BILLING CODE 4310-CG-M

[NV-930-91-4212-11; N-34978]

Termination of Recreation and Public Purposes Classification and Order Providing for Opening of Land; Nevada

June 26, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates Recreation and Public Purposes classification N-34978, in its entirety. The land will be opened to the public land laws generally, including location under the mining laws.

EFFECTIVE DATE: Termination of the classification is effective upon publication of this document in the **Federal Register.** The land will be open to entry at 10 a.m. on August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Mary Clark, BLM Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, 702-785-6530.

SUPPLEMENTARY INFORMATION: Pursuant to section 7 of the Taylor Grazing Act (48 Stat. 1272) and the authority delegated by appendix 1 of Bureau of Land Management Manual 1203, dated April 14, 1987, Recreation and Public Purposes classification N-34978 is hereby terminated in its entirety:

Mount Diablo Meridian, Nevada

T. 33 N., R. 70 E.,
Sec. 21, NE¼, N½N½SE¼.

The area described contains 200 acres in Elko County, Nevada. The classification, made pursuant to the Act of June 14, 1926, as amended, segregated the public land from all other forms of appropriation under the public laws, including location under the mining laws.

The land was subsequently leased to Elko County for a sewage treatment plant in West Wendover, Nevada. Said lease has since expired and a determination has been made that the classification is no longer appropriate.

At 10 a.m. on August 12, 1991, the land will be open to the operation of the public land laws, subject to valid existing rights, existing classifications and withdrawals, and requirements of applicable law. All valid applications received prior to or at 10 a.m. on August 12, 1991 will be considered as

simultaneously filed. All other applications received will be considered in the order of filing.

At 10 a.m. on August 12, 1991, the land will also be open to the operation of the mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is authorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 39, 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.

The lands have been and will remain open to the mineral leasing and material sale laws.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 91-16451 Filed 7-10-91; 8:45 am]

BILLING CODE 4310-HC-M

[CA-940-01-4212-24; CACA 27922]

California; Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregative effect—conveyance of the reserved mineral interests.

SUMMARY: This notice will correct an error in the land description in an application for the conveyance of mineral interest.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, BLM California State Office, 2800 Cottage Way, room E-2841, Federal Office Building, Sacremento, California 95825, (916) 978-4820.

The land description for serial No. CACA 27922, 56 FR 19121, April 25, 1991, is hereby corrected as follows:

The land description shown as "sec. 24, lots 1 through 4, S½N½,SE¼;" is hereby corrected to read "sec. 2, lots 1 through 4, S½N½, SE¼;".

Dated: July 2, 1991.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 91-16508 Filed 7-10-91; 8:45 am]

BILLING CODE 4310-40-M

(CA-060-01-4212-13; CA-28048)

Realty Action; Exchange of Public and Private Lands, Riverside Co., CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to notice of realty action, CA-28048.

SUMMARY: This notice amends the legal description of the selected lands in the notice of realty action published in the **Federal Register** on Friday, May 17, 1991, in Vol. 56, No. 96, pages 22884, 22885, and 22886.

The land description is amended to include:

Selected Public lands

San Bernardino Meridian, California

T. 6 S., R. 6 E.,
Sec. 4: SW¼.

Containing 160 acres, more or less.

Total public lands amounts to 2,625.45 acres, more or less.

Disposal of this parcel would be subject to R/W grants, Serial No.(s) CA-6758, & CA-13969.

FOR FURTHER INFORMATION CONTACT: Peter Kempenich, BLM Palm Springs-South Coast Resource Area, 400 S. Farrell Dr., Palm Springs, CA 92262, (619) 323-4421.

Dated: July 2, 1991.

Alan Stein,

Acting District Manager.

[FR Doc. 91-16509 Filed 7-10-91; 8:45 am]

BILLING CODE 4310-40-M

[MT-930-4212-12; MTM-73159]

Order Providing for Opening of Public Land in Beaverhead Co., MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order opens lands reconveyed to the United States in exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. to oil and gas leasing.

EFFECTIVE DATE: August 15, 1991.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

SUPPLEMENTARY INFORMATION:

1. In a land exchange with the State of Montana, the United States acquired lands with existing leases which restricted the opening of the lands to oil and gas leasing. The leases on the following described lands have expired:

Principal Meridian

T. 12 S., R. 11 W.,
Sec. 36.
T. 13 S., R. 12 W.,
Sec. 16, NE¼;
Sec. 36.

The lands described aggregate 1,440.00 acres in Beaverhead County.

2. At 9 a.m. on August 15, 1991, the lands will be opened to expressions of interest and offers for oil and gas leasing.

Dated: July 2, 1991.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 91-16510 Filed 7-10-91; 8:45 am]

BILLING CODE 4310-DN-M

[NV-930-91-4212-13; N-54049]

Land Exchange Conveyance Documents; NV

June 26, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Issuance of Land Exchange Conveyance Documents, Nevada.

SUMMARY: This notice identifies Federal lands involved in a recently completed exchange transaction. With the exception of oil, gas, sodium and potassium, the Federally-owned mineral interests in the subject lands were conveyed simultaneously with the surface estate.

FOR FURTHER INFORMATION CONTACT: Mary Clark, Nevada State Office, Bureau of Land Management, P.O. Box 12000, Reno, NV 89520 (702) 785-6530.

SUPPLEMENTARY INFORMATION: On May 29, 1991, the United States issued patents for the following described lands pursuant to sec. 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 7, lots 7, 13, 17 and 22;
Sec. 17, lots 1, 2, 4-13, 16, 17, 20, 21 and 22

The area described contains 660.73 acres in Clark County, Nevada.

In exchange for those lands, the United States acquired 46,968.57 acres of land in Elko County, Nevada, with demonstrated wildlife, riparian, and recreation potential. At this time, the lands acquired by the United States will

not be open to the operation of the public land laws.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 91-16450 Filed 7-10-91; 8:45 am]

BILLING CODE 4310-HC-M

[ID-942-01-4730-12]

Filing of Plats of Survey; Idaho

The plats of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., July 5, 1991.

The plat representing the dependent resurvey of portions of the 1st Standard Parallel south (south boundary, T. 6 S., R. 12 E.), portions of the south and east boundaries, subdivisional lines, and the subdivision of certain sections, T. 7 S., R. 12 E., Boise Meridian, Idaho, Group No. 722, was accepted, July 1, 1991.

The plat representing the dependent resurvey of portions of the subdivisional lines and 1867 meanders of the Boise River, the subdivision of section 17, an informative traverse of both banks, and survey of the 1991 meander line of a portion of the left bank of the Boise River in section 17, T. 4 N., R. 1 W., Boise Meridian, Idaho, Group No. 775, was accepted, July 1, 1991.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: July 5, 1991.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 91-16511 Filed 7-10-91; 8:45 am]

BILLING CODE 4310-GG-M

Bureau of Reclamation

Initial Bench and Bottom Land Map and Criteria, Newlands Project, Nevada

AGENCY: Bureau of Reclamation (Reclamation), Interior.

ACTION: Notice of availability of report and request for comments.

SUMMARY: The Newlands Reclamation Project uses water from the Carson and Truckee Rivers for the irrigation of desert lands in the vicinity of Fallon and Fernley, Nevada. Court decrees have established that water-righted Newlands Project lands are entitled to receive annually no more irrigation water than 3.5 acre-feet per acre for bottom lands and 4.5 acre-feet per acre for bench lands delivered to the farms. Those decrees did not identify which lands were bench and which were bottom. Reclamation proposes criteria for and designation of bench and bottom lands. That designation identifies 64,233 acres of water-righted bottom lands and 9,556 acres of water-righted bench lands.

DATES: Comments must be submitted on or before August 12, 1991.

ADDRESSES: Comments should be sent to the Regional Director, U.S. Bureau of Reclamation, Attention MP-430, 2800 Cottage Way, Sacramento, California 95825-1898. Copies of the report are available upon request or may be viewed at the same address.

FOR FURTHER INFORMATION CONTACT: Gordon Lyford, U.S. Bureau of Reclamation, Mid-Pacific Region, Sacramento, California (916) 978-5062.

SUPPLEMENTARY INFORMATION: The Newlands Reclamation Project was constructed beginning in 1902 to use a portion of the waters of the Carson and Truckee Rivers for irrigation of desert lands in the vicinity of Fallon and Fernley, Nevada. The Orr Ditch Decree in 1944 (United States v. Orr Water Ditch Co., Equity No. A-3 (D. Nev.)) and the Alpine Decree in 1980 (United States v. Alpine Land and Reservoir Co., 503 F. Supp. 877 (D. Nev. 1980), substantially affirmed, 697 F.2d 851 (9th Cir. 1983), cert. denied, 464 U.S. 863 (1983)) established among other things that the water-righted Newlands Project lands are entitled to receive annually no more irrigation water than 3.5 acre-feet per acre for bottom lands and 4.5 acre-feet per acre for bench lands delivered to the farms. Those decrees, however, did not identify those lands. On October 4, 1989, the United States Court of Appeals for the Ninth Circuit ruled that the Secretary of the Interior has authority to make the initial designations of the Newlands Project bench and bottom lands (Untied States v. Alpine Land and Reservoir Co., 887 F.2d 207 (9th Cir. 1989)). On October 1, 1990, the United States Supreme Court affirmed that decision by refusing to hear an appeal (TCID v. United States, 111 U.S. 60 (1990)).

The Newlands Project is currently being operated under the Operating Criteria and Procedures (OCAP), which were approved by United States Court for the District of Nevada in April 1988. The OCAP, among other things, specify how the Newlands Project irrigation diversions are to be quantified each year. Central to that determination is the area of water-righted bench and bottom lands that are irrigated each year. The overall purpose of the OCAP is to improve the project-wide efficiency of the Newlands Project.

Reclamation has prepared a report entitled "Initial Bench and Bottom Land Map and Criteria, Newlands Project, Nevada, September, 1990." That report contains the soil criteria and map that designates the locations of the bench and bottom lands for the Newlands Project. Reclamation proposes that the initial map will be used to determine which lands are bench lands and which lands are bottom lands beginning with the 1992 irrigation season. Generally, the criteria in the report provides that bench lands consist of coarse-textured, well-drained soil, and that bottom lands consist of fine-textured, poorly drained soils. The specific criteria relies on the water table depth and the available water-holding capacity of the soils in the Project. The primary source of information for those factors is from the Soil Conservation Service's "Soil Survey of Fallon-Fernley Area, Nevada, Parts of Churchill, Lyon, Storey, and Washoe Counties, January 1975."

If comments received during this comment period indicate a need for further information, meeting may be held to receive further input from the public. Notice of any such meetings will be published in the **Federal Register.** In addition, all respondents to this notice will be notified by mail of the date, time, and places of any such meetings.

To facilitate the public involvement process, invitations and public notices were given to groups and individuals advising of a meeting on April 17, 1991. The meeting was held in Reno, Nevada, to explain the report and to solicit comments concerning it.

During the course of the public meeting there was one presenter, Mr. Gordon H. DePaoli, Woodburn, Wedge and Jeppsen, Attorneys and Counselors at Law, Reno, Nevada, representing a host of individuals and entities. During the meeting, several individuals commented on Mr. DePaoli's statements. His specific statements were confirmed by correspondence of May 8, 1991. Comments were centered on the application of the proposed bench/bottom land criteria to the Newlands Project Lands. Prominent points of Mr. DePaoli's letter were:

(1) Select an independent consultant to review the September 1990 report;

(2) Preserve status quo until final outcome of the bench/bottom action;

(3) Review the report provisions related to the appeals process; and

(4) Undertake a site-specific analysis on each farm.

A response to the issues raised in the aforementioned letter will be addressed during the final review process.

Interested persons are invited to provide comments on the bench and bottom land criteria and map presented in the report. All comments received prior to the closing date will be considered by the Department of the Interior prior to implementing an initial bench and bottom land map for the 1992 irrigation season.

Dated: July 5, 1991.

Donald R. Glaser,

Acting Commissioner of Reclamation.

[FR Doc. 91-16458 Filed 7-10-91; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31900]

Morris H. Kulmer, Michael J. Van Wagenen, and Troy Schumacher—Continuance in Control Exemption—KCT Railway Corp. & T&P Railway, Inc.

Morris H. Kulmer, Michael J. Van Wagenen, and Troy Schumacher filed a notice of exemption to continue to control KCT Railway Corporation (KCT) and T and P Railway, Inc. (T&P).

KCT is a class III rail carrier operating solely in Colorado. T&P is a noncarrier that has filed a notice of exemption in Finance Docket No. 31901, *T and P Railway, Inc.—Acquisition and Operation Exemption—The Atchison, Topeka and Santa Fe Railway Company,* to acquire and operate approximately 41 miles of line owned by The Atchison, Topeka and Santa Fe Railway Company. The line extends between milepost 47+3390 feet, near Topeka, and milepost 6+31822 feet, near Parnell, in Shawnee, Jefferson, and Atchison Counties, KS. T&P will be a class III carrier.

Messrs. Kulmer, Van Wagenen, and Schumacher are officers of both KCT and T&P. Further, Mr. Kulmer owns an interest in both KCT and T&P, and Mr. Schumacher owns an interest in KCT. Mr. Schumacher's father, Kern Schumacher, owns an interest in T&P.

This transaction involves the continuance in control of nonconnecting carriers where: (1) The railroads will not connect with each other or any railroads in their corporate family; (2) the continuance in control is not a part of a series of anticipated transactions that will connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on Suzanne M. Te Beau, Weiner, McCaffrey, Brodsky, Kaplan & Levin, P.C., suite 800, 1350 New York Avenue NW., Washington, DC 20005.

Decided: July 3, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-16537 Filed 7-10-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31901]

T&P Railway, Inc.—Acquisition and Operation Exemption—the Atchison, Topeka & Santa Fe Railway Co.

T&P Railway, Inc. (T&P), a noncarrier, has filed a notice to acquire and operate approximately 41 miles of rail line, owned by The Atchison, Topeka and Santa Fe Railway Company, between milepost 47+3390 feet, near Topeka, and milepost 6+31822 feet, near Parnell, in Shawnee, Jefferson, and Atchison Counties, KS.[1] Consummation was expected to occur on or soon after June 25, 1991.

T&P states that, although it intends to provide common carrier rail service to the shippers and receivers on the line, due to what it has determined to be light traffic density, it will continue from the inception of its operations on the line carefully to monitor the economics of the operations. If T&P determines that it is unable to operate the rail line profitably on a long term basis, it will seek Commission authority to abandon the line.

Any comments must be filed with the Commission and served on Suzanne M. Te Beau, Weiner, McCaffrey, Brodsky, Kaplan & Levin, P.C., suite 800, 1350 New York Avenue NW., Washington, DC 20005.

T&P shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 3, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-16536 Filed 7-10-91; 8:45 am]

BILLING CODE 7035-01-M

[1] A notice of exemption for the continuance in control of T&P and another rail carrier by Morris H. Kulmer, Michael J. Van Wagenen, and Troy Schumacher was filed concurrently with this notice in Finance Docket No. 31900, *Morris H. Kulmer, Michael J. Van Wagenen, and Troy Schumacher—Continuance in Control Exemption—KCT Railway Corporation and T&P Railway, Inc.*

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Lubrizol Corp. et al

Notice is hereby given that a proposed Consent Decree in *United States* v. *Lubrizol Corporation, et. al.*, Civil Action No. 3:91CV7381 (N.D. Ohio) between the United States, on behalf of the Environmental Protection Agency ("EPA"), and Lubrizol Corporation, Allied-Signal Corporation, Rockwell International Corporation, and E.I. DuPont de Nemours & Company has been lodged on July 1, 1991 with the United States District Court for the Northern District of Ohio. The Consent Decree resolves certain response cost recovery claims of the United States against the defendants under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, for costs expended by the United States during the time period between March 1986 and July 1, 1990 in connection with a hazardous waste facility known as the Greiner's Lagoons Facility, located in Sandusky County, Ohio near the town of Fremont. Under the settlement reflected in the Consent Decree, the defendants will pay the United States $671,808.48 (plus interest from the date of lodging).

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC

20530, and should refer to *United States v. Lubrizol Corporation*, D.J. Ref. No. 90-11-3-10B. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Ohio, 1404 E. Ninth St., suite 500, Cleveland, OH 44114, the Region V Office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $3.50 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-16513 Filed 7-10-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Open Software Foundation, Inc.

Correction

In notice document 91-14006 concerning Open Software Foundation, Inc., appearing in the issue of Thursday, June 13, 1991 at 56 FR 27273, make the following correction: In the list of published notices delete "April 3, 1991 (56 FR 13655), respectively." and add "March 25, 1991 (56 FR 12387), respectively."

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-16514 Filed 7-10-91; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 90-24]

DePietro's Pharmacy; Denial of Application

On March 26, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to DePietro's Pharmacy, 1334 Main Street, Peckville, Pennsylvania 18452, proposing to deny its application, dated June 23, 1989, for registration as a pharmacy under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Francis L. Young. The case was subsequently transferred to Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Arlington, Virginia, on August 30, 1990.

On April 5, 1991, Judge Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed and on May 22, 1991, the administrative law judge transmitted the record of these proceedings to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that Respondent is a pharmacy located in Peckville, Pennsylvania, and for some period prior to June 1989 was owned and operated by Thomas DePietro. In 1988, Mr. DePietro sold controlled substances to an undercover police officer and/or informant without a prescription or physician's authorization. He was arrested on June 6, 1988, and based on this arrest, the state suspended his license to handle controlled substances. On April 3, 1989, Mr. DePietro pled guilty to one felony count and was sentenced to three years probation.

On March 3, 1989, an Order to Show Cause was issued proposing to revoke Respondent's registration on grounds that its continued registration was not in the public interest. Mr. DePietro did not request a hearing and on May 17, 1989, the then-Administrator of DEA issued a final order revoking Respondent's registration effective June 23, 1989. See, 54 FR 22499, May 24, 1989.

On June 15, 1989, Mr. DePietro sold Respondent to his wife in exchange for one dollar and her agreement to assume the pharmacy's debts. On June 23, 1989, Mrs. DePietro executed the instant application for a DEA registration.

At the hearing, Mrs. DePietro testified that since her purchase of the pharmacy, she has operated it without any involvement by Mr. DePietro. She also testified that Mr. DePietro is unemployed, but that he will not influence her operation of Respondent because to do so would be a violation of his parole agreement. She further testified that Respondent's pharmacists know that allowing Mr. DePietro access to Respondent's controlled substances would jeopardize their licenses to practice pharmacy.

A DEA Diversion Investigator testified that Mrs. DePietro's application for DEA registration did not include any assurances or guarantees that Mr. DePietro would be denied access to Respondent or that he would not be in a position to influence the operation of Respondent. The Investigator also testified that it would be difficult, although not impossible, to exclude Mr. DePietro from Respondent.

The Investigator also testified that on June 26, 1989, he and other DEA Investigators visited Respondent to secure Respondent's DEA registration and to remove all controlled substances from the premises. It appears that Mr. DePietro was present during the seizure in that he signed a receipt for the controlled substances removed. It is unclear, however, why Mr. DePietro was present during the seizure, and more significantly, why he was even present at Respondent pharmacy after June 15, 1989.

The administrative law judge also found that Mrs. DePietro has had no education or business experience regarding the handling of controlled substances. Mrs. DePietro testified that she completed "a year in business school after I graduated from high school." She also testified that she has no practical business experience other than working in her father's restaurant. Further, Mrs. DePietro testified that she employs a registered pharmacist as a pharmacy manager and that he would exclusively handle the dispensing of controlled substances. However, Mrs. DePietro admitted that she would not be able to identify an invalid prescription. She also testified that she was unaware that it was unlawful for Respondent to handle controlled substances after June 23, 1989, the effective date of the revocation of its DEA registration. Additionally, Mrs. DePietro testified that Respondent needs a DEA registration in order to collect payment from state assistance programs and that most of Respondent's customers are elderly, living on fixed incomes.

The Administrator may deny an application for registration if he determines that such registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), the Administrator must consider the following factors in making his determination: (1) The recommendation of the appropriate State licensing board or professional disciplinary authority. (2) The applicant's experience in

dispensing, or conducting research with respect to controlled substances. (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances. (4) Compliance with applicable State, Federal, or local laws relating to controlled substances. (5) Such other conduct which may threaten the public health and safety. The Administrator may rely on any one or a combination of those enumerated factors. He may give such factors the weight he deems appropriate in determining whether a registration should be revoked or an application denied. See, *Henry J. Schwarz, Jr., M.D.*, Docket No. 88-42, 54 FR 16422 (1989); *Neveille H. Williams, D.D.S.*, Docket No. 87-47, 53 FR 23465 (1988); *David E. Trawick, D.D.S.*, Docket No. 86-69, 53 FR 5326 (1988).

After considering all of the evidence, the administrative law judge concluded that Respondent's DEA registration would not be in the public interest. The record shows that Mr. DePietro has failed to carry out his responsibilities as a registrant in the past and Mrs. DePietro lacks the experience and qualifications to accept the responsibilities of a DEA registrant.

The mere sale of a pharmacy from one family member to another does not, *ipso facto*, establish that the transaction is a sham. In the instant case, however, the record demonstrates that the sale occurred after the issuance and before the implementation of the then-Administrator's final order revoking Respondent's DEA registration. The administrative law judge agrees with the Government's contention that the sale was intended to obviate the consequences of the revocation.

Finally, Mrs. DePietro failed to demonstrate that her husband would not influence her operation of Respondent. There is no evidence of any formal steps taken to keep Mr. DePietro out of the pharmacy and to deny him access to controlled substances. Indeed, the record establishes that Mr. DePietro was in the pharmacy and apparently in charge, on a date subsequent to the purported sale, when DEA personnel seized the controlled substances and registration pursuant to the final order. Mrs. DePietro's bare assertions are insufficient to prove that Mr. DePietro will not influence her operation of Respondent.

The Administrator concludes that based upon the facts and circumstances involved in this matter, the application for registration submitted by DePietro Pharmacy should be denied because it is inconsistent with the public interest. The Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in their entirety.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for registration executed by DePietro Pharmacy, on June 23, 1989, be, and it hereby is, denied. This order is effective July 11, 1991.

Dated: July 3, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-16441 Filed 7-10-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interst in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 22, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 22, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 24th day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/Workers/Firm	Location	Date received	Date of petition	Petitoion No.	Articles produced
Accurate Bushing Company IAMAW	Garwood, NJ	06/24/91	06/10/91	25,955	Bushings and roller bearings.
Alexandra Fashions (wkrs)	Woodside, NY	06/24/91	06/10/91	25,956	Ladies dresses.
Beloit Corporation IAMAW	Beloit, WI	06/24/91	06/10/91	25,957	Iron and steel castings.
Beloit Corporation IAMAW	South Beloit, WI	06/24/91	06/10/91	25,958	Iron and steel castings.
C & W Coal Company (wkrs)	Clarksburg, WV	06/24/91	06/11/91	25,959	Coal.
Doe Run Company (The) (wkrs)	St. Louis, MO	06/24/91	06/04/91	25,960	Lead mining.
Doe Run Company (The) SEMO Mining (wkrs)	Viburnum, MO	06/24/91	06/04/91	25,961	Lead mining.
Doe Run Company, Smelting Div. (wkrs)	Herculaneum, MO	06/24/91	06/04/91	25,962	Lead mining.
Dura Mechanical Component, Inc (UAW)	Toledo, OH	06/24/91	06/11/91	25,963	Auto electric windows and door hinges.
Eljer Manufacturing (Plumbingware) (wkrs)	Atlanta, GA	06/24/91	06/06/91	25,964	Toilets.
Gleason Corporation (wkrs)	Rochester, New York	06/24/91	06/12/91	25,965	Tooling.
Houston Electronics (IUE)	Kane, PA	06/24/91	06/07/91	25,966	Holders of communication crystals.
Label-Tech, Inc (wkrs)	Grand Praairie, TX	06/24/91	06/10/91	25,967	Common impression cyclinder
Loth Lumber (wkrs)	Gold Bar, WA	06/24/91	06/10/91	25,968	Cedar lumber products.
LTV Energy Products Co (Co.)	Casper, WY	06/24/91	06/12/91	25,969	Oil Field Equipment.

APPENDIX—Continued

Petitioner: Union/Workers/Firm	Location	Date received	Date of petition	Petitoion No.	Articles produced
LTV Energy Products Co (Co.)	Gillette, WY	06/24/91	06/12/91	25,970	Oil Field equiment.
MacLaw Precision Parts (Co)	Syracuse, NY	06/24/91	06/09/91	25,971	Populating machine parts.
Miss Jamie, Inc (wkrs)	New York, NY	06/24/91	06/12/91	25,972	Dress sample making.
Nish-Nah-Bee Plastics, Inc (wkrs)	Traverse City, MI	06/24/91	06/13/91	25,973	Plastic molded auto parts.
Pacific Ford, Inc (wkrs)	Philadelphia, PA	06/24/91	06/11/91	25,974	Ford dealership.
Paul Terri Sportwear, Inc. ILGWU	Long Branch, NJ	06/24/91	06/12/91	25,975	Coats.
Phelps Dodge Corp, Bayway Operation (Co)	Elizabeth, NJ	06/24/91	06/06/91	25,976	Copper alloy rods.
Plant and Field Service Corp (Co.)	Parachute, CO	06/24/91	05/27/91	25,977	Supply contract personnel to shale oil.
Plumrose Dak (UFCW)	Eat Brunswick, NJ	06/24/91	06/12/91	25,978	Canned ham.
Royal Silk (wkrs)	Clifton, NJ	06/24/91	06/14/91	25,979	Mail order catalog.
Scott Fetzer Company (wkrs)	Bridgeport, CT	06/24/91	05/29/91	25,980	Power winches, Windlasses.
TriQuest Corporation (wkrs)	Vancouver, WA	06/24/91	06/10/91	25,981	Molded plastic components.
United Technologies Automotive (URW)	Keokuk, IA	06/24/91	06/11/91	25,982	Auto instrumentation panels.
Walbro Corporation (wkrs)	Caro, MI	06/24/91	06/13/91	25,983	Electric fuel pump assembly.
Warner Universal Corp (USWA)	Kearney, NJ	06/24/91	06/10/91	25,984	Aluminum extrusions.
Whittenton Lighting Products, Inc (Co)	Taunton, MA	06/24/91	06/05/91	25,985	Lamps.
Wilson Sporting Goods (UFCW)	Edison, NJ	06/24/91	06/12/91	25,986	Tennis rackets.
York International Corp (OCAW)	Madisonville, KY	06/24/91	06/14/91	25,987	Heat pumps, air conditions.

[FR Doc. 91-16519 Filed 7-10-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,767]

Atron/High Q; Clarkesville, MI; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 6, 1991, in response to a worker petition which was filed on May 6, 1991, on behalf of workers at Atron/High Q, Clarkesville, Michigan.

The investigation revealed that the petitioning group of workers are located at Pellston, Michigan and not at their mailing address in Clarkesville, Michigan. The Pellston, Michigan petition is subject to an ongoing investigation for which a determination has not yet been issued (TA-W-25, 733). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 28th day of June, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-16518 Filed 7-10-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,501]

Komatsu Dresser, Inc., Galion, OH; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated May 30, 1991, District 59 of the International Association of Machinists (IAM) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice for petition TA-W-25,501 was signed on April 30, 1991 and will soon be published in the **Federal Register**.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers produce compactors (rollers), cranes, graders, excavators, planners and hydraulic cylinders. Although, investigation findings show that total sales and production increased in fiscal year (FY) 1990 compared to FY 1989, sales and production of rollers decreased during the same period. The Department's survey of Komatsu Dresser's major customers show that none of the respondents imported rollers in 1989 or in 1990.

The union submitted an inventory control card, packing slips, and purchase orders showing the receipt in 1991 of imported components—excavator components, sleeve tandem mountings, final drive housings, sprockets and axle weldments.

The issue of components was addressed early in the administration of the worker adjustment assistance program. In *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F2d (D.C. Circ.1974) the court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Accordingly, increased imports of excavator components, and sleeve mountings and drive components for motor graders cannot be considered in determining import injury to workers producing excavators, motor graders and other finished machines. Therefore, in determining import injury to workers, the Department must consider imports of excavators, motor graders, cranes, rollers, etc.

Investigation findings show that the workers are not separately identifiable by product. Other findings show that excavator components and sprockets were always purchased items and Galion never produced them. The redesigned sleeve and final drive housing components for the motor grader were outsourced because at the time of their purchase, Galion was not tooled up to produce them. Accordingly, worker separations resulting from the above situations would not provide a basis for certification even if the component workers were separately identifiable.

The Department's investigation was complete through 1990. If there were worker separations in 1991 resulting from increased imports of excavators or other finished articles at Galion, the Department would entertain a new petition.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the facts or of the law which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 27th day of June 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services Unemployment Insurance Service.

[FR Doc. 91-16522 Filed 7-10-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25, 374]

Sonoco Fibre Drum, Inc.; Reading, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Sonoco Fibre Drum, Incorporated, Reading, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-25; 374; Sonoco Fibre Drum, Incorporated, Reading, Pennsylvania (June 28, 1991)

Signed at Washington, DC this 3rd day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-16520 Filed 7-10-91; 8:45am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of June 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,654; Speed Sew, Patton, PA

TA-W-25,786; Nextech, Turtle Creek, PA

TA-W-25,740; Chromalloy, Turbine Airfoils Div., Harrisburg, PA

TA-W-25,501; Komatsu Dresser, Inc., Galion, OH

TA-W-25,793; Birchcraft Kitchen, Inc., Reading, PA

TA-W-25,691; Tultex Corp., Marion, NC

TA-W-25,692; Tultex Corp., Spindale, NC

TA-W-25,693; Tultex Corp., Martinsville, VA

TA-W-25,512; Shelby Advanced Automotive Technology, Inc., McKinney, TX

TA-W-25,512A; Shelby Advanced Automotive Technology, Inc., D/B/A Carroll Shelby Industries, Gardena, CA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25,729; Alumax Mill Products, Inc., Hawesville, KY

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,775; GTE Sylvania Products Corp., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,749; Manhattan Industries, Glen Rock, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,789; VTC, Inc., Subsidiary of Control Data Corp., Bloomington, MN

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,671; Gear Products Inc., Tulsa, OK

U.S. imports of oil and gas field machinery were negligible in 1989 and 1990.

TA-W-25,747; Lone Rock Timber, Roseburg, OR

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,731; AMP, Inc., Weyers Cave, VA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,776; Heim Werner Corp., Hein Werner Auto, Waukesha, WI

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,787; P.I.E. Nationwide, Inc., Portland, OR

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,687; Stinson Seafood Co (Formerly Stinson Canning Co), Rockland, ME

U.S. imports of fish and seafood products declined relative to domestic shipment in 1989 compared to 1988 and declined absolutely and relative to domestic shipment in 1990 compared to 1989.

TA-W-25,742; Conlee Drilling Fluids, Clyde, TX

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,777; Hudson's Bay New York, Inc., Carlstadt, NJ

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,841; Gitano, Newswear Div., New York, NY

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,814; Rhone-Poulenc Rorer Pharmaceutical Corp., Fort Washington, PA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certifications.

TA-W-25,809; Motorola, Inc., General System Sector, Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-25,765; Youngland Industries A/K/A Sam Landorf, Co., East Newark, NJ

A certification was issued covering all workers separated on or after March 19, 1990 and fore August 31, 1990.

TA-W-25,694; United Technologies Automotive Group, Inc., Wabash, IN

A certification was issued covering all workers separated on or after December 1, 1990.

TA-W-25,665; Dallco Industries, Inc., York, PA

A certification was issued covering all workers separated on or after April 3, 1990.

TA-W-25,666; Dallco Industries, Inc., Mt. Union, PA

A certification was issued covering all workers separated on or after April 3, 1990.

TA-W-25,753; North Country Glove, Northville, NY

A certification was issued covering all workers separated on or after April 12, 1990.

TA-W-25,527; Bull HN Information Systems, Inc., Phoenix, AZ

A certification was issued covering all workers separated on or after March 2, 1991.

TA-W-25,736; G.M.S. Gilbrith Packaging Systems, Kingston, PA

A certification was issued covering all workers separated on or after April 13, 1990.

TA-W-25,785; NER Data Products, Inc., Demorines, IA

A certification was issued covering all workers separated on or after April 26, 1990.

TA-W-25,703 & TA-W-25,704; CB North America Glens Falls, NY and North Adams, MA

A certification was issued covering all workers separated on or after March 27, 1990.

TA-W-25,710; Hesteco # 1, Elizabethtown, NJ

A certification was issued covering all workers separated on or after March 28, 1990.

TA-W-25,748; Lori Lock Corp., Southington, CT

A certification was issued covering all workers separated on or after April 16, 1990.

TA-W-25,696; Winning Moves, Inc., Athens, AL

A certification was issued covering all workers separated on or after March 28, 1990.

TA-W-25,788; Texas Apparel Co., Carrizo Springs, TX

A certification was issued covering all workers separated on or after April 24, 1990.

TA-W-25,773; Electro Design, Inc., Mancelona, MI

A certification was issued covering all workers separated on or after April 24, 1990 and before April 29, 1991.

I hereby certify that the aforementioned determinations were issued during the month of June, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue NW. Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: July 2, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-16521 Filed 7-10-91; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Application No. D-8337]

Proposed Amendment to Prohibited Transaction Exemption (PTE) 77-8 Involving the Transfer of Individual Life Insurance Contracts and Annuities From Employee Benefit Plans To Plan Participants, Certain Beneficiaries of Plan Participants, Employers and Other Employee Benefit Plans

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of a proposed amendment to PTE 77-8.

SUMMARY: This document contains a notice of pendency before the Department of Labor of a proposed amendment to PTE 77-8. PTE 77-8 is a class exemption that enables an employee benefit plan to sell individual life insurance contracts and annuities to (1) a plan participant insured under such policies, (2) a relative of such insured participant who is the beneficiary under the contract, (3) an employer any of whose employees are covered by the plan or, or (4) another employee benefit plan, for the cash surrender value of the contracts, provided certain conditions are met. The proposed amendment, if adopted, would affect, among others, certain participants, beneficiaries and fiduciaries of plans engaged in the described transactions.

DATES: Written comments and requests for a hearing should be received by the Department on or before September 9, 1991.

EFFECTIVE DATE: If adopted, the proposed amendment to PTE 77-8 would be effective as of October 22, 1986.

ADDRESSES: All written comments and requests for a hearing (preferably at least three copies) should be sent to: Office of Exemption Determinations, Pension and Welfare Benefits Administration, room N-5649, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. The application pertaining to the exemptive relief proposed herein (Application D-8337) and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Madsen of the Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 523-8971. (This is not a toll-free number); or Diane Pedulla of the Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523-9597. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 77-8 (42 FR 31574, June 21, 1977). PTE 77-8 provides an exemption from the restrictions of section 406(a) and 406(b) (1) and (2) of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code.

The amendment to PTE 77-8 proposed herein was requested in an exemption application dated August 16, 1989, by the American Council of Life Insurance.[1] The Department is proposing the amendment to PTE 77-8 pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code [2] and in

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[1] The applicant also requested, and the Department is publishing in today's Federal Register, a similar proposed amendment to PTE 77-7 (42 FRE 31575, June 21, 1977).

[2] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor.

In the discussion of the exemption, references to sections 406 and 408 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

accordance with ERISA Procedure 75-1 (40 FR 18671, April 28, 1975).

PTE 77-8 permits an employee benefit plan to sell individual life insurance contracts and annuities to (1) a plan participant insured under such policies, (2) a relative of such insured participant who is the beneficiary under the contract, (3) an employer any of whose employees are covered by the plan, or (4) another employee benefit plan, for the cash surrender value of the contracts, provided the conditions set forth in the exemption are met. As of the date PTE 77-8 was granted, section 408(d) of the Act provided that no exemption could be granted under section 408(a) of the Act for transactions of the type described in the exemption between a plan and certain persons such as an owner-employee (as defined in section 401(c)(3) of the Internal Revenue Code of 1986) or a shareholder-employee (as defined in section 1379 of the Internal Revenue Code of 1954). The exemption is, however, applicable to such persons for purposes of section 4975 of the Code.

The applicant requests an amendment that would expand the coverage of PTE 77-8 to include transactions with owner-employees (as defined in section 401(c)(3) of the Internal Revenue Code of 1986) and shareholder-employees (as defined in section 1379 of the Internal Revenue Code of 1954 as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982).

The Department notes that all the conditions contained in PTE 77-8 still must be met under the proposed amendment. These conditions include a requirement that the amount received by the plan as consideration for the sale is at least equal to the amount necessary to put the plan in the same cash position as it would have been in had it retained the contract, surrendered it, and made any distribution owing to the participant of his vested interest under the plan. Additionally, the conditions require that, with regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, discriminate in form or in operation in favor of plan participants who are officers, shareholder, or highly compensated employees.

The applicant notes that section 1898(i) of the Tax Reform Act of 1986 (Pub. L. 99-514, October 22, 1986) amended section 408(d) of the Act to remove the restriction on the Department granting exemptions under section 408(a) of the Act for transactions involving owner-employees and shareholder-employees.

The applicant represents that many pension and profit sharing plans, particularly those of small employers, are funded in whole or in part by the purchase of individual annuity or life insurance contracts on the lives of the plan's participants. In many cases where the insurance policies are already owned by the pension plan, the plan decides that it no longer wants to provide insurance protection through the plan. In order to keep the policies in force, the plan allows insured participants to purchase their policies. The applicant asserts that, without the proposed amendment to PTE 77-8, owner-employees or shareholder-employees would be unable to purchase their policies and, therefore, the policies would have to be surrendered. The applicant notes that a common reason why an owner-employee or shareholder-employee participant may want to purchase a policy from a plan and keep it in force on his own is to preserve any life insurance protection provided by the policy in a case where he has a medical impairment and may be currently uninsurable or would be unable to replace that insurance in the open market at standard rates. In the case of annuity contracts with no life insurance protection, a purchase may be desirable from the participant's standpoint in order to preserve a valuable contract option that may no longer be available or to avoid a higher first year expense loading that would be payable if he purchased a new policy. The applicant further argues that since the restriction on the Department's ability to grant exemptions to owner-employees and shareholder-employees under section 408(a) of the Act was removed by section 1898(i) of the Tax Reform Act of 1986, there is no reason to continue to limit the availability of PTE 77-8 for such persons.

The applicant notes that the proposed amendment is protective of plan participants and beneficiaries because owner-employees and shareholder-employees who enter into transactions covered by PTE 77-8 will be subject to the conditions already contained in the exemption, as would any other party utilizing the exemption. Specifically, by requiring that the consideration paid to a plan on a sale be at least the amount the plan would have received on surrender, the plan will be in precisely the same financial position whether the sale is made or the policy is surrendered. The applicant also states that the proposed amendment is administratively feasible because the transactions permitted for owner-employees and shareholder-employees will be subject to the objective criteria contained in PTE 77-8.

As noted above, at the time PTE 77-8 was granted, section 408(d) of the Act precluded the Department from granting exemptive relief under section 408(a) of the Act for transactions of the type described in the exemption involving an owner-employee or a shareholder-employee. The preamble to PTE 77-8 (42 FR 31575) made clear that the exemption was intended to be available to such persons for purposes of section 4975 of the Code. Based on the amendment to section 408(d) of the Act, the protections already embodied in PTE 77-8 and the arguments presented by the applicant, the Department has decided to propose the amendment to PTE 77-8 requested by the applicant.

The applicant originally requested an efective date for the proposed amendment of January 1, 1975, which is the effective date of PTE 77-8. In this regard, the Department notes that the amendment to section 408(d) removing the restriction on the Department granting exemptions for transactions involving owner-employees and shareholder-employees under section 408(a) of the Act was effective for transactions occurring after October 22, 1986. The Department believes that it is appropriate to propose the same effective date for the amendment to PTE 77-8.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The class exemption is applicable to a particular transaction only if the

transaction satisfies the conditions specified in the exemption; and

(4) The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a public hearing on the proposed amendment to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed amendment. Comments received will be available for public inspection with the referenced application at the above address.

Proposed Amendment

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with ERISA Procedure 75-1, the Department proposes to amend PTE 77-8 as set forth below.

I. Effective January 1, 1975, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act, and the taxes imposed under section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of an individual life insurance or annuity contract by an employee benefit plan to (1) a participant under such plan; (2) a relative of a participant under such plan; (3) an employer, any of whose employees are covered by the plan; or (4) another employee benefit plan, if—

(1) Such participant is the insured under the contract;

(2) Such relative is a "relative" as defined in section 3(15) of the Act (or is a "member of the family" as defined in section 4975(e)(6) of the Code), or is a brother or sister of the insured (or a spouse of such brother or sister), and is the beneficiary under the contract;

(3) The contract would, but for the sale, be surrendered by the plan;

(4) With respect to sales of the policy to the employer, a relative of the insured or another plan, the participant insured under the policy is first informed of the proposed sale and is given the opportunity to purchase such contract from the plan, and delivers a written document to the plan stating that he or she elects not to purchase the policy and consents to the sale by the plan of such policy to such employer, relative or other plan;

(5) The amount received by the plan as consideration for the sale is at least equal to the amount necessary to put the plan in the same cash position as it would have been in had it retained the contract, surrendered it, and made any distribution owing to the participant of his vested interest under the plan; and

(6) With regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, discriminate in form or in operation in favor of plan participants who are officers, shareholders, or highly compensated employees.

II. Effective October 22, 1986, the exemption provided for transactions described in part I is available for plan participants who are owner-employees (as defined in section 401(c)(3) of the Internal Revenue Code of 1986) or shareholder-employees (as defined in section 1379 of the Internal Revenue Code of 1954 as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982) if the conditions set forth in part I are met.

Signed at Washington, DC, this 5th day of July, 1991.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91-16560 Filed 7-10-91; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-8303]

Proposed Amendment to Prohibited Transaction Exemption (PTE) 77-7 Involving the Transfer of Individual Life Insurance and Annuity Contracts to Employee Benefit Plans

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of a proposed amendment to PTE 77-7.

SUMMARY: This document contains a notice of pendency before the Department of Labor of a proposed amendment to PTE 7-7. PTE 77-7 is a class exemption that permits the transfer of certain individual insurance or annuity contracts to employee benefit plans by plan participants or by employers, any of whose employees participate in such plans, provided specified conditions are met. The proposed amendment, if adopted, would affect, among others, certain participants, beneficiaries and fiduciaries of plans engaged in the described transactions.

DATES: Written comments and requests for a hearing should be received by the Department on or before September 9, 1991.

EFFECTIVE DATE: If adopted, the proposed amendment to PTE 77-7 would be effective as of October 22, 1986.

ADDRESSES: All written comments and requests for a hearing (preferably at least three copies) should be sent to: Office of Exemption Determinations, Pension and Welfare Benefits Administration, room N-5649, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. The application pertaining to the exemptive relief proposed herein (Application D-8303) and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Madsen of the Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 523-8971. (This is not a toll-free number); or Diane Pedulla of the Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523-9597. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 77-7 (42 FR 31575, June 21, 1977). PTE 77-7 provides an exemption from the restrictions of section 406(a) and 406(b) (1) and (2) of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code.

The amendment to PTE 77-7 proposed herein was requested in an exemption application dated August 16, 1989, by the American Council of Life Insurance.[1] The Department is proposing the amendment to PTE 77-7 pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code [2] and in

[1] The applicant also requested, and the Department is publishing in today's Federal Register, a similar proposed amendment to PTE 77-8 (42 FR 31574, June 21, 1977).

[2] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December

Continued

accordance with ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

PTE 77-7 permits the transfer of certain individual insurance or annuity contracts to employee benefit plans by plan participants or by employers, any of whose employees participate in the plan, provided certain conditions are met. As of the date PTE 77-7 was granted, section 408(d) of the Act provided that no exemption could be granted under section 408(a) of the Act for transactions of the type described in the exemption between a plan and certain persons such as an owner-employee (as defined in section 401(c)(3) of the Internal Revenue Code of 1986) or a shareholder-employee (as defined in section 1379 of the Internal Revenue Code of 1954). The exemption is, however, applicable to such persons for purposes of section 4975 of the Code.

The applicant requests an amendment that would expand the coverage of PTE 77-7 to include transactions with owner-employees (as defined in section 401(c)(3) of the Internal Revenue Code of 1986) and shareholder-employees (as defined in section 1379 of the Internal Revenue Code of 1954 as in effect on the day before the date of the enactment of the subchapter S Revision Act of 1982).

The Department notes that all the conditions contained in PTE 77-7 still must be met under the proposed amendment. These conditions include a requirement that, the plan pay, transfer, or otherwise exchange no more than the lesser of (a) the cash surrender value of the contract; (b) if the plan is a defined benefit plan, the value of the participant's accrued benefit at the time of the transaction (determined under any reasonable method); or (c) if the plan is a defined contribution plan, the value of the participant's account balance. Additionally, the exemption requires that, with regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to the subject sale, transfer, or exchange, discriminate in form or in operation in favor of plan participants who are officers, shareholders, or highly compensated employees.

The applicant notes that section 1898(i) of the Tax Reform Act of 1986 (Pub. L. 99-514, October 22, 1986) amended section 408(d) of the Act to remove the restriction on the Department granting exemptions under section 408(a) of the Act for transactions involving owner-employees and shareholder-employees.

The applicant represents that many pension and profit sharing plans, particularly those of small employers, are funded in whole or in part by the purchase of individual annuity or life insurance contracts on the lives of the plan's participants. The applicant states that an owner-employee or shareholder-employee may wish to transfer a policy he already owns to the plan, usually because he decides to establish a pension plan for his employees and provide insurance protection under the plan. The applicant asserts that without the proposed amendment to PTE 77-7, such owner-employee or shareholder-employee would be unable to avoid duplicative coverage other than by surrendering the policy. The applicant further argues that since the restriction on the Department's ability to grant exemptions to owner-employees and shareholder-employees under section 408(a) of the Act was removed by section 1898(i) of the Tax Reform Act of 1986, there is no reason to continue to limit the availability of PTE 77-7 for such persons.

The applicant notes that the proposed amendment is protective of plan participants and beneficiaries because owner-employees and shareholder-employees who enter into transactions covered by PTE 77-7 will be subject to the conditions already contained in the exemption, as would any other party utilizing the exemption. Specifically, by requiring that the price paid by a plan for an insurance contract be limited to the lower of the cash surrender value or the participant's account balance or accrued benefit, the other plan participants in the plan are protected in the event the participant covered by the insurance contract dies before his accrued benefit or account balance equals or exceeds the cash surrender value of the contract. The applicant also states that the proposed amendment is administratively feasible because the transactions permitted for owner-employees and shareholder-employees will be subject to the objective criteria contained in PTE 77-7.

As noted above, at the time PTE 77-7 was granted, section 408(d) of the Act precluded the Department from granting exemptive relief under section 408(a) of the Act for transactions of the type described in the exemption involving a plan and an owner-employee or a shareholder-employee. The preamble to PTE 77-7 (42 FR 31576) makes it clear that the exemption was intended to be available to such persons for purposes of section 4975 of the Code. Based on the amendment to section 408(d) of the Act, the protections already embodied in PTE 77-7 and the arguments presented by the applicant, the Department has decided to propose the amendment to PTE 77-7 requested by the applicant.

The applicant orginally requested an effective date for the proposed amendment of January 1, 1975, which is the effective date of PTE 77-7. In this regard, the Department notes that the amendment to section 408(d) removing the restriction on the Department granting exemptions for transactions involving owner-employees and shareholder-employees under section 408(a) of the Act was effective for transactions occurring after October 22, 1986. The Department believes that it is appropriate to propose the same effective date for the amendment to PTE 77-7.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(4) The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of

31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor.

In the discussion of the exemption, references to sections 406 and 408 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a public hearing on the proposed amendment to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest n the proposed amendment. Comments received will be available for public inspection with the referenced application at the above address.

Proposed Amendment

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with ERISA Procedure 75-1, the Department proposes to amend PTE 77-7 as set forth below.

I. Effective January 1, 1975, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale, transfer, or exchange of an individual life insurance or annuity contract to an employee benefit plan from a plan participant on whose life the contract was issue, or from an employer, any of whose employees are covered by the plan, if:

1. The plan pays, transfers, or otherwise exchanges no more than the lesser of—

(a) The cash surrender value of the contract;

(b) If the plan is a defined benefit plan, the value of the participant's accrued benefit at the time of the transaction (determined under any reasonable method); or

(c) If the plan is a defined contribution plan, the value of the participant's account balance.

2. Such sale, transfer, or exchange does not involve any contract which is subject to a mortgage or similar lien which the plan assumes.

3. Such sale, transfer, or exchange does not contravene any provision of the plan or trust document.

4. With regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, transfer, or exchange, discriminate in form or in operation in favor of plan participants who are officers, shareholders, or highly compensated employees.

II. Effective October 22, 1986, the exemption provided for transactions described in part I is available for plan participants who are owner-employees (as defined in section 401(c)(3) of the Internal Revenue Code of 1986) or shareholder-employees (as defined in section 1379 of the Internal Revenue Code of 1954 as in effect on the day before the date of the enactment of the subchapter S Revision Act of 1982) if the conditions set forth in part I are met.

Signed at Washington, DC, this 5th day of July, 1991.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91-16561 Filed 7-10-91; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL EDUCATION GOALS PANEL

Interim Council on Standards and Testing; Meeting

AGENCY: The National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: The National Education Goals Panel was established by a Joint Statement between the President and the Nation's Governors dated July 31, 1990. The panel will determine how to measure and monitor progress toward achieving the national education goals and to report to the nation on the progress toward the goals.

The Interim Council on Standards and Testing is composed of 28 members, including members of the panel, members of Congress, Federal officials, and members of the education and labor communities. The council will report to the panel by December 31, 1991 on issues related to developing national standards and a national assessment system for education. Governor Roy Romer and Governor Carroll Campbell serve as co-chairmen.

TENTATIVE AGENDA ITEMS: The tentative agenda for the meeting includes discussion of current standard setting activities in five core academic subjects.

DATES: The second meeting is scheduled for Thursday, July 18, 1991. Time TBA.

ADDRESSES: Hotel Washington, 515 Fifteenth Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Stevenson at the National Education Goals Panel office. The phone number is (202) 632-0952.

Dated: June 28, 1991.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 91-16581 Filed 7-10-91; 8:45 am]

BILLING CODE 3127-01-M

NATIONAL SCIENCE FOUNDATION

Ocean Sciences Review Panel; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Ocean Sciences Review Panel.

Dates/Times: July 30, 31 and August 1, 1991—8:30 am to 5 p.m. each day.

Place: St. James Hotel, 950 24th NW., Washington, DC 20037.

Type of Meeting: Closed.

Agenda: Review and evaluate oceanography research proposals.

Contact: Dr. Michael R. Reeve, Head, Ocean Sciences Research Section, room 609, National Science Foundation, Washington, DC 20550 (202-357-9610).

Dated: July 8, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-16525 Filed 7-10-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Final Meeting of the MELCOR Peer Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The MELCOR Peer Review Committee will hold its final meeting to review the technical adequacy of the MELCOR code.

DATES: July 22-24, 1991.

TIME: 8:30 am each day.

ADDRESSES: NRC Nicholson Lane South Building, room 014, 5650 Nicholson Lane, Rockville MD 20852.

FOR FURTHER INFORMATION CONTACT: R. B. Foulds, Office of Nuclear Regulatory Research, U.S. Nuclear

Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION: MELCOR is a fully integrated severe accident analysis code that has been developed for the U.S. Nuclear Regulatory Commission by Sandia National Laboratories. Among the targeted applications of the code are its use in probabilistic risk assessment studies to address the perceived risk from a nuclear plant and evaluation of accident management strategies. MELCOR development activities have focused on improving physical models beyond those in precursor codes, flexibility for future modification, and ease of use. MELCOR is capable of treating the complete accident sequence from the initiating event to the fission product release.

The newest version of MELCOR, MELCOR 1.8, was released in March 1989. This version has the capabilities for modeling both boiling and pressurized water reactor plants. The code has now reached sufficient maturity that a number of organizations inside and outside the U.S. Nuclear Regulatory Commission are planning to use the current version. Although the quality control and validation efforts are seen to be proceeding, there is a need to have a broad technical review by recognized experts to determine or confirm the technical adequacy of the code for the serious and complex analyses it is expected to perform.

A peer review committee has been organized using recognized experts from the national laboratories, universities, MELCOR user community, and independent contractors. This will be the sixth and final meeting of the MELCOR Peer Review Committee. The Committee members will review and markup the summary report in preparation for publication of the report.

Dated at Rockville, Maryland, this 5 day of July, 1991.

For the U.S. Nuclear Regulatory Commission.

Farouk Eltawila,

Chief, Accident Evaluation Branch, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 91-16526 Filed 7-10-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-354]

Public Service Electric and Gas Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Public Service Electric and Gas Company (the licensee) to withdraw its April 1, 1991 application for proposed amendment to Facility Operating License NPF-57 for the Hope Creek Generating Station, located in Salem County, New Jersey.

The proposed amendment would have revised the facility Technical Specifications (TS) surveillance 4.8.1.1.2.h.4.b by allowing the surveillance to be run at the normal operating temperature of the Emergency Diesel Generator (EDG). The current TS require this test to be performed at ambient temperature. Additionally, TS surveillance 4.8.1.1.2.h.8 would have been revised to eliminate the requirement to perform TS surveillance 4.8.1.1.2.h.4.b within 5 minutes of completing the 24 hour test.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on May 1, 1991 (56 FR 20044). However, by letter dated June 20, 1991, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 1, 1991, and the licensee's letter dated June 20, 1991, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Dated at Rockville, Maryland, this 3rd day of July 1991.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Project Manager, Project Directorate I-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-16528 Filed 7-10-91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF STATE

[Public Notice 1420]

Shipping Coordinating Committee Meeting

The Working Group on Stability and Load Lines and on Fishing Vessels Safety (SLF) of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on July 30, 1991 at 9 a.m. in room 4315 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this Working Group meeting is to discuss the preparations for the 36th Session of SLF, which is tentatively scheduled for March 1992 at the IMO Headquarters in London.

Items of discussion will include the following: Subdivision and damage stability of dry cargo ships; the new Code of Intact Stability; subdivision and damage stability standards of passenger ships including existing ro-ro ferries; basic principles for future revisions to the 1966 Load Line Convention; safety of fishing vessels, including discussions on external forces caused by fishing gear and development of protocol to the 1977 Torremolinos Convention; stability, load line, and tonnage aspects of open-top container ships; hull cracking in large ships; review of the stability requirements for dynamically supported craft; adequacy of IMO instruments to prevent and mitigate marine pollution incidents; double hull tanker stability; role of the human element in marine casualties; the Work Program SLF 36; and review of reporting requirements on Codes and Assembly resolutions related to the work of the Subcommittee.

Members of the public may attend this meeting up to the seating capacity of the room.

For further information contact Mr. Cojeen or Mr. Hayden at (202) 267-2988, U.S. Coast Guard Headquarters (G-MTH-3/13), 2100 Second Street, SW., Washington, DC 20593-0001.

Dated: June 28, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91-16515 Filed 7-10-91; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Studies: City of San Diego, San Diego Co.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of initiation of environmental studies.

SUMMARY: The FHWA is issuing this notice to advise the public that environmental studies will be prepared for a proposed highway project in San Diego County, California.

FOR FURTHER INFORMATION CONTACT: Leonard E. Brown, District Engineer, Federal Highway Administration, P.O. 1915, Sacramento, California 95812-1915, Telephone: (916) 551-1307.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will study the easterly extension of Nobel Drive with

interchange construction at I-805. The following is a brief summary of the project:

The proposed project study area encompasses approximately 600 acres of land in the western portion of Miramar Naval Air Station and the eastern portion of University City in the City of San Diego. The project study area is generally south of the La Jolla Village Drive/Miramar Road/I-805 interchange. Refer to Figures 1 and 2 for the regional location map and proposed project map. The project is an extension of Nobel Drive, a city six-lane divided arterial, from its existing eastern terminus near Shoreline Drive, northeast across I-805, and intersecting with Miramar Road in the vicinity of Eastgate Mall road. Nobel Drive is proposed for construction of six lanes west of I-805 and four lanes east of I-805.

The Nobel Drive extension is being proposed by the City of San Diego to provide an alternate east-west transportation corridor to serve the North City area. The Nobel Drive extension would help alleviate existing and projected capacity problems on Miramar Road, specifically in the vicinity of the La Jolla Village Drive/Miramar Road/I-805 interchange. The Caltrans and FHWA project components include: Stage (1) construction of a metered half-diamond interchange at Nobel Drive/I-805 with a bridge over I-805 and auxiliary lanes to the south; and Stage (2) construction of north ramps at the Nobel Drive/I-805 interchange braided with a revised La Jolla Village Drive/Miramar Road interchange at I-805, including the installation of traffic meters at all intersection on-ramps. All improvements related to the interchange with Nobel Drive will be coordinated among Caltrans, FHWA, and the City of San Diego. Stage 1 construction of the project is anticipated to begin in July 1993, to be followed by Stage 2 improvements, as determined by traffic thresholds outlined in the Project Report and environmental document.

As shown in Figure 2, two primary alternatives have been identified for the Nobel Drive Alignment: Alternatives "A" and "B". Alternative "B" is the preferred Nobel Drive Alignment. The two alternative routes have been identified based upon preliminary biological resources, cultural resources, and geotechnical sensitivity constraints. Both alignments will be addressed in the environmental document, as well as the No Project Alternative and other design alternatives (e.g., modifications to Miramar Road to help alleviate capacity problems, terminating Nobel Drive at I-805 and constructing a half-diamond interchange, and utilization of the planned MTDB mass transit system as a means for accommodating some of the North University City traffic).

The FHWA, Caltrans, and the City of San Diego will institute a formal scoping process for the project. Other agencies, such as U.S. Fish and Wildlife Service, and the U.S. Navy, will be contacted regarding the sensitive issues involved with the project. Public meetings will be held to provide an opportunity for all interested parties to voice their concerns. Through the public scoping meetings and Notice of Initiation of Environmental Studies process, significant environmental concerns will be sought, considered, and included in the scope of the project.

To ensure that the full range of issues relative to this proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the environmental studies should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal Programs and activities apply to this program)

Issued on July 2, 1991.

Leonard E. Brown,

District Engineer, Sacramento, California.

[FR Doc. 91-16516 Filed 7-10-91; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 91-34-IP-No. 1]

Subaru of America; Receipt of Petition for Determination of Inconsequential Noncompliance

Subaru of America (Subaru) of Cherry Hill, New Jersey, has determined that reflex reflectors on some of its passenger cars fail to comply with 49 CFR 571.108, Federal Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices and Associated Equipment, and has filed an appropriate report pursuant to 49 CFR part 573. Subaru has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicles safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Standard No. 108 requires that materials used for side reflex reflectors meet the performance standards in either table I or table IA of SAE Standard J594f, Reflex Reflectors. Subaru produced approximately 45,591 MY 1989 and MY 1990 Subaru (Loyale) Station Wagon, 4-Door Sedan, and 3-Door Coupe models during November 1, 1988, through April 10, 1990, which do not comply with the photometric requirements of the resinous reflex reflector in SAE Standard J594f. Subaru stated the noncompliance was caused by a rust preventive paper that was inadvertently left in the metal mold at the start of the molding process on October 29, 1988. Upon discovery, the paper was not removed completely and an extremely fine residue was left on the mold surface. At that time the measured data had not been plotted on a chart for quality control purposes, therefore the deterioration of reflex performance was not detected.

Subaru supports its petition with the following:

Although the photometric value(s) at some of the test points are below the specifications, according to the vendor's inspection of two failed samples, the sum of measured values of the noncompliant samples are larger than the sum of the minimum requirement values. This point is illustrated in the table below.

Test point	SAE required specification	Noncompliant reflectors	
		Sample #2	Sample #3
H-V	11.25	9.70	9.36
10U-V	7.5	8.60	7.26
10D-V	7.5	7.14	6.77
H-20L	3.75	5.72	6.43
H-20R	3.75	4.58	4.81
Total	33.75	35.74	34.63

The minimum requirement of the photometric value for amber-color reflex reflector (R/R) is 2.5 times larger than that for red R/R. The measured values of the failed samples (amber-colored) pass the minimum requirement of red R/R with sufficient margin.

Subaru was unable to differentiate reflected light of failed parts of which photometric value is less than the minimum requirement from the reflected light of normal ones visually at each of the following distances; 30m, 60m, and 100m.

The affected vehicles are also equipped with side marker lamps as well as R/R to

make other drivers aware of the vehicle's presence.

Subaru is not aware of any accidents or owner complaints as a result of this noncompliance.

Interested persons are invited to submit written data, views and arguments on the petition of Subaru, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 12, 1991.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on July 5, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-16453 Filed 7-10-91; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Pipeline Safety User Fees

This notice announces that the Fiscal Year 1991 pipeline safety user fee assessments will be mailed to operators on or about July 15, 1991. This notice also states certain changes in the previously announced policies and practices that the Research and Special Programs Administration (RSPA) has adopted to implement the pipeline safety user fee provisioins of the Consolidated Omnibus Reconciliation Act of 1985 (Reconciliation Act) (Pub. L. 99-272; April 7, 1986).

The Reconciliation Act authorizes the assessment and collection of user fees to fund the activities conducted under the Natural Gas Pipeline Safety Act of 1968 (NGPSA) (49 U.S.C. App. 1671 *et seq.*) and the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) (49 U.S.C. App. 2001 *et seq.*) RSPA assesses each operator of jurisdictional gas transmission and hazardous liquid pipelines a share of the total program costs in proportion to the miles of pipeline each operator has in service at the beginning of the Fiscal Year (October 1). The fee schedule for LNG facilities is based on storage capacity and the number of plants.

As mandated, the allocation of departmental resources was taken into consideration and total program costs for Fiscal Year 1986 through Fiscal Year 1990 were divided 80 percent for gas and 20 percent for liquid, less the costs of States grants-in-aid which were divided 95 percent for gas and 5 percent for liquid.

In Fiscal Year 1991, the calculation of user fees is being changed as a result of increased allocation of resources to the hazardous liquid program. The program costs will be divided 75 percent for gas and 25 percent for liquid, less the costs of States grants-in-aid, which will be 90 percent for gas and 10 percent for liquid.

In accordance with the regulations of the Department of the Treasury, user fees will be due 30 days after the date of the assessment. Interest, penalties, and administrative charges will be assessed on delinquent debts in accordance with 31 U.S.C. 3717. Assessments for Fiscal Year 1991 will be dated August 1, 1991, and due August 31, 1991.

Issued in Washington, DC, on July 8, 1991.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 91-16543 Filed 7-10-91; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0771.

Form Number: None.

Type of Review: Extension.

Title: Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits; Substantiation Requirements With Respect to Listed Property and Substantiation Requirements Relating to Taxation of Fringe Benefits, Travel, Entertainment, and Gift Expenses.

Description: Section 274(d) and regulation § 1.274-5 require all taxpayers to substantiate their deductions for business travel, entertainment or gift expenses by keeping adequate records as to amount, time, place, business purpose and business relationship. This is necessary to verify that deductions are not permitted for personal expenses. The regulations also provide rules on certain exclusions from gross income.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 7,282,150.

Estimated Burden Hours Per Response/Recordkeeping: 5 hours, 30 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/Reporting Burden: 50,377,688 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-16504 Filed 7-10-91; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy; Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on July 11 in room 600, 301 4th Street, SW., Washington, DC from 10:30 a.m to 12 noon.

The Commission will meet at 10:30 a.m. with Mr. Warren Obluck, Deputy Associate Director, Bureau of Educational and Cultural Affairs, to discuss the Bureau's grants management policies. At 11:15 a.m., the Commission will meet with USIA Deputy Director Eugene P. Kopp and Comptroller Stanley

Silverman to discuss the Agency's budget and strategic planning.

FOR FURTHER INFORMATION: Please call Gloria Kalamets, (202) 619–4458, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: July 9, 1991.

Cathy A. Brown,

Management Analyst, Federal Register Liaison.

[FR Doc. 91–16651 Filed 7–8–91; 12:41 pm]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 133
Thursday, July 11, 1991

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).

U.S. COMMISSION ON CIVIL RIGHTS

July 9, 1991.

DATE AND TIME: Monday, July 15, 1991, 9:00 A.M.–5:00 P.M.

PLACE: U.S. Commission on Civil Rights, 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

STATUS: Open to the public.

Monday, July 15, 1991

I. Approval of Agenda
II. Approval of Minutes of June 10 and 21 Meetings
III. Announcements
IV. SAC Appointments for Maine, North Carolina, South Carolina
V. Draft report on *Recent Decisions of the Supreme Court and the Proposed Civil Rights Acts of 1990 and 1991*
VI. Staff Director's Report
VII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications, (202) 376–8312.

Emma Monroig,
Solicitor.

[FR Doc. 91–16693 Filed 7–9–91; 3:45 pm]

BILLING CODE 6335–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, July 16, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, July 18, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Proposed Final Rule on Disposition of Excess Campaign Funds, with Explanation and Justification
Title 26 Regulations: Revised Final Rules and Explanation and Justification (If necessary)

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

Delores Harris,
Administrative Assistant, Office of the Secretariat.

[FR Doc. 91–16675 Filed 7–9–91; 3:45 p.m.]

BILLING CODE 6715–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, July 17, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any 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, begining 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.

Dated: July 9, 1991.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 91–16690 Filed 7–9–91; 3:45 pm]

BILLING CODE 6210–01–M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Thursday, July 18, 1991.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

FY 93 Budget.
Ex Parte No. MC–195, *Petition of Regular Common Carrier Conference for Establishment of Minimum Rate Standard and Other Relief.*
Finance Docket No. 31532, *Indiana Hi-Rail Corporation—Lease and Operation—Norfolk & Western Railway Company Line Between Douglas, OH and Van Buren, IN.*

CONTACT PERSON FOR MORE INFORMATION:

A. Dennis Watson, Office of External Affairs, Telephone: (202) 275–7252, TDD: (202) 275–1721

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 91–16539 Filed 7–8–91; 12:23 pm]

BILLING CODE 7501–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Thursday, July 18, 1991.

PLACE: Mayflower Park Hotel, 405 Olive Way, Seattle, Washington 98101 (202) 623–8700.

STATUS: Open.

BOARD BRIEFINGS:

1. Central Liquidity Facility Report and Report on CLF Lending Rate.
2. Insurance Fund Report.
3. Study for State Regulator Reimbursement.
4. Legislative Update.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Interest Rate Ceiling on Credit Union Loans.
3. Final Rule: Sections 701.23 and 741.4, Purchase of Assets and Assumption of Liabilities, NCUA's Rules and Regulations.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,
Secretary of the Board.

[FR Doc. 91–16656 Filed 7–9–91; 8:45 am]

BILLING CODE 7535–01–M

Corrections

Federal Register
Vol. 56, No. 133
Thursday, July 11 1991

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 COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

[Docket No. 910645-1145]

Pelagic Fisheries of the Western Pacific Region

Correction

In rule document 91-14568 beginning on page 28116 in the issue of Wednesday, June 19, 1991, make the following corrections:

1. On page 28116, in the third column, under **EFFECTIVE DATE**, in the last line, "August 19, 1991" should read "September 17, 1991".
2. On page 28117, in the 3rd column, in the last paragraph, in the 11th line, "num" should read "nm".
3. On page 28118, in the third column, in amendatory instruction 2, in the third line, "August 19, 1991" should read "September 17, 1991".
4. On the same page, in the same column, in amendatory instruction 3, in the fourth line, "August 19, 1991" should read "September 17, 1991".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[CP91-2206-000, et al.]

Tennessee Gas Pipeline Co., et al; Natural gas certificate filings

Correction

In notice document 91-15016 beginning on page 28878, in the issue of Tuesday, June 25, 1991, make the following corrections:

1. On page 28880, in the third column, the docket number for South Georgia Natural Gas Co.; Southern Natural Gas Co. should read "[Docket Nos. CP91-2272-000[2]; CP91-2273-000]
2. On the same page, in the same column, in "**6. South Georgia Natural Gas Co.; Southern Natural Gas Co.**", in the first line "Take notice[2]" should read "Take notice".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 91-30-NG]

Wes Cana Marketing (U.S.) Inc.; Application for Blanket Authorization to Import and Export Natural Gas

Correction

In notice document 91-14847 beginning on page 28545 in the issue of Friday, June 21, 1991, in the third column, under **DATES**, in the last line, "July QQ, 1991" should read "July 22, 1991".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3967-4]

Environmental Impact Statements; Availability

Correction

In notice document 91-14857 appearing on page 28558, in the issue of Friday, June 21, 1991, in the second column, in the 12th line from the bottom of the page, after "EIS No. 910199," "DRAFT" should read "FINAL".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AGL-2]

Transition Area Establishment; Sault Ste Marie Municipal/Sanderson Field Airport, MI

Correction

In rule document 91-8119 appearing on page 14190 in the issue of Monday, April 8, 1991, make the following correction:

§ 71.181 [Corrected]

On page 14190, in the third column, in § 71.181, under Sault Ste Marie ***, in the fourth line, "lat. 45°" should read "lat. 46°".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-163-84]

RIN 1545-AH22

Treatment of Transactions Between Partners and Partnerships

Correction

In proposed rule document 91-9647 beginning on page 19055 in the issue of Thursday, April 25, 1991, make the following corrections:

§ 1.707-3 [Corrected]

1. On page 19063, in the 1st column, in § 1.707-3(g), *Example 4*, in the 20th line "9c)" should read "(c)".

§ 1.707-6 [Corrected]

2. On page 19070, in the third column, in § 1.707-6(d), *Example 1*(ii), in the first line "$1 100,000" should read "$1,100,000"

BILLING CODE 1505-01-D

federal register

Thursday
July 11, 1991

Part II

Department of Commerce

International Trade Administration

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al.; Final Results of Antidumping Duty Administrative Review; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[A-428-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On March 15, 1991, the Department of Commerce published the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs), from the Federal Republic of Germany (56 FR 11200). The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 13 manufacturers/exporters and the period November 9, 1988 through April 30, 1990.

Based on our analysis of the comments received and the correction of certain inadvertent programming and clerical errors, we have changed the preliminary results. The final margins for the reviewed firms for each class or kind of merchandise are listed below in the section "Final Results of Review."

EFFECTIVE DATE: July 11, 1991.

FOR FURTHER INFORMATION CONTACT: David M. Birdsey (Messerschmitt-Boelkow-Blohm GmbH (MBB), Heidelberg Druckmaschinen, AG, (HDM)), Robert Hamilton (NTN Kugellagerfabrik (Deutschland) GmbH (NTN)), J. David Dirstine (SKF Textilmaschinen-Komponenten GmbH (SKF), Georg Mueller Nurnberg, AG (GMN)), Laurel M. Lynn (Pratt & Whitney Canada, Inc.), Edmond A. O'Neill (FAG Kugelfischer Georg Schaefer KGaA (FAG)), Thomas A. McGinty (FiatAvio S.p.A. (FiatAvio)), Maureen C. McPhillips (INA Walzlager Schaeffler KG (INA)), Breck J. Richardson (Gebruder Reinfurt GmbH & Co. Kg. (GRW), Neuweg Fertigung GmbH (NWG), Zahnradfabrik Friedrichshafen AG (ZF)), Richard Rimlinger or Ileana Crowley, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On June 11, 1990, in accordance with 19 CFR 353.22(c), the Department of Commerce (the Department) initiated administrative reviews of the antidumping duty orders on ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof, from the Federal Republic of Germany for the period November 9, 1988 through April 30, 1990 (55 FR 23575).

On March 15, 1991, we published the preliminary results, and termination in part, of these administrative reviews (56 FR 11200). We gave interested parties an opportunity to comment on our preliminary results. At the request of certain interested parties, we held public hearings during the week of April 22, 1991. Because there are concurrent administrative reviews of imports of AFBs from nine countries, we held a hearing on general issues pertaining to all nine countries on April 22, 1991, and a country-specific hearing for the Federal Republic of Germany on April 26, 1991.

Issues Appendix

All issues raised in the case and rebuttal briefs by parties to the nine concurrent administrative reviews of AFBs are addressed in the "Issues Appendix" which is appended to this notice of final results. The first part of the Issues Appendix addresses all general issues raised in these reviews, and our determinations with respect to each issue. The next part addresses all remaining comments filed by the parties to these proceedings according to subject and then by company within each subject. See the Table of Contents to the Issues Appendix for a complete listing of all issues raised and addressed.

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), and parts thereof, and constitute the following "classes or kinds" of merchandise: Ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). For a detailed description of the products covered under BBs, CRBs, and SPBs, please see the section on "Scope of Reviews" in the Issues Appendix.

Reporting Requirements

Our review of the information provided on the record by respondents disclosed that there were millions of AFB sales to the United States, the home market and third countries during the period of review (POR). The enormous number of transactions, coupled with the fact that reviews were requested for over sixty foreign producers and exporters, underscored the need to formulate a reasonable sampling methodology in order for the parties and the Department to cope with the resultant costs and administrative burdens

In response to these problems, and after carefully considering comments on, and suggested alternatives to, our initial sampling proposal, we adopted a sampling plan as authorized under section 777A of the Tariff Act of 1930, as amended (the Act). Under this plan (see "Memorandum to File" dated August 27, 1990), respondents with over 2,000 exporter's sales price (ESP) transactions for any class or kind of merchandise were requested to submit data for all U.S. sales of this class or kind that were made during a selected sample of nine one-week periods. These nine weeks were chosen at random, one from each two-month interval during the POR. For each U.S. sale reported during the selected weeks, we requested that respondents report all sales of identical and similar AFBs sold in the home market during the month corresponding to the sample week for U.S. sales. The dumping margins calculated for this sample group of ESP sales were weight-averaged with the dumping margins for purchase price transactions to calculate each respondent's overall dumping margin.

No comments were received from interested parties concerning the basic validity of our sampling process.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information otherwise available (BIA) is appropriate for several firms. For certain firms, total BIA was necessary, while for other firms, only partial BIA was applied. For a discussion of our general application of BIA, see the section on "Best Information Available" in the Issues Appendix. The firms to which total BIA was applied are also identified in the "Best Information Available" section of the Issues Appendix.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes in these final results.

• Where applicable, certain programming and clerical errors in our preliminary results have been corrected. Any alleged programming or clerical errors pertaining to the calculation and treatment of charges and adjustments, cost of production and constructed value with which we do not agree are discussed in the relevant sections of the Issues Appendix.

• In accordance with section 773(b) of the Act, in determining whether to disregard home market sales made at prices below the cost of production, we examined whether such sales have been made in substantial quantities over an extended period of time. When less than 10 percent of the home market sales of each model were at prices below the cost of production, we did not disregard any sales and made normal price-to-price comparisons. When more than 10 percent, but less than 90 percent of the home market sales of a particular model were determined to be below cost, we excluded the below-cost home market sales from our calculation of FMV provided that these below cost sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model for purposes of calculating foreign market value (FMV).

No home market below-cost sales were disregarded unless they were determined to be over an extended period of time.

We have determined that the threshold for "extended period of time" is met when there are below-cost home market sales in more than two months of the POR. We made an exception to this threshold requirement when a particular model was sold in less than three months during the POR. In such cases, where sales below cost occurred in each of the months in which such models had been sold, we concluded that these sales of particular models had been made below cost over an extended period of time.

Home market sales of obsolete merchandise and distress sales were not disregarded from our analysis unless there was documented information on the record demonstrating that such sales were outside the ordinary course of trade.

Since none of the respondents has submitted information indicating that any of its sales below cost were at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade," we are unable to conclude that the costs of production of such sales have been recovered within a reasonable period. For a more complete discussion of our determination with respect to the cost of production test, see the section on "Cost of Production" in the Issues Appendix.

• For our preliminary results, we compared U.S. and home market sales at the same level of trade. If we did not find contemporaneous sales of such or similar merchandise at the same level of trade, we used constructed value (CV) as the basis for FMV. However, as a result of our review of comments filed by the parties to these proceedings, we have changed our comparison procedures.

For purposes of these final results of review, we first sought contemporaneous sales of identical merchandise at the same level of trade in the home market as that of the U.S. sale. If we were unable to find a match, we then looked for contemporaneous sales of identical merchandise at the next level of trade. (Our analysis of the various levels of trade reported by the respondents led us to conclude that sales of AFBs are made at two levels of trade: (1) Original equipment manufacturers, and (2) distributors, retailers and aftermarket sellers.) If we were unable to find identical matches at the next level of trade, we then sought contemporaneous home market sales of the same family as the U.S. bearing at the same level of trade. If unsuccessful, we then sought contemporaneous home market sales of the same family at the next level of trade before using CV as the basis for FMV (see the section on "Level of Trade" in the Issues Appendix).

• Based on our analysis of comments filed by parties to these proceedings, we have modified or altered our treatment of certain charges and adjustments. These modifications or alterations are discussed in the relevant sections of the Issues Appendix. The most significant modification pertains to our treatment of value-added taxes (VAT) and consumption taxes. Under section 772(d)(1)(c) of the Act, U.S. price must be increased by the "* * * amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation." Accordingly, we have calculated an amount for the VAT or consumption tax, and added it to U.S. price. In order to ensure tax-neutral results, we have made a circumstance of sale adjustment to the home market price. When home market prices were reported net of VAT or consumption tax, we were able to effect a circumstance of sale adjustment by adding the amount of the tax calculated for the U.S. sale to the home market price. For a more complete discussion of our treatment of these taxes, see the section on "Value-Added Taxes" in the Issues Appendix.

Analysis of Comments Received

See the Issues Appendix attached to this notice.

Final Results of Review

We determine the following percentage margins to exist for the period November 9, 1988 through April 30, 1990.

Company	Ball bearings	Cylindrical roller bearings	Spherical plain bearings
Dowty Rotol	8.11	(1)	(2)
FAG	11.93	3.90	10.80
FiatAvio	12.86	10.02	(2)
GRW	0.14	(2)	(2)
GMN	2.84	(1)	(1)
HDM	0.00	0.00	(2)
INA	10.56	14.56	(1)
MBB	0.00	0.00	0.00
NWG	51.56	(2)	(2)
NTN-FRG	5.36	(2)	(2)
Pratt & Whitney	5.25	3.31	(1)
SKF-FRG	5.25	6.42	3.69
ZF	42.72	13.59	0.00
All others	51.56	14.56	10.80

[1] No sales to the U.S. during the period.
[2] Not subject to review.

Cash Deposit Requirements

To calculate the cash deposit rate for each respondent, we divided the total potential uncollected dumping duties (PUDD) for each exporter by the total net USP value for that exporter's sales during the review period under each order.

In order to derive a single deposit rate for each class or kind of merchandise for each respondent (*i.e.*, each exporter or manufacturer included in these reviews), we weight-averaged the purchase price (PP) and exporter's sales price (ESP) deposit rates (using the combined U.S. value of PP sales and ESP sales as the weighting factor). To accomplish this where we sampled ESP sales, we first approximated a total PUDD for all ESP sales by dividing the sample ESP PUDD by the ratio of sampled weeks to total weeks in the review period. We then

approximated a total net USP value for all ESP sales during the review period by dividing the sampled ESP total net value by the ratio of sampled weeks to total weeks in the review period.

We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after, the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an unrelated customer in the United States will receive the exporter's deposit rate for the appropriate class or kind of merchandise.

Entries of products subject to the orders that had passed through foreign trade zones (FTZs) before entry into U.S. Customs territory will be treated the same as other entries of products subject to the orders to the extent that such treatment is not inconsistent with our handling of FTZs. *See* the section on "Foreign Trade Zones" in the Issues Appendix.

The following deposit requirements will be effective for all shipments of German-origin antifriction bearings (other than tapered roller bearings) and parts thereof, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act:

(1) For the reviewed companies, the cash deposit rate will be that established in the final results of these reviews;

(2) For merchandise exported by manufacturers or exporters not covered in these reviews, but covered in the final determinations of sales at less than fair value (the LTFV investigations), the cash deposit rate will continue to be the rate published in the final determinations in the LTFV investigations;

(3) If the exporter is not a firm covered in these reviews or the original investigations, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews or, if not covered in these reviews, the rate from the LTFV investigations;

(4) The cash deposit rate for all other manufacturers which export the subject merchandise shall be the "All Others" rate listed in the section "Final Results of Review" above for each class or kind of merchandise.

These deposit requirements shall emain in effect until publication of the final results of the next administrative reviews. All comments submitted concerning the calculation of the cash deposit rates are addressed in the section on "Assessment and Cash Deposit Rates" in the Issues Appendix.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent us from doing entry-by-entry assessments, we will calculate wherever possible an exporter/importer-specific assessment rate for each class or kind of antifriction bearings. In our preliminary results of review (56 FR 11200), we stated that we would calculate this exporter/importer-specific rate based on the ratio of the total value of dumping duties calculated for the sales examined in the review period to the total entered customs values of those sales. We stated that this rate would be assessed uniformly on all entries of the class or kind of merchandise by that particular importer during the review period. We also stated that where we did not have entered customs value for all merchandise examined during the review period, we would calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the review period.

Based on comments received from interested parties and our analysis of the information on the record, we have modified the methodology described in the preliminary results. For purposes of these final results, assessment rates will be calculated as follows.

1. Purchase Price Sales

With respect to purchase price sales for these final results, we will divide the total PUDD (calculated as the difference between foreign market value and U.S. price) for each importer by the total number of units sold to that importer. We will direct Customs to assess the resulting unit dollar amount against each unit of merchandise in each of that importer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer under each order for the review period will be almost exactly equal to the total PUDD, which is the correct assessment amount.

2. Exporter's Sales Price Sales

For ESP sales (sampled and non-sampled), we will divide the total PUDD for the reviewed sales by the total entered value of those reviewed sales, for each importer. We will direct Customs to assess the resulting percentage margin against the entered Customs values of the subject merchandise in each of that importer's entries under the relevant order during the review period. Although this approach will result in the assessment of a dumping margin based, to some extent, on sales of merchandise imported outside the POR, it is the most accurate rate that can be calculated on the basis of the information on the record.

In the case of companies which did not report entered value of sales, we will calculate a proxy for entered value of sales, based on the price information available and appropriate adjustments (*e.g.*, insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis).

For calculation of the ESP assessment rate, entries for which liquidation was suspended, but which ultimately fell outside the scope of the orders through operation of the "Roller Chain" rule, will be included in the assessment rate denominator to avoid over-collecting. (The "Roller Chain" rule excludes from the scope of an order bearings which were imported by a related party and further-processed, and which comprise less than one percent of the finished product sold to the first unrelated customer in the United States. *See* the section on "Roller Chain" in this appendix.) Entries of parts incorporated into finished bearings before sale to an unrelated customer in the United States will be assessed the importer's weighted-average margin for the appropriate class or kind of merchandise.

3. Other Assessment Instructions

In the case of companies which chose to respond to the price list option (*see* Preliminary Results of Antidumping Duty Reviews: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof, from the Federal Republic of Germany, 56 FR 11200), we will calculate an *ad valorem* assessment rate by dividing PUDD by a proxy for entered value of sales. The proxy will be calculated based on the price information available and appropriate adjustments (*e.g.*, insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis).

Entries of products subject to the orders that had passed through a foreign trade zone before entry into U.S. Customs territory will be treated the same as other entries of products

subject to the orders to the extent that such treatment is not inconsistent with our approach to FTZs. *See* the section on "Foreign Trade Zones" in the Issues Appendix.

When we refer to importers, we are referring to the U.S. customer, whether related or unrelated to the exporter, not the customs broker or brokerage house that might be the importer of record for any of these entries. Our liquidation instructions to Customs will identify the customer that these notices refer to as the importer.

The comments made by interested parties concerning the calculation of assessment and cash deposit rates are addressed in the "Assessment and Cash Deposit Rates" section of the Issues Appendix.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22 (1990)).

Dated: June 27, 1991

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Issues Appendix

Table of Contents

- *Company Abbreviations*
- *General Issues*
  1. Scope Determinations
  2. Assessment and Cash Deposit Rates
  3. Roller Chain
  4. Foreign Trade Zones
- *Other Issues*
  5. Best Information Available
  6. Date of Sale
  7. Level of Trade
  8. Ordinary Course of Trade/Quantities
  9. Model Match and Adjustments for Physical Differences in Merchandise
  10. Packing and Movement Charges
  11. Discounts and Rebates
  12. Circumstances of Sale and Exporter's Sales Price Adjustments
  13. Inventory Carrying Costs
  14. Value-Added Taxes
  15. Cost of Production
  16. Constructed Value
  17. Romania—Specific Issues
  18. Miscellaneous

Company Abbreviations

ADH—Aerospatiale Division Helicopteres
ADR—ADR les Applications
Asahi—Asahi Seiko Company
Barden—The Barden Corporation
Cooper—Cooper Bearings Co., Ltd.; Cooper Roller Bearing Company
Dowty—Dowty Rotol Ltd.
FAG-FRG—FAG Kugelfischer Georg Schaefer KGaA
FAG-Italy—FAG Cuscinetti S.p.A.
FAG-UK—FAG (U.K.) Ltd.
Federal-Mogul—Federal-Mogul Corporation
Fiat—Fiatavio S.p.A.
Fujino—Fujino Ironworks Co., Ltd.
GMN—Georg Muller Nurnberg; Georg Muller of America
GRW—Gebruder Reinfurt GmbH & Co. KG
HDM—Heidelberg Druckmaschinen, AG
Honda—Honda Motor Co., Ltd.; American Honda Motor Co., Inc.; Honda of America Manufacturing, Inc.; Honda Power Equipment Manufacturing, Inc.
IJK—Inoue Jikuuke Kogyo Co., Ltd.
INA-FRG—INA Walzlager Schaeffler KG; INA Bearing Company, Inc.
INA-France—INA Roulements S.A.
Isuzu—Isuzu Motors, Ltd.
Izumoto—Izumoto Seiko Co., Ltd.
JAEC—Japanese Aero Engines Corporation
Koyo—Koyo Seiko Co. Ltd.
Kuroe—Kuroe Industries Co., Ltd.
KYK—Tottori Yamakai Bearing Seisakusho, Ltd.
MBB—Messerschmitt-Boelkow-Blohm, GmbH
Meter—Meter S.p.A.
Minebea—Minebea Co., Ltd.
Nachi—Nachi-Fujikoshi Corp.; Nachi America Inc.
Nakai—Nakai Bearing Company, Ltd.
Nankai Seiko—Nankai Seiko Co., Ltd.
NMB/Pelmec Singapore—NMB Singapore Ltd.; Pelmec Industries (Pte.) Ltd.
NMB/Pelmec Thai—NMB Thai, Ltd.; Pelmec Thai, Ltd.
NPB—Nippon Pillow Block Manufacturing Co., Ltd.; Nippon Pillow Block Sales Co., Ltd.
NSK—Nippon Seiko K.K.; NSK Corporation
NTN-FRG—NTN Kugellagerfabrik (Deutschland) GmbH
NTN-Japan—NTN Corporation; NTN Bearing Corporation of America; American NTN Bearing Manufacturing Corporation
NWG—Neuweg Fertigung GmbH
Osaka Pump—Osaka Pump Co., Ltd.
Peer Int'l—Peer International, Ltd.
Pratt & Whitney—Pratt & Whitney Canada, Inc.
RHP—RHP Bearings; RHP Bearings Inc.
Rolls-Royce—Rolls-Royce plc; Rolls-Royce Inc.
SARMA—SARMA
Showa—Showa Pillow Block Manufacturing Company
SKF-FRG—SKF GmbH; SKF Gleitlager GmbH; SKF Textil-maschinen-Komponenten, GmbH
SKF-France—SKF Compagnie d'Applications Mecaniques, S.A. (Clamart); ADR; SARMA
SKF-Italy—SKF Industrie; RIV-SKF Officine de Villar Perosa; SKF Cuscinetti Speciali; SKF Cuscinetti; RFT
SKF-Sweden—AB SKF; SKF Mekanprodukter AB; SKF Sverige
SKF-UK—SKF (U.K.) Limited; SKF Industries; AMPEP Inc.
SNECMA—Societe, Nationale d'Etude et de Construction de Moteurs d'Aviation
SNFA—SNFA Bearings, Ltd.
SNR—SNR Roulements; SNR Bearings USA, Inc.
Somecat—Somecat S.p.A.
Takeshita—Takeshita Seiko
TIE—Tehnoimportexport
Torrington—The Torrington Company
Turbomeca—Turbomeca
Wada Seiko—Wada SeikoCo. Ltd.
Yamaha—Yamaha Motor Co., Ltd.; Yamaha Motor Corporation, U.S.A.
ZF—Zahnradfabrik Friedrichshafen AG

Section 1: Scope Determinations

A. Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, and constitute the following "classes or kinds" of merchandise:

1. Ball Bearings and Parts Thereof: These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

2. Cylindrical Roller Bearings and Parts Thereof. These products include all antifriction bearings that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: Antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

3 Spherical Plain Bearings and Parts Thereof. These products include all spherical plain bearings that employ a spherically shaped sliding element.

Imports of these products are classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, 8708.99.50.

Size or precision grade of a bearing does not influence whether the bearing is covered by the order. HTS item numbers are provided for convenience and Customs purposes. In each case, the written description remains dispositive.

B. Scope Determinations

During the course of these administrative reviews, an issue arose concerning whether load rollers, thrust rollers, trolley wheels, chain wheels, and chain sheaves manufactured and exported to the United States by Meter fell within the scope of the orders covering antifriction bearings. The Department issued preliminary determinations that load rollers and thrust rollers fell within the scope of these orders, and that trolley wheels, chain wheels, and chain sheaves fell outside the scope of these orders. Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Italy; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 56 FR 11181 (1991). We received comments on these preliminary scope determinations from Meter, Federal-Mogul, Torrington, SKF-Italy, the Cascade Corporation (Cascade), and the Yale Materials Handling Corporation (Yale).

The regulations governing the Department's scope determinations appear at 19 CFR 353.29; 355.29 (1990). Our primary bases for determining whether a product is covered by the scope of an antidumping or countervailing duty order(s) are the descriptions contained in the order(s), the preliminary and final determinations of the International Trade Commission (ITC) and the Department, and the petition. 19 CFR 353.29(i)(1); 355.29(i)(1) (1990). When we cannot render a scope determination based upon these criteria, we evaluate four additional criteria generally referred to as the Diversified Products criteria. These criteria are the physical characteristics of the merchandise, the expectations of the ultimate purchaser, the ultimate use of the merchandise, and the channels of trade in which the merchandise moves. 19 CFR 353.29(i)(2); 355.29(i)(2) (1990).

Because the descriptions of the subject merchandise contained in the relevant antidumping and countervailing duty orders, the final determinations of the Department and the ITC, and the petition were dispositive, we did not need to consider the four additional criteria set forth in our regulations to determine whether load rollers, thrust rollers, conveyor system trolley wheels, and chain wheels fell within the scope of the relevant orders. Our final scope determinations, as discussed below, modify the preliminary determinations by including trolley wheels and chain wheels within the scope of the antidumping and countervailing duty orders covering antifriction bearings. Our final determinations reaffirm the preliminary determinations by including load rollers and thrust rollers within the scope of these orders. We are deferring our final scope determination with respect to chain sheaves, because we are unable at this time to complete our analysis.

Accordingly, we will issue instructions to the U.S. Customs Service (Customs) to suspend the liquidation of trolley wheels and chain wheels for each entry of this merchandise that is entered, or withdrawn from warehouse, for consumption on or after the publication date in the **Federal Register** of the final results of the administrative reviews covering antifriction bearings. 19 CFR 353.29(j)(3); 355.29(j)(3) (1990). We also will instruct Customs to continue to suspend the liquidation of load rollers and thrust rollers. *Id.* Chain sheaves shall continue to be exempt from any suspension-of-liquidation requirements.

Furthermore, we will instruct Customs to require a cash deposit of estimated antidumping or countervailing duties at the applicable rate, as the case may be, for each entry of trolley wheels, chain wheels, load rollers, and thrust rollers that is entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the administrative reviews covering antifriction bearings. *Id.*

Comment 1: Meter contends that load rollers and thrust rollers fall outside the scope of the orders covering antifriction bearings. Citing a Customs Headquarters ruling, Meter contends that load rollers and thrust rollers are wheels specifically designed to guide the elevation of the carriages of forklift truck mast assemblies, rather than antifriction bearings. Meter also contends that unlike antifriction bearings, load rollers and thrust rollers do not have a fixed outer race that supports a rotating, reciprocating, or oscillatory shaft. Meter further contends that because the Department excluded certain linear motion devices from the scope of the initial investigations, the Department should exclude load rollers and thrust rollers from the scope of the relevant orders. In particular, Meter contends that its products facilitate the linear motion of a forklift truck carriage, rather than reduce friction between moving and fixed parts. Cascade, Yale, and SKF-Italy offer similar arguments in support of Meter's position.

Federal-Mogul and Torrington support the Department's preliminary scope ruling with respect to load rollers and thrust rollers. According to Federal-Mogul and Torrington, these products are mast guide bearings that possess the same general physical characteristics and perform the same function as antifriction bearings. Specifically, Federal-Mogul contends, among other things, that these products are essentially ball bearings that have an outer race that has been specially thickened and shaped to function as though it were a "tire" rolling up and down the mast channel. Federal-Mogul further contends that the petition covers load rollers and thrust rollers (1) because the petition expressly covers tappet bearings, which are similar to load rollers and thrust rollers, and (2) because the petition covers products that "permit free motion between moving and fixed parts by holding or guiding the moving parts to minimize friction and wear." Federal-Mogul Submission at 14 (April 22, 1991) (citing Petition at 136–37) (emphasis supplied in original).

Department's Position: We determine that load rollers and thrust rollers are mast guide ball bearings and, therefore, fall within the scope of the antidumping and countervailing duty orders covering antifriction bearings. The product descriptions contained in the petition, the final determinations issued by the Department and the ITC, and the relevant orders establish that those products that possess certain general physical characteristics and perform certain specific functions are antifriction bearings subject to these orders. *See* Petition at 13–20; Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From Italy, 54 FR 18992, 19006–19019 (1989); Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, USITC Pub. 2185 at A–4–11 (1989); Antidumping Duty Orders: Ball Bearings and Cylindrical Roller Bearings, and Parts Thereof From Italy, 54 FR 20903 (1989).

Antifriction bearings generally share certain common physical characteristics. According to the ITC final determination, antifriction bearings generally "consist of a few major components: an outer ring or outer race; an inner ring or inner race; a series of rolling elements, either balls or rollers, that fit into the opening in a separator or cage; and a separator or cage which keeps the balls or rollers equally distributed around the races." USITC Pub. 2185 at A-4.

Antifriction bearings also perform certain specific functions.[1] In particular, the primary function of an antifriction bearing is to "permit free motion between moving and fixed parts by holding or guiding the moving parts to minimize friction and wear." Petition at 136-137. In addition, an antifriction bearing "can facilitate oscillatory motion and can support heavy loads at relatively low speeds." USITC Pub. 2185 at A-4.

Based upon an examination and analysis of the technical drawings and diagrams submitted by the interested parties, we determine that load rollers and thrust rollers possess the general physical characteristics of and perform essentially the same function as the antifriction bearings subject to the relevant orders. Torrington Submission at 16, Exhibits 2-7 (April 29, 1991). The products at issue contain an inner ring or race, an outer ring or race, a series of balls or rolling elements between the inner and outer races that fit into openings in the separator or cage, and a separator or cage that keeps the balls or rollers equally distributed around the races. *Id.*

Meter does not dispute in any of its submissions that its load rollers and thrust rollers possess these physical characteristics. Instead, Meter contends that because the outer segment of these products is a "tire," these products are not antifriction bearings. Meter Submission at 7-8 (April 11, 1991). Contrary to Meter's contention, an outer race thickened or shaped to function as a tire, or a separately fabricated tire, is merely an enhancement that does not alter the fundamental bearing characteristic of a load roller or a thrust roller. *Cf.* 54 FR at 19,014; USITC Pub. 2185 at 20-21 (flanged housing on wheel hub unit that functions as outer race constitutes "enhancement").

Moreover, there is no evidence on the record that demonstrates that the so-called "tire" on the outer race adds significant value to a load roller or thrust roller. Therefore, the presence of the "tire" on the outer segment of a load roller or a thrust roller is not sufficient to remove the products at issue from the scope of the relevant orders. *See id.*

Furthermore, load rollers and thrust rollers perform essentially the same function as antifriction bearings. Load rollers and thrust rollers reduce friction and wear between the moving and fixed parts of a forklift truck mast assembly. Specifically, the motion of the forklift carriage in the outer channels of the mast assembly is facilitated by load rollers and thrust rollers, both of which guide the carriage in the mast channels and reduce the friction and wear between the moving (carriage) and fixed (mast channels) parts of the mast assembly. Moreover, similar to spherical plain bearings which were expressly covered by the petition, Petition at 13-15, 19, load rollers and thrust rollers serve to sustain the heavy radial loads carried by a forklift truck and also serve to withstand heavy shock or thrust loads.

We disagree with Meter's contention that load rollers and thrust rollers fall outside the scope of the relevant orders, because the Department excluded linear motion bearings (LMBs) and linear motion guides (LMGs) from the scope of the initial investigations. The products at issue are distinguishable from LMBs and LMGs. First, Meter ignores the Department's principal rationale for excluding LMBs and LMGs from the scope of the underlying investigations: "LMDs do not contain the four basic components (*e.g.*, inner/outer race) cited in the petition that most antifriction bearings contain(.)" 54 FR at 19,013. By contrast, load rollers and thrust rollers, as explained above, contain the four basic components of an antifriction bearing.

Second, Meter ignores the fact that the reduction of friction is only a secondary, rather than the primary, function of LMBs and LMGs. *Id.* The primary function of LMBs and LMGs is to facilitate precise linear movement and positioning. *Id.* By contrast, the primary function of load rollers and thrust rollers, as explained above, is to reduce the friction and wear between the moving and fixed parts of the larger forklift mast assembly.

We also disagree with Meter's contentions that the Department is bound by tariff classification numbers or rulings issued by the Customs Service, or that such rulings are even "instructive" in the context of a scope determination. It is well established that tariff classification numbers and Customs classification rulings possess no precedential value in scope determinations rendered by the Department. *Royal Business Machines v. U.S.*, 507 F. Supp. 1007, 1014, n. 18 (CIT 1980), *aff'd*, 669 F. 2d 692 (Fed. Cir. 1982). As articulated by the CIT in *Royal*, "[t]he court distinguishes between the authority of the Customs Service to classify according to tariff classifications (19 U.S.C. 1500) and the power of the agencies administering the antidumping law to determine a class or kind of merchandise." *Id.*

Additionally, although Customs recently ruled that load rollers function as wheels, this ruling also stated that these products nonetheless function as antifriction bearings. HQ 087775 (January 17, 1991) ("The load rollers perform * * * antifrictlon and support functions * * *."). In this regard, load rollers, as well as thrust rollers, are similar to tappet bearings. In particular, the outer race of a tappet bearing, similar to that of load and thrust rollers, enables the tappet to function as a wheel by facilitating a rolling motion on the surface of a valve lifter. *See* Torrington Submission at 14 (April 29, 1991); Federal-Mogul Submission at 7-8 (April 22, 1991). Also like the products at issue, tappet bearings do not carry a rotating or reciprocating shaft passing through the inner diameter of the inner race. The inner race of a tappet bearing is mounted on a stub or a shaft and the outer race, similar to that of load rollers or thrust rollers, rotates around the inner race. *See id.* The petition expressly covered tappet bearings. Petition at 13.

Because load rollers and thrust rollers possess the same general physical characteristics and perform essentially the same function as antifriction bearings, these products are subject to the antidumping and countervailing duty orders covering the subject merchandise. In short, these products are simply mast guide ball bearings. In rendering these scope determinations, we emphasize that the FAG Group and Koyo reported all sales of load rollers and thrust rollers in their respective questionnaire responses as antifriction bearings and have never sought exclusion of these products from the scope of the relevant orders. *See* Federal-Mogul Submission at 6, Exhibit 1 (April 15, 1991).

Comment 2: Meter contends that conveyor system trolley wheels and chain wheels fall outside the scope of

[1] It is important to emphasize that the "function" of an antifriction bearing (*i.e.*, reduction of friction) is a separate and distinct concept from the "end use" of a bearing (*i.e.*, ultimate application or use of a bearing in, or as part of, an end product, such as an automobile or a textile-machinery component). *See* 54 FR at 19,011, 19,012, 19,017. The terms "function" and "end use," insofar as these terms relate to antifriction bearings, are neither synonymous nor interchangeable. *See id.*

the orders covering antifriction bearings. According to Meter, these products are guide wheels that roll along the tracks of a conveyor system and, as such, are conveyor system components that fall outside the scope of the relevant orders. Meter also contends that these products are very similar to roller skate wheels which Meter asserts fall outside the scope of the orders covering antifriction bearings.

Federal-Mogul and Torrington, in contrast, contend that conveyor system trolley wheels and chain wheels possess the same general physical characteristics of and perform the same friction-reduction function as antifriction bearings. Specifically, Federal-Mogul contends that conveyor system trolley wheels, also referred to as "ball bearing trolleys," are simply ball bearings that have an outer race that has been thickened and specially contoured to function as a "tire". Federal-Mogul asserts that the primary function of ball bearing trolleys is to reduce the friction between the conveyor track and the moving parts of the conveyor system, as well as to withstand shock and support heavy loads. Federal-Mogul Submission at 9–11 (April 11, 1991). Therefore, according to Federal-Mogul, conveyor system trolley wheels are no different from the mast guide ball bearings discussed in Comment 1.

Federal-Mogul also argues that chain wheels are "roller chain idler sprockets" which are simply ball bearings that have an outer race that has been merely enhanced by gear teeth. Federal-Mogul compares these products to slewing rings, which also have gear teeth. According to Federal-Mogul, the Department determined in the initial investigations that the gear function of slewing rings is merely an enhancement that does not alter the primary function of reducing friction and wear between moving and fixed parts. *Id.* at 14–16. Because roller chain idler sprockets are similar to slewing rings, Federal-Mogul asserts that these products fall within the scope of the relevant orders.

Department's Position: We determine that conveyor system trolley wheels are enhanced ball bearings and, accordingly, fall within the scope of the antidumping and countervailing duty orders covering antifriction bearings. The technical drawings and diagrams submitted by the interested parties establish that conveyor system trolley wheels possess the same general physical characteristics and perform essentially the same function as antifriction ball bearings. *See* Federal-Mogul Submission at Exhibit 2 (April 11, 1991). Specifically, trolley wheels possess both an inner race and an outer race, as well as a series of rolling elements that fit into an opening of a cage. *See* Federal-Mogul Submission at Exhibit 2 (April 11, 1991); *compare id. with* Department's Position to Comment 1.

Although the outer race of a trolley wheel is shaped to function as a "tire," this "tire" is a mere enhancement that does not alter the fundamental bearing characteristics of trolley wheels. *See* Department's Position to Comment 1. Moreover, there is no evidence on the record that demonstrates that this so-called "tire" adds significant value to a trolley wheel. Therefore, the presence of an outer race enhanced by a "tire" is not sufficient to remove trolley wheels from the scope of the relevant orders. *See id.*

Furthermore, the primary function of trolley wheels—like that of antifriction bearings—is to minimize friction between moving (conveyor) and fixed (trolley track) parts, as well as to carry heavy loads. *See id.* Trolley wheels minimize friction in a manner similar to that of tappet bearings which were expressly covered by the petition. *See* Federal-Mogul Submission at Exhibit 2 (April 11, 1991); *see also* Department's Position to Comment 1.

We also determine that chain wheels (*i.e.*, roller chain idler sprockets) are bearings that are merely enhanced by gear teeth and are, therefore, subject to the orders covering antifriction bearings. The technical drawings submitted by the interested parties demonstrate that chain wheels possess the four physical characteristics common to antifriction bearings: an inner an outer race; a series of rolling elements; and a cage or separator into which the rolling elements are placed. *See* Federal-Mogul Submission at Exhibit 3 (April 11, 1991); *compare id.* at Exhibit 2 *with* 54 FR at 19,015.

Although gear teeth are present on the outer race of a chain wheel, these teeth constitute a mere enhancement that does not alter the fundamental bearing characteristics of these articles. *Compare id. with* Federal-Mogul Submission at Exhibit 3 (April 11, 1991). Moreover, there is no evidence on the administrative record that demonstrates that the gear teeth on the outer race of a chain wheel add significant value to the product in dispute. Thus, the presence of gear teeth on the outer race of a chain wheel is not sufficient to remove these products from the scope of the orders covering antifriction bearings.

Furthermore, chain wheels perform essentially the same function as antifriction bearings. Chain wheels reduce friction and wear between moving and fixed parts by facilitating smooth rotation between lower and upper structures of heavy equipment. *Compare* Federal-Mogul Submission at Exhibit 3 (April 11, 1991) *with* USITC Pub. 2185 at 18–19. Furthermore, similar to spherical plain bearings which were expressly covered by the petition, Petition at 13–15, 19, chain wheels are designed to withstand heavy loads and to perform at low speeds while facilitating oscillatory motion.

Compare Federal-Mogul Submission at Exhibit 3 (April 11, 1991) *with* USITC Pub. 2185 at 18–19.

For the reasons discussed above, conveyor system trolley wheels and chain wheels are essentially ball bearings with an enhanced outer race that function primarily to reduce friction between moving and fixed parts, as well as to bear heavy loads. Accordingly, these products fall within the scope of the antidumping and countervailing duty orders covering antifriction bearings.

Section 2: Assessment and Cash Deposit Rates

A. Calculation Methodology for Determining Assessment Rates

In our preliminary results of review of antifriction bearings from the Federal Republic of Germany, France, Italy, Japan, Singapore, the Socialist Republic of Romania, Sweden, Thailand and the United Kingdom, we described in detail our intended methodology for the assessment of current antidumping duty liabilities. For these final results, we have revised certain portions of the methodology described therein.

1. Purchase Price Sales

With respect to purchase price sales for these final results, we will divide the total potential uncollected dumping duties ("PUDD" —calculated as the difference between foreign market value and U.S. price) for each importer by the total number of units sold to that importer. We will direct Customs to assess the resulting unit dollar amount against each unit of subject merchandise in each of that importer's entries under the relevant order during the review period. Although this will result in the assessment of different percentage margins for individual entries, the total antidumping duties collected for each importer under each order for the review period will be almost exactly equal to the total PUDD, which is the correct assessment: amount.

2. Exporter's Sales Price Sales

For ESP sales (sampled and non-sampled), we will divide the total PUDD

for the reviewed sales by the total entered value of those reviewed sales, for each importer. We will direct Customs to assess the resulting percentage margin against each unit of subject merchandise in each of that importer's entries under the relevant order during the review period. Although this approach will result in the assessment of a dumping margin based, to some extent, on sales of merchandise entered outside the period of review, it is the most accurate rate that can be calculated on the basis of the information on the record. In the case of companies which did not report entered value of sales, we will calculate a proxy for entered value of sales, based on the price information available and appropriate adjustments (e.g., insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items as appropriate on a company-specific basis).

For calculation of the ESP assessment rate, the value of entries for which liquidation was suspended, but which ultimately fell outside the scope of the orders through operation of the "roller chain" rule, will be included in the assessment rate denominator to avoid over-collecting. (The "roller chain" rule excludes from the scope of an order bearings which were imported by a related party and further-processed, and which comprise less than one percent of the finished product sold to the first unrelated customer in the United States. (*See* the section on "Roller Chain" in this appendix.)] Entries of parts incorporated into finished bearings before sale to an unrelated customer in the United States will be assessed the importer's weighted-average margin for the appropriate class or kind of merchandise.

3. Other Assessment Instructions

In the case of companies which chose to respond to the price-list option (*See* Preliminary Results of Antidumping Duty Reviews: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof, from the Federal Republic of Germany, 56 FR 11200 (1991)), we will calculate an *ad valorem* assessment rate by dividing PUDD by a proxy for entered value of sales if they did not report entered value. The proxy will be calculated based on the price information available and appropriate adjustments (*e.g.*, insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items as appropriate on a company-specific basis).

Entries of products subject to the orders that passed through a foreign trade zone before entry into U.S. Customs territory will be treated the same way as other entries of products subject to the orders to the extent that such treatment is not inconsistent with our approach to FTZs. (*See* the section on "Foreign Trade Zones" in this appendix.)

When we refer to importers, we are referring to the U.S. customer, whether related or unrelated to the exporter, not the customs broker or brokerage house that might be the importer of record for any of these entries. Our liquidation instructions to Customs will identify the customer that these notices refer to as the importer.

B. Calculation Methodology for Determining Cash Deposit Rates

For purchase price and ESP sales, we divided the total PUDD for each exporter by the total net U.S. price for that exporter's sales under each order during the review period. We will direct Customs to collect the resulting percentage deposit rate against each unit of the exporter's subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

In order to derive a single deposit rate for each class or kind of merchandise for each respondent (i.e., each exporter or manufacturer included in these reviews), we weight-averaged the purchase price and ESP deposit rates (using the combined U.S. price of PP sales and ESP sales as the weighting factor). To accomplish this where we sampled ESP sales, we first approximated a total PUDD for all ESP sales during the period of review by dividing the sample ESP PUDD by the ratio of sample weeks to total weeks in the review period. We then approximated a total net USP for all ESP sales during the review period by dividing the sampled ESP total net USP by the ratio of sampled weeks to total weeks in the review period.

Entries of parts incorporated into finished bearings before sale to an unrelated customer in the United States will receive the exporter's deposit rate for the appropriate class or kind of merchandise.

Entries of bearings potentially excludable from assessment under the "roller chain" rule will receive the exporter's deposit rate for the appropriate class or kind of merchandise.

Entries of products subject to the orders that passed through foreign trade zones before entry into U.S. Customs territory will be treated the same way as other entries of products subject to the orders to the extent that such treatment is not inconsistent with our handling of FTZs. (*See* the section on "Foreign Trade Zones" in this appendix.)

C. Comments

Comment 1: Federal-Mogul and Torrington argue that since the cash deposit rate is applied to the entered value of future entries, the Department's policy of calculating this rate as a percentage of statutory USP rather than as a percentage of the entered values results in an under collection of cash deposits on future entries. This understatement is more egregious in instances where a tax adjustment increases USP. According to Federal-Mogul and Torrington, Congress did not intend or envision that the Department would knowingly understate the deposit required for future entries.

Department's Position: Section 731 of the Tariff Act defines an antidumping duty as the amount by which foreign market value exceeds United States price. As the Department has stated on numerous occasions, duty deposits are merely estimates of future dumping liabilities. Should the amount of the antidumping duties deposited be less than the amount assessed, the Department will instruct Customs to assess the difference with interest. *See* 19 U.S.C. 1673f (1980) and 19 CFR 353.24.

Comment 2: NTN, NSK, and NMB/Pelmec assert that the Department should calculate separate importer-specific cash deposit rates. They argue that since the Department stated its intention to calculate importer-specific assessment rates, it must proceed in exactly the same manner with respect to antidumping duty deposits. Caterpillar argues that purchasers that engaged only in purchase price transactions are entitled to importer-specific margins both for purposes of deposits and assessments. Caterpillar argues that the objective of the antidumping duty statute " * * * is to establish an estimated duty rate that, as closely as possible, predicts the amount by which the U.S. sales under review are at LTFV prices. This cannot be accomplished where the duty deposits required of purchase price buyers are calculated in large part on the basis of the transactions of other parties." Fiat requests importer-specific assessment because it does not have information that would allow specific entries to be traced to specific subsequent sales. Nachi supports the Department's decision to calculate importer-specific assessment rates and exporter-specific cash deposit rates. Torrington agrees with the above noted respondents that the Department should derive importer-specific assessment rates. With respect

to cash deposit rates, Torrington notes that the Department's " * * * practice is to publish only one margin rate where both purchase price transactions and ESP transactions are involved." The petitioner raises no objections to this practice.

Department's Position: The Department has determined that importer-specific assessment rates are appropriate for purposes of these reviews. As Torrington stated in its brief, importers that purchase at fair value or at higher dumped prices should not, in effect, be forced to subsidize the antidumping duty bill for importers who paid the lowest prices and whose imports were dumped to the greatest extent.

The Department has not determined importer-specific cash deposit rates for these reviews; each exporter received a single deposit rate. Duty deposits are merely estimates of what future duty amounts will be. As such, we believe that the need for a precise estimate is outweighed by the need to provide the Customs Service with a set of deposit rates which can be effectively administered. As stated in the *Department's Position* to *Comment 1*, if the amount of antidumping duties deposited is less than the amount assessed, the Department will instruct Customs to assess the difference with interest. We do not accept the argument that the assessment rate must be calculated in exactly the same manner as the deposit rate. Section 751 of the statute (19 U.S.C. 1675) merely requires that both the deposit rate and the assessment rate be derived from the same FMV/USP differential. With respect to Caterpillar's arguments on importer-specific cash deposit rates for purchase price transactions, we see no reason to depart from the treatment we have outlined above.

Comment 3: SKF submitted several objections to the Department's basic assessment methodology for sampled sales, *i.e.*, basing the assessment rate on the ratio of potential uncollected dumping duties (PUDD—calculated from the sample) to total entered value for the sample. SKF, together with INA, NSK, GMN, FAG, and NWG, argue that the antidumping statute provides no authority for the Department to use entered value in calculating the antidumping duty assessment rate. SKF points to language in section 751 of the statute that requires the amount of duties assessed, and deposits required, to be based upon the difference between FMV and USP. Further, SKF argues that companies not participating in this review and BIA/non-reporting companies will receive a preferential assessment rate because the Department will not have the appropriate information to "adjust" the assessment rates by entered value for such companies. In addition, SKF argues that publication of its company-specific appraisement rates, together with its company-specific weighted-average margin, will allow competitors to determine SKF's transfer prices. Finally, SKF requests that if the Department persists in this assessment approach, it should use SKF's transfer prices to calculate entered value.

Department's Position: Section 751 of the statute requires that the Department calculate the FMV/USP differential and use that differential in the assessment process. However, there is nothing in the statute that dictates how the actual assessment rate is to be determined from that differential. The Department calculated transaction-by-transaction dumping duties for all reported sales based on the difference between FMV and USP. However, in ESP cases, the Department cannot tie sales to entries and therefore cannot do an "entry-by-entry assessment" in the manner suggested by SKF. In addition, this type of entry-by-entry assessment is impossible where margins have been based on sampling. The Department has decided that for future reviews where sampling is not used and where ESP sales are involved, we will attempt to collect the precise aggregate difference between FMV and USP (based on sales during the period of review) by assigning each entry (during the period of review) a proportionate amount of the aggregate difference. Thus, entries will be the vehicle for the collection of duties, the amount of which will be derived from a sale-by-sale analysis. For this review, the Department does not have the information necessary to follow the new ESP methodology. The Department will therefore calculate an approximation of the proper amount of duties by starting with the total FMV/USP differential for the sampled sales and dividing that amount by the total entered value of sales in the sample. The resulting rate will then be applied to the entered value of units entered. While application of this rate will not necessarily result in collection of the exact amount of the PUDD, the Department is satisfied that it achieves a fair assessment of duties on entries during the period of review (based on the pricing behavior of respondent companies and the information available on the record). For a discussion of purchase price transaction assessment *See* the *Department's Position* to *Comment 5*, below.

With respect to companies not participating in this review, presumably all interested parties were satisfied with the previously published cash deposit rates for assessment purposes. Therefore, the Department need not reconsider the accuracy of those published rates. For BIA/non-reporting companies, the Department will determine the most appropriate BIA rate on a company-specific basis. *See* the section on "Best Information Available" in this Appendix.

As to SKF's concern that publication of two rates would permit competitors to discern sensitive pricing practices, the Department will only be publishing the cash deposit rate.

Comment 4: Several respondents proffer additional arguments against the basic assessment approach outlined above. First, GMN and FAG argue that entered values are not the same as appraised values (the values U.S. Customs derives after analyzing the information available about the value of the merchandise). Second, GMN, NSK, and FAG argue that it is inappropriate for the Department to use the entered value of sales during the period of review to calculate an assessment rate that will be applied to the entered value of units entered, because some of the reviewed sales may have been imported prior to, or after, the period of review. Third, these respondents argue that the method of calculating deposit rates must be identical to the method used to calculate assessment rates. Fourth, GMN and NSK argue that sampling does not eliminate the statutory requirement of entry-by-entry assessment. Fifth, GMN, NSK, INA and RHP contend that the Department's proposed method for calculating assessment rates would penalize companies for charging higher prices in the United States. They claim that this method results in an illegal deduction of profits from ESP.

Department's Position: The Department is aware that entered values are not always identical to appraised customs values. However, the U.S. Customs Service maintains records of both entered and appraised values. Our instructions to Customs will specify that the assessment rates should be applied to entered, not appraised values.

In response to GMN's, NSK's, and FAG's second argument, the Department recognizes the fact that a review of sales is not the same thing as a review of entries and that, therefore, we may in some instances be applying our assessment rate to entries which were not part of the universe of sales.

Because we cannot relate sales to entries in these reviews, and because we cannot yet apply the Department's new methodology for calculating assessment rates on ESP sales, we must use the most viable and reasonable alternative available to the Department.

With respect to the third argument, we do not agree that the deposit rate and the assessment rate must always be calculated in exactly the same manner (*See Department's Position* in *Comment 2*, above).

With regard to the effect of sampling on entry-by-entry assessment, the Department notes that there is specific statutory authorization for sampling (19 U.S.C. 1677f–1). The use of averaging or sampling was authorized for the purpose of reducing the administrative burden in reviews involving an extraordinarily large volume of sales. The use of a sampling technique automatically renders it impossible for the Department to calculate the foreign market value and U.S. price for each sale (or entry) subject to an antidumping duty order. Therefore, for these reviews, the Department will calculate importer-specific assessment rates based on the sales transactions reviewed and will instruct Customs to assess the appropriate rate against each importer's entries of subject merchandise during the period of review.

Finally, one must distinguish between the assessment rate and the assessed duties in analyzing the claim made by GMN, NSK, INA and RHP to the effect that companies with higher prices (and therefore higher profits) in the United States will receive higher assessed duties and, in effect, be penalized as a result of the assessment methodology used in this review. To the extent that the assessment rate is increased by the use of entered values, the value to which that rate is applied is lowered, thereby nullifying any possible distortion.

Comment 5: Pratt & Whitney contends that the Department should use *ad valorem* appraisement rates for purposes of instructing Customs to assess antidumping duties on price-list companies' entries, since price-list responses were similar to sampled ESP responses in that they did not contain sale-by-sale listings.

Department's Position: As discussed in the beginning of this section of the Issues Appendix, the Department will assess price-list entries on an *ad valorem* basis.

Comment 6: Several companies pointed out that the Department received data on all their U.S. sales during the review period (NWG and Fiat) or at least all purchase price sales (RHP and Caterpillar). Caterpillar and Fiat request that the Department calculate a per-unit assessment for their entries. Fiat argues that the Department's *ad valorem* assessment methodology unfairly applies a dumping margin derived from the set of sales made during the period of review to the unrelated set of entries made during the period of review. According to Fiat, efforts by a respondent to adjust its pricing behavior in response to potential dumping duty liability will not be acknowledged by the Department's methodology, since entries of the sales with the adjusted pricing will already have been liquidated at a higher rate. To avoid this, Fiat contends, the Department should not issue liquidation instructions covering entries of merchandise that was not sold during the review period and requests that the Department apply a first-in, first-out (FIFO) method for matching sales to entries because Fiat cannot connect specific sales to specific entries.

Department's Position: Although we did not sample purchase price sales, the Department reviewed sales rather than entries during the period of review, and therefore cannot derive duties on an entry-by-entry basis. Since units entered and units sold are almost identical in purchase price situations, we can collect a close approximation of the total dumping duty liability by calculating importer-specific per-unit amounts for sales during the period of review and applying those per-unit amounts to entries during the period.

Comment 7: SKF and NTN object to the calculation of a per-unit assessment amount. They argue that the per-unit assessment approach is distortive since the quantity entered bears no relationship to either the quantity sold or the value of the unit. Moreover, since there is a vast difference in the value between complete bearings and parts, an adjustment for parts would be necessary.

Department's Position: As discussed earlier in this section of the Appendix, the Department will calculate an *ad valorem* rate for assessment of ESP transaction dumping liabilities and a per-unit amount for assessment of purchase price transaction dumping liabilities. In ESP situations where a respondent did not provide entered values, the Department will calculate a proxy for the entered value of the subject merchandise. (See Calculation Methodology for Determining Assessment Rates in part A of this section of the Issues Appendix.)

Comment 8: NTN contends that the Department does not have the relevant information to facilitate a per-unit assessment, as NTN provided no data concerning parts sold during the period of review. NTN's response to section B of the Department's questionnaire identifies the items sold as the finished product and the quantity of the finished product sold. In the case of a further processed bearing, one piece of the finished bearing could represent anywhere from one part to fifteen or more pieces of parts. Further, NTN argues that its deposits have been based upon entered value, and therefore it would be inappropriate to use a different basis for assessment.

Department's Position: As discussed in Part A of this section of the Appendix, for purposes of assessment, the Department will apply a weighted-average *ad valorem* rate that will be calculated for ESP sales and a per-unit amount that will be calculated for purchase price sales (for each appropriate class or kind of merchandise) to parts which were further manufactured into complete bearings after entry into the United States. Since units entered and units sold are almost identical in purchase price situations, we do not agree that the per-unit assessment calculation will result in a gross distortion of the dumping duty liability. In addition, as stated above, we do not agree that exactly the same calculation must be performed for cash deposits as for assessments.

Comment 9: Allied-Signal, Inc. argues that as a purchase price customer the entered customs value of its merchandise is equivalent to the U.S. price; therefore it would be inappropriate for the Department to add any surcharge to account for a difference between U.S. price and entered customs value.

Department's Position: The Department conducted a purchase price analysis for subject merchandise sold to Allied-Signal; therefore, we will calculate a per-unit assessment amount for that merchandise which requires no adjustment between USP and entered value.

Comment 10: Turbomeca requests that the Department increase the total U.S. price by the value of the bearings subject to the "roller chain" rule for purposes of calculating Turbomeca's cash deposit and assessment rates.

Department's Position: See Calculation Methodology for Determining Assessment Rates and Calculation Methodology for Determining Cash Deposit Rates in parts A and B of this section of the Issues Appendix. Note that the cash deposit rate does not require the degree of adjustment that is required of the

assessment rate, for reasons explained above, and that we cannot calculate a USP for "roller chain" transactions.

Section 3: Roller Chain Principle

Comment 1: Petitioner submitted two arguments in response to the Department's preliminary determination to exclude from the scope of the antidumping duty orders those AFBs which are sold to the first unrelated party in the United States after being incorporated into a non-AFB product by a related party in the United States. First, Torrington claims that where the imported merchandise accounts for less than a "significant percentage" of the value of the finished product, Congress did not intend for the merchandise to escape the application of the antidumping laws; rather, it intended that the Department simply not use the method outlined in 19 U.S.C. 1677a(e)(3) (1980). Second, Torrington claims that a United States Price (USP) can reasonably be determined by resort to transfer price.

Department's Position: The Department considers those AFBs otherwise subject to these orders that are incorporated into non-AFB products, which collectively comprise less than one percent of the value of the finished products sold to unrelated customers in the United States, to be outside the scope of the antidumping orders on AFBs and not subject to antidumping duty assessments. We rely here on the legislative history of section 1677a(e)(3). Congress, in enacting the 1974 amendment to Exporter's Sales Price (ESP) that explicitly gave the Department the authority to derive an ESP for certain further-processed merchandise, stated that further-processed merchandise imported from related parties should be within the scope of the AD law, unless the merchandise was an insignificant percentage of the value of the finished product. *See,* H. Rep. No. 571, 93d Cong., 1st Sess. 70 (1973) and S. Rep. No. 1298, 93rd Cong., 2d Sess. 173 (1974). Thus, where the imported merchandise constitutes an insignificant percentage of the value of the product sold in the United States, it should be considered to be outside the scope of the order.

Moreover, even if this were not the case, there is no statutory authority, as petitioner suggests, to use the transfer price between related parties as the basis of U.S. price. The antidumping statute provides two measures of U.S. price—Purchase Price (PP) and ESP—and neither of these can accommodate the use of transfer prices between related parties. PP methodology presupposes that the parties to the PP transaction are not related. ESP methodology treats the related importer as an "exporter" for purposes of the price calculation. 19 U.S.C. 1677(13). Thus, for ESP to apply, the relevant sale must be between the related importer and the first unrelated party in the United States. The transfer price would not meet this requirement.

Comment 2: Nissan Motor Co. Ltd., Nissan Motor Corporation, Nissan Motor Manufacturing Corporation U.S.A., Nissan Industrial Equipment Corp., and Barrett Industrial Trucks request that the Department confirm that a scope determination can be made independently of, as well as in conjunction with, an administrative review proceeding, or that the Department allow importers to file a declaration with the Customs Service stating that the merchandise meets the Roller Chain criteria (Roller Chain, Other Than Bicycle, From Japan, 48 FR 51,801, November 14, 1983).

MHI Forklift America, Inc. requests that an importer be permitted to escape participation in an administrative review of antifriction bearings from a country listed in the antidumping order if it can certify the following: (1) The AFBs were imported from a related party; (2) the AFBs will be used in the U.S. manufacture of a non-AFB product that will be sold to an unrelated party; and (3) the AFBs will comprise less than one percent of the value of the finished product based on the price of the finished product to the first unrelated party in the United States. MHI argues that participation in a review is unnecessarily onerous for an importer who is importing merchandise that is not within the scope of the order.

Turbomeca, ADH, and MBB comment that it is impossible for them to identify upon entry how the bearings will be used by related parties in the United States. They ask that a method be devised to take into consideration bearings outside the scope of the order for both liquidation and deposit purposes. This could be accomplished by increasing the total U.S. value by the value of the bearings outside the scope of the order.

Department's Position: Our assessment rate for ESP transactions uses a denominator of total entered customs value of merchandise analyzed for the POR (inclusive of Roller Chain transactions). (*See* the section on "Assessment" in this Issues Appendix.) Thus, in order to collect the correct total of duties, we must apply this rate to all entries (even those entries for which duties are not calculated). While we are not similarly compelled by the definition of the cash deposit rate to collect deposits on all future ESP entries, we have no way of knowing at the time of entry whether the Roller Chain principle will operate to exclude any particular entry from the scope of the order. We cannot therefore accept any proposal which would limit the Department's authority to require deposits on merchandise which may ultimately be subject to the order.

The proposal made by Turbomeca, ADH, and MBB does not require that we make an early decision about whether a particular entry will ultimately be excluded from the order. However, it does require that we have a USP for transactions which are excluded from assessment because of the Roller Chain principle. Since we do not have a USP for such transactions, we cannot implement the proposal suggested by these respondents. (*See* the section on "Cash Deposit" in this Appendix.)

Comment 3: MFA contends that its imports of AFBs are outside the scope of any of the antidumping duty orders on AFBs, and no antidumping duties can be assessed on its entries. MFA purchases the AFBs from a related party in the exporting country and uses them in the production of forklift trucks in the United States. MFA asserts that the total value of all AFBs used by MFA is less than one percent of the value of the forklift trucks sold to unrelated customers. In accordance with the Department's preliminary decision that merchandise meeting these criteria is outside the scope of the order, a decision with which MFA agrees, the Department should instruct the Customs Service to assess no antidumping duties.

MFA further contends that, because this is a scope decision, importers cannot be required to participate in an administrative review. The Department should administer this scope decision like all other scope decisions, even though it is based on the use of the product rather than its physical characteristics. The Department recognized this principle in Cellular Mobile Telephones and Subassemblies from Japan; Final Determination of Sales at Less Than Fair Value, 50 FR 45447, (1985), by allowing importers to file a declaration with the Customs Service for exclusion from the order. MFA argues that Customs will be charged with implementing this decision, and thus, the importer should be required to provide to Customs at the time of entry appropriate certification that particular imported merchandise is outside the scope of the order. Alternatively, the Department could simply instruct

Customs that a particular importer's bearings are not subject to an order.

Department's Position: For the Department to issue a determination concerning the applicability of the Roller Chain principle to MFA's imports of AFBs, MFA must request that the Department examine sales to the U.S. made by MFA's foreign suppliers. Absent a timely request for review by MFA, the Department, at this late date, cannot include MFA's imports of AFBs in this review. All information submitted to the Department in this review has been subjected to rigorous examination, and in many cases, on-site verification. Any decisions to exclude subject sales from review, subject to the Roller Chain decision, were made on a case-by-case basis on sales by companies that had actively participated in the review process and had provided timely evidence on the record regarding the applicability of the Roller Chain decision to individual sales. MFA had an equal opportunity to participate in this review and did not. Therefore, we have determined that AFBs imported into the U.S. by MFA during the period of review should not be excluded from this review and are subject to the antidumping order.

Comment 4: Fiat argues that the Department should apply the Roller Chain principle to exempt from antidumping duties bearings which Fiat exported to the United States and which were consumed by the importer, Pratt & Whitney, in the production of aircraft engines pursuant to collaborative programs between Fiat and Pratt & Whitney. Fiat's bearings are imported not for independent sale, but for the manufacture of a downstream product; its commercial focus is the downstream product, not the imported bearings; and no independent sales price has been established for the imported bearings; rather, a price must be constructed based on data for the downstream product.

Fiat contends that these collaborative programs represent a relationship between Fiat and Pratt & Whitney for purposes of applying the Roller Chain principle. Since Pratt & Whitney is responsible for the manufacture and sale of the engines, which is the first sale involving Fiat's AFBs, Pratt & Whitney acts as an "agent" of Fiat. This status is consistent with the Department's view of Pratt & Whitney as a consignee for purposes of defining Fiat's sales as ESP sales.

The agreements between Fiat and Pratt & Whitney do not establish prices for bearings or other components, but rather, define Fiat's revenues based on engine equivalency ratios assigned to each component. The bearings supplied by Fiat comprise well under one percent of the value of the finished product (the aircraft engine) as evidenced by the fact that Fiat's entire contribution is not much greater than one percent and the vast majority of that contribution consists of non-bearing products. FiatAvio participates in the programs as a manufacturer of gearboxes, not bearings.

Department's Position: The Department has established that Fiat transfers bearings to Pratt & Whitney on consignment. These bearings are then held in inventory by Pratt & Whitney until such time as they are either incorporated into a Pratt & Whitney-manufactured engine, sold as replacement parts, or provided to customers pursuant to warranty agreements with Pratt & Whitney. Although Fiat and Pratt & Whitney operate in a cooperative manner with regard to various long-term risk and revenue sharing contractual agreements, they are, for the Department's purposes, not related parties. Such risk and revenue sharing contracts between two otherwise unrelated parties do not meet the Department's criteria for considering two parties to be related.

The Roller Chain principle applies only to related importers in the U.S. who, after importation of the subject products into the United States, incorporate those products into a product outside the scope of the antidumping orders in which the originally imported good comprises less than one percent of the value of the finished product. Since Fiat and Pratt & Whitney are, for the Department's purposes, unrelated parties, the Roller Chain principle cannot be applied to Fiat's sales through Pratt & Whitney. Therefore, we have not excluded these sales from our analysis of Fiat's AFB sales to the United States.

Comment 5: ZF asserts that bearings which ZFNA, a related service center in the U.S., consumed in the rebuilding or repair of transmissions constituted less than one percent by value of materials used annually in the assembly of rebuilt transmissions and, as such, should be excluded from the Department's ESP calculations. ZF cites Roller Chain, Other than Bicycle, from Japan, 48 FR 51,801 (1983) and Elemental Sulphur from Canada, 55 FR 28,794 (1990). ZF claims that ZFNA purchased ZF bearings from a price list and consumed them in repair work pursuant to service contracts in which no price per bearing was identified. There was no verifiable data identifying quantity or value of bearings used in any given rebuilt transmission. ZF further argues that because it "was not permitted to do a matching model number analysis for sales by ZF to ZFNA, even though those sales were made from a price list" ZF was unable to provide detailed verifiable data for ESP sales.

Department's Position: Throughout the course of this review, ZF has failed to supply the Department with full information and/or documentation with which the Department could evaluate ZF's ESP sales activities. ZF submitted new arguments, documentation, and suggested methodologies in its case briefs and in several letters to the Department (March 14, 15, 18, 1991), after the preliminary results were issued. Much of this information is untimely and none of it is sufficient to allow the Department to properly calculate a margin for ZF's ESP sales. For the final results, we have used BIA for these sales. (*See* the section on "Best Information Available" in the Issues Appendix.)

Comment 6: ADH and Turbomeca argue that the Department should reaffirm its application of the Roller Chain principle in the final results of this administrative review. They assert that they have provided information on the record which shows that the percentage value of bearings incorporated into helicopters by their U.S. subsidiaries is less than one percent of the value of the finished good. ADH and Turbomeca contend that the Roller Chain principle should be applied to its U.S. imports of these bearings.

Department's Position: ADH and Turbomeca provided the Department with an AFBs-to-finished good breakdown by value of all AFBs incorporated into a finished good in the U.S. by their U.S. subsidiaries. In each case, the value of the AFBs incorporated into the finished product was less than one percent. Therefore, we have incorporated the value of the AFBs meeting the Roller Chain criterion into the denominator used in the calculation of assessment rates.

Section 4: Foreign Trade Zones ("FTZ") Issues

Comment 1: Petitioner argues that the Department should include all sales of AFBs made to customers in FTZs or subzones, whether entered into the customs territory of the United States as AFBs or not, in the total of United States sales used for price-to-price comparisons. In support of this proposition, petitioner examines the language and legislative history of the Foreign Trade Zones Act of 1934 ("FTZ Act") (19 U.S.C. 81a, *et seq.*), and argues that Congress did not intend that the

creation of FTZs would affect the antidumping duty law. Petitioner contends that the phrase "without being subject to the customs laws of the United States" in section 81c of the FTZ Act, does not include the antidumping law, and that the antidumping statutory scheme, which repeatedly refers to "entries" subject to the Customs laws, describes something other than the formal admission of merchandise into the customs territory of the United States. Petitioner implies that the term "entry" as used in the FTZ Act should be construed to refer merely to the process of physical entry of merchandise into the geographic territory of the United States. Petitioner argues that the Department, in proposed regulations published by the Foreign Trade Zones Board, has recognized this principle implicitly, by requiring that merchandise subject to antidumping duty orders be placed in "privileged foreign status" upon admission into a FTZ. Foreign Trade Zones in the United States, 55 FR 2760, 2768, (January 26, 1990) (the current FTZ Regulation can be found at 15 CFR part 400). Accordingly, petitioner concludes that bearings that enter a FTZ or subzone are not exempt from the antidumping law.

Numerous respondents argue that, contrary to petitioner's assertions, the FTZ Act expressly exempts merchandise within zones from U.S. Customs duties. They argue that foreign merchandise properly in a FTZ has not been entered into U.S. Customs territory, and is thus not subject to the customs laws, including the antidumping laws, of the United States.

Department's Position: In the Department's questionnaire, we requested that respondents report information on all sales made through FTZs; in other words, sales of AFBs that passed through a FTZ, and subsequently entered U.S. Customs territory, as AFBs. These sales, where reported, were included in our calculations. To the extent that any sales of the subject merchandise were admitted into a FTZ and transformed into merchandise not covered by these orders (e.g., automobiles) before entry into U.S. Customs territory, the Department currently has no basis for the assessment of antidumping duties on the merchandise.

We disagree with the petitioner's contention that the antidumping law somehow pierces the protective veil established for FTZs pursuant to the FTZ Act, and that merchandise admitted into a FTZ is subject to antidumping regardless of whether it enters U.S. Customs territory as merchandise subject to the order. Section 751 of the Tariff Act instructs the Department to determine "the foreign market value and United States price of each entry of merchandise subject to the antidumping duty order," and the "amount, if any, by which the foreign market value of each entry exceeds the United States price of the entry." 19 U.S.C. 1675(a)(2). The use of the term "entry" in the antidumping law unambiguously refers to release of merchandise into the customs territory of the United States.

The Department's proposed FTZ Regulations, nonetheless, attempt to address some of petitioner's concerns about the assessment and collection of antidumping duties on FTZ-destined merchandise. Under § 400.33 of the proposed regulations, all merchandise subject to an antidumping or countervailing duty order shall be placed in "privileged" status upon admission to a zone or subzone, and will be subject to duties or suspension of liquidation upon entry for consumption into the United States as it was admitted to the zone, regardless of whether or not it has been transformed into non-covered merchandise. It bears noting that the proposed regulations do not affect the point at which the merchandise becomes subject to antidumping duties; it is subject to duties and suspension of liquidation upon entry for consumption into the United States, not upon admission into the zone or subzone. However, these regulations are not yet effective, and we are not following them. Accordingly, AFBs that were admitted to a FTZ during this period of review, and transformed into non-covered merchandise, have not been included in the Department's calculations.

Comment 2: Petitioner argues that the Department should instruct the Customs Service to collect estimated antidumping duty deposits upon admission of subject merchandise into FTZs and subzones. Petitioner reasons that the collection of estimated duty deposits is consistent with Congress' intent to expedite relief of the affected domestic industry, would help prevent circumvention of the antidumping duty laws, and that such action is within the Department's authority.

Respondents argue that bearings admitted into a FTZ are subject to required deposits of antidumping duties only if and when they are entered for consumption in the United States.

Department's Position: We disagree with petitioner. As noted above in the *Department's Position* to *Comment 1*, both the language of the FTZ statute and the character of FTZs support the conclusion that antidumping duties should be assessed on foreign merchandise admitted to a FTZ only if, and when, such merchandise enters the Customs territory of the United States. No provision of the antidumping statute requires a contrary result. In fact, 19 U.S.C. 1673e(a)(3) explicitly provides that deposits of estimated antidumping duties shall be required "at the same time as estimated customs duties on that merchandise are deposited." Because deposits of normal customs duties on merchandise admitted to a FTZ are required only if, and when, such merchandise leaves the zone and is entered into the United States for consumption, section 1673e(a)(3) effectively provides that deposits of antidumping duties shall be required only if, and when, merchandise admitted to a FTZ is entered into the United States for consumption.

Comment 3: Petitioner argues that goods that have been sold into a FTZ or subzone and then reexported are subject to antidumping duties, and singles out NMB/Pelmec Singapore and NMB/Pelmec Thai as two respondents that had resold bearings that had been admitted to a FTZ.

Certain respondents argue that antidumping duties may be imposed only on merchandise "sold in the United States." They argue that the goods in question were never sold in the United States, nor did they ever enter the Customs territory of the United States. They argue further that the legislative history of the FTZ Act demonstrates that the U.S. government's policy "is not * * * to subject to our tariff laws goods not destined for domestic use."

Department's Position: For the reasons outlined above in the *Department's Positions* to *Comment 2* and *Comment 3*, the Department does not consider merchandise that is admitted to a FTZ and subsequently resold to have ever entered the Customs territory of the United States. Accordingly, these goods are not subject to antidumping duties.

Section 5: Best Information Available (BIA)

Section 776(c) of the Act requires the Department to use the 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."

In deciding what to use as best information available, the Department's regulations provide that the Department may take into account whether a party

refuses to provide requested information (19 CFR 353.37(b)). Thus, the Department may determine, on a case-by-case basis, what the best information available is. For the purposes of these final results of review, we have applied two tiers of BIA:

1. When a company refused to cooperate with the Department or otherwise significantly impeded these proceedings, we have used as BIA the higher of: (1) The highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less than fair value investigation (LTFV) or (2) the highest rate found in this review for the same class or kind of merchandise in the same country of origin.

2. When a company substantially cooperated with our requests for information including, in some cases, verification, but failed to provide the information requested in a timely manner or in the form required, we have used as BIA the higher of: (1) The firm's LTFV rate for the subject merchandise (or the "all others" rate from the LTFV investigation, if the firm was not individually investigated), or (2) the highest calculated rate in this review for the class or kind of merchandise from the same country of origin.

Listed below is a company-by-company summary of our use of total BIA applied in these final results of review. Total BIA was applied where we were unable to use a company's response for purposes of determining that company's dumping margin.

INA-France: INA did not respond to our questionnaire. Therefore, we applied the first tier of BIA as described above.

SNFA-France: SNFA responded only to section A of our questionnaire and provided no further responses. Therefore, we applied the first tier of BIA.

Somecat-Italy: Somecat provided a substantially inadequate response to our questionnaire. This inadequate response significantly impeded our review. Therefore, we applied the first tier of BIA.

Minebea-Japan: Minebea did not respond to our questionnaire. Therefore, we applied the first tier of BIA.

JAEC-Japan: JAEC provided a substantially inadequate response to our questionnaire. This inadequate response significantly impeded our review. Therefore, we applied the first tier of BIA.

Asahi-Japan: Asahi submitted responses to all sections of the questionnaire and agreed to undergo verification. However, at verification we discovered that the firm had inadvertently failed to report a substantial number of its U.S. sales. Given the degree of cooperation demonstrated by Asahi, we applied the second tier of BIA as described above. Since no calculated rate in this review exceeded the "all others" rate assigned to Asahi from the LTFV investigation, we used that rate as BIA.

NPB-Japan: NPB also responded to all sections of the questionnaire and agreed to undergo verification. However, at verification NPB was unable to support its cost allocations, and we were unable to test the firm's home market sales against below-cost sales allegations. Because NPB was cooperative in this review, we used the firm's previous rate (in this case the "all others" rate from the LTFV investigation) as BIA.

Meter-Italy: The Department required Meter to provide additional information concerning its sales of mast guide bearings to the United States based on a scope decision made concurrently with our preliminary results of review. Although Meter submitted a response in the limited time allowed prior to our final results, the response was inadequate. However, given that the scope issue was raised relatively late in these proceedings, and that entries of the mast guide bearings exported by Meter over the period of review have already been liquidated by U.S. Customs, we think it would be inappropriate to set Meter's cash deposit rate any higher than the highest rate calculated for an Italian company in this review for the same class or kind of merchandise. For Meter, due to these unusual circumstances and the degree of cooperation demonstrated by the firm, we used the highest calculated rate for an Italian company for this review as BIA.

ZF: ZF supplied the Department with a substantially inadequate ESP response. Only after the preliminary results did ZF even attempt to submit an ESP response in the form requested by the Department. This submission was untimely, so we used the first tier of BIA, as described above, for ZF's ESP response.

In certain situations, we found it necessary to use partial BIA. Partial BIA was applied in cases where we were unable to use some portion of a response in calculating a dumping margin. The following is a general description of the Department's methodology for certain situations.

In cases where a firm failed to supply certain FMV information (i.e., corresponding home market sales within the contemporaneous window or constructed value data for a few U.S. sales), we generally used the following methodology:

1. If a firm failed to provide matching data for an insignificant portion by quantity of its reported U.S. sales, we used as BIA for those particular transactions the higher of (1) the firm's previous rate from the LTFV investigation (or, if the firm did not have an individual rate, the "all others" rate), or (2) the weighted-average margin for that firm from this review;

2. If a firm failed to provide matching data for a significant portion of its reported U.S. sales by quantity, we used as BIA for those particular transactions the higher of (1) the firm's previous rate (or "all others" rate) from the LTFV investigation, or (2) the highest calculated rate for any firm in this review.

For charges and adjustments, we assigned a value of zero as BIA to any adjustments and charges to home-market prices or CV, such as freight or differences in merchandise, which were missing from the sales listings. If adjustment information for differences in merchandise was missing from the U.S. sales listing, we used the above to determine the BIA rates to use as the margins for these particular transactions. If other U.S. adjustment information such as freight charges were missing, we used other transactional information in the response to estimate these expenses.

The following comments were received concerning BIA issues:

Comment 1: Federal-Mogul argues that, wherever the information submitted by a respondent in these reviews is found to be inadequate, inaccurate, unsubstantiated, or unverifiable, the Department should use as BIA the highest margin found in the original investigation for any company. The application of less-adverse BIA for companies which appeared to cooperate, but nonetheless failed to provide reliable, substantiated information improperly "rewards" these respondents, because the submission of unverifiable information is itself a significant impediment to the Department. Furthermore, it suggests that a respondent may benefit by merely "going through the motions" or, worse, by submitting manufactured, self-serving data, which if not detected through verification would result in erroneously low margins.

Department's Position: When determining a margin based upon BIA for a respondent, in accordance with § 353.37(b) of the Department's regulations, for these final results we took into account whether that respondent refused to provide requested factual information or otherwise

impeded a segment of the proceeding. For firms which failed to respond substantively or otherwise impeded these reviews, we assigned, as BIA, the highest of the rates, including BIA rates, determined for individual firms in the LTFV investigation or in the instant review for the same class or kind of merchandise and country of origin. We assigned a less-adverse BIA rate for firms whose submitted information was unverifiable due to demonstrably unintentional errors if the firm responded to all pertinent sections of the questionnaire and all requests for additional information in a timely manner and in the form required, provided sufficient information to merit verification, and did not impede the review. For each of these firms that cooperated, we assigned, as BIA, the higher of the rate applicable to the particular firm from the original investigation or the highest weighted-average rate calculated for any individual firm in the relevant instant review.

Comment 2: Torrington argues that the Department should use BIA for particular sales or data whenever data are missing and particularly whenever U.S. transactions occur for which no home market prices or constructed value data were provided. The Department should use BIA to supply missing data, *i.e.*, information requested but not produced in a timely manner and in the form required, as stipulated by 19 U.S.C. 1677e(b). Where the missing information prevents the comparison of a particular U.S. transaction price to home-market prices or to constructed value or where the data for a necessary adjustment for differences in merchandise were not provided, the Department should use the rate determined for that respondent in the original investigation or the highest rate determined in this review period for a respondent whose data were complete and verified.

Torrington contends that failure to apply BIA where required data are missing allows the respondent to control aspects of the review and will encourage respondents to withhold information in the future whenever such omissions might result in lower dumping margins. For example, where NSK did not provide the variable cost of manufacturing (VCOM) of the U.S. product, the Department made no comparison to a home-market family and instead used constructed value. NSK thus controlled whether constructed value became the FMV for certain products. In addition, where GMN failed to report various adjustments to USP, the Department simply eliminated those U.S. sales from its margin calculations. Thus GMN controlled whether particular U.S. sales were used to calculate margins.

Federal-Mogul argues that the Department may not simply disregard SKF's U.S. sales for which the Department found no home-market price data or constructed value information. If the information submitted by SKF is inadequate for purposes of establishing FMVs, the Department should apply BIA for those sales to complete its analysis.

Nankai Seiko argues that the Department's regulations permit the Department to take into account the degree of cooperation of a respondent in determining BIA for that respondent, and the Department's policy has been to do so. While the Department has a legitimate interest in deterring deliberate attempts by respondents to evade review, penalizing cooperative respondents for inadvertent failures to provide full information would undermine the Department's goal of encouraging active participation in the process. Nankai Seiko further argues that it cooperated fully and in good faith in this review. It failed to provide certain CV data only because of the complexity of the review, the language barrier, the company's inexperience with antidumping proceedings, and a genuine misunderstanding of the questionnaire.

Nachi argues that its unmatched sales did not result from missing data but from the Department's computer program. Nachi asserts that Torrington's comments concerning the use of BIA are not relevant to Nachi.

Department's Position: Contrary to Torrington's opinion, GMN did not fail to provide required data for adjustments to USP. Therefore, we did not use BIA for GMN sales on this basis.

We applied a less-adverse BIA rate, as discussed above, to those U.S. sales by Nankai Seiko for which no FMV data were provided. For Nachi, even after we revised the computer programs we still found unmatched sales. For these sales, we have used BIA as described above.

Comment 3: Allied-Signal argues that the Department should not impose a punitive BIA rate on SNFA, because SNFA attempted to cooperate fully with the Department. SNFA should not be subjected to the same punitive rate as respondents that refused to cooperate and significantly impeded the Department's investigation as SNFA neither refused to cooperate nor significantly impeded the investigation.

GE also argues that the Department should not apply a punitive BIA rate to SNFA, because such a rate does not reflect the circumstances involved and unfairly punishes GE, which is not at fault.

Department's Position: SNFA did not provide a substantive response to our questionnaire. It responded to section A (general information) of the questionnaire, but did not respond to sections B, C, or D. This does not constitute a reasonable attempt by SNFA to comply with the Department's requirements for conducting the review. The lack of information significantly impeded the Department's investigation, since there was no basis for calculating actual dumping margins nor even data to consider.

Although Allied-Signal and GE, as interested parties, have expressed concern regarding SNFA's final result, SNFA is solely responsible for its participation in this review. Therefore, we can consider only the nature of SNFA's response to our questionnaire in determining the appropriate BIA rate to apply.

Accordingly, we used as BIA the highest rate determined for any individual firm in the original investigation with respect to the same class or kind of merchandise and country of origin.

Comment 4: Dowty argues that the Department should not use BIA for Dowty's sales of French AFBs, arguing that it provided all necessary USP and FMV information.

Department's Position: We agree that Dowty's response was adequate. For these final results, we used the information submitted by Dowty concerning its sales of AFBs from France.

Comment 5: NPB contests the Department's use of BIA in the preliminary results of review. NPB states that its basic labor, overhead, selling, general and administrative expense data were verified; the verification report refers only to potential problems with the allocation methodology used for labor and overhead. Since NPB had no deficiencies in its response, all data were verified, and only the allocation methodology for labor and overhead are at issue, the Department's use of a punitive, overall BIA rate which rejects use of that verified data indicates that the Department "applied its BIA authority in an arbitrary, capricious and unreasonable manner."

NPB contends that according to Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada; Final Results of Antidumping Duty Administrative Review, 55 FR 20176 (1990), the Department's criteria to

determine whether to use BIA are completeness of the original and any supplemental responses, whether the Department gave the respondent adequate notice to correct any deficiencies, and timeliness of the deficiency response. In the case of minor omissions from a response, NPB argues, the Department has clearly stated that it may apply a partial BIA, but only to those omissions. In such a cnse rejection of the entire response is not warranted. NPB cites as support Tapered Roller Bearings Four Inches or Less in Outside Diameter and Certain Components Thereof from Japan; Final Results of Antidumping Duty Administrative Review, 55 FR 38720, 28728 (1990) (hereinafter TRBs); Certain Fresh Cut Flowers from Columbia; Final Results of Antidumping Duty Administrative Review, 55 FR 20491, 20494 (1990) (hereinafter Flowers). NPB argues, therefore, that the Department may not use BIA in lieu of verified data, even where the allocation methodology for that verified data is at issue. Since NPB does not maintain the books and records necessary to derive a more acceptable allocation methodology for labor and overhead expenses (it has only raw data from untabulated daily production reports) it should not be penalized for failing to provide information that it simply does not have. The Department's contention that NPB should have tabulated selected information from its 18 months of daily production reports (in one or two days of the verification) constitutes the Department's requiring NPB to create new accounting records.

NPB contends that there is strong precedent for accepting allocations based on aggregated cost data when cost information cannot be disaggregated because a respondent's records are not maintained on a disaggregated basis. *See Atlantic Sugar, Ltd., et al.* v. *United States* 744 F.2d 1556 (1989) (herein after Atlantic Sugar); Offshore Platform Jackets and Piles from Japan: Final Determination of Sales at Less Than Fair Value, 51 FR 11788 (1986); Photo Albums and Filler Pages from Hong Kong, 50 FR 4375 (1985). NPB argues that if the Department continues to reject NPB's suggested alternatives it should develop its own methodology, using the verified data.

NPB further argues that in instances where companies had "not appropriately quantified or valued" certain costs (labor, overhead, C&A, interest expenses, selling expenses) the Department adjusted such items based on information from the financial statements. See Certain Valves and Connectors of Brass for Use in Fire Protection Systems from Italy, 55 FR 50342 (1990) (hereinafter Valves; Final Determination of Sales at Less Than Fair Value; Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7661 (1991) (hereinafter Salmon).

NPB also notes that in the Final Determination of Sales at Less Than Fair Value; Sweaters Wholly or in Chief Weight of Man-Made Fibre from Taiwan; 55 FR 34585 (1990) (hereinafter Sweaters) where a cooperative company provided substantially complete and verified responses but failed to provide certain data, the Department used the highest calculated margin for any other company (with a verified response) in that review as BIA for that portion of the unverified sales. Thus, for NPB's labor and overhead, the Department should resort to BIA for only those items, not reject the entire response.

Finally, NPB notes that verification was originally scheduled for five days. After it had been rescheduled for 3.5 days the Department promised not to draw any adverse inferences regarding any data for which the Department was unable to complete verification. NPB alleges that this promise was not honored.

Department's Position: We disagree with NPB's contention that its basic labor, overhead, selling, general and administrative expense data were successfully verified. Although we were able to tie the aggregate labor, overhead and SG&A expenses from the monthly trial balance to the audited financial statements, we were not able to tie the reported model-specific amounts for these items to those internal accounting records and financial statements. Verification depends precisely on tying amounts reported in questionnaire responses to the company's internal accounting records and financial statements. Failure to demonstrate such a relationship results in a failed verification. In Valves and Salmon minor reallocations based on financial statement data were accepted because the respondents' questionnaire responses reconciled to the internal accounting records and financial statements. Unlike Valves and Salmon, and TRBs and Sweaters, where partial BIA was used to correct for minor omissions in the response, and Flowers where such minor omissions did not result in rejection of the entire response, NPB failed verification, in this case, verification of costs. In accordance with Department practice and policy, a failed verification is sufficient grounds for rejecting a response and resorting to BIA.

It is not the Department's policy to penalize respondents for not maintaining records in a manner that facilitates response to the antidumping questionnaire. When NPB explained its cost accounting system to the Department at verification, the Department attempted to work with NPB to devise an appropriate allocation methodology based on that system. However, due to problems addressed herein, the Department was unable to devise such an appropriate methodology at verification. Had NPB informed the Department of its unsophisticated cost accounting system prior to completing its questionnaire response, the Department and NPB, at that time, might have been able to devise an appropriate allocation methodology for these expenses.

The Department's attempt to substantiate the accuracy of NPB's claimed labor and overhead expenses through the use of two months of the daily production reports should not be construed as a requirement by the Department that NPB create new accounting records. Since NPB was unable to tie these expenses to the monthly trial balance or the audited financial statement, the daily production reports were the only alternative internal accounting records NPB could use to substantiate those expenses.

The Department did attempt to make a more appropriate allocation for labor and overhead costs, but found that by doing so, it would have to ignore verified subcontracting costs. NPB's computer submission recorded its subcontracting, in-house labor, and overhead expenses under the same computer variable. In order to use reallocated in-house labor, and overhead costs in our analysis, we would have had to segregate the verified subcontracting expense from the total subcontracting, labor and overhead cost reported under this computer variable. The only data available to the Department for segregating the subcontracting expense from the other two items are worksheets of voluminous data which were provided by the company at verification. Since this information was not on computer tape, we could not incorporate it into NPB's computer database. Thus, if the Department were to accept a new allocation for NPB's labor and overhead, it would also have to derive a new allocation for its subcontracting costs. We consider it inappropriate to accept reallocated data, for purposes of analysis, if applying that revised data would result in rejection of verified information.

The alternate allocation methodology for labor and overhead costs proposed by NPB in its prehearing brief (aggregate labor and overhead expenses allocated across aggregate material and subcontracting costs) would result in an under- or over-allocation of these items. The Department learned, at verification, that production steps performed by subcontractors are not the same for all models; therefore, models with the highest subcontracting cost would be allocated higher portions of the labor and overhead costs.

In cases where the Department has accepted cost allocations based on aggregate data, it has done so because the costs involved bore some relationship to each other, or because such cost allocations were appropriate given the companies, internal cost accounting systems. For example, in Atlantic Sugar the company involved did not maintain disaggregated records, and therefore in determining injury the International Trade Commission (ITC) devised appropriate aggregate allocations. Here, some disaggregated records were kept by NPB, and unlike the ITC decision in Atlantic Sugar, the Department was unable to devise an appropriate allocation methodology.

Finally, we note that NPB's failure to substantiate its claimed labor and overhead costs was not a function of the shortened verification. Rather, this failure resulted from the complex and inappropriate allocation methodology used by the respondent to derive model-specific labor and overhead costs.

For the reasons discussed above, the Department was not able to conduct a test for sales below the cost of production. Thus, we were unable to use home market sales for comparison purposes. For the same reasons that NPB's data were unacceptable for the cost test, they were unacceptable for use in constructed value. Therefore, for this firm, we used as BIA the higher of the "all others" rate from the LTFV investigation or the highest weighted-average rate calculated for any individual firm in the instant review.

Comment 6: NPB contends that the Department should not reject the SG&A data for two fiscal years that it submitted (September 21, 1987–September 20, 1988 and September 21, 1988–September 20, 1989), simply because the first fiscal year does not coincide with the period of review. NPB notes that section A of the Department's questionnaire instructed respondents to "Provide English translations of your audited consolidated financial statements for your two most recent fiscal years." At verification NPB provided the Department with the most recent audited fiscal year (September 21, 1989–September 20, 1990), thus the Department should use the SG&A as reported, or alternatively, for its reallocation, should use data from the two fiscal periods which coincide with the period of review. Moreover, NPB contends that the Department has known since submission of the section A response that NPB submitted data covering a fiscal period outside the period of review, yet the Department failed to note this or request updated information in its deficiency letter. In the instant review the Department had also not issued a deficiency letter to Osaka Pump for certain missing information, and was requesting the information after publication of the preliminary results of review. The Department must apply the same standard to NPB, especially since those missing data were already provided and verified.

Department's Position: We did not reject NPB's fiscal year SG&A data simply because they had not been provided in the company's response to our questionnaire. For a complete discussion of our use of BIA for NPB see the *Department's Position* to *Comment 5* above.

Comment 7: ZF argues that the Department should not use BIA for its ESP sales but instead should use the data ZF submitted. If the Department must use BIA, however, the most adverse BIA should not be used because any information not provided by ZF is simply information ZF does not have. Moreover, the Department's practice is to apply the most adverse BIA when a respondent refuses to cooperate, whereas ZF cooperated fully with the Department.

Department's Position: ZF's response to our questionnaire was neither timely nor adequate. Its response to section A, which was due on June 28, 1990, was not submitted until July 19, and contained serious deficiencies which prevented the Department from making a proper analysis. The Department requested that ZF revise its section A response and resubmit it along with its responses to sections B and C on September 7, 1990. The Department did not receive them until September 11, 1990. Furthermore, the responses to all three sections were substantially deficient. Most notably, the submissions did not include ZF's ESP sales data, and the PP sales data were incomplete. ZF subsequently requested that it be permitted to submit a price list response, and the Department accepted this approach for ZF's purchase price sales. This information was submitted on October 15, 1990. A price list submitted for this purpose did not include prices for the subject merchandise. Ultimately, a proper price list was submitted, which enabled the Department to perform a proper analysis of ZF's PP sales. Nevertheless, no additional information was submitted to the Department for ZF's ESP sales. On February 7, 1991, ZF indicated to the Department that, because the majority of its ESP sales were actually made through service contracts involving the repair of transmissions, and the bearings themselves accounted for an insignificant portion of the value of those contracts, such bearings should be considered outside the scope of the order. We requested that ZF provide documentation that would support this claim; however, ZF did not provide the evidence we requested (*see* the section on "Roller Chain" in this appendix).

The Department maintained that ZF, in order to account for its ESP sales, should attempt to make reasonable allocations of its ESP expenses using records it did keep. ZF continued to make its argument concerning further processing, but provided no supporting evidence for its claim. Finally, on April 17, 1991, ZF did attempt to make the allocations requested by the Department, but this was not done until after publication of the preliminary results. Lacking a substantive response from ZF concerning its ESP sales, we used the first tier of BIA to calculate the margin on its ESP sales.

Comment 8: Asahi and McGill argue that the Department's use of the most adverse BIA for Asahi's sales is not justified. If Asahi's information is not used, the Department should use as BIA the highest non-BIA rate from this review or Asahi's rate from the original investigation.

Asahi contends that its conduct throughout this review demonstrates its full cooperation with the Department. The errors in its data were inadvertent and reported as soon as discovered. Asahi further maintains that the Department's practice has been to use either a BIA rate only for that portion of the response that was inadequate or to disregard the entire response and use either the firm's rate from the previous review or the highest rate calculated for a responding firm in the current review. A BIA rate drawn from unsubstantiated estimates in the petition is unduly punitive and contrary to Department policy.

Federal-Mogul argues that the Department is compelled to use BIA for Asahi, because verification revealed that there were severe deficiencies in Asahi's reported sales.

Department's Position: The U.S. sales listing in Asahi's response omitted a substantial portion of its U.S. sales and thus was inadequate. We agree, however, that Asahi did make a reasonable attempt to comply with the Department's requirements for the review and that the omission was inadvertent. Asahi provided a narrative response to all pertinent sections of our questionnaire and provided a computer tape containing its sales listings, though these sales listings were flawed. Furthermore, Asahi's response was sufficiently adequate on its face to warrant verification. Accordingly, for these final results we used as BIA the higher of the rate applicable to Asahi from the original investigation or the highest rate calculated for any individual firm in the relevant instant review.

Section 6: Date of Sale

Comment 1: Isuzu maintains that the Department should continue to use the bill-of-lading date, rather than the order-acknowledgement date, as the date of sale for its purchase price transactions. Use of the order-acknowledgement date would be inaccurate and contrary to Department precedent. Isuzu's sample order-acknowledgement form is prominently labeled an estimate, and Isuzu argues that the Department has repeatedly emphasized that a sale does not occur for antidumping purposes until the material terms of the contract are fixed. Isuzu cites Antifriction Bearings and Parts Thereof From the Federal Republic of Germany, 54 FR 18992 (May 3, 1989) and Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan, 53 FR 3227 (February 4, 1988), in support of its position.

Department's Position: It is the Department's established practice to use the date when the price and quantity terms are set as the date of sale. We verified that the prices and quantities were set for Isuzu's sales in this administrative review on the bill-of-lading date. Therefore, the bill-of-lading date is the date of sale for purposes of calculating Isuzu's antidumping margins in these final results.

Comment 2: The Torrington Company contends that Nachi failed to document its price changes and resulting changes to the dates of sale; therefore, the Department should not change Nachi's dates of sale for purposes of the final results. The combination of substantial price increases and radical revisions in sale dates has the potential to dramatically change the margin.

Department's Position: Nachi failed to submit its revised sales price data in a proper format. Nachi submitted substantial revisions to the reported date of sale without an accompanying computer tape. These revisions were provided only eight days before the verification of purchase price sales in Japan. As a result, the Department was unable to process this information for purposes of the verification. Furthermore, Nachi did not present any information at verification to corroborate its assertions concerning its prices and dates of sale changes. Therefore, for purposes of the final results, we are using the dates of sale as originally submitted by Nachi.

Section 7: Level of Trade

Comment 1: Torrington argues that the statute requires the Department to exhaust all possible home market sales of identical merchandise before resorting to similar merchandise or CV. Torrington further argues that the Department's decision to compare U.S. sales to similar merchandise or CV before exhausting all identical merchandise contravenes 19 U.S.C. 1677b(a)(1)(A) and is contrary to judicial and departmental precedent. *The Timken Co.* v. *United States*, 11 CIT 786, 673 F. Supp. 495 (1987). Torrington concludes that the Department's "family" match methodology was agreed to with the understanding that the Department would compare sales of "identical" and "family" at other levels of trade where appropriate.

GMN agrees with Torrington and claims that the Department's decision to depart from prior practice by limiting comparisons to the same level of trade unduly prejudices GMN because U.S. prices were established by reference to the traditional matching hierarchy.

NWG also agrees with Torrington and GMN and states that because respondents such as NWG were required to report CV information only for unmatched sales, the Department's matching methodology causes serious difficulties. Because respondents employed the Department's traditional level of trade methodology to determine whether there were unmatched U.S. sales, there now exist unmatched U.S. sales for which no CV data have been provided. NWG asserts that if the Department retains this level of trade methodology in the final results, all unmatched U.S. sales should receive a BIA margin equal to the average margin of all transactions for which same-level price comparisons or CV data are available.

The NMB/Pelmec companies agree with Torrington and, like NWG, reported CV information for only unmatched U.S. sales based on the Department's traditional policy of comparing such or similar merchandise across levels of trade before resorting to CV. NMB/Pelmec further contends that if the Department does not correct the level of trade methodology, CV information submitted after disclosure, in response to the unmatched sales, should be accepted and used to determine FMV.

The SKF Group Companies argue that the Department's decision not to cross levels of trade for the preliminary results was correct and should be employed for the final results. SKF asserts that the Department's approach was reasonable and authorized by the statute. According to SKF, by comparing only prices at the same level of trade, the Department recognizes the significance of commercial comparability and is able to make a fair determination in keeping with the intent of the statute to compare U.S. and foreign market value on an equivalent basis.

The FAG companies contend that the Department has the discretion to determine whether and to what extent it will cross levels of trade. A comparison at the same levels of trade, in an industry like AFBs, "* * * fulfills the spirit of the law, and results in a more equitable and accurate result * * *".

The NTN companies and Koyo also agree that the Department's approach to level of trade in the preliminary results is reasonable, in accordance with the law, and within the Department's discretion. NSK also agrees with the Department's method of comparing only sales at the same level of trade, noting that comparing sales within levels of trade will permit respondents to calculate when prices in the United States are at or above foreign market value. NSK claims that it would be unreasonable for the Department to search across levels of trade after a limited home market search of only three possible months out of a potential universe of 18 months of home market sales.

Department's Position: Our review of the statute, our administrative practice, and judicial precedent lead us to conclude that we must exhaust all possible contemporaneous HM sales of identical or selected similar merchandise (*i.e.*, families) regardless of level of trade before resorting to CV.

The regulations neither authorize nor require the Department to resort to CV as a result of level of trade differences. 19 CFR 353.58 provides that, where possible, the Department will compare sales at the same leval of trade. But "(i)f sales at the same level of trade are insufficient in number to permit an

adequate comparison, the Secretary *will calculate FMV based on sales of such or similar merchandise at the most comparable commercial level of trade.*" (emphasis added). The Secretary may then make an adjustment for level of trade differences affecting price comparability. The Department has consistently determined in past reviews that the fact that home market sales may be at a different level of trade does not outweigh the importance of relying on actual sale prices rather than CV. Final Results of Antidumping Duty Administrative Review; Brass Sheet and Strip from Canada, 55 FR 31414 (1990); Final Results of Antidumping Administrative Review; Tapered Roller Bearings From Japan, 52 FR 30701 (1987); Final Determination of Sales at Less Than Fair Value; Fresh Cut Flowers from Costa Rica, 52 FR 6582 (1987). The Court of International Trade has affirmed this approach. *NTN Bearing Corp. of America* v. *United States*, 747 F. Supp. 726, 743 (CIT 1990). *Timken Co.* v. *United States*, 11 CIT 786, 674 F. Supp. 495 (CIT 1987).

Comment 2: Nankai Seiko argues that when sales at different levels of trade are compared, an appropriate adjustment must be made. Because there is no reasonable method for adjusting Nankai Seiko's U.S. and home market prices for sales at different levels of trade, the firm urges the Department to use CV as the basis for FMV. Nankai Seiko contends that the Department should accept additional CV data for certain ball bearing models because neither Nankai Seiko nor the Department anticipated the need to provide additional CV data for ball bearing models which were not appropriate for comparison.

The Wada Seiko Company claims that a difference in levels of trade exists between the home market sales and exports to the U.S. Wada Seiko argues that prices on sales through trading companies in the home market are 10 percent higher than prices on sales to the U.S. through trading companies. According to Wada Seiko, direct sales to customers in the home market will be more than 10 percent higher in price than direct sales to U.S. customers. To adjust for this claimed difference in level of trade, Wada Seiko urges the Department to decrease home market prices by 10 percent.

FAG contends that if the Department compares sales at a different level of trade, it is required to make an adjustment for differences affecting price comparability, according to 19 CFR 353.58.

Department's Position: Under 19 U.S.C. 1677b(a)(4)(B), if it is established to the satisfaction of the Department that the amount of any difference between USP or FMV is wholly or partly due to differences in circumstances of sale, due allowance will be made therefor. The Department's practice has established that it is the respondents' burden to request such an adjustment, to demonstrate that such an adjustment is justified, and to appropriately quantify the adjustment. Final Determination of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof, from the Federal Republic of Germany, 54 FR 18992 (May 3, 1989). *See also* 19 CFR 353.54. All of the respondents had the opportunity to demonstrate that a level of trade adjustment was justified and to quantify their claim, but did not do so. Therefore, no level of trade adjustment was made.

Comment 3: NSK argues that the Department ignored the commercial realities of the Japanese marketplace when it classified home market sales of replacement bearings to OEMs, in small quantities and at higher prices, as the same level of trade as U.S. OEM sales. NSK contends that the Department also erred when it considered sales made to unrelated distributors that were destined for OEMs as aftermarket sales. NSK argues that, in Japan, it is not uncommon for OEMs to purchase bearings through unrelated distributors. An analysis of HM weighted-average prices of bearings by customer category clearly shows these distinctions, according to NSK. NSK urges the Department to recognize sales to distributors for OEMs as sales to OEMs and to recognize small quantity, high price sales to OEMs as aftermarket sales not equivalent to sales for OEM production.

Torrington agrees with the Department's level of trade classification and notes that in the LTFV investigation, the Department rejected NSK's claim that sales to distributors for resale to OEMs should be classified as the same level of trade as OEM sales. Torrington agrees with the Department's finding in the LTFV investigation that comparisons will be based on sales to the first unrelated customer and that the identity of the customer's customer is not relevant to the analysis.

Department's Position: In determining dumping margins, the Department begins with the actual price at which merchandise is exchanged between unrelated parties. *PQ Corp.* v. *U.S.*, 652 F. Supp. 721 (CIT 1989). The distributor in these cases is the first unrelated customer and the identity of the customer's customer is not relevant to our analysis. Furthermore, NSK has not demonstrated that the selling expenses incurred in these distributor sales are comparable to those for direct OEM sales.

Comment 4: Nachi argues that sales to trading companies for resale to OEMs in the U.S. market should be regarded as sales to the OEM level of trade. Nachi contends that the function of distributors in the home market differs substantially from the function of trading companies in the U.S. market, and therefore sales to trading companies in the U.S. are more appropriately compared to sales to OEMs in the home market.

Torrington agrees with the Department's treatment of Nachi's sales to trading companies and contends that Nachi has failed to demonstrate that the trading company sales were improperly classified in the preliminary results.

Department's Position: The Department is concerned with sales to the first unrelated customer. The customer's customer is not relevant to the Department's analysis. *See Department's Position* to *Comment 3.*

Comment 5: Torrington claims that sales by SOS do not represent an additional level of trade and should not be excluded from the home market sales listing. Torrington notes that SKF-France, in its response, shows all of its aftermarket sales organizations, including SOS, to be on the same level of trade. Torrington claims that even if sales by SOS are on an "emergency" basis, this alone does not determine that sales are at a different level of trade. SKF must occasionally sell on an emergency basis in the U.S. as well, according to Torrington, although SKF has made no claim for a different level of trade in U.S. market. Torrington asserts that even if SOS may incur more selling expenses than another SKF selling subsidiary, it is not a basis for claiming a different level of trade adjustment. Torrington argues that the Department " * * * allows a level of trade adjustment claim only if the respondent shows that prices are not comparable because the merchandise is sold at a different level of trade." SOS, according to Torrington, has not adequately supported their claim for a level of trade adjustment and the Department should therefore deny such a claim.

SKF-France argues that sales by SOS should not be included in the Department's margin analysis because sales by SOS are made on an emergency basis to a customer's customer and therefore are at a distinct level of trade. SKF-France argues that " * * * SOS performs a unique function in the French

market, distinct from the functions performed by either OEMs or distributors." As a result of this unique function, SKF claims that higher selling expenses are incurred. SKF-France claims that it has demonstrated that SOS incurs different selling expenses in selling to a different level of trade and that the Department has verified that SOS sales incur an additional level of selling expenses.

Department's Position: The Department has rejected SKF-France's claim that SOS sales are at a unique level of trade from other SKF-France sales organizations. SOS and the other SKF-France selling affiliates sell to the same customers—distributors. The fact that SOS may provide fast delivery of bearings and incurs higher selling expenses does not demonstrate a level of trade distinct from other SKF-France selling units which service distributors. Therefore, we have considered sales by SOS to be at the same level of trade as that of the other SKF-France selling units that sell to distributors.

Comment 6: Torrington argues that the Department's margin analysis for SKF-FRG should be revised to include sales by Betec, a wholly owned subsidiary of SKF-FRG, and exclude sales from other SKF-FRG companies to Betec. Torrington contends that SKF-FRG failed to provide the necessary information to support its allegation that sales to Betec were at arm's length. SKF-FRG, according to Torrington, did not compare prices on specific products to show that prices charged to Betec were comparable to those charged to other distributors at the same level of trade. Torrington further asserts that SKF-FRG did not demonstrate that SKF-Services' selling expenses incurred in sales to Betec are comparable to those for unrelated customers and that the net margin realized on sales to Betec does not differ from those obtained from sales to unrelated parties. Torrington claims that SKF's sales structure does not suggest that sales by Betec should be treated any differently from sales by any of the other SKF-FRG sales organizations.

SKF-FRG asserts that the Department properly excluded sales by Betec in its calculation of foreign market value. SKF-FRG contends that sales to Betec are at arm's length, with terms of sale identical to those applicable to SKF's unrelated distributors, and with profit margins consistent with those realized by SKF-FRG on sales to independent distributors of comparable size. SKF-FRG claims that detailed transactional data for sales to Betec have been provided on the record to more than justify the Department's exclusion of sales made by Betec. SKF-FRG further states that the Department's preliminary treatment of Betec sales is also supported on the grounds that Betec's sales of AFB's are a minor, diminishing aspect of its overall operations and, as a percentage of SKF-FRG's total sales of AFBs in Germany, represent less than one half of one percent by quantity.

Department's Position: The Department has reviewed SKF-FRG sales to Betec and determined that the sales were made at arm's length, with prices and terms comparable with those sales made to unrelated distributors. Accordingly, the Department has included SKF-FRG sales to Betec in its analysis and disregarded sales by Betec.

Section 8: Ordinary Course of Trade/ Quantities

Comment 1: Nankai Seiko argues that the Department must make a reasonable allowance for price differences that are wholly or partly due to differences in quantities. Nankai Seiko claims that the Department inappropriately compared U.S. and home market sales of vastly different quantities without making a proper adjustment for these differences. Nankai Seiko claims that it grants discounts to customers based on, among other factors, quantity. In the Department's preliminary results, U.S. sales of very large quantities were compared to home market sales of small quantities with no adjustment made for quantity differences affecting price comparability. Since Nankai Seiko acknowledges that it does not qualify for the calculation of FMV based on quantity discounts as described in 19 CFR 353.55 (b) and (c), and it would be difficult, if not impossible, to calculate an adjustment, the firm urges that the Department use CV to match sales of vastly different quantities.

Department's Position: The statute and the regulations provide that the Department will make an adjustment for any difference in quantities if it is established to the satisfaction of the Department that the amount of any price differential is wholly or partially due to that difference in quantities. 19 U.S.C. 1677b(a)(4)(A) and 19 CFR 353.55.

With regard to this adjustment, the regulations require the requesting party to "quantify" the adjustment by showing that any price differential is due to the difference in quantities sold in the HM and the United States. 19 CFR 353.55(a). For example, in Brass Sheet and Strip from the Netherlands, 53 FR 23,431, 23,433 (June 22, 1988), the Department stated, "* * * to be eligible for a quantity-based adjustment, the respondent must demonstrate a clear and direct correlation between price difference and quantities sold or costs incurred." In a court case involving Swedish steel, the CIT affirmed Commerce's practice of requiring the requesting party to quantify the adjustment. *Sandvik* v. *United States*, 679 F. Supp. 12 (1989) ("* * * the ITA properly exercised its discretion in determining that plaintiffs do not qualify for a quantity discount adjustment since the record reflects that there is a lack of correlation between the price and quantity.") Absent any information on the record properly quantifying an adjustment attributable to differences in quantity, we cannot make a quantity adjustment.

With regard to Nankai Seiko's suggestion that the Department use CV to match sales of differing quantities, the Department believes that the statute, administrative practice, and judicial precedent require us to exhaust all sales of such or similar merchandise before resorting to constructed value for price comparisons. The fact that a HM sale may be at a different quantity than a U.S. sale does not outweigh the importance of relying on actual sale prices rather than CV.

Comment 2: Wada Seiko claims that the Department matched home market sales of three models of bearings to U.S. sales of extremely different quantities. To correct these matches of uncomparable quantities, Wada Seiko suggests that the Department compare, as identical matches, the "metric" equivalent of the bearings sold in the U.S. These metric bearings, which are not in the same "family", as defined by the Department questionnaire, differ only slightly in inner and outer diameter and had more comparable quantities sold in the home market. Wada Seiko suggests that if the Department does not accept the "metric equivalents" as identical matches, CV should be used as the basis for FMV for the three models in question or a quantity discount of 20 percent should be deducted from the domestic prices of the three models.

Department's Position: It is the Department's practice to exhaust all sales of such or similar merchandise before resorting to CV as a basis of comparison. (*See Department's Position* to *Comment 1* above.) As in the case of Nankai Seiko, Wada Seiko was unable to quantify its claim for an adjustment attributable to differences in quantities. With respect to Wada Seiko's suggestion to use the "metric equivalent" bearings in place of identical matches, the Department will only match such or similar merchandise as defined in the questionnaire.

Comment 3: NSK argues that the Department regulations provide for the Department to use sales of comparable quantities when comparing United States price to foreign market value. As a result of the Department's methodology of comparing U.S. sales to home market sales in one month or within a contemporaneous window, regardless of quantities, identical U.S. sales in some instances were not dumped sales and in other cases had significant dumping margins. NSK contends that such an improper comparison is "* * * arbitrary and capricious, and inconsistent with the purpose of the dumping law—to encourage respondents to sell at fair value."

NSK offers three remedies for this situation. Under the first alternative, if U.S. sales are of large quantities and there are large and small quantities in the HM, the Department could disregard the small quantity sales and only compare the large quantities. If the quantity of a home market sale, for example, is less than five percent of the quantity of the U.S. sale, the Department should not match price to price, but should reject the home market sale as not comparable and search for a match of a comparable quantity in the contemporaneous window, or use CV for determining FMV. Another alternative is to calculate a single weighted-average FMV, as recently followed in the Administrative Review of Tapered Roller Bearings from Japan. Home market sales would be properly averaged and not disregarded. Under a third alternative, the Department could apply its "preponderant price" regulation where, "(i)f not less than 80 percent of the sales which the Secretary may use to calculate foreign market value during the period under examination were made at the same price, the Secretary will calculate foreign market value based on sales at that price." 19 CFR 353.44(b).

Department's Position: With respect to NSK's proposals, the Department's practice is to calculate FMV using a weighted-average of all contemporaneous home market sales (or a preponderant price if not less than 80 percent of sales which are used for FMV were made at the same price in accordance with § 353.44 of the Commerce Regulations). However, the Department would have taken differences in quantities into account if NSK had demonstrated a clear correlation between price and quantity. This correlation is not apparent from NSK's response. Therefore, the Department sees no justification for disregarding small quantity sales. Similarly, NSK has failed to demonstrate that not less than 80 percent of the sales used for comparisons were made at the same price. Finally, in accordance with § 353.46 (2) and (3) of the Commerce Regulations, the Department is required to calculate the FMV based on the price at the time the producer or reseller sells the merchandise for exportation to the United States for purchase price transactions, or at the price at the time the importer sells the merchandise in the United States to the first unrelated customer for exporter's sales price situations. The Department believes that, because of our sampling procedures and the pricing patterns in these reviews, the Department should not calculate a single weighted-average FMV, as used in the TRBs from Japan reviews.

Comment 4: NPB urges the Department to perform price-to-price sales comparisons for models which are sold in the home market in comparable quantities to those sold in the United States. NPB urges the Department to use constructed value in lieu of HM price for comparison purposes where the quantity of those home market sales is 4 percent or less of the sales of the comparable U.S. models.

Petitioner claims that the approach advocated by NPB is inconsistent with the statutory scheme, which instructs the Department to determine FMV based on CV only where the quantity sold in the HM is very small in relation to the quantity sold to third countries, not to the U.S. Petitioner further argues that NPB has failed to demonstrate a direct correlation between different quantities and different prices. Torrington claims that notwithstanding such a correlation, the Department would not resort to CV but would compare U.S. and home market prices and make an adjustment for differences in circumstances of sale.

Department's Position: The Department initiated a sales-below-cost investigation of NPB. However, at verification NPB failed to substantiate the cost data it submitted to the Department for this purpose. Therefore, we were unable to use home market prices for our analysis and resorted to BIA. (*See* the section on "Best Information Available" in this Issues Appendix.) Thus, NPB's arguments with respect to comparing sales of different quantities became irrelevant for purposes of these final results.

Comment 5: The SKF Group Companies claim that prototype and obsolete sales are outside the ordinary course of trade and should therefore be excluded from the sales comparisons. SKF defines a prototype as a bearing not having been previously manufactured by the particular company which is claiming the prototype sale. SKF asserts that prototype sales are unrepresentative of the majority of SKF's sales transactions "* * * in terms of price, quantity and the testing purposes for which they are sold." SKF classifies as obsolete those bearings that were manufactured prior to January 1, 1987, and asserts that these sales are unrepresentative sales because the bearings are sold at prices not reflective of sales of non-obsolete bearings. SKF argues that sample sales, like prototype and obsolete sales, are also outside the ordinary course of trade and should be excluded from sales comparisons.

NSK asserts that the Department should exclude home market prototype sales from its analysis because they are outside the ordinary course of trade. NSK also claims that the Department examined a prototype sale during verification and based on this examination should exclude these bearings from comparison.

Torrington states that SKF has not provided evidence that its sales that are allegedly outside the ordinary course of trade are in "extremely low quantities" and "at prices substantially higher than the vast majority of sales in the ordinary course of trade." Torrington further asserts that SKF's definitions of a prototype and an obsolete bearing are overly broad and are not sufficiently explained. SKF's overly broad definition of obsolete bearings would include any bearings an SKF company stops producing in a particular country after December 31, 1986, even though the bearing may be currently manufactured by an SKF company in another country. Similarly, according to SKF's definition of a prototype bearing, a bearing manufactured for the first time by an SKF company may have been a bearing for which production had shifted from an SKF company in another country.

Torrington claims that the fact that tooling or die charges may be included in the price, as NSK has claimed, does not establish that the sale was outside the ordinary course of trade. The petitioner further argues that NSK did not demonstrate that prototype sales were made in extremely small quantities and at prices substantially higher than the vast majority of sales reported.

Department's Position: According to 19 CFR 353.46(a), the Department ordinarily will calculate FMV based on the prices at which such or similar merchandise is sold or offered for sale

in the home market, in the usual commercial quantities, and in the ordinary course of trade for home consumption. In determining the "ordinary course of trade", the Department will consider the conditions and practices which for a reasonable period prior to the time described in paragraph (a) have been normal in the trade of merchandise of the same class or kind in the home market (19 CFR 353.46(b)). With respect to obsolete bearings, SKF considered any particular bearing model to be obsolete if it had not been produced since January 1, 1987, in the particular country under review. However, given SKF's gobal rationalization of production system, this did not preclude the possibility that the same bearing model was being produced in SKF plants in other countries. Therefore, since these bearings were not technically "obsolete", but rather out of production at a given plant, the Department has not excluded these sales in its analysis. With respect to prototype sales, neither SKF nor NSK produced convincing information to demonstrate that the sales in question were at prices extraordinarily high in comparison to other sales not classified as prototypes. Although the initial production of a bearing type may involve blueprints, tooling, or other start-up costs, these types of expenses in themselves do not render the initial sales of the bearings outside the ordinary course of trade. Such costs are usually amortized over a reasonable period of time. Without a complete explanation of the facts which establish the extraordinary circumstances rendering particular sales outside the ordinary course of trade, the Department cannot exclude particular sales from FMV. This is particularly true with respect to a blanket classification of such sales as prototype without individual justification.

Also, SKF classified as a prototype any bearing sold in what was considered to be a trial sale of new products for customer-specific applications. However, SKF failed to establish that bearings being produced in a particular facility for the first time were not bearings for which production had been merely shifted from another plant. Nor did SKF's response provide data to support the extraordinary nature of the sales in question. Therefore, the Department did not exclude from our calculation bearings classified by SKF as prototype bearings.

Comment 6: Nachi states that one particular sample sale has been demonstrated to have been sold at a very low quantity and at a very high price and therefore meets the Department's standard of being outside the ordinary course of trade. Nachi claims that after technical negotiations with a customer, the customer accepted an alternative bearing model offered by Nachi. (Verification exhibit 11). Nachi claims that the alternate bearing was sold solely for the purpose of testing whether it could adequately replace the previous bearing used by the customer and that the price charged for the bearing was substantially higher than a majority of reported sales prices of this bearing because of the technical discussions and low quantity sold. Nachi contends that the price of the sample sale was determined by the unique circumstances surrounding the sale, not simply by normal market forces and production costs. These sales were not in the ordinary course of trade. Industrial Nitrocellulose from the Federal Republic of Germany, 55 FR 21,058, 21,059 (Dep't Comm. 1990). Nachi further argues that, in the alternative, the Department should disregard this sale because it was not in the usual commercial quantities, according to 19 U.S.C. 1677(b)(a)(1) (1989).

INA claims that a certain number of home market "after market" sales should not be used as the basis for FMV because these sales transactions were outside the ordinary course of trade. INA claims that these relatively few transactions consisted of small quantities at prices substantially higher than the prices of a vast majority of sales reported.

The NMB/Pelmec companies assert that the Department properly excluded free promotional samples from the margin determination and states that free promotional samples are intended to generate sales and the cost of these samples should be included as a selling expense. Furthermore, since there is no U.S. price, NMB/Pelmec argues that free promotional samples must be excluded from both the margin calculation and duty assessment.

Torrington agrees with the Department's treatment of alleged sample sales and contends that the respondents have not demonstrated that such sales are outside the ordinary course of trade. However, Torrington argues that U.S. sales with a "zero" price must be included in the margin calculation and must be assessed duties on the entry. According to Petitioner, the exclusion of "free" bearings from the calculation of antidumping duty assessment rates would clearly violate the instructions of 19 U.S.C. 1675, which require the Department to calculate a dumping margin and assess duty based on the margin for each entry of subject merchandise during the review period. Petitioner states that the Department has not allowed respondents to exclude "zero" price sales from U.S. sales listings and that the exclusion of "free samples" from an assigned dumping margin encourages respondent to raise prices on some bearings to a customer and then give away "free samples" to that customer in order to lower the average price. Although the Department allowed respondents to exclude such sales in the original investigation, the petitioner claims that the Department has recognized that there is a greater flexibility under the statute to investigate fewer than all sales during a given period in the less-than-fair-value investigation than there is in the administrative reviews.

Nachi disagrees with Torrington and claims that it is the Department's practice to exclude samples provided free of charge.

Department's Position: The Department agrees with Torrington. All sales reported as samples have been included in the margin calculations.

Comment 7: Torrington argues that Koyo improperly excluded sales of military use bearings from its response. With respect to these particular sales, Torrington further argues that a "Memorandum of Understanding" (MOU) was not in effect and that Koyo failed to demonstrate that the merchandise has "no substantial nonmilitary use" as required for exclusion under section 1335 of the Omnibus Trade and Competitiveness Act of 1988 (1988 Act). Also, Torrington argues that before the Department can exclude "military" sales by FAG–FRG, FAG–FRG should be required to submit the MOU and supporting documentation from the Department of Defense (DOD) confirming that the sales were made under the MOU.

FAG–FRG claims that the military sales were verified and properly excluded from FAG–FRG's database. Furthermore, FAG–FRG states that the relevant MOU is published in the U.S. Code of Federal Regulations and is not required to be submitted.

Department's Position: There is no evidence to suggest that Koyo improperly excluded any military sales from the sampled weeks reported. Although military sales may have been made in non-sampled weeks, we have no reason to believe or suspect that Koyo made sales of unreported military-use bearings in the sampled weeks. Also, military sales made by FAG–FRG were verified to be made to military contractors with an MOU in effect.

Therefore, we have excluded these sales by FAG–FRG in accordance with section 1335 of the 1988 Act.

Section 9: Model Match and Difference in Merchandise Adjustments (DIFMERS)

Comment 1: To facilitate the matching of bearings sold in the United States with the appropriate counterparts in the home market for purposes of this review, the Department grouped the bearings within a class or kind of merchandise into "bearing families" that shared each of six characteristics (load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions). SKF–FRG agrees with the Department's matching methodology with respect to finished bearings. However, SKF–FRG disagrees with the application of this methodology to sales of components. SKF–FRG argues that this methodology does not preserve the requirement of matching the most similar merchandise, because there is too much variation among components within families for comparisons to be appropriate. SKF–FRG also states that matching components within families can grossly distort difference in merchandise adjustments (difmers), because the comparisons produce unreasonably high difmers. SKF–FRG requests that for its components the matching procedure be confined to only identicals, and that the Department use CV in those situations where no identical matches of components are found.

Torrington agrees with SKF–FRG that the use of families has the result of violating the requirement that the Department select the most similar merchandise sold in the home market when sales of identical merchandise are not available. However, Torrington does not agree with SKF–FRG's proposal that the Department resort to CV when an identical match cannot be found. Torrington argues that the Department should apply its criteria for selecting bearing families (inner diameter, outer diameter, width, load rating, etc.) to the selection of components, disregarding those criteria which are not relevant. Potentially comparable merchandise should then be ranked from most to least similar according to the greatest deviation in a single relevant criterion.

Department's Position: For SKF–FRG, we agree that matching of components at the family level can produce inappropriate product comparisons. Comparisons become inappropriate when excessive adjustments for difmers become necessary. In such cases, the Department believes that reasonable comparisons cannot be made within the meaning of section 771(16) of the Act.

In SKF–FRG's case, sales to the United States of component parts comprise a very small percentage of SKF–FRG's total sales to the United States. Most U.S. sales of component parts had identical matches in the home market. Since the quantity of unmatched sales is insignificant, and we are unable to redefine the family for components, or rank individual components from most to least similar (which would be inconsistent with our family approach for these reviews), we have resorted to constructed value.

Comment 2: Torrington argues that the Department should use BIA, rather than CV, for those sales for which respondents failed to report variable cost of manufacture information for calculation of adjustments for difmers. Torrington cites, for example, sales by NSK and SKF-France for which no such information was reported.

Department's Position: Adjustments for difmers were calculated as the difference between the variable cost of manufacture of the home market product (VCOM) and the variable cost of manufacture of the U.S. product attributable to actual physical differences between them. Where the VCOM of the product sold in the U.S. was not provided, thus preventing calculation of this adjustment, we did not make comparisons to similar merchandise, *i.e.,* the home market family, but instead used BIA. *See Department's Position* to *Comment 2* in the section on "Best Information Available" in this Appendix.

Comment 3: Torrington argues that Koyo improperly included in its product code product characteristics which the Department has determined to be non-essential. This may have resulted in too few product matches between the U.S. and home markets. Torrington contends that Koyo has not submitted its data in the form required by the Department, and that the Department should therefore either revise Koyo's product codes or reject Koyo's response in favor of BIA.

Koyo argues that its product nomenclature is appropriate for model match purposes. Koyo states that it sought guidance from the Department on this issue while preparing its response and that the Department did not object to the use of the product codes as they were reported. The home market responses were verified and no difficulties regarding nomenclature were reported. Koyo argues that use of BIA is groundless under these circumstances.

Department's Position: Koyo's reported product codes are not in the form requested by the Department, as they contain product information identified in the Department's questionnaire as insignificant. Koyo essentially chose to disregard the Department's directions when it prepared its response. At no point during the review has the Department agreed that Koyo's reported product nomenclature is acceptable. To the contrary, although Koyo expressed a desire to modify the Department's definition of identical merchandise, it was never given permission to do so. Because using Koyo's reported product codes effectively changes the Department's definition of identical merchandise, we were unable to make comparisons to home market sales of identical merchandise. Therefore, as BIA, we disregarded Koyo's "identical" matches, and compared U.S. sales to home market sales at the family level.

Comment 4: Torrington argues that INA–FRG's reported product codes may be insufficient to ensure appropriate matches of such or similar merchandise. Torrington argues that INA–FRG's product codes do not identify custom bearings and, therefore, custom bearings may be matched to commodity bearings. Torrington states that the Department should examine all bearings identified as custom bearings to ensure that the most appropriate match is made.

INA–FRG states that it has provided the Department with sufficient information to perform product comparisons. INA–FRG argues that it has accurately identified all subject merchandise for matching purposes, and that its product codes accurately reflect the characteristics as required by the Department.

Department's Position: The model match procedure was conducted using INA–FRG's reported article numbers. These article numbers identify identical merchandise, and are ordered by sequence of product design and development. Because these code numbers identify identical bearings, it is not possible for custom-made bearings to be matched to mass-produced bearings. If we did not obtain an identical match we used the bearing family for comparison purposes. The prefixes and suffixes used in the family variable reflect the strict critria established by the Department. The specificity of the characteristics prevents comparing a custom bearing to a commodity bearing. At verification, we examined INA–FRG's product nomenclature system, and we are satisfied that we had sufficient

information to obtain proper product comparisons.

Section 10: Packing and Movement Charges

Comment 1: Torrington contends that the Department should not have made an adjustment to home market sales price for pre-sale freight expenses between plant and warehouse or distribution center for FAG-Italy, SKF-Italy, SKF-FRG, NTN, Nachi, and NSK. Torrington argues that while freight expense incurred between distribution center and customer is an appropriate deduction from foreign market value, freight between factory and warehouse or distribution center is similar to a cost of production expense, and is not an allowable adjustment under *Silver Reed America, Inc.* v. *United States*, 7 CIT 23, 34, 581 F. Supp. 1290, 1298 (1984), *rev'd on other grounds sub nom. Consumer Products Div., SCM Corp.* v. *United States*, 753 F.2d 1033 (Fed.Cir. 1985). Regarding FAG-Italy, SKF-Italy, and SKF-FRG, Torrington asserts that reported pre-sale freight expenses may include charges for movement of raw materials, work-in-progress, or inter-plant transportation.

NSK argues that in the home market, it incurs freight expense moving bearings from the factories to the distribution centers. These freight charges are incurred both on bearings destined for domestic consumption and on bearings destined for export. NSK claims that if no adjustment is made for "pre-sale" freight in the home market, but an adjustment is made to U.S. price, then the-results of the comparisons will be biased. In that situation, comparisons would not be made at a common point in the distribution chain, as required by the CIT in *Smith-Corona Group* v. *United States*, 713 F.2d 1568, 1571-72 (Fed. Cir. 1983); Final Determination of Sales at Less Than Fair Value; Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992, appendix B at 19049 (May 3, 1989).

FAG-Italy asserts that Torrington is incorrect in its statement that FAG-Italy's pre-sale freight charges relate to transportation of raw materials or work-in-progress, or that such charges represent inter-plant transfers of unfinished bearings. FAG-Italy has explained in its questionnaire response that pre-sale freight is incurred for the movement of finished goods from its various factories to regional distribution centers FAG-Italy also states that no discrepancies were found in FAG-Italy's methodology or calculations during verification, and that the expenses should be accepted as reported.

SKF-FRG and SKF-Italy argue that pre-sale freight should be treated as a direct expense. They argue that Torrington is incorrect in its characterization of the nature of these expenses, and that the expenses are charges incurred on behalf of sales to related parties. The SKF companies assert that if the Department should determine to treat pre-sale freight as a direct expense, it should be treated as an indirect expense.

Nachi argues that pre-sale freight should be treated as a movement expense, and should be deducted from foreign market value.

NTN agrees with the Department's treatment of plant freight as a direct expense in the preliminary results. However, NTN does not object to treatment of the expense as an indirect selling expense in the final results.

Department's Position: In accordance with the Department's decision in the Final Determination of Sales at Less Than Fair Value; Gray Portland Cement and Clinker from Mexico, 55 FR 29244, (July 18, 1990), we have determined that pre-sale inland freight should be treated as a movement expense and deducted from foreign market value. Because we do not treat pre-sale and post-sale movement charges differently in calculating an ex-factory U.S. price, we must treat these expenses in a similar manner in the home market, to ensure an equitable price-to-price comparison. We found no evidence on the record that FAG-Italy had improperly included expenses for transporting raw materials or work-in-progress. We have deducted pre-sale freight expenses from foreign market value for SKF-FRG, NTN, FAG-Italy, Nachi, and NSK. However, because SKF-Italy did not report pre-sale freight in the format required by the Department, and reported it instead as part of the pool of indirect selling expenses, we are unable to break out pre-sale freight and have treated it an indirect selling expense.

Comment 2: Torrington argues that air freight charges on NSK's U.S. sales, reported as "Other Import Expenses," should be reallocated to the individual transactions on which they were incurred, instead of the current allocation across all sales. In the prelininary results, the Department treated these expenses as direct selling expenses. Torrington contends that the Department should require NSK to resubmit the expense data allocated only over air freight sales, and should treat the resulting amounts as direct selling expenses.

NSK states that its records do not allow it to identify air freight expenses with specific entries. Because it did not have the capability to identify expenses with entries, NSK developed an allocation methodology for reporting those expenses, and has expressed its willingness to allow the Department to verify the reasonableness of this methodology. NSK asserts that elsewhere in its response, where it has been able to identify expenses with specific transactions, it has done so, and that there is no reason to draw an adverse conclusion about the reliablity of this particular allocation methodology.

Department's Position: We accepted NSK's allocation of these expenses as reasonable. NSK states that it is unable to provide the data in the format requested by the Department, and has made an effort to present the data in a format which approaches the Department's preferred format as closely as its records will allow.

We have no evidence that NSK's allocation methodology is unrepresentative of its actual experience, and have used the reported data in the final results.

Comment 3: INA-FRG requests that the Department continue to accept INA-FRG's calculation of home market movement charges (*i.e.*, inland freight, insurance, and brokerage and handling), based on sales value rather than weight. INA-FRG claims that its record-keeping system does not allow it to provide this information exactly as requested in the questionnaire. Therefore, INA-FRG developed separate methodologies for calculating each stage of movement expense in order to approach as closely as possible the methodology preferred by the Department, and that which would be most consistent with past Department practice.

Department's Position: At verification, the Department confirmed the accuracy of INA-FRG's claim that allocating movement expenses by weight was not possible, given the fact that INA-FRG's accounting system is not product-level-specific. As stated in the Final Determination of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured of Uncured, from Singapore, 54 FR 15489 (April 18, 1989), the Department can accept a reasonable alternative allocation methodology. We have therefore accepted INA-FRG's allocation of movement expenses over the value of domestic sales as reasonable.

Comment 4: INA-USA maintains that its internal accounting procedures make

it incapable of providing movement charges in the form requested by the Department. Furthermore, INA–USA points out that it is the Department's practice to permit a respondent to calculate expenses using a reasonable allocation methodology. Final Determination of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured of Uncured, from Singapore, 54 FR 15489 (April 18, 1989); Final Results of Administrative Review; Porcelain-on-Steel Cookware from Mexico, 55 FR 21061, 21062 (May 22, 1990). Therefore, for each of its movement expenses (*i.e.*, domestic inland freight, ocean/air freight, marine insurance, U.S. inland freight from port to warehouse, U.S. brokerage/handling, and U.S. inland freight from warehouse to the unrelated customer), INA–USA developed an allocation methodology which it believes approximates, as closely as possible, the actual situation. INA–USA requests that the Department utilize the expenses as reported for the final results.

Department's Position: We verified that INA–USA does not keep its records on a part number- or product level-specific basis. For each individual movement expense, we believe INA–USA has made a concerted effort to allocate the expense in a manner which most closely reflects reality. We have accepted INA–USA's allocation methodology as reasonable.

Comment 5: Torrington contends that the domestic inland freight expenses reported by SKF–FRG, SKF-Sweden, and SKF–UK should be rejected. The expenses were calculated by allocating total freight costs to all products shipped during the period of review for which these SKF companies incurred freight charges, including those products which are not subject to review. Torrington also argues that the SKF companies did not account for distance in this methodology, and that this may result in overstatement of expenses incurred.

The SKF companies assert that reported freight expenses are based on actual freight costs, and that there is no basis for Torrington's hypothesis that reported freight costs may be inaccurate. SKF–FRG and SKF-Sweden point out that at verification the Department found no discrepancies in freight calculations. Furthermore, the SKF companies claim that distance is irrelevant because they are charged by freight carriers only by weight. The SKF companies request that the Department accept the adjustments as reported.

Department's Position: At verification, we verified SKF–FRG's and SKF-Sweden's methodology for allocating inland freight expenses to the merchandise under review. We conducted generally accepted document traces to ledgers and worksheets and found that the allocation methods were consistent and reasonable. Since SKF–UK's methodology is similar to the methodology used by SKF–FRG and SXF-Sweden, we have no basis for believing that SKF–UK's methodology is not representative of its actual experience. Therefore, we have accepted domestic inland freight expenses as reported.

Comment 6: Torrington contends that FAG–FRG did not provide a complete description of the methodology used in calculating U.S. movement charges. Torrington argues that without a more thorough explanation of allocations and calculations, the Department cannot be certain of the accuracy of the reported expenses. Therefore, BIA should be used, which Torrington states in this instance should be the highest movement charge reported by any German producer for an identical or similar bearing.

FAG–FRG asserts that the Department verified all U.S. movement charges and did not find any discrepancies. FAG–FRG contends that Torrington's argument is therefore without merit.

Department's Position: The Department verified all movement charges without finding discrepancies. The allocation methods used by FAG–FRG were reasonable and consistently applied. We therefore used FAG–FRG's data as submitted.

Comment 7: Federal-Mogul argues that the Department must recalculate Nachi's ESP offset by excluding certain inland insurance expenses from the amount claimed for U.S. indirect selling expenses. Federal-Mogul asserts that, if the Department is unable to reallocate the indirect expense claim so as to isolate only substantiated indirect selling expense for purposes of the ESP offset cap, then the Department should reclassify as a direct selling expense the total amount claimed by Nachi as a U.S. indirect selling expense. The expense could then be deducted from USP.

Nachi counters that it correctly included an insignificant amount for inland insurance in the total amount claimed for U.S. indirect selling expenses. Nachi claims that the inland insurance amount was too small to measure, and was therefore allocated to sales as part of Nachi America's indirect selling expenses. Nachi asserts that even if the Department were to separate the insignificant amount for inland insurance from total U.S. indirect selling expenses, the *ad valorem* effect on USP would be *de minimis*.

Department's Position: We agree with Federal-Mogul. We deducted the insurance expense as a movement expense and reduced indirect selling expense by the same amount.

Comment 8: Torrington argues that SKF-Sweden's use of sampled expenses in its allocation of ocean freight, foreign inland freight, and foreign brokerage and handling expenses is unacceptable. Torrington states that the samples chosen by SKF-Sweden may be unrepresentative of expenses incurred, and that the accuracy of the sampling methodology has not been adequately justified. Torrington contends that the Department should require SKF-Sweden to resubmit its actual expense data: if SKF-Sweden does not comply, the Department should use BIA. In this instance, Torrington suggests that the highest movement expense reported by any German producer for the same product would be appropriate for use as BIA.

SKF-Sweden states that its sampling methodology is an accurate reflection of its movement expenses. SKF-Sweden also points out that the Department verified the reasonableness of the methodology. When the Department requested additional data in order to confirm the accuracy of the sampling methodology, the results were consistent with SKF-Sweden's reported data. SKF-Sweden requests that the Department accept its methodology for use in the final results.

Department's Position: During verification of SKF-Sweden's U.S. movement expenses, the Department found the sampling and allocation methodologies to be reasonable and representative of the actual expenses incurred. The eight sampled months include at least one month from each quarter of the period of review. We have accepted the data as reported.

Comment 9: Federal-Mogul contends that the Department should not accept Nachi's reported export packing expenses. Federal-Mogul argues that Nachi did not include material costs in its calculation, with the result that the expense is understated. Federal-Mogul suggests that the Department should recalculate Nachi's export packing expenses.

Nachi asserts that its reported export packing expenses are accurate and complete. Nachi claims that the Department verified its response and found that all packing expenses were appropriately reported.

Department's Position: The Department verified Nachi's export

packing expenses and determined that all expenses, including material costs, were reported as required.

Comment 10: Federal-Mogul asserts that as a result of reported discrepancies in NTN's packing costs discovered at the home market verification, the Department should increase NTN's reported U.S. packing costs in order to account for the unreported amounts of packing materials and labor incurred in the home market on U.S. shipments.

Department's Position: We agree. Therefore, based on the verified differences between the reported amounts for total packing costs and the actual amounts, we have increased the amount of U.S. packing costs to be added to FMV for both PP and ESP comparisons for the entire period of review.

Comment 11: Torrington contends that the Department should reject SKF-UK's reported repacking expenses and use as BIA the highest repacking cost for any U.S. sale. Torrington states that SKF-UK's calculations of repacking expenses are unacceptable, because they are not in form requested by the Department.

SKF-UK argues that the Department has verified the reasonableness of its allocation methodology and calculations, and that the expenses should be accepted as reported.

Department's Position: At the U.S. verification, the Department verified SKF-UK's allocation methodology for repacking expenses and found it to be a reasonable and accurate reflection of repacking expenses incurred. The Department traced factors used in the calculation to source documents and found no discrepancies. Therefore, expenses were accepted as reported.

Section 11: Discounts and Rebates

Comment 1: Torrington argues that the Department should deny or, failing that, treat as an indirect selling expense claimed home market discounts and rebates which are not tied to the products or sales under consideration and do not reflect transaction-specific amounts. Torrington cites Tapered Roller Bearings from Japan, 49 FR 8976, 8978 (1984), Carbon Steel Wire Rod from Argentina, 49 FR 38,170, 38,173 (1984), and Internal-Combustion Industrial Forklift Trucks from Japan, 53 FR 12,552, 12,561 (1988). Torrington asserts that where certain rebates or discounts involve specific sales, they should be allocated to those sales.

Torrington further argues, depending upon the respondent involved, that respondents must prove one or several of the following to receive an adjustment for discounts and rebates: That the terms and conditions of their HM rebates were known to the customer at the time of sale; that its claimed rebates or discounts were part of its normal business practice; that its claimed rebates or discounts were consistent with commercial considerations; and/or that its claimed rebates or discounts were made on a contractual basis.

Torrington is concerned that certain respondents might have granted post-invoicing adjustments to avoid the imposition of antidumping duties. Torrington contends that the Department did not sufficiently verify certain discounts because the Department failed to address whether discounts could be allocated on a transaction-by-transaction basis, did not compare reported discount amounts to the actual amounts for individual transactions to determine whether the reported discounts were reasonable, and did not explain how certain customers could apply discounts, such as early payment discounts, to multiple invoices.

Department's Position: The Department generally allows adjustments to home market price and USP for discounts and rebates where respondents have granted and paid them on sales of subject merchandise to unrelated parties during the period of review. Such discounts or rebates should be part of a respondent's standard business practice and not intended to avoid potential antidumping duty liability. The Department generally makes an adjustment if discounts and rebates, granted pursuant to accurately and adequately described programs, are properly reported on a sale or customer-specific basis and are directly associated with the products or sales under consideration. See Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al., 55 FR 18992, 19056 (1989).

FAG: The Department has the discretion to allow adjustments based on allocations rather than invoice-specific adjustments. Contrary to Torrington's assertions, the Department fully verified all of FAG's discount and rebate programs, and found FAG's allocation methods to be reasonable and consistent. The Department determined at verification that where FAG allocated discounts, rather than responding on a transaction-specific basis, it did so because its computer system was not able to extract the appropriate information. FAG's computer system was able, however, to generate these discounts on a customer-specific basis. Furthermore, the Department noted that a number of FAG's customers applied discounts, such as early payment discounts, to multiple invoices, sometimes paying for hundreds of separate invoices with a single payment. Keeping in mind that an individual invoice can cover many different types of bearings, the Department agrees with FAG that it would impose a needless burden to hand-sort through the hundreds of thousands of invoices issued by FAG each year to determine how each specific discount applied to each specific bearing on each specific invoice. Furthermore, we compared a number of reported discount amounts to the amounts shown on individual invoices to determine whether the reported discounts were reasonable.

Regarding Torrington's concern that FAG might have granted post-invoicing adjustments to avoid the imposition of antidumping duties, we examined several invoices subject to these discounts, as well as supporting documentation, and found no evidence that these adjustments were used to mask dumping. Where FAG's discount and rebate programs applied to total sales to customers, discounts and rebates were correctly allocated over all sales. Where discounts and rebates only applied to particular products, the discount and rebate amounts were only allocated over sales of those products. We verified FAG's discount and rebate programs and determined that its allocation methods were reasonable and in accordance with its internal books and records.

Koyo: The adjustments claimed by Koyo are allowable because they are customary and an ordinary part of its business practices. Koyo determines these adjustments on a product-specific basis but aggregates them for bookkeeping purposes. Because they were allocated on neither a product-specific nor a customer-specific basis, we treated them as indirect selling expenses.

Nachi: The Department verified that Nachi calculated rebates on a product- and customer-specific basis. We did not find that Nachi had allocated rebates over sales of all products including those not subject to review as alleged by Torrington. We analyzed Nachi's sales database and have determined that there is an insignificant number of transactions where reported rebates are greater than the unit price. Where this occurred, we set those rebates equal to zero.

NTN: At verification, NTN demonstrated to the Department's satisfaction that its rebates were tied to

sales of the subject merchandise, and that it granted rebates during the period of review for sales made during the period of review. Because it is the Department's practice to treat post-sale price adjustments as rebates where they are granted as a standard business practice, we have deducted the amount of the rebate from FMV. See Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al., 54 FR 18992, 19056 (1989). We also deducted such claims from the USP.

NSK: We treated NSK's post-sale price adjustments as direct price adjustments because they were allocated by customer and product. We treated lump-sum post-sale adjustments as indirect selling expenses since they were not allocated on a product-specific basis nor shown to be some proportion for all products sold to each customer. NSK's rebate was customer-specific and part-number-specific.

SKF: SKF granted rebates on a customer-specific basis. The Department verified that rebates per customer were accrued for sales which occurred during an agreed-upon time period or up to a certain agreed-upon amount, and then paid to the customer. We traced from payments of rebates to documentation justifying why the payments were made. SKF demonstrated that its rebates were legitimate and based on agreements. For the purpose of allocating rebates for this review, SKF divided the total rebates given to each customer during a given time period by the total sales to that customer. We found the allocation of discounts and rebates by SKF–FRG, SKF-France, and SKF-Italy to be consistent and reasonable; therefore, we have not changed our calculations from the preliminary determination.

Comment 2: Federal-Mogul and Torrington contend that for each alleged discount, rebate, and difference in circumstance-of-sale in the home market, the true cost to the respondent is not the amount paid out, but rather the amount paid out minus the savings realized by paying that amount some time after the obligation to pay was incurred. These parties argue that the Department should calculate interest earned by respondents in a manner similar to imputing credit cost, and deduct this amount from the claimed expense prior to making any adjustment to HM price.

NTN Japan argues that Federal-Mogul is in error in assuming that all discounts and rebates are based on delayed after-sale payments. If the discount is granted at the time of sale and the invoiced amount represents the discounted or rebated price, or if the after-sale discount is made prior to payment by the customer, then no imputed interest is earned. NWG cites Color Television Receivers From the Republic of Korea, 56 FR 12701, 32703 (1991) in arguing that the petitioners' argument has been rejected in the past. NWG also contends that the Department stated in Color Television Receivers, Except Video Monitors, From Taiwan, 55 FR 47093, 47094 (1990), that no adjustment is necessary since the seller takes into account any savings resulting from the deferred payment or a discount or rebate when the seller sets the terms of the discount or rebate.

Department's Position: As the Department stated in Color Television Receivers, Except Video Monitors, From Taiwan, 55 FR 47093, 47094 (1990), any savings resulting from the deferred payment of a discount or rebate would have been taken into account by the seller in setting the terms of the discount or rebate. Therefore, it is unnecessary to adjust the "actual cost" to the seller. This is in contrast to credit costs or inventory carrying costs, which are imputed costs, where the seller does not know how long it will take for a customer to pay or how long he will store merchandise before it is sold. For this reason, we have not adjusted discount and rebate expenses for any savings realized by deferred payment.

Comment 3: MBB claims that the Department should not have subtracted a rebate amount from all of its U.S. sales because it is clear that not all of its U.S. customers qualified for the rebate. After the preliminary results of review were published, MBB supplied a new and reduced rebate factor, reflecting an allocation of rebates given to qualifying U.S. customers over all U.S. sales.

Department's Position: The rebate rate supplied by MBB in its original submission was applied to all U.S. sales because the adjustment could not be tied to specific bearing sales based upon the information available. In addition, MBB's post-preliminary determination submission was untimely according to 19 CFR 353.31. Thus, the Department did not change our preliminary determination concerning MBB's rebates in this final determination.

Comment 4: INA contends that the Department's calculations for the preliminary determination were consistent with past precedent (e.g, Dry Cleaning Machinery from West Germany, 50 FR 1256 (1985) and Certain Circular Welded Carbon Steel Pipes and Tubes From Korea, 49 FR 9926, 9930 (1984)), in deducting discounts and rebates from the unit price since the unit price reported by INA was not net of discounts. All four of INA's HM discount programs and the company's rebate policy were verified and should continue to be deducted from the unit price.

Department's Position: We agree with INA and have deducted the discounts and rebates from the gross unit price in our final determination.

Comment 5: Torrington argues that Koyo's HM rebates, if classified as indirect selling expenses, should be reclassified as direct selling expenses only if they were granted to customers that participated in the rebate program. Torrington contends that Koyo allocated this rebate to more customers than those that participated in the program, despite Koyo's assertion that it allocated each customer's own rebates only to purchases by that customer. Moreover, Torrington argues, Koyo inconsistently reported one of its customers as both related and unrelated.

Koyo claims that its allocation of rebates was done on a customer-specific basis. Koyo states that Torrington is incorrect in its assertion that Koyo allocated "rebate one" to more customers than those that participated in the program. In defense of this argument, Koyo states that it assigned more than one customer code to each of these customers and, also, the various names Torrington cites are different English spellings or abbreviations of the same company names. Moreover, the department verified and accepted Koyo's rebate program. Koyo, however, acknowledges that it did inconsistently report the customer relationship for some sales.

Department's Position: We agree that these rebates should be regarded as direct expenses and have verified that the rebates were allocated on a customer-specific basis. We have corrected the inconsistent customer relationship cited by Torrington by determining the appropriate customer classifications (related or unrelated).

Comment 6: Torrington argues that the Department should consider Nachi's returns and price changes file in the calculation of margins because the Department noted at verification that Nachi's U.S. sales listing showed only the original sales price, rather than the final price after price changes. Prices on the U.S. sales listing should be adjusted in those cases where the subsequent adjustment lowered the unit price. Nachi argues that its U.S. data base is sound since the Department verified its reported sales, price changes, and returns.

Department's Position: The Department agrees that it is necessary to adjust for all price changes in order to determine the final U.S. price. Therefore, all price adjustments to which the petitioner has referred have been made to the U.S. sales database.

Section 12: Circumstance-of-Sale Adjustments

A. Commissions

Comment 1: NTN-FRG and NTN-Japan assert that since sales involving the payment of home market commissions are very few, or less in value, in relation to the payment of U.S. commissions, the Department should offset U.S. commissions (in cases where no commission was paid on the corresponding home market sale), by the amount of home market indirect selling expense or, in the case of ESP, the amount remaining after an offset is made for U.S. indirect selling expenses. NTN-FRG and NTN-Japan claim that this calculation would be in accordance with the intent of the Department's regulations that expenses in both markets should be equalized before making comparisons.

Torrington and Federal-Mogul argue that this proposed calculation is contrary to law and Departmental regulations. They contend that the Department's practice is to offset commissions with indirect selling expenses only in those situations where commissions are paid in one market and not the other. Torrington and Federal-Mogul argue that the Department should reject this claim for an adjustment for differences in commissions.

Department's Position: We agree with Torrington and Federal-Mogul. Department regulations do not permit the Department to compare the number or amount of U.S. commissions with the number or amount of home market commissions in order to use home market indirect selling expenses to offset greater U.S. commissions. In accordance with 19 CFR 353.56(a)(2), the Department makes a reasonable allowance for differences in commissions paid in one market by deducting indirect selling expenses from the other market in cases in which no commission is paid in the other market under consideration (See Special Rule 19 CFR 353.56(b)(1)). Since NTN-Germany paid commissions in both markets, we could not apply the Special Rule and offset U.S. commissions with home market indirect selling expenses.

Since NTN-Japan and NTN-FRG paid commissions in both markets, in ESP situations we subtracted home market commissions from FMV, and subtracted home market indirect selling expenses up to the amount of U.S. indirect selling expenses. In calculating USP in ESP situations, we subtracted U.S. commissions and U.S. indirect selling expenses. In PP situations, where there were commissions in both markets, instead of deducting commissions from USP, we subtracted home market commissions from and added U.S. commissions to FMV. We made no deductions from U.S. price for commission expenses in PP situations.

Comment 2: Torrington argues that NSK included commissions paid to related distributors in its home market indirect selling expense total. Moreover, Torrington argues that since the selling expenses of NSK's subsidiaries are already included in NSK's indirect selling expense amount, inclusion of the related-party commissions double-counts the expenses of the related party.

NSK denies that commissions paid to related distributors have been included in any of its claimed adjustments, and argues that its data should be used as reported for the final results of review.

Department's Position: At verification, the Department examined NSK's indirect selling expenses and determined that NSK had not included commissions paid to related parties in the home market offset. The Department has also found no evidence of double-counting expenses of related distributors in NSK's reported home market offset to U.S. indirect selling expenses.

Comment 3: When NSK does not have a specific part available for immediate sale to a distributor, the distributor requiring the part may obtain it from another NSK distributor. NSK pays the purchasing distributor a stock transfer commission as an incentive to purchase an NSK product. NSK disagrees with the Department's decision to treat stock transfer commissions as indirect selling expenses, and argues that commissions should be treated as direct selling expenses. NSK contends that these commissions, paid only to unrelated distributors, conform to the Department's practice and precedent in defining commissions. NSK also contends that its reporting methodology should be accepted, even though the calculation of the commissions is not product-specific. NSK argues that product-specific reporting is not required in instances where product-specific records are not kept and where the respondent offers a reasonable and representative allocation methodology.

Torrington states that the Department's preliminary results are correct: Stock transfer commissions are indirectly related to sales. Torrington asserts that the stock transfer commission is related to another distributor's purchases of the merchandise from the first distributor and involves no sale by NSK. Torrington argues that the basis for determining the amount of commission is the amount paid by one distributor to another, not NSK's sale price to its distributor. Only NSK's sale price based on its distributor sales is included in the sales listing; therefore, the Department would be making an adjustment to the home market sales price for an amount determined by one distributor's sales price to another distributor. Torrington also contends that NSK made no attempt to tie these commissions to the sales under review. Therefore, Torrington asserts that NSK is not entitled to an adjustment under 19 CFR 353.56(a)(1).

Department's Position: We agree with Torrington that stock transfer commissions are not direct selling expenses because they are not based on sales made by NSK, but are related to sales by NSK's distributors. Therefore, we have treated stock transfer commissions as indirect selling expenses.

Comment 4: Torrington argues that Koyo has claimed, but not adequately supported, an adjustment for commissions paid to both related and unrelated parties in the home market. Torrington contends that commissions to related parties should not be deducted from FMV, unless the respondent demonstrates that the commissions were at arm's length and were directly related to sales subject to review. Torrington argues that Koyo did not demonstrate either of these conditions, and that the Department should therefore reject the claimed adjustment for related party commissions.

Koyo contends that Torrington is incorrect in stating that Koyo reported commissions to related parties in its home market sales listing. Koyo admits that, due to an error in the sales listing, an unrelated party is identified as a related party. Koyo contends, however, that this error is insignificant, and is not indicative of the accuracy of the remainder of the reported data.

Department's Position: We agree with Torrington that commissions paid to related parties should not be included in the home market sales listing. However, we have identified and corrected the error in the coding of the commissionaire relationship on Koyo's home market sales listing. We have no reason to believe that Koyo's data contain commissions paid to related parties, and have used Koyo's

commission adjustment data as otherwise reported in these final results.

Comment 5: Federal-Mogul disagrees with the Department's general treatment of all U.S. commissions as indirect selling expenses. Federal-Mogul argues that U.S. commissions should be broken into direct and indirect components, in order to reflect the actual nature of the expense. Only the indirect portion of the U.S. commission expense should be used to offset home market indirect selling expenses. Additionally, Federal-Mogul argues that the Department should deduct from USP all indirect selling expenses incurred in the home market on all commissioned U.S. sales regardless of whether they are ESP or PP sales. Federal-Mogul argues that these indirect selling expenses are analogous to the indirect selling expenses incurred in the home market for ESP sales.

NTN-Japan, NWG, FAG–FRG, FAG-Italy, and FAG–UK contend that Federal-Mogul's argument is contrary to the law and the Department's regulations and should be rejected. They assert that the Department is correct in treating U.S. commissions as direct expenses, as commissions paid to unrelated parties are directly related to sales.

Department's Position: In accordance with 19 CFR 353.56(a)(2), the Department makes a reasonable allowance for differences in commissions when commissions are paid in both the U.S. and home markets. We are only authorized to offset commissions paid in one market with indirect selling expenses from the other market in cases in which no commissions are paid in the other market (see Special Rule in 19 CFR 353.56(b)(1)). There is no provision for breaking out direct and indirect portions of U.S. commissions, and we have not done so in these reviews. This determination is in accordance with the Department's decision on the same issue in Final Results of Administrative Review; Television Receivers, Monochrome and Color, From Japan, 54 FR 165, 35520 (August 28, 1989). The Department considers commissions paid to unrelated commissionaires to be direct expenses, and has deducted them from USP where appropriate.

Comment 6: Torrington and Federal-Mogul argue that NTN-Japan's home market commission expenses should be included in indirect selling expenses. Both parties contend that NTN-Japan's commissions have not been calculated on a customer, or sale-specific basis, and are instead allocated over all sales (even though commissions are not paid on all sales). Torrington argues that, to the extent commissions cannot be tied to individual sales, they should be treated as indirect expenses. Torrington states that the Department recognized this expense as indirect in the verification report.

NTH argues that that there is no basis for doubting the accuracy of the reported adjustment data. NTN states that its reporting methodology is the same as was used for the LTFV investigation, and that Federal-Mogul has presented no adequate justification for changing this methodology. NTN requests that the Department use the expense data as reported for the final results.

Department's Position: At verification, we found that NTN-Japan's reported home market commissions were not allocated on a sale-by-sale or customer-by-customer basis. Therefore, we treated NTN-Japan's home market commissions as indirect expenses for the final results of review.

B. Indirect Selling Expenses

Comment 1: Torrington argues that SKF-France (including ADR, SARMA, SOS), and SKF-Italy must support any claim for an indirect selling expense adjustment to the home market price by establishing that the claimed expenses relate to subject home market sales only, and not to export sales, or sales of products outside the scope of the review.

SKF-France and SKF-Italy argue that the Department verified the methodology employed by the French SKF companies in reporting indirect selling expenses incurred by SKF-France, ADR, SARMA, and SOS. SKF submits that the methodology employed accurately captures expenses related to the merchandise under review, and sold in the appropriate market. Moreover, SKF also explained in detail the allocation of all of its indirect selling expenses, including the identification of expenses incurred by more than one of its companies.

Department's Position: We verified SKF-France and SKF-Italy's indirect selling expenses, and determined that the allocation methodology used reasonably captured indirect selling expenses incurred in the home market on sales of the subject merchandise. Therefore, we have used indirect selling expense data which were reported and verified.

Comment 2: SKF-France has claimed two levels of indirect selling expenses for SOS, a related selling company in the home market. The first level of selling expenses reflects the portion of selling expenses incurred by the SKF manufacturing companies which, according to SKF, incur indirect selling expenses associated with its sales to SOS. The second level of indirect selling expenses were indirect selling expenses incurred by SOS to unrelated parties.

Torrington asserts that the Department should reject SKF-France's claimed "first level" selling expenses because these expenses are not incurred on sales made by SOS to its customers, but instead reflect expenses incurred by all French SKF companies in selling to all their customers, including SOS.

SKF maintains that the Department should not reject its indirect selling expense claim because the commercial realities of SKF's manufacturing and sales operations demonstrate the legitimacy of the two levels of selling expenses it claims in relation to SOS. SKF incurs selling expenses on behalf of its related selling company, SOS. Consequently, both SKF-France and SOS, market and advertise the products that SOS sells.

Department's Position: The Department has disallowed SKF-France's "first level" selling expenses for SOS because they reflect the indirect selling expenses of the SKF manufacturing companies incurred on sales to their customers. Since we are comparing SOS's sales to its customers, the Department will only consider the indirect selling expenses incurred which support sales made by SOS and not sales made to SOS. Therefore, the Department disallowed the "first-level" of indirect selling expenses claimed by SKF on behalf of SKF's wholly-owned subsidiary, SOS.

Comment 3: Torrington asserts that the Department should also reject SKF-France's claimed "second-level" selling expenses because SKF failed to demonstrate that these expenses, incurred by SOS in its selling activities to its customers, encompass only selling expenses, and do not also include general and administrative expenses.

Department's Position: The Department verified that "second-level" selling expenses were indirect selling expenses incurred by SOS on sales to unrelated parties. We verified that general and administrative expenses were not included in SOS's claimed "second-level" selling expenses and have treated them as indirect selling expenses in our final results.

Comment 4: Torrington asserts that all expenses incurred on sales to the United States by SKF–USA should be classified as direct unless the respondent can justify that these expenses are correctly categorized as indirect. Torrington cites *Timken Co.* v. *United States*, 11 CIT 786, 804, 673 F. Supp. 495, 513 (The Department maintains a presumption against the claimant, because it is to the

exporter's advantage to claim U.S. expenses as direct).

SKF-UK urges the Department to continue to categorize direct and indirect selling expenses in the same manner in which SKF-USA, its U.S. affiliate, reported them in response to the Department's questionnaire. SKF-UK maintains that the Department verified that the firm reported as direct expenses only those expenses which were directly related to its U.S. sales. SKF-UK asserts that the Department conducted an extensive examination of SKF-USA's direct and indirect selling expenses, tied these expenses to the company's ledgers and financial statements, and found no discrepancies.

Department's Position: The Department verified SKF-USA's direct and indirect selling expenses and determined that both categories of selling expense were reported accurately and completely. Therefore, *Timken* is not relevant in this instance.

Comment 5: Torrington maintains that the Department should reject INA-FRG's claim for indirect selling expenses because INA-FRG's home market sales response indicates that selling expenses incurred on export sales, as well as a number of overhead expenses, are included in home market indirect selling expenses. Torrington argues that INA-FRG has incorrectly included the following overhead expenses as indirect selling expenses: product design, testing, product development, and finished goods inventory. Petitioner asserts that home market selling expenses may include only expenses related to INA-FRG's selling activities in the home market.

INA-FRG argues that the petitioner's assertions regarding the unreliability of INA's reported indirect selling expenses are without merit, because the Department fully verified INA's selling expenses and successfully reconciled the amounts with those reported in INA-FRG's audited financial statements. INA-FRG maintains that for the final results, the Department should continue to treat these expenses as *bona fide* indirect selling expenses.

Department's Position: To calculate its indirect selling expenses, INA-FRG used the expenses associated with the market or selling sector of its accounting system. For expenses from another sector, such as the general sector, INA-FRG allocated the expenses accordingly. Based on our verification, we are satisfied that INA-FRG did not include any non-selling expenses in its allocation. Therefore, we have used INA-FRG's home market indirect selling expenses as reported.

Comment 6: Torrington and Federal-Mogul assert that NTN-Japan misclassified certain U.S. freight expenses as indirect selling expenses. Federal-Mogul further asserts that, if the Department cannot separate certain freight expenses from the total amount claimed as a U.S. indirect selling expense, then these expenses should be treated as a direct expense deduction from USP.

NTN-Japan counters that Federal-Mogul does not give any basis for its assertions that the firm's indirect expenses are inflated by the inclusion of certain freight expenses. In addition, NTN-Japan does not object to treating U.S. inland freight as a direct expense, but argues that the expense should be added to FMV rather than deducted from the USP.

Department's Position: The verification report and NTN-Japan's response (dated September 6, 1990) indicate that amounts for U.S. inland freight (from warehouse to customers), as well as amounts for certain other freight expenses, were included in U.S. indirect selling expenses. The Department has determined that these expenses are not indirect selling expenses. Rather, they are movement expenses and therefore should not have been commingled with U.S. indirect selling expenses and used to offset home market indirect selling expenses. Therefore, for these final results, we separated these amounts from the total indirect selling expenses as reported in NTN-Japan's response and adjusted both U.S. indirect and direct selling expenses accordingly.

Comment 7: Torrington asserts that FAG has inappropriately removed interest expense from its reported total U.S. indirect selling expenses. Torrington argues that the Department should deduct the full amount of FAG-USA's interest expenses, as well as the credit costs and inventory carrying costs imputed to FAG. In Torrington's view, imputed expenses for credit and carrying inventory are, in the antidumping law, in addition to actual expenses reflected on the U.S. company's books, unless the respondent can tie actual payments to interest expense incurred in extending credit or by the carrying of inventory.

FAG counters that the Department correctly excluded interest expense from indirect selling expenses in both the U.S. and home markets. Relying on past administrative practice and citing the Department's results in Portable Electric Typewriters from Japan; Final Results of Antidumping Duty Administrative Review, 56 FR 14072, 14074 (April 5, 1991), FAG maintains that since interest costs, other than those imputed for credit and inventory carrying costs, are not captured in the adjustments for USP and FMV, the Department's treatment of these expenses for the preliminary results should remain unchanged for the final results.

Department's Position: For the final results, the Department deducted imputed credit and inventory carrying cost from both USP and FMV. We reduced interest expenses on the firm's books for a portion of the expense related to these activities to avoid double-counting. This methodology is consistent with the Department's treatment of this issue in the final determination of sales at LTFV. See Antifriction Bearings (Other Than Tapered Roller Bearings) From The Federal Republic of Germany, 54 FR 18992 (May 3, 1989).

Comment 8: Torrington argues that Koyo improperly classified salaries and wages, benefits, and directors' fees, as indirect selling expenses. Torrington asserts that these expenses should be classified as general and administrative expenses and included in the COP, if the benefits have been paid to production workers. Since Koyo has not demonstrated that the salaries and wages constitute benefits paid to salesmen, or benefits paid to sales-related workers, these expenses cannot then be claimed as indirect selling expenses.

Koyo asserts that it properly allocated the pool of sales-related expenses to indirect selling expenses. Koyo maintains that Torrington's insinuations that Koyo may have improperly allocated non-selling and production-related salaries and benefits to indirect selling expenses are unsupported and contradicted by information on the record.

Department's Position: The Department verified those amounts claimed as indirect selling expenses, and determined that Koyo had properly reported and allocated sales-related expenses.

Comment 9: Torrington argues that, based on the Department's findings at verification, the Department should increase Nachi's U.S. indirect selling expenses for bad debt. Torrington asserts that Department precedent in Roller Chain Other Than Bicycle from Japan, 55 FR 42,602 (1990) indicates that bad debt expenses should be deducted from ESP. In addition, Torrington contends that indirect selling expenses should be re-allocated over ESP sales only.

Nachi asserts that Department precedent in Red Raspberries from

Canada: Final Results and Termination in Part of Antidumping Duty Administrative Reviews, 56 FR 677 (January 8, 1991) indicates that insignificant indirect selling expenses need not be considered, and reasons that its U.S. bad debt expenses should not be included in indirect selling expenses because they were insignificant.

Department's Position: We have determined that Nachi's bad debt expenses warrant consideration. At verification we determined Nachi's actual bad debt expenses for fiscal year 1989. Since bad debt expense information was not available for the remainder of the period of review (POR), we used the 1989 bad debt expense as BIA and added this amount to the pool of U.S. indirect expenses.

Comment 10: INA-FRG maintains that the Department erred in deducting export selling expenses from the ESP transactions. It is INA-FRG's contention that these expenses represent general expenses of the parent company and should not be attributed to INA-USA. INA-FRG maintains that these expenses are incurred in the home market for sales in the U.S. market and are not indirect selling expenses. Citing Internal Combustion Engine Forklift Trucks From Japan, 53 FR 12552, 12563 (April 15, 1988), INA-FRG argues that the Department should deduct export selling expenses from FMV; in the alternative, if the Department considers the expense to be indirect, the Department must include the expense in the U.S. indirect selling expenses.

Department's Position: We treated the selling expenses incurred by INA-FRG for U.S. sales as U.S. indirect selling expenses. INA-FRG has an export team which handles the export markets in the Western Hemisphere. A portion of the cost of this export team can be tied to sales made to the United States. Therefore, we deducted those expenses allocated to U.S. sales from USP and, as we did in the LTFV investigation (see Antifriction Bearings from the Federal Republic of Germany, Appendix B, 54 FR 18992 (May 3, 1989)), included them in U.S. indirect selling expenses.

Comment 11: Federal-Mogul maintains that the Department acted in violation of its own regulations when it reclassified Izumoto Seiko's ESP direct selling expenses as indirect selling expenses. Federal-Mogul further asserts that this reclassification increased Izumoto Seiko's total U.S. indirect selling expense amount which is subject to an offset by home market indirect selling expenses. In addition, Federal-Mogul argues that Izumoto should not be allowed to submit new selling expense information after the preliminary results.

Department's Position: Izumoto reported both indirect and direct selling expenses incurred in the home market. We reviewed these expenses and determined that they were all indirect selling expenses. We further determined that some of these expenses were incurred by Izumoto in Japan for its U.S. subsidiary, IKS. At the time of our preliminary determination, we requested that Izumoto provide further information to enable us to more accurately reallocate home market and U.S. indirect selling expenses incurred in Japan. Based on the record, we are satisfied that the selling expenses allocated to ESP were export-related and indirect in nature.

Comment 12: Torrington and Federal-Mogul assert that NTN-Japan misclassified certain U.S. freight expenses as indirect selling expenses. Federal-Mogul further asserts that, if the Department cannot separate certain freight expenses from the total amount claimed as a U.S. indirect selling expense, then these expenses should be treated as a direct expense and deducted from USP.

NTN-Japan counters that Federal-Mogul fails to give any basis for its assertions that the firm's indirect expenses are inflated by the inclusion of certain freight expenses. In addition, NTN-Japan does not object to Federal-Mogul's suggestion that U.S. inland freight be treated as a direct expense, but argues that the expense should be added to FMV, rather than deducted from USP.

Department's Position: The Department has determined that NTN-Japan's reported U.S. indirect selling expenses incorrectly included amounts for certain other freight expenses and inland freight. On October 26, 1990, the Department issued a supplemental request for information to NTN-Japan requesting that the firm clarify the inclusion of inland freight as a U.S. indirect selling expense. NTN-Japan's response to our request was inadequate, stating, in part, that the total amount of prepaid inland freight was so small relative to the total CIF value during the period of review that NTN-Japan included the amount as part of its U.S. indirect selling expenses. In addition, at verification the Department found that NTN had incorrectly reported certain freight expenses as indirect selling expenses of its U.S. subsidiary as well. Because of these irregularities in NTN's reporting of U.S. indirect selling expenses, we are treating NTN's claimed U.S. indirect selling expenses as direct selling expenses for these final results, and are deducting them from USP. With respect to NTN-Japan's contention that U.S. inland freight should be added to FMV rather than deducted from the USP, see the Department's Position to Comment 1 in the section on "Direct Selling Expenses" in this Appendix.

Comment 13: Torrington argues that, at verification the Department determined that NTN-Japan did not accurately report all U.S. selling expenses incurred in Japan. The specific adjustments which Torrington argues were not included in the export selling expense allocation were export commissions and exchange charges.

Department's Position: At verification we determined that NTN-Japan incurred commission expenses on U.S. sales, which it had failed to report in its response. Total commissions paid were mixed in one of NTN-Japan's accounts with another expense, inspection fees. NTN claims that inspection fees were reported as part of brokerage and handling expenses which the Department had deducted from USP for the preliminary results. However; since the Department is unable to separate commissions from inspection fees, we have deducted the entire amount from USP for the purposes of these final results.

Also, at verification we determined that exchange charges are bank charges for currency exchange services rendered by the bank for export sales transactions. In these final results, we deducted these bank charges from USP.

Comment 14: Isuzu argues that unrelated bank profits accumulated on foreign exchange transactions for Isuzu's non-yen-denominated PP sales should not be included in its margin calculation.

Department's Position: We disagree with Isuzu. We consider Isuzu's unrelated bank profits to be bank charges for currency exchange services rendered by the bank for export transactions. Therefore, in these final results, we have deducted these bank charges from USP.

C. Direct Selling Expenses

Comment 1: NTN-Japan, NTN-Germany, RHP, INA, NWG, and NSK assert that the Department did not follow the CIT decision in *Timken* v. *United States*, 11 CIT 786, 673 F. Supp. 495 (1981), and incorrectly allowed an adjustment to USP for direct selling expenses, when ESP was the basis for USP. Instead, the Department should make a circumstance-of-sale adjustment

for direct selling expenses and treat the adjustment as an addition to FMV.

Torrington counters that the Department should continue its practice of not following the CIT's ruling in Timken. Petitioner maintains that the Department should follow current Department practice and treat the adjustment as a deduction from USP in ESP situations, and not make a difference in circumstances-of-sale adjustment by adding the direct selling expense to FMV.

Department's Position: The Department's decision to deduct direct selling expenses from USP in an ESP situation is consistent with our long-standing administrative practice, and is in accordance with 19 CFR 353.41(e). See Final Results of Antidumping Duty Administrative Review, Certain Fresh Cut Flowers from Mexico, 56 FR 1794, (January 17, 1991); Final Results of Antidumping Duty Administrative Review, Brass Sheet and Strip From Sweden, 55 FR 49317, (November 27, 1990); Final Determination of Sales at Less Than Fair Value, Gray Portland Cement from Mexico, 55 FR 29244, (July 18, 1990).

D. Warranty/Technical Services

Comment 1: Torrington argues that the claims made by SKF-France, SKF-FRG, SKF-UK, FAG-UK, and FAG-Italy for technical services and warranty costs as direct expenses must be rejected by the Department because these expenses were based, in part, on expenses related to products not under review. Torrington maintains that expenses allocated over a range of covered and non-covered products should not be classified as direct. Torrington further argues that, in order for an expense to be classified as direct, it must be reported on a sale-by-sale basis. Torrington suggests that these expenses be reclassified as indirect. In addition, Torrington states that SKF-FRG could not provide information the Department requested for warranty history, and that SKF-FRG "* * * admitted that it had included some indirect warranty expenses in its direct warranty expense as it could not differentiate between variable and fixed expenses."

SKF-France and SKF-FRG assert that the Department verified both warranty expenses and technical services, and found no discrepancies. SKF-FRG and SKF-France add that technical expenses should be considered a condition of sale.

SKF-UK asserts that it reported technical service expenses as a direct expense in accordance with the Department's instructions. SKF-UK asserts that during the U.S. verification of SKF-USA, the Department verified this issue and found no discrepancies.

FAG asserts that the Department accepted allocation of technical services rather than sale-by-sale reporting in the LTFV investigations of AFBs. FAG states that, in any case, its technical service expenses do not vary significantly over time as a percentage of sales. FAG adds that the Department verified FAG's technical service expenses and found no discrepancies.

Department's Position: With respect to warranty expenses, our past practice has been to accept variable warranty expenses which were incurred during the review period as a surrogate for such expenses actually incurred on sales during the review period, provided such expenses reasonably reflect the firm's historical experience with respect to warranty expenses. We use a surrogate expense amount because warranty commitments for sales under review may not reach fruition until after the review period is over. Therefore, the Department does not require a sale-by-sale breakdown of direct warranty expenses, just a reasonable allocation of these expenses.

With respect to technical service expenses, we prefer reporting on a sale-by-sale basis. However, in the absence of sale-by-sale data, the Department accepts reasonably allocated expense amounts.

The Department verified the accuracy of SKF and FAG's allocation methods for these expenses. We are satisfied that the accounting systems of SKF and FAG prevent reporting these expenses on a sale-by-sale basis. Therefore, we have determined that the verified allocations for warranty and technical services of SKF and FAG are accurate, reasonable, and complete.

Comment 2: Torrington argues that NSK's U.S. technical service expenses should be recalculated and allocated over original equipment manufacturers' (OEM) sales only. Torrington states that it is obvious that a majority, if not all, of NSK's technical service expenses are incurred on behalf of OEMs. Torrington asserts that NSK's reporting methods are an attempt to spread the cost of technical services over all sales.

NSK states that the technical services reported relate to both OEM and aftermarket sales. NSK asserts that its allocation of technical services expenses on the basis of total sales value is reasonable. In addition, NSK argues that, because the majority of NSK's sales to the U.S. are to OEMs, the allocation is representative of NSK's experience.

Department's Position: There is no evidence that NSK's technical service expenses were incurred exclusively for its OEM sales. Although the Department prefers to have technical service expenses tied to individual sales, we have examined NSK's allocation methodology and determined that it is reasonable and complete.

Comment 3: Torrington argues that Koyo has improperly allocated certain technical expenses as indirect selling expenses rather than direct selling expenses, thereby increasing the amount of U.S. indirect selling expenses which are compared to home market indirect selling expenses. Torrington argues that these expenses are directly related to U.S. sales. Therefore, the Department should deduct these expenses from USP and not include these expenses in the pool of U.S. indirect selling expenses.

Koyo states that Torrington's claims are speculative and that the Department has implicitly accepted Koyo's reporting of technical service expenses, since the Department asked no follow-up questions concerning technical expenses after Koyo's original submission. Koyo argues that the Department should use the reported technical expense data in the final results.

Department's Position: We agree with Torrington that Koyo's reported U.S. technical service expenses are direct selling expenses. The expenses reported by Koyo are variable expenses, and as such, are directly related to sales of the subject merchandise. For the final results, we deducted U.S. technical service expenses from the USP.

Comment 4: Torrington argues that the Department should treat warranty expenses, which were reported by Koyo as indirect warranty costs, as presumptively direct in nature. Torrington argues that the respondent bears the burden of demonstrating otherwise. Torrington also argues that Koyo has failed to report direct warranty costs incurred in Japan in support of U.S. sales. Torrington asserts that Koyo reported direct warranty expenses only in the home market. Torrington contends that because home market warranty expenses cannot be separated from costs incurred on U.S. sales, no adjustment should be made to FMV.

Department's Position: The Department is satisfied that Koyo did, in fact, report and separate all warranty expenses for its U.S. sales. However, we have concluded from Koyo's response that some of the warranty costs incurred in both Japan and the U.S. were direct warranty expenses. Since Koyo failed to separate direct and indirect warranty costs, we have deducted all U.S.

warranty expenses reported by Koyo as direct selling expenses.

Comment 5: Torrington argues that Machi failed to report technical service and warranty expenses incurred in Japan on behalf of U.S. sales, thereby understating such expenses. Torrington contends that the Department should apportion a share of home market technical service expenses to U.S. sales and deduct this amount from USP as an indirect selling expense.

Department's Position: We verified the claimed expenses in both markets and saw no evidence in support of Torrington's claim. Therefore, the Department used Nachi's technical service and warranty expenses, as reported, for the final results.

E. Royalties

Comment 1: Torrington argues that NTN-Japan has incorrectly allocated royalties, which are paid on certain home market sales, over all sales of a given class or kind of subject merchandise. In addition, Torrington argues that NTN-Japan failed to demonstrate that home market AFBs which were used for comparison to U.S. sales were actually subject to a royalty payment. Therefore, Torrington asserts that NTN-Japan has failed to demonstrate that royalty expenses are direct selling expenses subject to a circumstance-of-sale adjustment.

Federal-Mogul maintains that it cannot be confirmed that all NTN-Japan's home market sales of the subject merchandise were subject to royalty payments, nor can it be confirmed that the claimed amounts reflect payment upon the appropriate base. Therefore, NTN-Japan's royalty expense should be treated as an indirect selling expense, if it is to be considered at all.

NTN-Japan states that it reported royalty expenses only on the class or kind of AFB for which the expense was incurred.

Department's Position: NTN-Japan reported royalty expenses on a class or kind basis. Since we verified that NTN allocated royalty expenses on a cost center basis, rather than a product-by-product basis, we treated royalties as an indirect selling expense for purposes of these final results.

F. Credit

Comment 1: Torrington argues that NTN-Japan, Koyo, and NSK each calculated credit expense incorrectly. NTN-Japan and NSK calculated an average cost of extending credit, while Koyo arbitrarily selected the largest fifty-three customers for ball bearings and the largest thirty-two customers for roller bearings as the basis for calculating credit expense in its U.S. and home market. Torrington argues that each of the respondents should have calculated a sale-by-sale or, at least, a customer-specific credit expense. Federal-Mogul and Torrington argue that NTN-Japan intentionally overstated home market credit expense through an exaggeration of its average home market interest rate. Therefore, Federal-Mogul believes the Department should decline to allow an adjustment for NTN-Japan's credit expense. Torrington believes that NTN's credit expense should be revised based on verification findings concerning the short-term interest rate and the number of credit days, or, in the alternative, Torrington asserts that the Department should disallow the adjustment.

NTN-Japan states that it calculated credit on a per-customer basis, and that the Department verified that its reporting of credit expense was customer-specific. NTN-Japan maintains that the reported calculation of credit expense is correct and sufficient for the Department's purposes. NTN-Japan maintains that the reported interest rate, which takes into account a claim for compensatory deposits, is the actual interest rate and that the Department should accept it and use the reported data.

NSK submits that home market credit expenses were derived directly from NSK's accounting system and related "strictly to sales of merchandise." NSK contends that its credit expense was reported in the only manner possible within its computerized accounting system and has been accepted in recent reviews of Tapered Roller Bearings as well as in the LTFV investigation of AFBs.

Koyo contends that its method of reporting credit expense is not arbitrary and has been accepted in the Tapered Roller Bearings reviews from Japan.

Department's Position: The Department prefers to have credit calculated on a transaction-by-transaction basis. However, given the massive number of transactions in these reviews, we consider calculations based on average credit days outstanding on a customer-specific basis to be reasonable. We verified that NTN-Japan and Koyo based their home market credit amounts on a customer-specific average. This methodology takes into account different actual payment periods extended to different customers. In addition, the Department re-calculated NTN-Japan's home market short-term interest rate in order not to include unsubstantiated compensating deposits. The Department applied this adjusted average credit time outstanding to NTN's submitted data for the final results.

We also used Koyo and NSK's credit costs, as reported, for these final results. Although credit expenses for NSK's home market sales and some of Koyo's sales were not calculated on a sale-specific or customer-specific basis, we have accepted the reported credit costs as the best information otherwise available in this review; however, with respect to the reporting of credit expense, this review is an exception to ordinary Department practice. In the future, in keeping with Department practice, credit expenses should be reported, at a minimum, on a customer-specific basis. In fact, the Department's preference remains sales-specific reporting of this expense.

Comment 2: Torrington states that SKF-Italy failed to report payment dates for certain U.S. sales. Torrington argues that the Department should use the larger of (1) the number of days between the sale date and the end of the period of review, or (2) the average number of days between sale and payment, as BIA.

SKF states that its subsidiary, SKF-USA, in a few instances was unable to identify the actual payment date. In these cases, SKF-USA reported the average number of days outstanding to calculate credit expense. SKF-Italy adds that the Department verified SKF-Italy's reported credit expense and should continue to use this information in the final results.

Department's Position: Although the Department prefers to have credit expense calculated on a customer-specific basis, we do not consider a methodology based on average credit days outstanding on a customer-specific basis to be unreasonable. At verification, the Department examined SKF's methodology for reporting credit expense and found no discrepancies. Therefore, we have accepted SKF's U.S. credit expense for the final results.

Comment 3: MBB argues that the Department should have allowed the credit offset submitted with its U.S. credit expenses. After the issuance of the preliminary results, MBB provided the actual credit experience of those U.S. sales reviewed by the Department. MBB asserts that this information should be considered by the Department for the final results.

Department's Position: In our preliminary results, we disallowed the credit offset claimed by MBB. Generally, it is the Department's practice to refuse to consider additional information submitted after the preliminary results of review, unless specifically requested by the Department. Such circumstances

do not exist for MBB. Therefore, we have not considered the credit offset information for the final results.

G. Advertising-Direct/Indirect

Comment 1: Torrington argues that U.S. advertising expenses as reported by SKF-UK, SKF-Italy, SKF-Sweden, and Nachi should be considered directly related to sales unless the respondents can show that they are indirect selling expenses. Torrington points out that SKF has not put all of its advertisements on the record. Torrington questions whether the Department sought to determine, at verification, if SKF's U.S. advertising was direct or indirect. Regarding Nachi, Torrington maintains that its advertising exhibits fail to identify the intended target market. In addition, Torrington contends that the verification of Nachi's advertising expense did not include a classification of the expenses.

SKF-UK, SKF-Sweden, and SKF-Italy assert that they reported only those expenses directly related to sales as direct expenses. SKF's U.S. advertising was reported as an indirect expense. The Department verified the reported expenses at SKF-USA, and noted no discrepancies in the reporting of either direct or indirect expenses.

Nachi states that it submitted a representative advertisement for the Department's examination. Since the Department did not request any further information, Nachi contends that the Department should continue to deduct these expenses from USP as indirect selling expenses for its ESP sales.

Department's Position: For advertising to be treated as a direct expense, it must be assumed on behalf of the respondent's customer and incurred on products under review; that is, it must be shown to be directed toward the company's customer's customer. SKF and Nachi claimed all U.S. advertising expenses as indirect selling expenses. We verified both companies' reported advertising expenses and found no discrepancies. The purpose of verification is to assess the overall accuracy of the response. This does not imply that the Department is required to examine every document which may be related to a given adjustment. We are satisfied through verification that SKF and Nachi's U.S. advertising expenses are indirectly related to sales.

Comment 2: Torrington argues that Nachi has not established its home market advertising expenses as direct selling expenses. Torrington contends that Nachi submitted no evidence that the expenses in question were related to resale efforts rather than general corporate image or name recognition. At verification, no evidence was reported that would support Nachi's claim that this advertising was directed to a customer's customer.

Nachi contends that advertising expenses were incurred by related parties. Nachi argues that advertising by related dealers is, by definition, directed at the dealer's end customer and is, therefore, a direct selling expense. Nachi adds that its advertising expense was verified by the Department.

Department's Position: The Department verified that Nachi's reported home market advertising expenses were generic in nature, dealing with Nachi bearings in general, and did not specify the class or kind of AFB offered for sale by Nachi. Based on this verified information, we have treated Nachi's home market advertising expenses as indirect expenses in our final results.

Comment 3: Torrington argues that Koyo over-reported advertising and export selling expenses in the home market and under-reported these expenses in the U.S. market. Torrington contends that many advertising expenses reported as third-country expenses should have been allocated to U.S. sales. Torrington specifically points out catalog and exhibition expenses incurred in Japan which, Torrington contends, are related to U.S. sales operations.

Koyo states that its U.S. affiliate reimburses Koyo for the cost of advertising expenses incurred in Japan, and that Koyo's reported home market advertising expenses properly accounted for this reimbursement.

Department's Position: At verification we examined Koyo's reported advertising and export selling expenses and found no evidence in support of Torrington's contention. Therefore, we have accepted Koyo's advertising and export selling expenses, as reported, for the final results.

Comment 4: IJK asserts that at verification the Department found that IJK's reported advertising expense was allocated over an incorrect sales base. IJK claims that for purposes of the final results, the Department should use the information developed at _____ verification.

Department's Position: We corrected the expense amount to reflect information found at verification.

H. Post-Sale Warehousing

Comment 1: Torrington argues that Nachi failed to establish that post-sale warehousing expenses were directly related to particular sales in the home market. Torrington states that these expenses were not required by contract. Torrington contends that if post-sale warehousing expenses are sales-specific, they should be reported on an invoice-specific basis rather than allocated across all sales to a given customer. Torrington argues that the Department's practice and judicial authority hold that warehousing expense is considered direct only when the expense is incurred after the sale. Therefore, Torrington contends that Nachi's warehousing costs should be allowed only as an indirect expense.

Nachi asserts that its warehousing expense meets the Department's criteria for a direct expense. Nachi contends that it incurred this expense only for certain customers. Nachi states that to make a fair price-to-price comparison the Department must consider the expense directly related to sales. Nachi contends that it provided the Department with actual expenses paid and actual sales transaction amounts for each customer for whom the expense was incurred.

Department's Position: At verification, the Department examined a sample contract which showed that the expenses incurred by Nachi were directly related to sales of the subject merchandise and were incurred after the sales. Therefore, we made a circumstance-of-sale adjustment for Nachi's directly-related post-sale warehousing expenses.

I. Hedging

Comment 1: Torrington argues that FAG-FRG's claimed adjustment for currency hedging should be rejected by the Department for several reasons. Torrington contends that FAG-FRG's hedging operations are tied to large currency transfers and are not directly related to sales, and that profits or losses realized from hedging are the result of speculation, not sales. The decision to engage in currency hedging is a business strategy applicable to FAG-FRG's international operations, not individual sales. Torrington also argues that FAG-FRG reported budgeted rather than actual profits and losses for 1990, and that the reported variances are not substantiated. Torrington argues that profits or losses resulting from currency hedging are not selling expenses which are factored into the sale price. Therefore, there should be no adjustment to U.S. price.

Torrington also argues that an adjustment should be made to U.S. price to reflect the expenses FAG-FRG incurs in entering into hedging contracts. Torrington argues that such expenses should be reported as indirect selling expenses.

FAG–FRG argues that the Department and the courts recognize that the circumstance-of-sale adjustment regulation is meant to allow reasonable adjustments which are based on economic realities. FAG–FRG contends that this regulation should not be applied in a restrictive manner. FAG–FRG asserts that at the time the response was due, FAG–FRG could not report the actual gains and losses for 1990 simply because they had not yet been realized. In the absence of a full year of data, FAG–FRG reported projected results from hedging activities. FAG–TRG submits that this is reasonable under the circumstances, and was correctly accepted by the Department in the preliminary results and in the LTFV investigation.

Department's Position: This adjustment is not related to fluctuating exchange rates. In the specific factual pattern presented in this case, we found that it was appropriate to make a circumstance-of-sale adjustment to reflect hedging profits or losses accurately, where these profits or losses were properly documented and verified.

To demonstrate that hedging has affected the actual exchange rate that it has received for its sales, a respondent must show the Department the actual exchange rate contracts that it entered into and demonstrate that these contracts are tied directly to the sales made during the period of review. In addition, the respondent must then accurately report the exchange rate that it used on these sales and include this information in its listing of individual sales and adjustments.

In these reviews FAG–FRG reported that it used the forward market to ensure a certain exchange rate for each of its U.S. sales. At verification FAG–FRG provided examples of its forward contracts and demonstrated that it had exchanged dollars received from its sales in the U.S. at the rates specified in those contracts. The rates FAG–FRG realized on its sales differed substantially from the Federal Reserve rates.

When we examined FAG–FRG's listings of U.S. sales and the adjustment it gave to reflect the actual exchange rates it used on these sales, we found that it based these adjustments for 1989 on the average of the actual exchange rates it used through its forward contracts in 1989. However, for 1990 FAG–FRG based these adjustments on its "budgeted" rate for 1990, *i.e.*, a rate representing the average exchange rate that the company had forecast it would receive for sales in that year. Therefore, the claimed 1990 adjustment was not based on the company's actual foreign exchange earnings in that year. See Final Determination of Sales at Less Than Fair Value; Certain Forged Steel Crankshafts from the United Kingdom, 52 FR 32951 (September 1, 1987). Just as in Crankshafts, for the 1990 U.S. sales in the instant case the respondent did not provide enough evidence to support its assertion that its pricing is directly linked to, or based on, the actual exchange rate it received. In order to make an adjustment of this sort the Department must rely on the actual rates that a company receives. Forecasted rates, especially those that provide only one rate for an entire year, remain only estimates of what a company expects to receive in its foreign exchange dealings. This information is too speculative to be used in our calculations. Therefore, the Department has not allowed FAG–FRG's claim for a circumstance-of-sale adjustment to reflect its hedging operations in 1990. Although the Department would prefer a more precise measure of the actual rate a company realized, *e.g.*, a rate based on a monthly average or one tied directly to the forward contracts of each U.S. sale, we verified the accuracy of FAG–FRG's 1989 data and allowed a hedging adjustment based on the average actual exchange rate it realized on sales in that year. Our regulations clearly state that the Department is to rely on the Federal Reserve rates to convert foreign currencies to U.S. dollars (19 CFR 353.56(a)). We have used the Federal Reserve rates for our calculations for FAG–FRG. However, because FAG–FRG clearly demonstrated for its 1989 sales that, through the use of forward markets, it received different amounts for its U.S. sales than our calculations would normally indicate, it is appropriate for the Department to take this action into account. Forward markets are clearly a tool that businesses can use to insure the actual return they receive on their sales. Therefore, for the above reasons we have allowed the adjustment for hedging for FAG's 1989 sales but not for its 1990 sales.

J. Other Claimed Adjustments

Comment 1: Federal-Mogul asserts that the Department should deduct respondents' antidumping-related legal expenses and estimated antidumping duties from ESP. In support of this position, Federal-Mogul cites 19 U.S.C. 1677a(e)(2) and 1677a(d)(2)(A), which require the reduction from ESP of the amount of expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise. Federal-Mogul argues that, under the statute, there is no rational basis for not deducting from ESP the amount of antidumping-related legal expenses (which are selling expenses), when all other legal expenses are routinely removed from ESP.

NTN-Japan, FAG, and NWG contend that the Department should continue its long-standing practice of not making a deduction from ESP for antidumping-related legal expenses.

Department's Position: We disagree with Federal-Mogul. The Department's consistent past practice has been not to deduct from ESP antidumping-related legal expenses. (See Televisions from Japan, 54 FR 13917 (April 6, 1989); Televisions from Japan, 54 FR 26225 (June 27, 1990); Color Televisions from Korea, 55 FR 35916 (September 4, 1990) (Comment #4); Fresh Cut Flowers from Colombia, 55 FR 20491 (May 17, 1990) (Comment #62)). Thus, we have not deducted these expenses from ESP in this case.

Comment 2: Torrington claims that, absent any further explanation of SKF's billing adjustment claim, the Department should disregard such claims made by SKF-France, SKF-Italy, and SKF-Sweden. Regarding SKF–USA's billing adjustment claim, Torrington proposes that the Department use the highest debit and disallow credits as the BIA. Alternatively, Torrington suggests that if the Department chooses not to disregard SKF's claim for billing adjustments, it should then treat the adjustment as a post-sale rebate and disallow the deduction from FMV.

Department's Position: On a line-item basis, as recorded on selected invoices, we verified the nature and accuracy of the billing adjustments claimed by all SKF companies. We have determined that these billing adjustments cannot be construed as rebates, because SKF did not know, prior to the sale, whether adjustments would be necessary, or in what amounts. Therefore, for these final results, we have continued to accept all sale-by-sale claims for billing adjustments and have added them to USP or FMV, where appropriate.

Comment 3: Torrington argues that NTN-Japan's price-protection adjustment should not be added to USP because NTN failed to demonstrate how these payments were specifically allocated to the sales of the U.S. customer who made the payments.

NTN contends that the Department erred in deducting amounts for price protection from USP in lieu of allowing the adjustment as an addition to USP.

Department's Position: Price-protection payments are incentive

payments made to NTN-Japan by a U.S. customer for expediting deliveries. We agree with NTN and have added amounts for price protection to USP on sales made to that customer.

Section 13: Inventory Carrying Costs

Comment 1: Torrington contends that the Department should only make an adjustment for inventory carrying costs to USP and not to FMV. Torrington argues that, in ESP situations, in which the cost of holding inventory is incurred by the foreign manufacturer on behalf of the related party importer, an inventory carrying cost adjustment, based on an imputed interest rate, should be deducted from the USP in accordance with section 772 (e)(2) of the Act. Torrington adds that, while the adjustment to USP is appropriate, the Department should not allow an adjustment to FMV for inventory carrying costs because inventory carrying costs in the home market are not imputed. The cost of holding inventory in the home market is not incurred on behalf of any particular home market customer with respect to any identified sale to that customer. In its Preliminary Results of Administrative Review; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Federal Republic of Germany, United Kingdom, and Sweden, 56 FR 11178 (March 15, 1991), the Department incorrectly allowed parallel deductions from FMV and ESP for inventory carrying costs.

INA–FRG, SKF-Italy, SKF-France, SKF–U.K., SKF-Sweden, NTN-Japan, FAG–U.K., FAG-Germany, FAG-Italy, NWG, Koyo, and Nachi argue that the Department should continue its practice of adjusting both ESP and FMV for inventory carrying costs.

Department's Position: We agree with respondents that for comparisons to be fair, it is necessary to make inventory carrying cost adjustments to both FMV and USP. See Final Determination of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof, From the Federal Republic of Germany, 54 FR 19050 (May 3, 1989). The Department adjusts for inventory carrying costs on U.S. sales through imputation because the actual financial cost, for the time between shipment from the parent and payment by the related importer, is generally borne by the foreign parent. Therefore, the cost will not be found on the books of the importer, but submerged in the accounts of the parent with other financial costs. As a result, some of the selling expenses associated with the U.S. sales are not directly identifiable. Similarly, in the home market, although the actual cost of carrying inventory is on the books of the seller, it will be commingled with all other interest expenses, and classified as a general and administrative expense rather than as a selling expense. As is the case for the U.S. sales, the actual amount is not identifiable. Therefore, it is appropriate to impute this cost in both markets, since the nature of the expense is the same, and the same difficulty exists in determining the actual costs in each market.

Comment 2: Torrington suggests that NTN-Japan's reported inventory carrying cost is inflated due to the inclusion of costs for finished-goods inventory, work-in-process inventory, and raw materials inventory. Therefore, a given bearing is likely to be included in NTN's inventory calculation several times as it moves through the production and distribution process. Torrington maintains that the Department's practice limits the calculation of inventory carrying cost to the cost of carrying finished-goods inventory. See Final Results of Administrative Review; Color Televisions from Korea, 55 FR 26225 (June 27, 1990). Torrington, therefore, urges the Department to either disallow the expense, or to recalculate the expense based on verification findings concerning the short-term interest rate.

NTN asserts that the Department should continue to accept NTN's reported calculation of inventory carrying costs, and should continue to allow NTN to use the actual interest rate in its calculation. NTN contends that the methodology employed for imputing inventory carrying costs was consistent with the Department's questionnaire instructions, and it was the same methodology employed by NTN and accepted by the Department in the underlying antidumping investigation. NTN argues that there is no basis to impute an expense, as Torrington suggests, based on an imputed interest rate when NTN used the actual interest rate.

Department's Position: NTN's October 4, 1990, questionnaire response states that only finished-goods inventory was included in NTN's calculation of inventory carrying costs. At verification we verified that only finished goods were included in NTN's calculation. The Department found, however, that NTN had improperly included unsubstantiated compensating deposits in its calculation of the short-term interest rate used in determining inventory carrying costs. NTN has not proven that these compensating deposits were a condition for borrowing. We have determined, therefore, that as the compensating deposits were not a condition for obtaining credit, they should not be considered in the calculation of home market credit expense. Therefore, we have not used NTN's reported interest rate, which includes a cost for the compensating deposits. Instead, we have recalculated NTN's inventory carrying costs by excluding compensating deposits from the firm's short-term interest rate calculation.

Comment 3: Torrington asserts that, for NTN, the Department should use the U.S. interest rate in calculating the related importer's cost of financing inventory, and deduct this amount from ESP. The Department erred in its preliminary analysis because the home market interest rate was used in the calculation for NTN. NTN maintains that it is long-standing Departmental practice to use the actual interest rate of the party which incurs the cost of carrying inventory. Therefore, the interest rate used by NTN in calculating inventory carrying costs for the preliminary results should continue to be used for the final results.

Department's Position: We have accepted NTN's calculation of inventory carrying costs for these reviews. Therefore, with one exception (see Department's Position to Comment 2), we have not changed NTN's inventory carrying cost calculation for these final results of review.

Comment 4: Torrington argues that the Department should recalculate Nachi's inventory carrying costs by including in Nachi America's (NA) inventory period, at NA's short-term borrowing rate, the payment period in the arrangement between NA and Nachi Fujikoshi NFC. Torrington maintains that the purpose of section 772(e)2 of the Act is to measure the amount of the expense that would have been borne by the related-party importer. Torrington also contends that NA's inventory carrying costs reflect inventory turnover of out-of-scope merchandise which may distort actual costs for products under review.

Nachi maintains that Torrington is confusing the calculation of Nachi's inventory carrying cost claim during the original LTFV investigation with the calculation of this cost during this administrative review. During the LTFV investigation, Nachi based its inventory carrying cost claim on the rate of inventory turnover. In this administrative review, Nachi's claim is based on the actual time in inventory for each bearing (using the FIFO method). Nachi asserts that the Department need not make any adjustments or modifications to its calculation of

inventory carrying costs for these final results. In addition, Nachi asserts that, in accordance with Department practice, it correctly applied the interest rate of the entity which bears the expense for carrying inventory. See Final Results of Administrative Review, Color Televisions Receivers from Japan, 54 FR 13917 (April 6, 1989).

Department's Position: The Department verified inventory carrying periods and costs for both NA and Nachi. Both of these inventory carrying costs are included in NA's reported indirect selling expense. In addition, NA's inventory carrying costs were calculated on a sale-specific basis. Therefore, inventory carrying costs for out-of-scope products are not reflected in the reported expenses.

Comment 5: Torrington argues that Koyo and INA–FRG based their inventory carrying cost adjustments on total inventory of finished goods regardless of the product mix. Torrington further argues that both firms failed to consider the possible variations in inventory periods on a class or kind basis (in the case of Koyo) and on a product-specific basis (in the case of INA–FRG). Torrington asserts that the product mix used by both firms may include items not subject to these orders. Torrington adds that Koyo does not clearly indicate how it determined whether the bearings included in the inventory carrying costs were sold in the United States or in the home market.

Koyo maintains that the calculation of inventory carrying costs used for the preliminary results is correct. Koyo argues that since the Department accepted Koyo's calculation of inventory carrying costs in the preliminary results, which did not include separate calculations for each class or kind of merchandise, the Department should simply reaffirm that Koyo's calculation of inventory carrying costs is correct for purposes of these final results.

INA–FRG argues that the Department determined previously that "the cost of carrying merchandise is indirect and is not absorbed by one particular product, but by the company's entire operations" (See Final Administrative Review of Color Television Receivers, Except for Video Monitors, from Taiwan, 55 FR 47093, 47098 (November 9, 1990)). Therefore, it is not necessary to allocate the claimed indirect expense of inventory carrying costs to a particular model or sale.

Department's Position: The Department has reviewed both Koyo's and INA–FRG's methodology for reporting inventory carrying costs and determined that their reported inventory carrying expenses are reasonable and complete. With respect to Torrington's assertion that we should calculate inventory periods on a product-specific basis, we have adhered to the Department's reasoning in Color Television Receivers from Taiwan as stated above. For this review, we did not require respondents to report inventory carrying costs on a model-specific basis. Therefore, we have used INA–FRG's average inventory carrying costs, as submitted, in our final results.

While we generally prefer a more specific calculation of inventory carrying costs, for this review we have accepted both Koyo's and INA–FRG's methodology as a reasonable estimate of the expense.

Comment 6: Torrington contends that, because NSK claimed no inventory carrying cost for home market sales, the Department should not adjust NSK's FMV for inventory carrying costs incurred in Japan.

Department's Position: NSK reported no inventory carrying costs in the home market; therefore, we made no adjustment.

Section 14: Value-Added Taxes

Comment 1: Both Torrington and Federal-Mogul argue that the Department erred in not adjusting for value added tax (VAT) (consumption tax in the case of Japan) imposed on home market sales of AFBs but not collected on sales of exported products. Torrington argues that the Department is required by judicial precedent to determine margins based on prices that include the effects of VAT. They cite to *Daewoo Electronics Co., Ltd.* v. *United States*.15 CIT, Slip Op. 91–21 (March 25, 1991); *Zenith Electronics Corp.* v. *United States No.* 88–02–00122, Slip Op. at 13–14, 33 (CIT Dec. 19, 1990); *Zenith Electronics Corp.* v. *United States*, 10 CIT 268, 633 F. Supp. 1382 (1986), appeal after remand dismissed for lack of jurisdiction, 875 F. 2d 291 (Fed. Cir. 1989); and *Daewoo Electronics Co., Ltd.* v. *United States*, 13 CIT, 712 F. Supp. 931, 954–56 (1989) to support their arguments. Torrington further argues that the statute prescribes an upward adjustment to USP with no adjustment to FMV. 19 U.S.C. 1677a(d)(1)(c). Torrington suggests that VAT should be based on the full unit price in both markets.

Federal-Mogul cites the Daewoo and Zenith decisions which held that the adjustment for VAT cannot be made by simply deducting the tax from FMV; rather, adjustments must be made to both USP and FMV. Federal-Mogul further argues that according to Zenith, no circumstance-of-sale adjustment may be made to account for tax differences. Lastly, Federal-Mogul argues that since the Department does not deduct an amount for profit from USP, the tax base for these calculations should be the FOB prices between the related parties, *i.e.*, the packed-for-export price.

FAG, NSK, and SKF point out that 19 U.S.C. 1677a(d)(1)(C) provides for the adjustment to USP only "to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation."

FAG and SKF argue that the Department should not make an adjustment to USP or FMV since home market sales prices in France, Italy, Germany, and the United Kingdom do not include VAT: *i.e.*, VAT is billed separately.

FAG claims that Zenith and Daewoo do not apply in this situation since these cases concerned home market sales which were VAT-inclusive. FAG references the Daewoo slip opinion where the court explains that the purpose of 19 U.S.C. 1677a(d)(1)(C) is to avoid the situation where USP is lower than FMV because it does not include taxes which are included in the price of the merchandise when it is sold in the foreign country. Since the home market prices in the instant proceeding do not include VAT, FAG argues it is a non-issue.

NSK notes that it reported home market sales net of VAT, and that the Department verified that NSK added the home market tax to the price paid by its customers. NSK argues that it is a waste of administrative resources to add back the tax in the home market, compute a comparable U.S tax, and then perform a circumstance-of-sale adjustment only to arrive at the same result as performing a tax-exclusive comparison. NSK further argues that if the Department does perform tax-inclusive comparisons, it is not necessary to measure the amount of tax passed-through to home market customers, citing In the Matter of Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada, U.S.-Canada Free Trade Agreement Article 1904 Bi-National Panel No. U.S.A. 89–1904–03, 1990 FTAPD Lexis 3, and *Smith-Corona Group* v. *United States*, 713 F.2d 1568, 1577 n.27. Finally, NSK argues that if the Department adds VAT to FMV, it is necessary to adjust USP and perform a circumstance-of-sale adjustment to FMV for differences in the tax amounts.

NWG argues that 19 U.S.C. 1677a(d)(1)(C) provides that taxes rebated or not collected by reason of exportation be taken into account in antidumping calculations, but it also

requires the Department to measure the extent to which the tax is passed through to the home market customer. NWG argues that it is difficult, if not impossible, to do this, and proposes that simply netting-out the VAT from home market sales satisfies the ultimate purpose of the provision, *i.e.*, ensuring tax-neutral comparisons between markets. NWG requests that if the Department does, however, decide to make VAT-inclusive comparisons, that a circumstance-of-sale adjustment be made to FMV to insure that the margins are not artificially inflated or deflated by the inclusion of taxes. NWG cites High Information Content Flat Panel Displays and Subassemblies Thereof from Japan, 56 F.R. 7008, 7011 (1991); Television Receivers, Monochrome and Color, from Japan, 56 F.R. 5392, 5396–97 (1991); and Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 F.R. 18992, 19091 (1989) in support of its position.

Koyo argues that if the Department adds VAT to USP and FMV, a circumstance-of-sale adjustment must be made to eliminate potential artificial margins created by differences between the tax bases in both markets.

Department's Position: We added an imputed VAT to USP under 772(d)(1)(C) of the Act because the VAT is "added to" the HM price. The fact that the VAT was added to the HM price disposes of respondents, comments that, because the VAT is billed separately, it was not "included in" the HM price. We did not adjust for VAT by employing a tax-net FMV (and USP) because we agree that the statute directs us to adjust for HM consumption taxes through an addition to USP. No VAT was added to USP where FMV was based on CV, because section 773(e) of the Act does not provide for the addition of any tax to CV. Similarly, no VAT was added to USP where FMV was based on third-country sales, because there is no tax forgiven "by reason of the exportation of the merchandise to the United States" in the FMV for such sales. Because there is no VAT in FMV to be offset by an adjustment to USP, in either case, any reduction in the margin that would result from such an adjustment would be unjustified.

We calculated the addition to USP by applying the HM tax rate to the net U.S. price after all other adjustments were made. This imputed tax amount is BIA, because HM sales were reported net of VAT, and we are thus unable to determine what the home market tax base was.

We imposed no limitation on the imputed tax added to USP on the basis of the incidence of the HM tax, because the statute requires no such limitation. We are not following Zenith v. United States, 633 F. Supp. 1382 (CIT 1986) and its progeny with respect to the circumstance-of-sale issue, because such voluntary acquiescence would deprive the Department of its right to appeal this issue in this proceeding.

Because all HM sales were reported net of VAT, we added the same VAT amount to FMV as that calculated for USP. This is equivalent to calculating the actual HM tax, and then performing a circumstance-of-sale adjustment to FMV to eliminate the absolute difference between the amount of tax in each market. We are not following Zenith and its progeny with respect to this issue, because we disagree and such voluntary acquiescence would deprive the Department of its right to appeal this issue in this proceeding. Rather, we are relying on the Department's broad statutory authority to make adjustments for such differences in the circumstances of sale. See *Smith-Corona* v. *United States*, 713 F.2d 1568 (Fed. Cir. 1983), cert. den., 465 U.S. 1022 (1984).

Comment 2: Torrington claims that it is unclear whether Koyo included VAT in its reported home market prices; therefore, the Department should add three percent of the sales price (the Japanese consumption tax rate) to all of Koyo's home market prices. Koyo responds that it reported all home market sales net of VAT, so no adjustment is necessary.

Department's Position: Since Koyo reported its sales net of consumption tax, we applied the same methodology as in Comment 1 above.

Section 15: Cost of Production

Comment 1: Federal-Mogul, Torrington, SKF, and INA–FRG argue that the Department incorrectly applied the sales-below-cost test in virtually all instances. Specifically, the Department did not examine below-COP sales on a model-specific basis. In performing the cost test, the Department also used the highest quarterly production cost (*i.e.*, the first quarter of the review period), instead of using the six quarters of the review period. Furthermore, the Department failed to retain below-cost sales in the home market sales data base where below-cost sales were less than 10 percent of the total home market sales. Finally, the parties argue that the "10/90 test" was performed only on above-cost sales.

Department's Position: Contrary to the parties' contention, the Department did examine below-cost sales on a model-specific basis. The remainder of the parties' contentions pertain to certain computer programming language errors in the cost test for the preliminary results of review. We have corrected these errors for the final results of review.

Comment 2: Koyo, INA–FRG, NTN, and RHP argue that the Department did not apply the proper criteria in disregarding below-cost sales. INA–FRG argues that the Department is permitted to disregard sales below cost in the home market only where such sales (1) have been made over an extended period of time, (2) were in substantial quantities, and (3) were at prices that do not permit recovery of costs in a reasonable period of time in the normal course of trade.

Koyo asserts that the Department applied the "10–90" cost test without considering whether Koyo's below-cost sales in the home market occurred over an extended period of time. Koyo urges the Department to employ an extended-period-of-time test that requires that there be below-cost sales over the period of review (POR) before below-cost sales are disregarded. RHP further argues that the Department's treatment of the below-cost issue should be revised due to sampling methodology as there is no "evidence that the Department has ever considered whether below-cost sales during the relevant sample months represent a 'substantial' portion of RHP's total home market sales of ball bearings." Koyo asserts that a three-month period should be used as the period to satisfy the "extended period of time" criterion. NTN suggests that an extended period of time should not constitute less than one half of the total reported months.

Torrington contends that below-cost sales occurring in one sample month are reasonably indicative of below-cost sales for an extended period of time. Torrington claims that since the Department used a nine-month home market sample period out of the 18-month POR (plus 1 month before and 1 month after the POR), it would be inappropriate to use the three-month test proposed by Koyo.

Torrington claims that a three-month test would skew the outcome of the below-cost analysis. Torrington states that if the Department adopts any period longer than one month, it should not require more than two months of below-cost sales to satisfy the statute. Torrington alleges that the three-month period cited by Koyo was conceived and applied in a non-sampling situation. Torrington further argues that Koyo failed to submit any evidence that it was likely to recover full costs at below-cost

price levels within a reasonable period of time.

Department's Position: Based on our analysis of the comments received and the Court of International Trade's ruling in *Timken Co.* v. *United States,* 673 F. Supp. (CIT 1987), we have concluded that we should apply the "10–90" test in the following manner. Under the "10–90" cost test, if less than 10 percent of sales of a model are below COP, we use all sales of the model for price comparisons and margin calculations. If between 10 percent and 90 percent of sales of a model are below COP, the below-cost sales may be excluded from the data base used for price comparisons and margin calculations. If more than 90 percent of the sales of a model were sold below COP, we disregard all sales of that model and use the constructed value (CV) of that model as FMV.

The 10 percent threshold satisfies the requirement that sales below cost must be made in substantial quantities. To satisfy the next requirement that below-cost sales must be made over an extended period of time, we have determined that the following test is reasonable for purposes of these reviews. If sales below cost are 10 percent or more by volume of total sales of a particular model over the POR, *and* below-cost sales occurred in more than two months during the review period, then we considered that these below-cost sales were made over an "extended period of time."

If more than 90 percent of the sales of a model were sold below COP over an extended period of time, then all sales of that model were disregarded and we used the CV of that model as FMV. However, if sales (whether above or below cost) occurred in three months or less, the below-cost sales were considered to have been over an extended period of time only if they occurred in each of the months in which sales were made. Otherwise, where a particular model was sold in less than three months, it automatically failed the "extended period of time" test. Although we recognize that below-cost sales may be distress or obsolete sales, we have presumed that the sales in question are not such sales unless documented information was provided in the record indicating the contrary.

With respect to the third requirement concerning recovery of cost within a reasonable period of time, none of the respondents has submitted data indicating that any of its sales below cost were at prices that would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade." Accordingly, we have concluded that all below-cost sales did not recover such costs. All below-cost sales that exceed the 10 percent threshold and that have been made over an extended period of time have been excluded from our price-to-price comparisons.

Comment 3: Torrington argues that the Department should have verified the Nachi, INA–FRG, FAG–FRG, FAG-Italy, SKF-France, and SKF-Sweden COP data or reject their cost responses and use BIA for the final results. Torrington argues that the Department must conduct verification if good cause is shown. Petitioner claims that there were sufficient discrepancies in the final determinations in the LTFV investigation to provide good cause for conducting cost verifications of each of these firms' data. Petitioner also states that there are numerous deficiencies in the current administrative review to provide further good cause for conducting cost verifications.

Nachi claims that the Department is not required by statute to verify its COP response. In addition, FAG-Italy and FAG–FRG argue that the Department has broad discretion in applying the rule concerning verification. Both respondents state that not only was Torrington's request for a verification insufficient, but also no changed circumstances were cited compelling verification. Moreover, both respondents claim that they responded to all deficiency information requests and that, after an extensive sales verification by the Department, their allocation methodologies were accepted without discrepancies. FAG-Italy and FAG–FRG further contend that their new cost accounting systems were not created for this proceeding, but because of the desire to provide product-level cost information. Once completed, they will be used for their normal internal records systems.

INA–FRG argues that the Department acted within its discretion by deciding not to verify INA's cost submissions and that the lack of a verification does not undermine the accuracy of the submissions.

Department's Position: See Comment 1 in the "Miscellaneous" section of the Issues Appendix.

Comment 4: Torrington argues that Nachi's cost response was not adequately tied to its internal accounting system and is not usable for the Department's purposes. Petitioner further argues that Koyo's cost accounting system is fictional; that is, it is not composed of true standard costs, variances, or other allocation methods.

Department's Position: The Department disagrees with petitioner's contention that Nachi's and Koyo's cost accounting systems are not usable for this administrative review. The Department has reviewed Koyo's cost accounting systems and Nachi's submission and found no significant discrepancies that would cast doubt upon Koyo's cost accounting systems or Nachi's submissions.

Comment 5: Torrington argues that Nachi has not adequately supported its claims for variances which reduce Nachi's reported cost of production, and that the inclusion of these variances in the calculation of cost should be disallowed. Torrington states that Nachi's reported variances were not tied to the company's actual accounting system. Torrington suggests that the Department should use Nachi's budgeted or estimated costs as reported, disallowing any claims for variances, as BIA.

Nachi contends that it is able to support all claims for variances, and that it would have supplied the documentation to the Department, had it been requested to do so.

Department's Position: The Department disagrees with petitioner's contention that the variances in Nachi's response should be disallowed. After analyzing Nachi's variance figures, the Department has no evidence that the data supplied by Nachi are inaccurate or unreliable. Therefore, we are accepting Nachi's variance data.

Comment 6: Petitioner argues that Nachi's reported general and administrative (G&A) expenses have been incorrectly calculated. Torrington claims that the 1988 G&A expenses were reported for 1989, and *vice versa.* Torrington further argues that the amounts reported do not agree with Nachi's consolidated financial statements. Torrington urges the Department to recalculate the expenses based on the data reported in the consolidated financial statements as BIA.

Nachi states that Torrington's claim that general and administrative costs were reported in the wrong year is incorrect. Nachi argues that the typographical error pointed out by Torrington was related to cost of sales, not G&A expenses. Nachi contends that its G&A expenses should be accepted as reported.

Department's Position: In reporting G&A expenses, Nachi committed a typographical error that resulted in an incorrect calculation of such expenses. We have corrected this error for purposes of these final results.

Comment 7: Torrington objects to Nachi's calculation of costs of manufacturing based on the

consolidation of related suppliers. Torrington argues that in the original investigation respondents were allowed to consolidate data only for those related suppliers in which the ownership interest was greater than 50 percent. Torrington contends that Nachi has consolidated suppliers in which it has only a 20 percent share, and that Nachi's data are therefore unreliable. Torrington argues that the Department should request inventory value data on a part-number basis, and compare those data to the reported cost of manufacture. The Department then should use the higher of the two figures as BIA.

Nachi argues that recalculation of its cost of manufacturing is unwarranted. Nachi states that it consolidated its reported costs for only those related suppliers where its direct and/or indirect ownership interests exceeded 50 percent. Nachi contends that it has reported its costs in conformity with the Department's requirements, and that the Department should use the data as reported for the final results.

Department's Position: Nachi provided consolidated COP data for only those suppliers in which its direct and/or indirect ownership exceeded 50 percent. Furthermore, the Department disagrees with petitioner's proposal that we adjust Nachi's submission to the higher of inventory values or reported cost of manufacturing. Therefore, the Department has not adjusted Nachi's cost data by using the higher of inventory values or reported cost of manufacturing.

Comment 8: Torrington contends that, in the LTFV investigation, the Department recalculated Nachi's interest expenses based on its consolidated expenses, and made no offset for interest income, because Nachi did not provide adequate information regarding the adjustment. Torrington argues that the Department should recalculate Nachi's interest expenses in the same manner in this review.

Department's Position: Contrary to Torrington's contention, Nachi did provide the Department with adequate information concerning its calculation of net interest expense. In accordance with our well-established practice, we offset Nachi's interest expense with the company's short-term interest income. See AFBs from the FRG, 54 FR at 19074.

Comment 9: Torrington argues that FAG-Italy and FAG–FRG used different cost accounting systems in this administrative review from the ones used for the LTFV investigation and that production costs are internally inconsistent. Petitioner claims that FAG–FRG's cost accounting system not only does not conform to German GAAP, but more than one standard cost method was used. In the LTFV investigation, petitioner claims that FAG-Italy was unable to supply market prices for some components and possibly understated depreciation expense as well as cost of goods sold.

FAG-Italy and FAG–FRG contend that they use product cost accounting systems based on the use of standard costs for parts and materials, labor, and overhead for each product throughout their manufacturing subsidiaries in order to calculate actual product costs on a regular basis. This also applies to the analyses of variances which were calculated separately for each bearing plant. Both FAG-Italy's and FAG–FRG's systems are fully supported by company records, as described in their responses, and conform to generally accepted methods of a standard cost system. FAG charges that Torrington's examples of alleged inconsistencies in individual product costs fail to take into account differences in production engineering and product design as well as differences in production routings between two models at the same plant.

Department's Position: The Department agrees with FAG–FRG and FAG-Italy. The cost accounting system used by FAG–FRG in this administrative review is essentially the same as that used in the LTFV investigation. The changes include updates made to the standard costs using 1989 data as a base and the integration within the system of a methodology for calculation of variances that FAG–FRG used in the LTFV investigation. FAG-Italy's new cost accounting system was developed from existing data under a corporate mandate to improve management information. In the LTFV investigation, FAG-Italy distributed actual manufacturing costs over total production applied to individual product's bills of materials and standard machine times. In this administrative review, standard costs were calculated using updated versions of information used in the LTFV investigation, *i.e.*, existing production routings, machine throughputs, and bills of materials applicable to each product.

There is nothing on the record indicating that FAG–FRG and FAG-Italy's cost accounting systems do not provide reliable data. Accordingly, the Department has used the cost information submitted by FAG–FRG and FAG-Italy for purposes of these final results of review. Moreover, the Department does not find Torrington's examples of "internally inconsistent" production costs in and of themselves indicative of an impaired submission. Such model comparisons did not take into account differences in production engineering, product design, and production processes within the plant.

Comment 10: Torrington argues that, because INA–FRG's cost response was defective, and because INA–FRG failed to submit quarterly data as well as 1988 data, its entire cost response should be rejected. Petitioner further alleges that INA–FRG's reporting methodology does not adequately account for production cost of specialty bearings and that its reported raw material costs are unreliable.

INA–FRG further claims that its submission of annual data is consistent with the instructions issued by the Department. As a privately-held business, INA–FRG is not required to produce audited quarterly financial statements. Quarterly cost data were not provided since INA–FRG does not prepare interim financial statements. Moreover, INA–FRG contends that it submitted an explanation of the circumstances underlying its inability to provide cost data for the less than-two-month period in 1988 covered by this review. INA argues that certain costs, which were characterized by petitioner as "fluctuating," accurately reflect the costs incurred by INA–FRG for the specific products involved.

Department's Position: The Department agrees with INA–FRG. The Department's questionnaire stipulates that costs may be provided on the same basis which the company uses to prepare its financial statements if the respondent does not prepare quarterly financial statements. Furthermore, the Department determined that the use of 1989 cost data for 1988 costs would not constitute a material distortion of costs. Considering the relatively few number of working days which were covered by the period of review, the use of 1989 data for the 1988 costs was considered to be appropriate in this case. Finally, the Department analyzed INA–FRG's response and did not find evidence of the significant conceptual flaws which petitioner claims exist, nor did we have reason to believe that INA–FRG's material costs were so unreliable as to warrant rejecting the entire response and using BIA.

Comment 11: Torrington argues that SKF-Sweden and SKF-France did not supply certain cost data (*e.g.*, raw material purchases and related-party transactions) for this review, but had advised the Department that the additional information would be provided at verification. Petitioner also maintains that the Department must have a precise understanding of SKF-Sweden's cost accounting system which

is based on the use of standard costs and variances in order to determine if cost variances have been developed accurately. Torrington further contends that there is no explanation of how SKF-Sweden calculated its basic labor rate which should include factors such as overtime pay, incentives, shift differentials, bonuses, and employee benefits.

SKF-Sweden and SKF-France claim that the record of the review, including the Department's deficiency-free verification of their sales data, supports the conclusions reached in the Department's preliminary results of administrative review. Furthermore, both firms argue that the Department should reject Torrington's arguments as SKF-Sweden's and SKF-France's questionnaire responses are reliable and accurate bases for determining both USP and FMV.

Department's Position: There is no evidence on the record that casts doubt upon the reliability or accuracy of the cost data submitted by SKF-Sweden and SKF-France. Therefore, the Department determined that the data could be relied upon for these final results of review.

Comment 12: Torrington argues that respondents should not be permitted to consolidate related parties, costs solely for the purpose of their responses.

Department's Position: We disagree. In accordance with our standard practice, the Department specifically requested that respondents report the actual cost of producing the merchandise, including the actual costs incurred by sister companies or subsidiaries. See Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from the Republic of Korea, 55 FR 32659 (August 10, 1990).

Comment 13: Torrington argues that a clerical error was made in the NSK computer program for calculating the adjusted price for the COP test, because the program does not reflect the adjustments to home market price shown in the disclosure memorandum.

Department's Position: The disclosure memorandum shows the calculation of FMV, not the adjusted price for the COP test. In the computer program itself, there were no clerical errors in the calculation of the price for the COP test. However, the memorandum inadvertently omitted an adjustment for discounts.

Comment 14: Torrington argues that the Department's failure to initiate a cost investigation for Koyo's sales of CRBs is inconsistent with the statute. Torrington states that Koyo failed to provide variable cost information as requested in the questionnaire and, given the minimal overlap between Koyo's bearings and Torrington's product line, it was not possible for petitioner's counsel to match Koyo's bearings with similar bearings produced by Torrington to derive estimated COP; therefore, Torrington used Nachi's variable cost information as BIA. Thus, Torrington concludes that it demonstrated, pursuant to the statute, reasonable grounds to believe or suspect home market sales below COP.

Koyo contends that Torrington's own description of the evidence reveals the insufficiency of that evidence. Koyo argues that the Department correctly declined to initiate a COP investigation for its sales of CRBs. As the CIT has made clear, however, "reasonable grounds to believe or suspect" (19 U.S.C. 1677b(b)) that a respondent is selling below cost in the home market cannot be based on cost data for another company. See Al Tech Specialty Steel Corp. v. United States, 575 F. Supp. 1277 (CIT 1983).

Department's Position: The Act, as interpreted by the CIT, mandates that a sales-below-cost allegation contain company-specific cost and price data to trigger the initiation of a COP investigation against a particular foreign company. See Al Tech, 575 F. Supp. at 1277. Company-specific costs include (1) the costs of the particular respondent against whom the petitioner is seeking a COP investigation, or (2) the petitioner's own costs adjusted for known differences between its costs and those of the particular respondent. *See id.* Because Torrington's sales-below-cost allegation in this case contained cost data of a third-party respondent, Torrington's allegation failed to satisfy the company-specific standard embodied in the Act. *See id.* Accordingly, the Department did not possess "reasonable grounds to believe or suspect" that Koyo was selling CRBs below cost during the POR in order to trigger a COP investigation. 19 U.S.C. section 16776(b) (1990).

Comment 15: Torrington argues that the reliability of Koyo's cost accounting system is undermined by its allocation methodology which allocates corporate-wide indirect expenses to its individual plants.

Department's Position: The Department disagrees with petitioner's claim that Koyo's allocation methodology for its corporate-wide "indirect" expenses was unreliable. The Department verified that Koyo's allocation methodology was accurate and reasonable.

Comment 16: Petitioner argues that Koyo understated its interest expense by consolidating such expenses over more than one fiscal year. Petitioner also claims that Koyo failed to provide an adequate explanation of its treatment of short-term interest income.

Department's Position: The Department agrees with petitioner's contention that the reported interest expense should be segregated into two fiscal periods. The Department bases interest expense on the amount incurred during fiscal periods. Cf. Sweaters From Korea, 55 FR at 32659. The Department disagrees, however, with petitioner's contention that Koyo did not provide sufficient explanation of its short-term interest income. The Department verified the amount of short-term interest income related to the operations of Koyo and, accordingly, deducted this amount from the consolidated interest expense.

Comment 17: Petitioner argues that Koyo incorrectly defined related parties as entities in which it owns fifty percent or more of the stock for the purpose of establishing whether transfers of materials must be at arm's length.

Department's Position: The Department agrees with petitioner's contention that a company is a related party if 5% or more ownership exists, in accordance with section 773(e)(3) of the Act. However, the Department has no evidence indicating significant preferential pricing between these specific entities. Accordingly, we consider the materials transfer prices to be at arm's length.

Comment 18: NSK argues that the Department incorrectly calculated the home market price for testing whether home market sales were below cost. Specifically, NSK argues that the Department used the adjusted price after all rebates were deducted to test whether home market sales were above or below COP. NSK alleges, however, that the Department used a different formula in calculating the net price. Specifically, the Department did not deduct two rebates in its net price calculation. NSK contends that the adjusted price formula for testing whether sales are below cost should be consistent with the net price calculation.

Torrington concurs that expenses should be treated in a consistent manner. However, Torrington argues that the Department correctly classified two rebates (REBATEH1 and REBATEH4) as indirect selling expenses. Therefore, the sales-below-cost portion of the program must be modified.

Department's Position: The adjusted price for the cost test is not necessarily the same as the net price used to calculate FMV. In the cost test, we

usually compare the ex-factory home market price to the cost of production of the product. See Sweaters From Korea, 55 FR 32659. For a proper comparison, we deducted discounts, rebates, and inland freight from the home market price because these expenses were not included in NSK's COP. However, we did not deduct selling expenses from the home market price because these expenses were included in the total COP.

The disclosure memorandum shows the calculation for FMV, which accounts for direct and indirect selling expenses as well as discounts and rebates. We did not deduct the two reported rebates directly from home market price, because of the method of allocation used in deriving the reported rebate amounts (See "Discounts and Rebates" in this Issues Appendix).

Comment 19: Nachi argues that inland freight expenses are included in the selling expense component of COP and therefore should not be removed from the adjusted net price; alternatively, they should be subtracted from the COP. Nachi contends that the inclusion of inland freight expenses in selling expenses is not reflected in the programs used to calculate Nachi's preliminary margins. Nachi alleges that the Department apparently compared a COP including inland freight with an adjusted net price that reflects a deduction from selling price for inland freight.

Torrington argues that, absent verification of Nachi's COP data, the Department should deny the proposed adjustment for reported costs for inland freight. Torrington further argues that, in the breakdown of selling expenses, Nachi failed to demonstrate whether freight expenses are "inter- or intra-plant" freight or freight to unrelated customers.

Department's Position: Contrary to Torrington's contention, the Department was not required to verify Nachi's cost response. *See Comment 1* in the "Miscellaneous" section of the Issues Appendix regarding the lack of a COP verification. The Department did reexamine Nachi's COP questionnaire response, and found that the inland freight expenses were included in the total reported COP data. Therefore, in order to make "apples-to-apples" comparisons between net home market prices and COP, we did not remove these expenses from the adjusted net price for these final results.

Comment 20: NTN-Japan asserts that the Department deducted reported presale freight as well as discounts from the unit price before performing the COP test. NTN-Japan contends that the Department's consistent practice is to deduct only discounts before performing the COP test.

Torrington argues that discounts must be deducted to test the actual sale price against the COP. Torrington contends that a discount or rebate is not a selling expense. Rather, a discount or rebate is a price adjustment that must be taken into account in determining whether a given transaction was at less than COP. The inland freight deducted by the Department corresponds to domestic inland pre-sale freight and, strictly speaking, this portion of inland freight is a production cost that should be included in COP and in the home market price. The Department thus acted reasonably by simply deducting the expense from the net price.

Department's Position: Since NTN-Japan included pre-sale freight in its COP by including the freight amount in G&A expenses, we did not deduct pre-sale freight from the home market price before testing those prices against COP. See Sweaters From Korea, 55 FR at 32659. We did deduct discounts and rebates from the home market price. We have used the same methodology for the final results.

Comment 21: Torrington alleges that COP data for various bearings were not reported by NTN-Japan. NTN contends, on the other hand, that it did not report COP data under the following circumstances: (1) The transaction had a unit price of zero, (2) the transaction was a sale of a sample, or (3) the transaction was related to a return at a later time. Since these transactions would be excluded from the sales data base before the COP test was conducted, there is no reason to report COP for these transactions. Thus, cost data were not reported for these transactions.

Department's Position: We agree with Torrington that NTN should have provided COP data for all home market transactions. For the purpose of these final results, we have assumed that any sales for which NTN-Japan failed to supply COP data were made below cost.

Comment 22: Torrington argues that modifications are required to NTN-Japan's labor and factory overhead costs which were found to be unsupported based on the Department's findings at verification. Torrington claims that NTN-Japan's reporting of "actual costs" as based on inappropriate data and cites the Department's verification report in which NTN-Japan admits that it was in the process of revising the data in question.

NTN-Japan contends that it correctly presented these costs in its COP submissions. NTN-Japan further contends that the Department did not request information on its standard cost system. Respondent argues that the Department should use the cost data submitted, because an application of BIA would not represent NTN-Japan's actual costs.

Department's Position: NTN-Japan had revised the standards for all models of ball bearings based on a study of man-hours. Based on this study, NTN-Japan decreased its standard man-hours for ball bearings due to changes in the production cycle and increased efficiencies. NTN-Japan did not revise the standards for efficiencies in the production of other bearings (*e.g.*, cylindrical bearings and spherical plain bearings). By revising the standards for one type of bearing, NTN-Japan created a distorted base for allocating the shared labor and overhead costs and, thereby, distorted its COP expenses for ball bearings. Therefore, we revised the submitted labor and overhead costs for the ball bearings produced in fiscal years 1989 and 1990.

Furthermore, NTN-Japan's contention that the Department did not request information on the standard cost system is incorrect. In its questionnaire, the Department requested general information on the standard cost system and specific information on revisions to standard costs. NTN-Japan did not disclose this revision of standards in any of its responses, but informed the Department at verification of its revisions to its standards. Because NTN-Japan failed to comply with our requests for information, we correctly relied upon BIA to make an adjustment to NTN-Japan's labor and overhead costs. *See* 19 U.S.C. 1677e. To calculate BIA, the Department increased NTN's labor and overhead costs for ball bearings by the noted difference in the costs resulting from the change in standards.

Comment 23: Torrington contends that the Department should calculate certain non-operating and extraordinary expenses for some respondents, as was done for certain respondents in the LTFV investigation. Torrington argues that the Department should then add amounts for depreciation and non-operating expenses to the production cost data submitted by NTN-Japan. Torrington further alleges that NSK's reported depreciation costs are unsupported and that NSK failed to provide any listing of idle assets that were excluded from depreciation expense. Torrington also argues that an amount for non-operating and extraordinary costs should be calculated for Nachi based on its total cost of

goods sold, and added to its production cost.

NTN-Japan contends that it correctly presented these costs in its COP submissions. NSK asserts that depreciation on idle equipment should not be included in its COP. Nachi contends that almost all of the non-operating and extraordinary expenses Torrington wants the Department to calculate have already been accounted for in its response. Only the interest and expenses related to the disposition of fixed assets have not been reported, and Nachi argues that these expenses are not related to production.

Department's Position: The Department disagrees with NSK-Japan's assertion that extraordinary and non-operating expenses (*i.e.*, those related to the loss on disposal of fixed assets and the change of the company name) should be excluded from the submitted costs. The costs were incurred in relation to production and were reflected on the company's financial statements. Accordingly, these costs were added to NSK-Japan's COP. See AFBs From Japan, 54 FR at 19076.

The Department also disagrees with NSK's assertion that depreciation on idle equipment should be excluded from the submitted costs. These costs were incurred in relation to the operation of the factory and accordingly should be included in the COP of NSK. The Department's long-standing practice has been to include depreciation on idle equipment in a respondent's COP. AFBs from Japan. 54 FR at 19105. However, in the case of NSK, the Department determined that the amount for this expense fell below the *de minimis* levels set forth in 19 CFR 353.59. Therefore, no adjustment was made to NSK's costs for this expense. *See id.*

Finally, for the reasons set forth above, the Department agrees with petitioner's contention that non-operating and extraordinary costs should be added to Nachi's COP. The Department revised Nachi's COP to include this information for these final results.

Comment 24: Torrington argues that the Department should use NTN-Japan's corporate-wide G&A and interest expense based on the Department's findings at verification. NTN-Japan claims that the Department should only consider interest expenses related to the production of the merchandise under review. NTN-Japan further claims that its long-term interest income should be used to offset its interest expense.

Department's Position: The Department disagrees with NTN-Japan's contention that G&A and interest expense should be based only on those calculated expenses incurred to produce the subject merchandise. General expenses are incurred by the company as a whole and, therefore, must be calculated on a corporate-wide G&A basis. Accordingly, we recalculated NTN-Japan's G&A expenses. The Department also disagrees with NTN-Japan's claim that long-term interest income should be used to offset interest expense. Long-term interest income does not relate to current operations and, accordingly, was not used as an offset against interest expense. AFBs from Japan, 54 FR at 19074.

Comment 25: Torrington alleges that, compared to certain other producers, NTN-Japan has understated the COP of certain bearing models. NTN-Japan asserts that it has no way of knowing what Torrington's allegation is because it is based on proprietary data of other companies that are not available to NTN-Japan. NTN-Japan seriously questions the fairness of such a "blind" allegation where Torrington knows that NTN-Japan will not be able to comment because of the use of proprietary data of other producers.

Department's Position: The Department disagrees with Torrington. Each company produces bearings at different costs. The Department has no specific evidence of understatement of cost data for NTN-Japan's particular model types.

Comment 26: Torrington argues that SKF-FRG deviated from its normal cost accounting procedures for the review, and that SKF-FRG provided an inadequate description of its cost accounting methodology.

Department's Position: We disagree. The Department verified that SKF-FRG did not deviate from its usual accounting practices. Based upon this verification, we determined that SKF-FRG's cost response could be relied upon and that SKF-FRG provided an adequate description of its cost accounting methodology.

Comment 27: Torrington argues that, although the Department took certain measures at verification to evaluate the SKF-FRG product cost system, it does not appear that there was a systematic evaluation of standard and actual costs, variances, and other allocated costs within a given family. Torrington contends that there are deficiencies in SKF-FRG's variances. Torrington further alleges that SKF has not reported costs of materials purchased from related companies in conformity with the Department's questionnaire.

Department's Position: The Department verified SKF-FRG's cost response and determined that it was reliable. SKF-FRG's variances include all price and efficiency variances as verified by the Department. Contrary to Torrington's contention, SKF-FRG reported its material costs in accordance with the Department's questionnaire.

Comment 28: Torrington argues that the costs submitted by SKF-Italy do not show the expected correlation between cost and performance features. Torrington also argues that SKF-Italy's method of calculating and allocating variances is not accurate and that the resultant production cost data should be rejected in its entirety.

SKF-Italy contends that the Department verified SKF-Italy's cost accounting structure and found it to be highly reliable. In addition, the Department fully tested both SKF-Italy's standard costs and its actual costs, as reflected in actual company records and in its cost response. SKF-Italy's cost data were found to be completely reliable.

Department's Position: SKF-Italy's methodology was based on the cost accounting system used for its audited financial statements. The Department verified that SKF-Italy's cost structure, standards and variances were accurate and properly allocated. Therefore, we viewed the cost data as reliable for these final results of review.

Comment 29: Torrington argues that SKF-UK failed to provide sufficient documentation to tie its response to its financial records, and to reconcile its costs to its actual inventory records. Therefore, its cost submission must be rejected in favor of BIA. SKF-UK counters that there is no record of these arguments in the official file. The petitioner based these allegations on insignificant observations from the Department's final determination in the LTFV investigation involving antifriction bearings from Germany, rather than the investigation involving the subject merchandise from the United Kingdom.

Department's Position: The Department carefully reviewed SKF-UK's cost response and found no evidence to support a rejection of the submission in favor of BIA. Furthermore, Torrington's argument concerning SKF-UK's failure to tie its response to its financial records is not persuasive, because the Department did not, and was not required to, verify SKF-UK's cost response. (See Comment 1 in the "Miscellaneous" section of this Issues Appendix.) Our analysis of SKF-UK's cost response indicates that SKF-UK's cost response could be relied upon for the determination of sales below cost.

Comment 30: NPB states that, although it submitted average labor and overhead cost data for a two-year

period in its questionnaire response, it provided both labor and overhead information on a fiscal year basis at verification. NPB contends that, since the Department verified these fiscal year aggregate expense data "directly from" the audited financial statements, the Department should use these verified data to reallocate labor and overhead expenses accordingly. Since the Department reallocated five separate selling expenses for two of NSK's subsidiaries in the preliminary results of review, the Department should reallocate NPB's labor and overhead for the two fiscal years in question.

Department's Position: Because NPB failed verification, the Department is using BIA for NPB in this review. See the section on "BIA" in this Issues Appendix.

Section 16: Constructed Value

Comment 1: Federal-Mogul argues that where the Department may deem it appropriate to adjust CV for differences in circumstances of sale (COS), such adjustments may be made only with respect to selling expenses. Therefore, when CV is calculated as the sum of COM, actual G&A, actual selling expenses, profit, and U.S. packing expenses, the adjustment to CV for differences in selling expenses should not result in a net CV that is less than the sum of COM, actual G&A, profit, and U.S. packing expenses. Moreover, where general expenses for CV are based upon the statutory minimum, any COS adjustment should still be based upon actual selling expenses, since the statutory minimum amount cannot be segregated into G&A and selling expenses. Federal-Mogul requests that the Department incorporate a check into its final computer programs to ensure that adjustments to CV do not inadvertently cause the result to fall below the sum of those constituent cost elements. More specifically, Federal-Mogul argues that if the Department revises the general expense component of SKF's CV (all countries), the Department should incorporate this same check (prior to the calculation of statutory profit) to make sure that the revised amount does not fall below the statutory minimum.

NWG states that Federal-Mogul's argument has no basis in law. In support of its position NWG cites the Department's decision in Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review, 54 FR 13917, 13919 (1989) (hereinafter Television Receivers). NWG further argues that recent judicial decisions clearly hold that the Department may make such adjustments when CV is being used to calculate FMV.

Department's Position: As noted by NWG, our practice of making adjustments to CV for differences in circumstances of sale has been upheld by the CIT (*Timken Co.*, v. *United States*, 673 F. Supp. 495 (CIT 1987); *Budd Co., Wheel & Brake Div.* v. *United States*, 746 F. Supp. 1093 (CIT 1990)). Adjustments for differences in selling expenses are made after CV is calculated. Therefore, the Department does not agree with Federal-Mogul that, by refusing to cap these adjustments to prevent the resultant CV from being less than the sum of COM, actual G&A, profit, and U.S. packing, we would be making a COS adjustment for more than just actual selling expenses. As stated in the Department's Position to Comment 8 in Television Receivers,

> Section 773(a)(4)(B) of the statute instructs us to adjust FMV, of which constructed value is one type, for differences in circumstances of sale. There is nothing in either the statute or our regulations which directs us to limit the result of such adjustments to the cost of manufacture plus the statutory minimum for general expenses and profit.

Therefore, the Department does not agree that it should cap the COS adjustments to CV as proposed by Federal-Mogul.

Comment 2: Federal-Mogul urges the Department to institute a general test to ensure that the profit amount used to calculate CV for the final results of review does not fall below the statutory minimum. Further, Federal Mogul notes that such a test was not incorporated into the preliminary results for RHP.

Department's Position: Our computer programs incorporate a test to ensure that the profit used to calculate CV is not less than the statutory minimum of eight percent of materials, labor, and general expenses.

Comment 3: SKF-France contends that where the Department made comparisons for ESP sales and used CV for purposes of determining FMV, the Department used both home market direct and indirect selling expenses. SKF-France argues that by not deducting home market direct selling expenses from CV separately from the offset adjustment, the Department has overstated FMV. The firm further suggests that the Department use the response to section C of the questionnaire to compute both home market direct and indirect selling expenses.

In rebuttal, Torrington states that since SKF-France failed to separately report direct and indirect selling expenses for the purpose of calculating CV, the Department properly subjected home market direct selling expenses to the ESP offset cap when CV was used as FMV. In addition, SKF-France apparently reported both credit and inventory carrying costs in one variable, rather than separately as requested in the Department's questionnaire. Torrington notes that the Department's questionnaire clearly requested that direct and indirect selling expenses be reported in separate computer variables. Torrington maintains that since SKF-France failed to provide the appropriate information necessary to cap only indirect selling expenses, the Department properly capped the entire pool of selling expenses as reported by SKF. Furthermore, Torrington objects to SKF-France's proposal that the Department calculate home market indirect selling expenses from the section C response to adjust CV. This would require the Department to develop a program for deriving weighted-average direct and indirect selling expense figures based on model-specific expenses. Torrington argues that the burden of this calculation is on the respondent, not the Department.

Department's Position: We agree with Torrington. Our CV questionnaire clearly requested that direct and indirect selling expenses be reported separately. Because SKF-France did not separately identify or quantify direct and indirect selling expenses to calculate the ESP offset to CV, we treated all reported selling expenses as indirect and used them to offset U.S. indirect selling expenses. To do otherwise would reward respondents for not providing accurate information in the manner requested by the Department.

Comment 4: Torrington contends that the Department inappropriately based the credit expense adjustment to SKF-Italy's CV on data taken from the financial statements rather than on the home market credit expense as reported in the questionnaire response. Since the credit adjustment to U.S. price (USP) was calculated on the basis of interest rates and the period between shipment and payment for U.S. sales, the adjustment to CV should be based on similar information with respect to home market sales. Moreover, citing the Final Determination of Sales at Less Than Fair Value; Offshore Platform Jackets and Piles from Japan, 51 FR 11788 (1986), Torrington contends that the Department has demonstrated a clear preference for using actual rather than projected data, wherever possible, for the calculation of FMV.

SKF-Italy disputes Torrington's allegation that the Department incorrectly adjusted CV for credit expenses incurred by the SKF group (credit calculated from the financial statements). The variable used by the Department to adjust CV for interest expenses contained SKF-Italy's home market credit expenses and imputed inventory carrying costs, which were calculated using SKF Italy's home market short-term borrowing rate.

Department's Position: We agree with the respondent. The credit expenses used to adjust CV were based on SKF-Italy's home market short-term borrowing rate and the period between shipment and payment for home market sales.

Comment 5: With respect to the calculation of CV for SKF–FRG, Federal-Mogul contends that the Department failed to include any selling expenses other than the imputed selling expenses reported under the variable DCVIMPEX.

Department's Position: Federal-Mogul is incorrect. All reported direct and indirect selling expenses which were not included in the variable DCVIMPEX were included in the variable DOCADJ. Both variables were used in the CV calculation.

Comment 6: FiatAvio (Italy, France, UK, and FRG) contends that, in revising the company's submitted CV calculations, the Department improperly added the interest expense incurred by the Fiat Group's financial services companies. FiatAvio maintains that, if the Department deems it appropriate to include in CV the interest expense incurred by these companies, then it must also reduce CV for the financial services income that the companies earned. Moreover, FiatAvio notes that, before including imputed credit expenses in CV, the Department normally reduces actual interest expense for that portion of the expense it estimates is related to financing home market credit sales. According to FiatAvio, in order to correctly adjust the company's net interest expense for imputed credit, the Department must take into account not only the Fiat Group's trade receivables, but also the balance of the financial companies' receivables. Lastly, FiatAvio argues that the Department should not use the best information otherwise available in lieu of certain financial statement information submitted by the company. FiatAvio argues that, although it initially provided poor quality reproductions of the data, FiatAvio later resubmitted the information in clear, readable form.

Torrington maintains that the Department's consistent practice has been to disallow an interest income offset to interest expense, unless the respondent can demonstrate that the interest income was directly related to the production and sale of the specific merchandise under review. Torrington contends that FiatAvio has failed to make such a showing.

Department's Position: For our preliminary results of review, we revised FiatAvios' CV calculations by including in general expenses the interest expense incurred by the Fiat Group's financial services companies. In doing so, we followed our normal practice of deriving net interest expense based on the borrowing experience of the consolidated group. Final Determination of Sales at Less Than Fair Value; Antifriction Bearings and Parts thereof from the Federal Republic of Germany, 54 FR 18992 (1989) (hereinafter AFBs from the Federal Republic of Germany); Final Determination of Sales at Less Than Fair Value; Small Business Telephone Systems from Korea, 54 FR 53141 (1989) (hereinafter Small Business Telephone Systems from Korea). We agree with respondent's argument that the short-term interest income earned by the Fiat Group's financial services companies should be considered in our calculation of net interest expense. Financial statements on the record indicate that, during the period of review, these financial services companies also earned short-term interest income on working capital investments used to fund operations of the Fiat Group's industrial companies. For our final results of review, we have revised our calculation of FiatAvio's net interest expense to reflect the short-term interest income earned by these companies.

Comment 7: NMB/Pelmec-Singapore and NMB/Pelmec-Thailand state that, "if the dividend income on marketable securities is not excluded, the corresponding interest expense attributable to marketable securities should be excluded." Alternatively, NMB/Pelmec-Singapore and NMB/Pelmec-Thailand believe the Department should include the balance of marketable securities in preparing an interest offset calculation.

Petitioner argues against the inclusion of the balance of marketable securities in the interest offset calculation, and states that the proposed inclusion of marketable securities is inconsistent with agency practice.

Department's Position: We assume NMB/Pelmec-Singapore and NMB/Pelmec-Thailand intended to argue that the Department should offset interest expense with dividend income earned on marketable equity securities in deriving net interest expense for CV. As detailed in Small Business Telephone Systems from Korea, dividend income is not a specific cost of producing the subject merchandise and, accordingly, is not included in the COP or CV calculations. As for including marketable securities in the offset calculation, we agree with petitioner. The Department allows an offset to interest expense to avoid double counting the expense related to financing inventory and accounts receivables, because the Department imputes an interest expense for these items. See, e.g., Small Business Telephone Systems from Korea; AFBs from the Federal Republic of Germany; and Final Determination of Sales at Less Than Fair Value; All Terrain Vehicles from Japan, 54 FR 4864 (1989). The Department does not impute interest expenses relating to a company's marketable security investments; therefore, it would be incorrect to include the balance of marketable securities in the offset calculation.

Comment 8: NMB/Pelmec-Singapore and NMB/Pelmec-Thailand argue that the Department should not have deducted movement expenses and U.S. duties from USP when USP is compared to CV.

Torrington contends that the respondent has failed to provide legal authority to support its argument.

Department's Position: CV is calculated net of movement expenses; however, we have deducted such expenses to the extent that they are included in the USP in order to make fair comparisons.

Comment 9: NMB/Pelmec-Singapore and NMB/Pelmec-Thailand contend that packing expenses incurred for shipment of the merchandise to the United States, and repacking expenses incurred in the United States, should be added to the USP when the USP is compared with CV.

Department's Position: Since packing expenses are already included in the USP there is no need to make an upward adjustment to USP for these items. Section 773(e)(1)(c) of the Act requires that CV be computed using all costs incidental to placing the merchandise under consideration in condition packed ready for shipment to the United States. Therefore, we have added those U.S. packing expenses to CV for purposes of our comparisons. Repacking expenses incurred in the United States have been deducted from USP, since these are considered direct selling expenses which are incurred in the United States. In our preliminary calculations we inadvertently added repacking expenses

to the FMV. We have corrected this for these final results of review.

Comment 10: NMB/Pelmec-Singapore contends that certain expenses reported under its export selling expenses variable were not included in the pool of U.S. indirect selling expenses which were ultimately deducted from ESP and offset against home market indirect selling expenses.

Department's Position: In our preliminary results, the reported export selling expenses were included in the ESP offset cap in our computer program. We have not changed this for these final results of review.

Comment 11: Dowty-Rotol contends that in the preliminary results of review the Department failed to make an ESP offset adjustment when comparing ESP transactions to CV.

Department's Position: Although we inadvertently failed to make an ESP offset adjustment when comparing ESP transactions to CV in our preliminary results, Dowty Rotol's computer response reported indirect selling, direct selling, and general expenses under one variable. The narrative response, however, contained the appropriate information to break out selling expenses from general expenses. Nevertheless, the narrative did not distinguish direct from indirect selling expenses. Therefore, for these final results we have treated all reported selling expenses as indirect and subjected them to the ESP cap for indirect selling expenses. To do otherwise would reward respondents for not providing complete and accurate information. See Department's Position to Comment 3 above.

Comment 12: NSK contends that once the Department excludes sales of merchandise entered prior to the period of review (POR) and searches for production periods prior to the sale period, there should be no remaining unmatched U.S. sales. NSK notes that it reported CV data for three six-month fiscal periods, and that the Department claims to have "exploded" NSK's CV data by assigning to each month within a reported fiscal period the CV provided for that period. NSK remarks, however, that it was unable to determine whether this had been done correctly. Nevertheless, NSK suggests two reasons for the Department's failure to find CV data for numerous transactions. First, when no CV data existed for the period matching the U.S. sale, the Department did not use CV data from an earlier period. Since production usually precedes sales it is not unusual for there to be no production of a particular model in the same period as the sale. Second, for certain models NSK had no production during the period of review.

Torrington urges the Department to reject NSK's proposal to search for CV data in a period that is more than ninety days removed from the date of sale where no match was found in the contemporaneous period. Moreover, NSK's methodology for determining what merchandise entered prior to the POR is erroneous and should not be used.

Department's Position: All merchandise has a value, regardless of whether production and sale occur in the same fiscal period. Thus, when production and sale do not occur in the same fiscal period, it is appropriate to search for CV data in a production period prior to the date of sale. Since our questionnaire requested CV data for all U.S. sales not matched to home market sales of identical or family merchandise (and for all U.S. sales, where a below-cost investigation was initiated), we applied BIA to any U.S. sales where no CV data were provided. See the section on "BIA" in this Issues Appendix.

Comment 13: Torrington claims that Koyo used an incorrect method to calculate profit for CV. The respondent calculated profit as a percentage of sales; however, pursuant to the statute, profit should be calculated as a percentage of materials, labor, selling, and SG&A. Koyo's methodology understates the percentage of profit for cylindrical roller bearings.

Department's Position: We disagree with petitioner's comments regarding the calculation of profit. A calculation of profit as a percentage of the cost of production was verified as less than the eight percent statutory minimum. Therefore, the Department has applied the eight percent statutory minimum to Koyo's CV.

Section 17: Romania—Specific Issues

Comment 1: TIE contends that it is improper for the Department to base steel prices on the value of imports because Romania does not import steel. TIE notes that Yugoslavia, the surrogate country, is a producer of bearing quality steel, and there is already information on the record regarding Yugoslavian steel exports.

Petitioner agrees with the Department's decision to use prices for Yugoslavian steel imports, rather than Yugoslavian steel export prices, because the Yugoslavian government's subsidization of steel exports distorts actual prices. Petitioner notes that in past cases, the Department has not required that a surrogate country be a producer of relevant raw materials if the non-market economy (NME) country produced those raw materials, nor required that values reflect the domestically manufactured product.

Department's Position: The Department has previously examined the issue of Yugoslavian subsidization of steel exports. (See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Welded Carbon Steel Pipe and Tube Products from Yugoslavia, 50 FR 53,360 (1985). Because the Department found Yugoslavian steel exports were subsidized, we have followed the precedent established in the Final Results of Administrative Review; Tapered Roller Bearings from Romania (hereinafter Romanian TRB Review), 56 FR 1169, 1171 (1991), and we have used prices for steel imported into Yugoslavia from the European Economic Community.

Comment 2: TIE argues that the Department incorrectly calculated the relative weights of steel used in cages, balls, rivets, and other components manufactured at the Birlad and Brasov factories. It claims that the Department calculated the relative weights based on information provided at the Alexandria factory where it was necessary to multiply the reported weights by the number of units of the respective component contained in a bearing. TIE argues that this calculation was only relevant to those bearings manufactured at the factory in Alexandria.

Petitioner argues that because proper material weights for bearings produced at the Alexandria plant were not discovered until verification, and TIE failed to clarify this issue before verification, and also because the same misrepresentation was made in the original investigation, these weights still remain uncertain. Petitioner alleges that these claims only serve to diminish the reliability of all other information reported by TIE, and make less dependable its information relating to the U.S. sales listing and the two plants that were not verified. Petitioner recommends the use of BIA in lieu of restructuring TIE's data.

Department's Position: We have determined that the weights of the components produced at the Birlad and Brasov factories were correctly reported. We have examined verification exhibits obtained at the Alexandria plant that show material weights for bearing models produced at Alexandria, Birlad, and Brasov, and it is apparent that the error in weights of components was limited to the Alexandria plant's reporting. For the final results, we have used the material

weights for Birlad and Brasov as reported. (See memorandum to the public file dated May 14, 1991 (Case No.: A-485-801).)

Comment 3: TIE contends that the Department should not have used alloy steel bar prices to calculate costs for the steel used in balls; instead, alloy steel wire rod prices should have been used. It argues that alloy steel wire rod is used in the manufacture of balls, while alloy steel bar is used for the manufacture of inner and outer rings. TIE recommends using a steel type (NC 7213.50) that was used in the Romanian TRB Review.

Petitioner argues that steel classified as NC 7213.50 should not be used because this classification is for iron and non-alloy steel.

Department's Position: The Department maintains, as it did in the Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts thereof from Romania, 54 FR 19080 (1989), that it properly used the surrogate value for 52100 steel bar to value balls contained in TIE's ball bearings.

Comment 4: Petitioner contends that, if the Department is to base material costs on the cost of imports into Yugoslavia, in order to reflect market realities and derive a true proxy for the price of the raw materials in Yugoslavia, the Department must add import tariffs to the value of the imports.

TIE contends that it would be unfair to include Yugoslavian import tariffs in calculating raw material costs because Romanian ball bearing manufacturers do not import steel.

Department's Position: The Department believes it is inappropriate to add import tariffs to the price of the imported steel. In determining FMV for companies in NME countries, the Department is instructed by 19 CFR 353.52(c) to use CV, as set forth in section 773(e) of the Tariff Act. Section 773(e)(1)(A) states that the cost of materials should be "exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used." It is our understanding that duties assessed on raw material imports in Yugoslavia are eligible for duty drawback upon exportation of the finished product. Therefore, for these final results, we have not added import tariffs to the price of imported steel.

Comment 5: Petitioner argues that in calculating scrap value, the Department should deduct an amount representative of the material lost through disposal, burning, and processing.

TIE contends that it would be unfair to deduct from scrap value the amount recommended by the petitioner since that amount is greater than the amount confirmed by the Department during verification.

Department's Position: For these final results, we recalculated scrap value to include materials lost through burning and processing. We based our calculations on information examined at verification.

Comment 6: Petitioner alleges that the Yugoslavian wage rate published by the International Labor Organization (ILO), which was used by the Department for the preliminary results, does not represent the full labor cost to the employer. Petitioner recommends use of labor statistics from the Bureau of Labor Statistics for Brazil, Mexico, Portugal, or Singapore.

TIE contends that the Department, in the Romanian TRB Review, noted that "the ILO labor rates are fully loaded" and, therefore, ILO labor rates for Yugoslavia should be the same as actual labor rates in Yugoslavia.

Department's Position: Wherever possible, the Department has relied on information pertaining to Yugoslavia. In our efforts to determine a labor rate, we first sought Yugoslavian labor information from the U.S. Embassy in Yugoslavia. When the U.S. Embassy was unable to respond to our request, we contacted the Bureau of Labor Statistics (BLS) and learned that it does not maintain labor rates for Yugoslavia. It does maintain labor rates for Brazil and Mexico (two countries the Department considers comparable to Romania), but not for the fabricated metal products industry in Mexico. While the BLS does have rates for the fabricated metal products industry in Brazil, they date from 1985 and are actually lower than the 1988 and 1989 ILO rates for Yugoslavia, which are also for the fabricated metal products industry. Although the ILO rates do not necessarily represent the full labor cost to the employer, they do reflect the appropriate industry and are the most current rates available. Because they are for Yugoslavia, they are consistent with material and freight costs for which we also have Yugoslavian information. Regarding Portugal or Singapore, two of petitioner's recommended sources of information, we have determined that they are not comparable to Romania. Therefore, the Department concludes that the ILO rates are the best information available.

Comment 7: Petitioner argues that the ILO wage data that the Department used are not valid because they reflect labor rates in the "socialized sector" of Yugoslavia.

TIE disagrees, noting that there is a distinction between "socialized" and "non-market" and that socialized countries, such as Norway and Sweden, have in the past been treated by the Department as market-economy countries.

Department's Position: The Department's practice has been to treat Yugoslavia as a market economy country, which is a determination that the Department makes without regard to individual sectors of the economy.

Comment 8: TIE argues that labor time for bearing components produced at the Alexandria plant should not have been treated in the same manner as material weight for the Alexandria plant (by multiplying labor time by the number of units of each component within a bearing). While the Alexandria plant did report material weight for bearing components on a per-unit basis, respondent contends that it did not do this for labor time. TIE claims that labor time was reported as the total time necessary to produce all units of a given component, and that the error reported by Alexandria related to material usage only. Respondent claims this was confirmed at verification for bearing model number 6205-UG.

Petitioner alleges that TIE did not follow the Department's instructions to provide a complete, accurate, and timely response, and that the Department could not, as required by departmental regulations, verify within the time specified the accuracy and completeness of the factual information submitted. Petitioner argues, therefore, that the Department should resort to BIA.

Department's Position: We have determined that labor times for the Alexandria factory were correctly reported by respondent. For the preliminary results, we increased labor time for the Alexandria factory because we mistakenly believed that all information supplied at the Alexandria factory was reported on a per-piece, rather than a per-bearing basis. We have examined verification exhibits obtained at the Alexandria plant that show labor times for bearing models produced at Alexandria, Birlad, and Brasov, and it is apparent that no error was made in reporting labor time. Therefore, for these final results, we have used the labor times for all three factories as reported. (See memorandum to the public file dated May 14, 1991 (Case No.: A-485-801).)

Comment 9: TIE argues that it was "unlawful" for the Department to base overhead and selling, general, and administrative expenses on ranged numbers that were derived from confidential information for a Thai bearings producer who is a respondent in the administrative review of the antidumping duty order on antifriction bearings from Thailand. TIE contends that there is no indication as to the methodology used to make the calculations, and no evidence on the record that the Department obtained the formal consent from counsel for NMB/Pelmec, the Thai company, to use its confidential information for the purpose of this review.

Department's Position: The Department disagrees that its decision to range the data of the Thai respondent for purposes of the preliminary results was unlawful. The Department did obtain the consent of NMB/Pelmec to use that company's ranged data. A memo to the public file, dated March 29, 1991, confirms the March 4, 1991 conversation with counsel for NMB/Pelmec in which consent was granted.

Comment 10: TIE argues that the Department should not have based any expenses on surrogate information from a Thai manufacturer. It claims that NMB/Pelmec, the Thai manufacturer in question, is highly automated. Respondent contends that the Department has recognized that overhead rates for automated manufacturers are much higher than for non-automated factories like TIE. It argues that because NMB/Pelmec manufactures principally miniature and other types of precision bearings, and that production of small, precision bearings incurs an inordinate amount of overhead, NMB/Pelmec's overhead is much higher than that of TIE, a manufacturer of larger commodity type bearings. Respondent further contends that NMB/Pelmec's overhead costs are also inflated because it is owned by a Japanese company which provides it with very sophisticated and technologically advanced machinery. For these reasons, TIE believes that the Department should have used Yugoslavian overhead costs.

Petitioner contends that the Department was justified in using an overhead rate based on current data submitted by a bearing producer in a developing market-economy country because they permit a degree of accuracy that is not otherwise possible. Petitioner argues that the overhead rate calculated by the Department is consistent with those of other countries at varying degrees of economic development. Petitioner advises that the Department's practice in NME cases is to use the ten percent statutory minimum only if there is no adequate surrogate information available.

Department's Position: During the course of this review, the Department exhausted all known resources in an attempt to obtain the most reasonable and representative rate for overhead for TIE. We attempted to obtain information on overhead in the bearings industries of six countries we considered potential surrogates. We also examined two Portuguese overhead rates that had been considered and/or used in the past, and studied two alternative sources for determining Yugoslavian overhead. However, all of these attempts to derive an overhead rate for TIE were unsuccessful. (See the final analysis memo to the public file, dated May 31, 1991 (Case No.: A-485-801).) Ultimately, we concluded that the Thai data were the best source available to determine an overhead rate. For the preliminary results, we inadvertently used overhead incurred by the Thai company in third country production. For the final results, we have used the overhead it incurred in the home market.

Comment 11: TIE alleges that many of the expenses (credit expense, inventory carrying costs, certain direct selling expenses, certain indirect selling expenses, interest expenses, a large part of the research and development expenses, factory G&A expenses, and headquarters expenses) in the Thai company's submission for third country sales, which were used by the Department as surrogates for TIE's SG&A, are expenses that do not apply to TIE. Respondent also contends that the reported home market general expenses for this company were lower than its third country general expenses, and that these expenses were "generally overstated." Respondent claims that it is not logical to base TIE's SG&A on NMB/Pelmec's third country SG&A and that, instead, the Department should have used the statutory 10 percent minimum to calculate SG&A. TIE concedes that, if the Department chooses to use NMB/Pelmec's experience as the basis for determining this expense, home market selling expense data for that company should be utilized, but the general expenses that do not apply to TIE should be deducted from the SG&A figure and divided by NMB's cost of sales in order to determine a proper ratio.

Department's Position: The Department agrees that certain expenses included in NMB/Pelmec's SG&A are not necessarily applicable to TIE. However, during the course of this review, in examining SG&A, and specifically selling expenses, we asked TIE to provide us with a full and detailed explanation of its involvement in counter-trade agreements with a U.S. importer who served as a trading company for TIE. TIE either failed or refused to provide information concerning the nature of its counter-trade arrangements or the U.S. sales involved. Accordingly, in the absence of any information from respondent, we have determined that NMB/Pelmec's SG&A is appropriate as BIA. (See Department's Position to Comment 13, below.)

Comment 12: Petitioner agrees with the surrogate information the Department used to determine indirect labor, general expenses, selling and administrative expenses, and overhead, but argues that, in deriving a value for profit, the Department was inconsistent in its decision to resort to the statutory profit rate.

TIE argues it would be inappropriate to use NMB/Pelmec's profit because most of its sales are to related parties and would, therefore, have a high profit rate in comparison to that of TIE.

Department's Position: We used Thai data only when necessary. The Department conducted an exhaustive search for overhead information among countries it determined to be comparable to Romania. We were not able to obtain usable information, and thus, resorted to the Thai overhead rate because it was the best rate that was available to us. We did not use Thai data for other factor prices, however, because this information was available for Yugoslavia, a country we had determined to be comparable to Romania. In our search for an adverse BIA for SG&A, we again resorted to Thai data. (See Comment 13, below.)

However, for profit, the statute provides an alternative, which we used. Section 773(e)(1)(B)(ii) of the Tariff Act directs the Department to add an amount for profit equal to that earned by producers of subject merchandise in the country of exportation. It also provides that that profit represent at least eight percent of cost and SG&A. Since profit data was not available for Romania or other countries we had determined to be comparable to Romania, the Department applied this alternative statutory minimum of eight percent.

Comment 13: Petitioner contends that because TIE's sales of bearings to an importer were made through a trading company, perhaps it is the sale to the trading company, rather than the sale to

the importer, that should be treated as the United States sale because TIE knew at the time of sale that the merchandise was destined for the U.S. Petitioner argues further that if the Department does not treat the sale to the trading company as the U.S. sale, then the U.S. price should be reduced by an amount equal to the compensation that a trading company would likely receive for its services; otherwise, BIA should be used for the final results.

TIE contends that no trading company expenses were paid by TIE and that the amount paid to TIE was the full amount that had been negotiated between TIE and its importer.

Department's Position: The Department requested that TIE provide a full and detailed explanation of the counter-trade agreement to which TIE referred in its response, and identify which U.S. sales were made under such agreements. TIE did not provide us with this information. For the final results, we have assumed that the trading company is performing a selling function for which it receives compensation from TIE. To account for TIE's additional selling expenses, as best information available, we have applied NMB/Pelmec's SG&A rate to TIE. (See Comment 11)

Comment 14: Petitioner contends that it is necessary for the Department to deduct credit expense from the USP. Petitioner argues that this credit expense should not be based on the Romanian interest rate reported by TIE, but, rather, on a market economy interest rate.

TIE claims that the Department should not make a deduction for credit expense because in its recent determination in the Romanian TRB Review the Department stated "there are not enough home market or surrogate country data to * * * determine differences in credit expenses between U.S. sales and CV." Respondent believes that if this adjustment is made, the Department should use the interest expense claimed by TIE because it is the actual expense that TIE pays to its bank in Romania.

Department's Position: When USP price is based on purchase price, the Department adjusts foreign market value for differences in circumstances of sale, such as differences in credit expenses, in accordance with 19 CFR 353.56. In this case, however, BIA was used to derive an SG&A rate, inclusive of credit expense. As such, we determined that it was inappropriate to adjust TIE's USP or FMV for credit expense using a surrogate, or any other, interest rate.

Comment 15: Petitioner alleges that it is irrational for TIE to have separately reported sales of the same bearing model to the same customer, on the same date, at four different prices. Petitioner asserts that this inconsistency affects the credibility of the response, and argues that because of the unreliability of "a significant portion" of TIE's United States sales submission, best information available is most appropriate.

TIE claims that it is not unusual for TIE to charge its U.S. customer different prices for the same model of bearing because it is not uncommon for TIE and its customer to reach an agreement in which certain bearings, which had not been shipped in accordance with an earlier contract, are re-ordered.

Department's Position: An analysis of TIE's U.S. sales listing shows that, in several instances, TIE reported sales of the same product to the same customer at different prices when the sale date and shipment date were the same. The Department has rejected TIE's explanation for this discrepancy since a re-order might have the same shipment date as another order, but would, by definition, have a different original sale date. For the final results, as best information available, we have applied the lowest price for each bearing model that was sold under these circumstances to all sales of the model.

Section 18: Miscellaneous Issues

A. Verification

Comment 1: Torrington and Federal-Mogul criticize the Department for its failure to conduct more extensive verifications, particularly with respect to its cancellations of cost of production verifications which were scheduled for FAG-FRG, FAG-Italy, and INA-FRG. Torrington argues that both of these firms fundamentally changed their cost systems in order to respond to the antidumping questionnaire and that both firms failed to support their data during verification in the original investigation. Also, Torrington argues that in other instances very few verification exhibits were requested by the Department, resulting in verification reports that state conclusions without supporting evidence. Finally, Torrington argues that an agency which fails to gather and consider all the relevant facts in making its decision is acting in an arbitrary or capricious manner.

Department's Position: With respect to administrative reviews, the Department is required to verify information under § 353.36(a)(l) of the Commerce Regulations if the Secretary decides that good cause for verification exists, or if a request for verification is received from an interested party no later than 120 days after publication of the notice of initiation, and the Department has not conducted a verification during either of the two immediately preceeding administrative reviews.

With respect to these reviews, the Department's decision as to whether there was good cause for verifying a certain response rested on a variety of factors or circumstances. Among the Department's considerations were the volume and significance of a particular firm's shipments from the country under review, as well as our evaluation of the credibility of the data submitted by that firm in the context of the review under consideration. Given the Department's evaluation of this information, the fact that a particular firm may have modified its cost system prior to the start of these reviews is not an overriding consideration. Also, although both Torrington and Federal-Mogul requested verification for all firms under review, given the large number of firms involved in these reviews and the time, resources and other constraints of the Department, total verification was not possible. (For example, the outbreak of hostilities in the Persian Gulf resulted in travel advisories which curtailed the Department's verification activities.) Under such circumstances, the Department was forced to reevaluate the need for verification, and certain scheduled verifications were cancelled. Although Torrington later recommended that the Department request firms which were not verified to send verification-type documents to Washington, we did not think this was advisable due to the logistical and procedural problems involved. Moreover, since these are the first administrative reviews for AFBs, there are no firms under review which have not been verified in the two previous reviews. Therefore, the Department did not need to consider this requirement for its verification decisions.

Finally, with respect to the thoroughness of the verifications which were conducted, the number of exhibits is not indicative of the thoroughness or completeness of verification itself. The need for verification exhibits must be decided in the context of the overall factual situation. Frequently, verification exhibits merely reinforce the credibility of data already in the response and are superfluous. The judgment as to whether data in the response are supported by source documents maintained by the firm should not be made on the basis of a particular document selected by the verifying officer as an exhibit to the verification report, but on the totality of

all information examined and discussed during the course of verification.

Comment 2: Torrington argues that since Nachi did not identify "cancelled" sales in its home market response, and the Department is prevented from assessing the integrity and completeness of Nachi's data, the sales listing is unusable until cancelled sales are identified and eliminated from the home market data base.

Nachi argues that the Department thoroughly verified the accuracy of its reported sales data and was completely satisfied with the integrity of the listing.

Department's Position: We examined Nachi's home market sales at verification, and we are satisfied that the firm did not include cancelled sales in its home market data base.

Comment 3: Torrington contends that FAG–FRG failed to report German-made bearings which were transshipped through other countries to the United States. Also, Torrington suggests that FAG–FRG failed to report any additional moving and selling expenses associated with sales of transshipped products.

FAG–FRG notes for the record that all German-origin bearings were reported in its response and that the response was fully verified.

Department's Position: Based on our verification, we are satisfied that FAG–FRG reported all sales of the subject merchandise which were transshipped to the United States through other countries.

Comment 4: Torrington argues that based on NSK's initial failure to provide a listing of all sales of similar merchandise (non-identical models in the same families as merchandise sold to the United States), the late correction of this deficiency at verification, and the Department's failure to fully verify these new data, the Department should reject NSK's data as submitted and should base the margin for the final results on either the margin in the LTFV investigation or the highest margin from a verified respondent in this review. Similarly, Torrington argues that information provided by Nachi at verification concerning its home market sales of cylindrical bearings should also be rejected.

Department's Position: We did not consider the new data submitted by both NSK and Nachi at verification to be such an extensive change to the previous submissions of these firms as to constitute a new response. Therefore, these data were accepted, fully verified, and used for these final results.

B. Administrative Record

Comment 5: Torrington notes that Fiat, an Italian reseller, whose sales of bearings to the United States are being reviewed under four separate orders, submitted all sales information regardless of country of origin in only the record of the Italian review. Torrington argues that since there is no information on the record for the three other reviews, the Department has no alternative but to use BIA.

Department's Position: The Department agrees with Torrington that Fiat's sales information should have been on the record for each proceeding in which the firm is involved. Proper requests for review were received for Fiat's exports of AFBs produced in all four countries, and Fiat's response properly identified the country of origin of each bearing sold. However, duplicates of Fiat's response were not filed in all four case records. Since this was just an administrative lapse, the Department has allowed Fiat to file duplicates of its responses in the case record of each of the proceedings in question for these final results of reviews.

C. Sales to Home Market Customers With U.S. Affiliates

Comment 6: Torrington contends that sales by respondents in the home market to original equipment manufacturers (OEMs) affiliated with U.S. producers should not be used as a basis for foreign market value. Torrington argues that such sales include sales that are ultimately destined for export to the United States and that the inclusion of these sales in the home market data base distorts home market price.

Department's Position: Our review of the record revealed that, in certain cases, sales were made to home market OEM customers that were affiliates of U.S. companies. However, this is normal when dealing with a global industry such as AFBs and with multinational firms. In such cases, it is reasonable for a manufacturer to believe that its sales to an OEM customer in the home market would, with certain exceptions, be consumed in that market. This is particularly true if the OEM customer has significant sales in the home market, or has not applied for a refund of indirect taxes that are rebated or not collected upon exportation of the merchandise. The exceptions would include situations in which the manufacturer was informed in advance or had reason to know the ultimate destination based on such factors as market-specific product specifications, shipping or marking instructions. In these reviews, we did not delete home market sales to OEMs with U.S. affiliates because there was no indications that the manufacturer knew, or should have known, that these sales were for other than home market consumption.

D. Data Base Problems

Comment 7: NSK requests that the Department correct erroneous data involving the processing cost for a particular cylindrical roller bearing (CRB) item, the Customs duty rate for imports of integral shaft bearings, and model information for certain home market sales. These errors were found by NSK in its response after the preliminary results were issued.

Torrington argues that the Department should not accept unsolicited corrections at the briefing stage of a review. Torrington argues that NSK's information is untimely and denies the petitioner adequate opportunity to review and comment on the new information.

Department's Position: With respect to NSK's requested corrections involving model information, we were able to determine from available information already on the record that errors had occurred and were able to correct these errors in time for these final results. However, we have not used NSK's alleged correct new data for Customs duty rates and CRB processing costs. This information is untimely, having been submitted after verification and publication of our preliminary results, and was not requested by the Department. There is precedent in support of our position (*see Asociacion Colombiana de Exportadores de Flores (ASOCOFLORES)* v. *United States*, 12 CIT , 704 F. Supp. 1114, 1124 (1989), aff'd, 901 F. 2d 1069 (Fed. Cir. 1990), cert. denied, 111 S.Ct. 136 (1990) (where the Court declined to order correction of a clerical error made by the respondent, where the error was revealed only after verification was concluded)).

The Department does have an interest in basing its decisions on accurate information. However, to accept untimely corrections to information in the response, we must be able to assess from information already on the record that an error has been made and that the new information is accurate. In this instance, we cannot determine from the information that was already on the record that the newly submitted data are accurate or that the originally submitted data are not accurate. NSK claims, but did not satisfactorily demonstrate, that a change in its

processing-cost formula was warranted. Both the original formula and the new formula were represented as valid means of determining the processing cost in question. The nature of the production process must be taken into account to determine the applicable formula, and insufficient information was presented to clearly demonstrate that a different formula should have been used. We were also unable to determine from information on the record that certain product codes referenced by NSK designated integral shaft bearings subject to a lower customs duty rate than that reported. Therefore, we have not made the corrections requested by NSK for these final results.

Comment 8: NTN asserts that, during its review of the computer printouts of the preliminary results, it discovered that the family code assigned to five particular U.S. part numbers was incorrect. The family code assigned to these part numbers incorrectly showed them as meeting ABEC-5 tolerances which correlates to high precision bearings. NTN claims that these items should have been categorized as conforming to ABEC-1 standards. NTN also claims that four other sales listed in the U.S. database are actually Canadian sales. The firm requests that the Department correct the family code for the five part numbers in question and also delete the alleged Canadian sales from the U.S. database.

Torrington asserts that the Department should decline to make any of these changes for its final results. Torrington argues that the information pertaining to the data is untimely and contrary to the statutory aim of verification of information and full participation by the domestic industry. Torrington states that NTN is the party in control of its information and that NTN is using supposed "correction to clerical errors" as a vehicle for reduction of its dumping margins in a manner precluded by the regulations and agency practice (19 CFR 353.31(a)(1)(ii), 353.31(a)(3), and 353.38(a)).

Department's Position: See Department's Position to Comment 7. In this case, NTN also submitted untimely data, and did not adequately demonstrate from informatiom already on the record that errors had occurred with respect to the sales in question. Therefore, we have not made the corrections requested by NTN for these final results.

Comment 9: After disclosure, Barden indicated that it had found two errors with respect to its home market database which, if corrected, would lower the dumping margins calculated by the Department.

Department's Position: See Department's Position to Comment 7. Since Barden's corrections were untimely, and we could not easily substantiate from the record that errors had occurred with respect to the items in question, we have not made the corrections requested by Barden for these final results.

Comment 10: After disclosure, INA-FRG requested that the Department delete from the U.S. database three listed sales which the firm claimed were sales of AFBs produced in the United States and not Germany. Also, INA-FRG requested that we delete a sample designation for certain home market sales which the firm claimed to be in error.

Department's Position: See Department's Position to Comment 7. Since INA-FRG's corrections were untimely, and we could not easily substantiate from the record that errors had occurred with respect to the items in question, we have not made the corrections requested by INA-FRG for these final results.

Comment 11: Takeshita contends that there were no home market model matches for the models it sold to the United States because the home market models are different from the U.S. models in design, precision, finish, and physical dimensions.

Department's Position: The Department does not contest Takeshita's claim that its home market models are different in many aspects from the models it sold to the United States. However, this fact has little relevance for our analysis of Takeshita's response. Takeshita submitted data on third-country sales instead of home market sales because it determined that its home market was not viable. Upon examination of aggregate sales data submitted by Takeshita in response to the Department's section A questionnaire, however, the Department determined that Takeshita's home market was viable. Our viability test was performed by class or kind of bearing without regard for the possible number of individual model matches. Thus, for the final results, we have compared Takeshita's sales to the United States with CV since Takeshita reported no home market sales.

E. Administrative Procedures

Comment 12: Torrington claims that the Department's attempt to complete these reviews within the time frame contemplated by the Department's regulations is at the expense of the Department's past and established practices for conducting administrative reviews. In particular, Torrington cites as inadequate the two-week period of time allowed by the Department between disclosure and the due dates for case briefs, and indicates the possibility that parties may be prejudiced by unannounced changes in methodology or by the Department's failure to further document the record through further verification. Torrington concludes by stating that the statutory provision that provides for annual reviews is directory, not mandatory, and the Department may exceed the specified period without losing its jurisdiction.

Department's Position: We believe that our attempts to complete these reviews in a timely manner have not been inconsistent with past practice, nor have they prejudiced participating parties in any way. We have afforded all parties an opportunity to participate fully in these reviews, and we have considered carefully all comments concerning the methodology employed for the preliminary results of these reviews. Where we determined that changes were warranted, we made them for these final results of review. This is no different from our procedures for other reviews. We are satisfied with the completeness of our verifications (See Department's Position to Comment 1) and the thoroughness of the documentation obtained during the course of these reviews. Although our time frame has been demanding for all concerned parties, we believe that any inconvenience caused by our attempts to stay within the one-year statutory period is more than balanced by the benefits derived by all interested parties in completing these reviews on time.

F. Reexports of AFBs

Comment 13: Torrington argues that the Department's failure to collect information and to calculate dumping duties on bearing imports by American Koyo, which are not sold in the United States but are reexported for sale to other countries, is contrary to the statute and inconsistent with prior agency practice. Torrington claims that the exclusion of these sales violates the intent of the statute because the importation by Koyo should not escape the law and that the sale to American Koyo is a basis for exporter's sales price. Torrington cites the Department's position in Tapered Roller Bearings Four Inches or Less in Outside Diameter from Japan; Final Results of Antidumping Duty Administrative Review, 55 FR 22,377 (June 1, 1990):

* * * In contrast, Koyo argues that the Department should not have included in its U.S. sales analysis products which its U.S. sales analysis products which its U.S. subsidiary imported into the United States and subsequently exported.

Department's Position: * * * Contrary to the respondent's assertion, merchandise entered into the customs territory of the United States is subject to antidumping duties, if within the scope of the finding. Normally, duties are remittable upon reexport through the payment of duty drawback, however, Congress has excluded antidumping duties from eligibility for duty drawback (section 1334 of the 1988 Act). Thus, the Department was correct in calculating the amount of antidumping duties on the exported products.

Department's Position: Sales to foreign purchasers by a U.S. affiliate of a respondent in a segment of an antidumping proceeding may not be used as the basis of United States price (USP). Accordingly, we cannot calculate dumping margins on such sales and have not done so in this review.

Section 731 of the Act directs the Department to impose antidumping duties on imported merchandise "in an amount equal to the amount by which the foreign market value exceeds the United States price for the merchandise." Section 751 of the Act further provides that the Department's administrative review of an antidumping duty order or finding will determine the amount of any antidumping duties and that "that determination shall be the basis for the assessment of antidumping duties on entries of the merchandise included within the determination * * *." The Department's determination of any antidumping duties must be in accordance with section 772 of the Act, which states that the USP may be the purchase price or the exporter's sales price.

Section 772(b) of the Act defines purchase price as "the price at which merchandise is purchased, or agreed to be purchased, prior to the date of importation, from a reseller or the manufacturer or producer of the merchandise for exportation to the United States." This provision is not applicable to the sales in question, because the provision contemplates a sale to an unrelated party prior to the date of importation (*see PQ Corporation v. United States*, 652 F. Supp. 724,731 (CIT 1987)).

Subsection 772(c) of the Act defines exporter's sales price as "the price at which merchandise is sold or likely to be sold in the United States, before or after the time of importation, by or for the account of the exporter * * *." Thus, for this provision to apply, there must be a sale in the United States. That sale cannot be a transfer to a related party in the United States, because the statute defines the exporter to include the importer if they are related (*see* section 771(13) of the Act.) Nor can this be a sale in the United States to a customer located outside the United States. Such sales are export sales and are not suitable for a determination of USP.

Accordingly, when a foreign manufacturer exports merchandise to its U.S. affiliate, which then sells the merchandise outside the United States, there is no USP and hence no basis for determining any antidumping duties.

Section 779 of the Act, which prohibits drawback of antidumping duties, does not affect our determination of the amount of antidumping duties in accordance with sections 751 and 772 of the Act, nor the proper collection or refund of the difference between the duties determined and the estimated antidumping duties deposited on entry of the merchandise into the United States. The refund of deposits of estimated antidumping duties, when greater than the amount of antidumping duties determined in accordance with section 751, is not a drawback of antidumping duties. Such refunds are merely a mechanism to conform the assessment of antidumping duties to the determination of the Department in its administrative review, as required by section 751 of the Act.

G. Country of Origin

Comment 14: Torrington notes that INA was unable to determine the country of origin for all bearing sales reported in its home market sales listing, and argues that this calls into question the fundamental reliability of INA's home market listing.

INA asserts that it accurately reported the country of origin of bearings it sold to the United States and in the home market.

Department's Position: Based on our verification, the Department is satisfied that INA accurately reported country of origin data in its response.

Comment 15: FAG–FRG argues that certain sales in its U.S. sales database were in fact U.S.-manufactured bearings and should be deleted.

Torrington asserts that the Department should first substantiate that these bearings were indeed U.S.-manufactured and contends that the Department's verification report did not explain how the Department determined the country of origin.

FAG–FRG counters by citing a section of the Department's verification report which discusses the methodology for verifying the country of origin of these sales.

Department's Position: As FAG–FRG points out, we verified country-of-origin data from source documents, and determined that the sales in question were U.S.-manufactured. Therefore, we have deleted these sales from the U.S. database.

H. Disclosure Materials

Comment 16: INA–FRG argues that the Department did not provide adequate background materials for INA–FRG to determine definitively if the Department calculated correctly the FMV for the transactions included in its preliminary margin calculation.

Department's Position: The preliminary results for INA were based on approximately 65 percent of the sales due to a formatting error in one of the variables. The remaining sales were not compared. However, the information we disclosed to INA provided it with our complete methodology and the sales we used for the preliminary results. We have corrected the formatting error in the programming for these final results.

I. Requests for Review

Comment 17: Fiat contends that the Department should have initiated an administrative review covering sales of Japanese origin bearings which Fiat exported to the United States during the period of review. In support of its position, the firm cites three requests for review submitted by one of its U.S. importers. Fiat contends that these requests, if reviewed correctly, should have resulted in a review of the firm's exports of bearings from Japan. Fiat further cites the Department's decision to review sales of bearings by Dowty Rotol from multiple countries after an importer clarified its review request shortly after the Department had initiated a review for only U.K.-origin bearings exported by Dowty Rotol.

Department's Position: With respect to the requests for review we received for Fiat, none explicitly requested that we conduct a review for Japanese-made bearings which Fiat sold to the United States. However, the Department did receive requests in proper form and did initiate reviews for German-, French-, and Italian-origin bearings sold by Fiat to the United States. For each of these reviews, Fiat was listed separately under the appropriate country in the Notice of Initiation of Antidumping Administrative Reviews, 55 FR 23575 (June 11, 1990). At that time, the Department had no information to conclude that an interested party had intended to request a review for Japanese bearings exported by Fiat. In fact, the Department was not informed

of this until after the preliminary results and disclosure. The Department believes that the initiation notice was sufficiently clear to allow an interested party to bring to our attention any problems prior to the preliminary results. This is exactly what happened in the case of Dowty Rotol; an interested party informed the Department, after initiation of these reviews, that the request was meant to cover all imports from Dowty Rotol in the United Kingdom regardless of country of origin of the bearings. Based on this clarification, the Department expanded the review coverage to include German-, French-, and Italian-made bearings, as well as those produced in the United Kingdom. However, because we did not receive the clarification for Fiat until after disclosure and evaluation of the preliminary results, we believe it would be inappropriate to expand our review coverage at this late date.

J. Related Party Home Market Sales

Comment 18: Torrington argues that since Nachi did not demonstrate that its home market sales to related parties are at arm's-length prices, these sales should not be used to determine FMV.

Department's Position: We agree with Torrington, and we have not used Nachi's home market sales to related customers in calculating the final dumping margins.

K. Basis for Price-to-Price Comparisons

Comment 19: NMB/Pelmec argues that based on its interpretation of the Act, the Department is obligated to compare sales of "such or similar merchandise sold in the United States" with sales of the same category of such or similar merchandise sold in the home market (or to third countries). This procedure would require the Department to compare a weighted-average USP with a weighted-average FMV, as opposed to comparing an individual U.S. sale with a weighted-average FMV.

Department's Position: Although section 777(A) of the Act allows the Department to average U.S. sales under certain conditions, the Department is not compelled to do so. The Department's preference is not to average USP because of the possibility that dumping margins may be masked by the averaging process. This would allow a foreign seller to dump selectively. Therefore, for purposes of these reviews, we have compared each USP with a weighted-average FMV.

L. Revised Tape Submissions

Comment 20: Torrington urges that certain purchase price transactions made by NTN, which the Department discovered as missing during the home market sales verification, be used by the Department for calculating the final results.

NTN points out that the missing information was contained in revised computer tapes which were submitted at the Department's request prior to the preliminary results, but which were not used in the Department's preliminary calculations. NTN also urges the Department to use these data.

Department's Position: Although we received the revised tapes too late to incorporate the information into our preliminary results, we considered the submission timely for purposes of our final results. Since NTN's revisions were timely and at the Department's request, we have used them for these final results.

M. SKF-Specific Issues

Comment 21: Torrington asserts that SKF should be required to disclose information concerning its April 6, 1990, acquisition of Chicago Rawhide, a seal manufacturer and bearing wholesaler.

Torrington suggests that SKF and Chicago Rawhide may have been acting as related parties before the acquisition date, and notes that SKF failed to submit detailed information and supporting documentation which was requested by the Department in a deficiency letter. Because SKF has not submitted the requested information, the petitioner states that the Department is required to reject the U.S. sales response and use BIA, in accordance with 19 U.S.C. 1677e(f). Alternatively, the Department could delete all sales to Chicago Rawhide from the U.S. sales response.

SKF–USA contends that sales made to Chicago Rawhide prior to April 6, 1990, were at arm's-length prices and that there was no relationship prior to that date. SKF also asserts that it was unable to provide acquisition documents because they are covered by a non-disclosure agreement between the parties and the submission of such documents would violate the agreement.

Department's Position: We have not received any convincing evidence that Chicago Rawhide was related to SKF prior to April 6, 1990. Therefore, we have not deleted these sales from SKF's U.S. sales response.

Comment 22: Torrington claims that SKF-Sweden failed to report all home market sales of the same family, as defined by the Department. Specifically, Torrington notes that SKF-Sweden did not report sales of "solid" or "poly" oil bearings on the grounds that these bearings did not belong to the same family as any bearings exported to the United States. Petitioner claims that these oil bearings share the characteristics of other bearings exported to the United States, as defined by the Department's questionnaire. SKF, according to the petitioner, improperly excluded these sales from its home market data base and therefore, the home market sales response is deficient. Because of this deficiency, the petitioner urges the Department to use BIA for all comparisons involving families that should have been reported.

SKF asserts that the Department's decision not to treat solid oil bearings as "such or similar" merchandise for the preliminary results was correct because of the unique physical and commercial characteristics of the bearings. SKF explains that "solid" or "poly" oil bearings contain a semi-hard plastic casing which surrounds and seals all the internal components of a bearing. SKF argues that oil bearings are used in limited circumstances and sold to a limited number of purchasers in small quantities. Because of their unique attributes and limited market, SKF claims that solid oil bearings are both physically and commercially distinct from standard bearings. SKF further contends that it is within the Department's authority to determine what merchandise is "such or similar." *Timken* v. *U.S.*, 10 CIT 86, 630 F. Supp. 1327 (1986).

Department's Position: According to the Department's questionnaire instructions, respondents were to group home market bearings into closely related families, defined according to eight criteria having to do with design, physical characteristics, and precision rating. However, we recognized that there may be special cases in which particular bearing types met each of the eight criteria, yet, based on other characteristics, could not reasonably be compared to a bearing sold to the United States within the meaning of section 771(16) of the Act. With respect to the bearings in question, the Department believes that "solid" or "poly" oil bearings are sufficiently unique, both physically and commercially, to be excluded from the category of "such or similar merchandise" for the purposes of this review.

Comment 23: Torrington alleges that bearings produced by SKF, in the five countries subject to antidumping orders, have been transshipped to the United States through SKF's Austrian affiliates, SKF Steyre GmbH and Steyr Walzlager GmbH, and that these sales have not been reported to the Department by

SKF. Torrington argues that information it submitted to the Department in support of its allegation was sufficient to compel the Department to investigate the issue further. This information included a Steyr price list of bearings offered for sale in the United States, including the country of manufacture of the bearings. Torrington argues that the Department should require SKF to provide additional information and supporting documentation regarding the sources of Steyr bearings and the countries to which these bearings were exported.

Torrington further argues that the Department erred when, in the preliminary results, it considered the information petitioner submitted concerning Steyr as "inadequate." Petitioner cites *Freeport Minerals (Freeport-McMoran, Inc.)* v. *United States*, 776 F.2d 1029, 1032 (Fed. Cir. 1985), where the standard of adequacy of information was information that was "reasonably available" to the petitioner. To expect or require the petitioner to submit additional information that is not available to the petitioner, but only available to the Department or the respondent, would be an "impermissible burden" on the petitioner and contrary to the Court's ruling in Freeport.

Torrington concludes that without further investigation, SKF's U.S. sales response cannot be considered reliable and should be rejected in its entirety.

SKF contends that evidence submitted on the record demonstrates that the SKF Steyr companies have not sold the subject merchandise in the United States during the period of review and thereafter. SKF argues that sworn affidavits from SKF officials confirm the fact that none of the SKF Austrian companies have imported or sold the subject merchandise in the United States during or after the review period. Finally, SKF indicates that since Steyr did not sell the subject merchandise to the United States, there is no further information which SKF can submit which is relevant to these reviews.

Department's Position: Torrington's allegations of transshipment were submitted late in these reviews, well after the completion of verifications. Nevertheless, we reviewed Torrington's allegations in depth and requested that SKF respond to them. Based on our review of all information submitted from all sources, we concluded that Torrington's allegations were inadequate because they failed to establish that there had actually been sales of the subject merchandise to the United States during the review period. At best, these allegations suggest the possibility that such sales may have occurred.

The Freeport Minerals case is easily distinguished. In that case, the Court ruled that Commerce abused its discretion by failing to obtain updated sales information from the respondents for purposes of the Department's determination to revoke the antidumping finding on elemental sulfur from Canada. Because the Department had not conducted a section 751 review within a year of its tentative revocation determination and had refused to require the Canadian respondents to submit updated sales data, the petitioner had no means of acquiring more substantial evidence than it had already submitted. In contrast, in the present review, the Department did not require any information from SKF which would not be reasonably available to the petitioner. The Department acted upon Torrington's allegation by requiring SKF to submit evidence regarding its sales from Austria. The Department analyzed SKF's information (which was also made available to Torrington) in light of Torrington's allegations and determined that such information did not lead to the conclusion that SKF had transshipped bearings through Austria.

Also, in light of the evidence submitted by SKF for the record, such as affidavits from Steyr officials, the Department believes that the SKF companies under review have fully reported all relevant transactions. Therefore, the Department finds SKF's U.S. sales response to be reliable.

Comment 24: Torrington argues that the Department should reaffirm its previous request and require SKF-France and SKF-U.K. to report all home market sales regardless of the manufacturer and country of origin. Torrington notes that since there were substantial difficulties in the original investigations of SKF-France and SKF-UK regarding the country of origin, the Department required a full reporting of all home market sales with identifying variables for manufacturer and country of origin. Torrington contends that the Department performed only a limited verification of the country-of-origin issue and that neither the U.S. nor the SKF-France home market verification reports describe any attempt of the team to verify SKF's country-of-origin methodology.

According to Torrington, prior experience with this issue and the fact that SKF-UK has not explained on the record how it is able to trace specific bearings from manufacture to final sale suggests that SKF-UK is unable to identify country of origin. Torrington argues that, in light of these considerations, and due to SKF's failure to report all sales with the requested country of origin and manufacturer information, the Department is required to use BIA for all home market sales.

SKF-France argues that it demonstrated at verification that the country of origin has been accurately reported. SKF-France claims that the Department thoroughly explored the country-of-origin data relied upon by SKF-France and was able to verify the accuracy of the codes used in assigning country of origin.

SKF-UK argues that it was reasonable for the Department to limit SKF-UK's home market reporting to products manufactured by SKF-UK in the UK since those products are the only appropriate home market sales to use in determining FMV. SKF-UK claims that at each of the SKF verifications conducted by the Department, each of the SKF companies demonstrated how it determines the country of origin of the merchandise it sells and verified the accuracy of the sales listings which were based on those country of origin listings. SKF contends that verifications of other SKF companies noted no discrepancies concerning SKF's reported sales files and the fact that the same country of origin methodology was employed by each of the SKF companies suggests that SKF-UK has accurately reported country of origin.

Department's Position: Initially the Department required the SKF group to report all sales during the required reporting period in both the U.S. and home markets regardless of whether the merchandise was produced by SKF in the applicable country subject to the order. SKF was to indicate the country of origin and the name of the manufacturer for all reported sales. However, after receiving our questionnaire, SKF appealed to the Department to reduce its reporting burden on the grounds that sales not subject to an order cannot be used to establish a rate. The Department reconsidered its request and allowed the SKF firms to report only sales of AFBs that were produced in countries subject to orders. However, the Department indicated that it must be satisfied at verification that SKF had in fact reported its sales correctly. Subsequently, we have conducted verifications in four of the five countries subject to order and in the United States, and we are satisfied that the SKF group reported its sales correctly

N. Traded Goods

Comment 25: INA-FRG contends that the Department should not use its sales of traded goods (non-German origin AFBs purchased by INA-FRG for resale) in its analysis of home market or U.S. sales.

Department's Position: Only German-origin bearings produced by INA-FRG have been used in the calculations of the margins for these final results.

O. Presale Freight

Comment 26: Federal-Mogul claims that the Department double-counted Nachi's presale freight expenses with respect to comparisons involving home market sales and ESP. Federal-Mogul maintains that the Department deducted this expense as both a home market indirect selling expense to offset U.S. indirect selling expenses, and also deducted it again as a movement expense. Federal-Mogul contends that presale freight should be deducted only once as a home market indirect selling expense to offset U.S. indirect selling expenses.

Nachi agrees that its presale inland freight from factory to warehouse should be deducted only once. However, Nachi argues that it should be deducted from home market price as a movement expense.

Department's Position: For our preliminary results, we inadvertently double counted Nachi's presale freight as described by Federal-Mogul. However, we agree with Nachi that this expense is a movement expense and should be deducted only once as such. This allows us to compare both the ex-factory USP and home market sales on an equitable basis.

P. Related-Party Sales

Comment 27: Koyo maintains that the Department is required to use home market sales to related parties in its analysis, as Koyo demonstrated the arm's-length nature of these transactions in its supplementary response. According to Koyo, an analysis of the sales database would show that there is no significant difference between home market prices to related and unrelated purchasers. Furthermore, the Department should have addressed this issue at verification, so that Koyo would have had the opportunity to provide further evidence. Koyo asserts that where arm's-length home market prices exist, the Department is required by law to base FMV on those prices before resorting to the use of constructed value.

Federal-Mogul points out that the Department's regulations provide that it may use related party sales "if satisfied that the price is comparable" to prices involved in arm's-length transactions (19 CFR 353.45(a)). Federal-Mogul contends that Koyo made no claim that it satisfied the Department's criteria for arm's-length comparability of its related party prices; rather, Koyo claimed to have submitted evidence "demonstrating that these were arm's-length transactions." In Federal-Mogul's view, however, the "evidence" cited is hopelessly conflicting with respect to price comparability between related and unrelated parties. Therefore, Federal-Mogul believes the Department should continue to exclude Koyo's related party transactions from FMV determinations.

Department's Position: Koyo failed to demonstrate that its home market sales to related parties were made at arm's length. In fact, Koyo's own analysis supports a conclusion that such sales were not arm's-length transactions. The information provided by Koyo purportedly showed that some related party sales were made at prices which were higher than prices to unrelated customers, while others were made at lower prices. Koyo claimed that this demonstrates the arm's-length nature of related-party sales, since there was no pattern to the price comparisons. We disagree. The fact that some related-party sales were made at arm's length is not an adequate basis to conclude that such sales were generally made at arm's length. Furthermore, Koyo's own analysis indicated that, had its actual sales to related customers been made at prices which unrelated parties paid for the same merchandise, Koyo's total revenue would have been substantially greater. Therefore, we found no basis to conclude that related-party sales in the home market were made at arm's length and disregarded such sales.

Comment 28: Federal-Mogul asserts that the preliminary results for IJK's purchase price sales were based on an analysis that disregards a large number of the respondent's relevant U.S. transactions and is, therefore, patently inadequate. The Department was limited to a few home market transactions for purposes of deriving FMV because the majority of sales were made to one related purchaser. Therefore, Federal-Mogul argues that for purposes of the final results, the Department should find IJK's home market sales to unrelated parties to be insufficient to form a basis for comparison to IJK's U.S. sales. Moreover, Federal-Mogul argues that IJK's constructed value data were equally inadequate for determining FMVs. Federal-Mogul asserts that if the Department lacks the necessary information to derive constructed values for all of IJK's purchase price transactions, the firm's response should be considered inadequate and the Department should resort to the use of adverse BIA for purposes of its final results. IJK maintains that it cooperated with every aspect of the Department's requests during the review period and that Federal-Mogul had ample opportunity to file comments regarding the inadequacy of IJK's response. According to IJK, Federal-Mogul has failed to point to any factual inadequacy in IJK's submissions. Moreover, to request an adverse BIA is contrary to the Department's practice of using BIA as a sanction by which it insures an adequate and complete response. IJK cites Tapered Roller Bearings Four Inches or Less in Outside Diameter and Certain Components Thereof from Japan, Final Results of Antidumping Administrative Review, 55 FR 38720, 38725 (September 20, 1990), in support of its position. IJK states that it replied fully and accurately to each request by the Department for information. To use any BIA, let alone adverse BIA, would be contrary to the intent of its use. Moreover, IJK contends that the Department verified the arm's-length relationship between IJK and its customer. The Department, therefore, should not have excluded IJK's sales to the customer in question, but should expand the home market data base to meet Federal-Mogul's objections and use these sales transactions as BIA.

Department's Position: Our questionnaire required any respondent who reported related-party home market sales and who believed such sales should be used in determining FMV to demonstrate, to the Department's satisfaction, that those sales were made at arm's length. In its initial response, IJK did not claim that its related party sales were arm's-length transactions and did not provide any analysis which would demonstrate that they were. In a supplemental request for information, we asked IJK to state whether its sales to related parties were arm's-length in nature and, if so, to explain. IJK's response was a mere assertion that such sales were made at arm's length and did not include any explanation or analysis. Furthermore, the information provided at verification was inadequate to show the arm's-length nature of IJK's related-party sales, since it included no comparison of prices to related and unrelated customers. Therefore, we have not used sales made by IJK to related parties in the home market for comparison to IJK's U.S. sales for the purpose of calculating antidumping margins.

The Department determined that IJK's reported constructed value data were acceptable for our purposes. In cases where constructed value data were provided by IJK for unmatched U.S. sales, we used that data to calculate dumping margins. For any U.S. sales for which no appropriate sale-to-sale or constructed value data were provided, we used BIA (see "Best Information Available" section of this issues appendix).

Q. Export Subsidies

Comment 29: NMB/Pelmec-Singapore and NMB/Pelmec-Thai contend that any countervailing duties imposed on the subject merchandise to account for an export subsidy should be added to the USP.

Department's Position: Article VI.5 of the General Agreement on Tariffs and Trade provides that "(n)o * * * product shall be subject to both antidumping and countervailing duties (CVD) to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act.

The current antidumping duty administrative review periods covering antifriction bearings from Singapore and Thailand extend from November 9, 1988 through April 30, 1990. The corresponding countervailing duty administrative review periods extend from September 6, 1988 through January 3, 1989 and from May 3, 1989 through December 31, 1989. There was a hiatus in suspension of countervailing duty liquidation for the period January 4, 1989 through May 2, 1989. Because the CVD reviews for the period January 1, 1990 through December 31, 1990 have not yet been completed, we have no concurrent CVD rate for the period January 1, 1990 through April 30, 1990 to adjust antidumping duty liability to account for export subsidies for those four months for purposes of assessment. Therefore, we will not issue or forward to the U.S. Customs Service liquidation instructions for entries of subject merchandise from Thailand or Singapore during that four-month period until issuance of the final results of the next countervailing duty reviews.

Since the assessment rate for ESP sales is an *ad valorem* rate, we will reduce the antidumping duty rate by the most recent rate attributable to the export subsidies found in the current countervailing duty review. See Final Results of Review: Countervailing Duty Orders on Antifriction Bearings and Parts Thereof from Singapore, 56 FR 26384 (1991).

For assessment of purchase price sales from Singapore, we will increase the USP by the rate attributable to the export subsidies found in the current countervailing duty review. The adjustment to USP will be made to reflect the different rates in effect during the period of review. From November 9, 1988 through January 3, 1989 the rate was zero; from January 3, 1989 through May 2, 1989 there was no suspension of CVD liquidation; from May 3, 1989 through December 31, 1989 the rate was 2.97 percent. We will calculate the potential uncollected dumping duties (PUDD) using this increased USP.

For assessment of ESP sales from Thailand, we will reduce the antidumping duty rate by the rate attributable to the export subsidies found in the original countervailing duty investigation since a review of the CVD order on AFBs for Thailand was not requested. See Final Affirmative Countervailing Duty Determination and Partial Countervailing Duty Order: Ball Bearings and Parts Thereof from Thailand; Final Negative Countervailing Duty Determinations: Antifriction Bearings (Other than Ball or Tapered Roller Bearings) and Parts Thereof from Thailand, 54 FR 19130 (1989).

For assessment of purchase price sales from Thailand we will increase the USP by the the rate attributable to the export subsidies found in the current countervailing duty review. The adjustment to USP will be made to reflect the different rates in effect during the period of review. From November 9, 1988 through January 3, 1989 the rate was 17.83 percent; from January 3, 1989 through May 2, 1989 there was no suspension of CVD liquidation; from May 3, 1989 through December 31, 1989 the rate was 21.54 percent. We will calculate the potential uncollected dumping duties (PUDD) using this increased USP.

We will instruct the U.S. Customs Service to assess the appropriate rate on the entered value of all units (or amount per unit) on all units included in each ESP/PP entry made by a particular importer during the period of review. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

For cash deposit rates, the antidumping duty cash deposit rate determined in this review for the subject merchandise from Singapore will be reduced by the most recent rate attributable to the export subsidies found in the concurrent countervailing duty review. Since no concurrent Thai countervailing duty review was requested, the antidumping duty cash deposit rate determined in this review of subject merchandise from Thailand will be reduced by the final rate attributable to the export subsidies found in the original countervailing duty investigation.

R. Resellers (FMV)

Comment 30: Peer Int'l argues that the Department should base USP on the price customers pay to Peer Int'l, not on the price Peer Int'l pays to its suppliers. Respondent claims that there is no statutory reason why the Department should base USP on the price Peer Int'l pays to its suppliers.

Further, Peer Int'l asserts that FMV should be based upon the constructed value (CV) data it submitted which consisted of its acquisition costs, SG&A, and profit. Because the price charged by Peer Int'l to its U.S. customers was at all times significantly greater than the price Peer Int'l paid its suppliers, there is no evidence of middleman dumping; therefore, there is no reason for the Department not to use the CV data as the basis for FMV.

Department's Position: The Department found that all of Peer Int'l's suppliers had knowledge at the time they sold their merchandise to Peer Int'l that those sales were destined for the United States. Because these suppliers had knowledge, they effectively acted as the exporters of their merchandise, not Peer Int'l. As such, the Department considers them the source of any dumping activity. Therefore, for cash deposit purposes, the Department has not calculated a rate for Peer Int'l. Instead, importers purchasing the subject merchandise sold by Peer Int'l must pay the deposit established for the producer of that merchandise. If no cash deposit was established for such a producer, the importer must pay the "all other" cash deposit rate. The Department will assess duties on an importer-specific basis. For a more detailed discussion of cash deposit and assessment rates, see the section on "Assessment" in the Issues Appendix.

Comment 31: Peer Int'l states that, if the Department insists on basing Peer Int'l's margin on sales from Peer Int'l's suppliers to Peer Int'l, then the methodology proposed by the Department in the preliminary results of review (a single margin for Peer Int'l based upon a weighted-average of the margins found on sales of its suppliers to Peer Int'l) is correct. The company further states that the Department should continue to base FMV for the final results for two of its suppliers on the constructed value (CV) data it provided. Respondent claims that the use of any other methodology would be punitive to Peer Int'l as it has supplied

all requisite information to the Department.

In addition, Peer Int'l argues that, if the Department bases Peer Int'l's margin on margins calculated for Peer Int'l's suppliers, respondent would be unfairly penalized, if those margins, because of inadvertent errors, include some element of BIA. Peer Int'l further argues that, in conducting its analysis, the Department should consider the size of a transaction so that sales of several thousand bearings are not compared to negligible quantities in the home market. Moreover, Peer Int'l states that, where suppliers' CV data are missing, it would be punitive and unreasonable not to base FMV on the CV data supplied by Peer Int'l. In such instances, the Department should base USP on the price paid to Peer Int'l by its customers.

Department's Position: Because the Department is not calculating an antidumping duty rate for Peer Int'l (see Department's Position to Comment 1), there is no reason to address comments regarding the calculation of such a rate.

S. Contemporaneous Window

Comment 32: Dowty claims that the Department should use Dowty's home market prices, instead of constructed value, to determine FMV. Dowty states that the Department's application of the 90/60 day rule resulted in only two unmatched sales for which we used CV as FMV. Respondent contends that the 90/60 day rule is merely a guideline and cites Certain Valves and Connections of Brass for Use in Fire Protection Systems from Italy, 56 FR 5388, 5389 (1991). Dowty argues that the Department should depart from the 90/60 day guideline for the two unmatched sales and recognize home market sales outside the 90/60 day window as contemporaneous for the final results.

Department's Position: The 90/60 day window extends from ninety days prior to sixty days after the date of sale. When necessary, the Department searches, one month at a time, within this window to find an identical match for a U.S. sale. The Department has applied the 90/60 day guideline as standard practice. (See Final Results of Antidumping Duty Administrative Review: Brass Sheet and Strip From the Republic of Korea, 54 FR 33257 (1989) and Final Results of Antidumping Duty Administrative Review: Color Television Receivers, Except for Video Monitors, From Taiwan, 51 FR 46903 (1988)). In the case cited by respondent, the Department departed from its guideline because the seller of the subject merchandise adhered to a price list. Therefore, a contemporaneous period was established by the date of the change in the list prices making reference to the 90/60 day guideline unnecessary. In these reviews, the Department analyzed the data of over sixty companies. We have consistently applied the 90/60 day guideline (with adaptation for the sampling methodology, where appropriate) to our analyses of these companies, regardless of the resulting number of sales matched. We applied the 90/60 day guideline to Dowty's transactions because we did not sample them. We believe it would be inappropriate to depart from adherence to the 90/60 day guideline in these reviews solely to accommodate one respondent.

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[A-427-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On March 15, 1991, the Department of Commerce published the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs), from France (56 FR 11178). The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 10 manufacturers/exporters and the period November 9, 1988 through April 30, 1990.

Based on our analysis of the comments received and the correction of certain inadvertent programming and clerical errors, we have changed the preliminary results. The final margins for the reviewed firms for each class or kind of merchandise are listed below in the section "Final Results of Review."

EFFECTIVE DATE: July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Diminich (SKF France, SARMA, and ADR), Thomas McGinty (SNECMA, Dowty Rotol, Turbomeca, Aerospatiale, and Fiat), Maureen McPhillips (SNR and INA Roulements), Laurel Lynn (Pratt & Whitney), Ileana Crowley, or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On June 11, 1990, in accordance with 19 CFR 353.22(c), the Department of Commerce (the Department) initiated administrative reviews of the antidumping duty orders on ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof, from France for the period November 9, 1988 through April 30, 1990 (55 FR 23575).

On March 15, 1991, we published the preliminary results, and termination in part, of these administrative reviews (56 FR 11178). We gave interested parties an opportunity to comment on our preliminary results. At the request of certain interested parties, we held public hearings during the week of April 22, 1991. Because there are concurrent administrative reviews of imports of AFBs from nine countries, we held a hearing on general issues pertaining to all nine countries on April 22, 1991, and a country-specific hearing for France on April 23, 1991.

Issues Appendix

All issues raised in the case and rebuttal briefs by parties to the nine concurrent administrative reviews of AFBs are addressed in the "Issues Appendix" which is appended to the "Notice of Final Results of Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany" which is published concurrently with this notice (hereinafter "Issues Appendix"). The first part of the Issues Appendix addresses all general issues raised in these reviews, and our determinations with respect to each issue. The next part addresses all remaining comments filed by the parties to these proceedings according to subject and then by company within each subject. See the Table of Contents to the Issues Appendix for a complete listing of all issues raised and addressed.

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), and parts thereof, and constitute the following "classes or kinds" of merchandise: ball bearings and parts thereof (BBs), cylindrical roller bearings and parts

thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). For a detailed description of the products covered under BBs, CRBs, and SPBs, please see the section on "Scope" in the Issues Appendix.

Reporting Requirements

Our review of the information provided on the record by respondents disclosed that there were millions of AFB sales to the United States, the home market and third countries during the period of review (POR). The enormous number of transactions, coupled with the fact that reviews were requested for over sixty foreign producers and exporters, underscored the need to formulate a reasonable sampling methodology in order for the parties and the Department to cope with the resultant costs and administrative burdens.

In response to these problems, and after carefully considering comments on, and suggested alternatives to, our initial sampling proposal, we adopted a sampling plan as authorized under section 777A of the Tariff Act of 1930, as amended (the Act). Under this plan (see "Memorandum to File" dated August 27, 1990), respondents with over 2000 exporter's sales price (ESP) transactions for any class or kind of merchandise were requested to submit data for all U.S. sales of this class or kind that were made during a selected sample of nine one-week periods. These nine weeks were chosen at random, one from each two-month interval during the POR. For each U.S. sale reported during the selected weeks, we requested that respondents report all sales of identical and similar AFBs sold in the home market during the month corresponding to the sample week for U.S. sales. The dumping margins calculated for this sample group of ESP sales were weight-averaged with the dumping margins for purchase price transactions to calculate each respondent's overall dumping margin.

No comments were received from interested parties concerning the basic validity of our sampling process.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information otherwise available (BIA) is appropriate for several firms. For certain firms, total BIA was necessary, while for other firms, only partial BIA was applied. For a discussion of our general application of BIA, see the section on "Best Information Available" in the Issues Appendix. The firms to which total BIA was applied are also identified in the "Best Information Available" section of the Issues Appendix.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes in these final results.

- Where applicable, certain programming and clerical errors in our preliminary results have been corrected. Any alleged programming or clerical errors pertaining to the calculation and treatment of charges and adjustments, cost of production and constructed value with which we do not agree are discussed in the relevant sections of the Issues Appendix.
- In accordance with section 773(b) of the Act, in determining whether to disregard home market sales made at prices below the cost of production, we examined whether such sales have been made in substantial quantities over an extended period of time. When less than 10 percent of the home market sales of each model were at prices below the cost of production, we did not disregard any sales and made normal price-to-price comparisons. When more than 10 percent, but less than 90 percent of the home market sales of a particular model were determined to be below cost, we excluded the below-cost home market sales from our calculation of FMV provided that these below cost sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model for purposes of calculating foreign market value (FMV).

No home market below-cost sales were disregarded unless they were determined to be over an extended period of time.

We have determined that the threshold for "extended period of time" is met when there are below-cost home market sales in more than two months of the POR. We made an exception to this threshold requirement when a particular model was sold in less than three months during the POR. In such cases, where sales below cost occurred in each of the months in which such models had been sold, we concluded that these sales of particular models had been made below cost over an extended period of time.

Home market sales of obsolete merchandise and distress sales were not disregarded from our analysis unless there was documented information on the record demonstrating that such sales were outside the ordinary course of trade.

Since none of the respondents has submitted information indicating that any of its sales below cost were at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade," we are unable to conclude that the costs of production of such sales have been recovered within a reasonable period. For a more complete discussion of our determination with respect to the cost of production test, see the section on "Cost of Production" in the Issues Appendix.

- For our preliminary results, we compared U.S. and home market sales at the same level of trade. If we did not find contemporaneous sales of such or similar merchandise at the same level of trade, we used constructed value (CV) as the basis for FMV. However, as a result of our review of comments filed by the parties to these proceedings, we have changed our comparison procedures.

For purposes of these final results of review, we first sought contemporaneous sales of identical merchandise at the same level of trade in the home market as that of the U.S. sale. If we were unable to find a match, we then looked for contemporaneous sales of identical merchandise at the next level of trade. (Our analysis of the various levels of trade reported by the respondents led us to conclude that sales of AFBs are made at two levels of trade: (1) Original equipment manufacturers, and (2) distributors, retailers and aftermarket sellers.) If we were unable to find identical matches at the next level of trade, we then sought contemporaneous home market sales of the same family as the U.S. bearing at the same level of trade. If unsuccessful, we then sought contemporaneous home market sales of the same family at the next level of trade before using CV as the basis for FMV (see the section on "Level of Trade" in the Issues Appendix).

- Based on our analysis of comments filed by parties to these proceedings, we have modified or altered our treatment of certain charges and adjustments. These modifications or alterations are discussed in the relevant sections of the Issues Appendix. The most significant modification pertains to our treatment of value-added taxes (VAT) and consumption taxes. Under section 772(d)(1)(c) of the Act, U.S. price must be increased by the "* * * amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the

exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation." Accordingly, we have calculated an amount for the VAT or consumption tax, and added it to U.S. price. In order to ensure tax-neutral results, we have made a circumstance of sale adjustment to the home market price. When home market prices were reported net of VAT or consumption tax, we were able to effect a circumstance of sale adjustment by adding the amount of the tax calculated for the U.S. sale to the home market price. For a more complete discussion of our treatment of these taxes, see the section on "Value-Added Taxes" in the Issues Appendix.

Analysis of Comments Received

See the Issues Appendix which is appended to the "Notice of Final Results of Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany" which is published concurrently with this notice.

Final Results of Review

We determine the following percentage margins to exist for the period November 9, 1988 through April 30, 1990.

Company	Ball bearings	Cylindrical roller bearings	Spherical plain bearings
SKF-France, SARMA, ADR	7.79	(1)	26.31
SNECMA	0.21	0.24	(2)
FiatAvio	0.00	(1)	(2)
ADH	2.64	3.15	4.87
Turbomeca	6.85	10.63	(1)
Pratt & Whitney Canada,Inc.	4.33	2.07	(1)
SNR	2.03	1.08	(1)
INA-France	66.42	18.37	39.00
SNFA	66.42	18.37	(2)
Dowty Rotol	0.00	(1)	(2)
All Others	7.79	10.63	26.31

[1] No sales to the U.S. during the period.
[2] Not subject to review.

Cash Deposit Requirements

To calculate the cash deposit rate for each respondent, we divided the total potential uncollected dumping duties (PUDD) for each exporter by the total net USP value for that exporter's sales during the review period under each order. In order to derive a single deposit rate for each class or kind of merchandise for each respondent (i.e., each exporter or manufacturer included in these reviews), we weight-averaged the purchase price (PP) and exporter's sales price (ESP) deposit rates (using the combined U.S. value of PP sales and ESP sales as the weighting factor). To accomplish this where we sampled ESP sales, we first approximated a total PUDD for all ESP sales by dividing the sample ESP PUDD by the ratio of sampled weeks to total weeks in the review period. We then approximated a total net USP value for all ESP sales during the review period by dividing the sampled ESP total net value by the ratio of sampled weeks to total weeks in the review period.

We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after, the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an unrelated customer in the United States will receive the exporter's deposit rate for the appropriate class or kind of merchandise.

Entries of products subject to the orders that had passed through foreign trade zones (FTZs) before entry into U.S. Customs territory will be treated the same as other entries of products subject to the orders to the extent that such treatment is not inconsistent with our handling of FTZs. See the section on "Foreign Trade Zones" in the Issues Appendix.

The following deposit requirements will be effective for all shipments of French-origin antifriction bearings (other than tapered roller bearings) and parts thereof, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act:

(1) For the reviewed companies, the cash deposit rate will be that established in the final results of these reviews;

(2) For merchandise exported by manufacturers or exporters not covered in these reviews, but covered in the final determinations of sales at less than fair value (the LTFV investigations), the cash deposit rate will continue to be the rate published in the final determinations in the LTFV investigations;

(3) If the exporter is not a firm covered in these reviews or the original investigations, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews or, if not covered in these reviews, the rate from the LTFV investigations;

(4) The cash deposit rate for all other manufacturers which export the subject merchandise shall be the "All Others" rate listed in the section "Final Results of Review" above for each class or kind of merchandise.

These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews. All comments submitted concerning the calculation of the cash deposit rates are addressed in the section on "Assessment and Cash Deposit Rates" in the Issues Appendix.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent us from doing entry-by-entry assessments, we will calculate where possible, an exporter/importer-specific assessment rate for each class or kind of antifriction bearings. In our preliminary results of review (56 FR 11178), we stated that we would calculate this exporter/importer-specific rate based on the ratio of the total value of dumping duties calculated for the sales examined in the review period to the total entered customs values of those sales. We stated that this rate would be assessed uniformly on all entries of the class or kind of merchandise by that particular importer during the review period. We also stated that where we did not have entered customs value for all merchandise examined during the review period, we would calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the review period.

Based on comments received from interested parties and our analysis of the information on the record, we have modified the methodology described in the preliminary results. For purposes of these final results, assessment rates will be calculated as follows.

1. *Purchase Price Sales.* With respect to purchase price sales for these final results, we will divide the total PUDD (calculated as the difference between foreign market value and U.S. price) for each importer by the total number of units sold to that importer. We will direct Customs to assess the resulting unit dollar amount against each unit of subject merchandise in each of that importer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping

duties collected for each importer under each order for the review period will be almost exactly equal to the total PUDD, which is the correct assessment amount.

2. *Exporter's Sales Price Sales.* For ESP sales (sampled and non-sampled), we will divide the total PUDD for the reviewed sales by the total entered value of those reviewed sales, for each importer. We will direct Customs to assess the resulting percentage margin against the entered Customs value of the subject merchandise in each of that importer's entries under the relevant order during the review period. Although this approach will result in the assessment of a dumping margin based, to some extent, on sales of merchandise imported outside the POR, it is the most accurate rate that can be calculated on the basis of the information on the record.

In the case of companies which did not report entered value of sales, we will calculate a proxy for entered value of sales, based on the price information available and appropriate adjustments (*e.g.*, insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis).

For calculation of the ESP assessment rate, entries for which liquidation was suspended, but which ultimately fell outside the scope of the orders through operation of the "Roller Chain" rule, will be included in the assessment rate denominator to avoid over-collecting. (The "Roller Chain" rule excludes from the scope of an order bearings which were imported by a related party and further-processed, and which comprise less than one percent of the finished product sold to the first unrelated customer in the United States. *See* the section on "Roller Chain" in the Issues Appendix.) Entries of parts incorporated into finished bearings before sale to an unrelated customer in the United States will be assessed the importer's weighted-average margin for the appropriate class or kind of merchandise.

3. *Other Assessment Instructions.* In the case of companies which chose to respond to the price list option (see Preliminary Results of Antidumping Duty Reviews: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof, from the Federal Republic of Germany, 56 FR 11200), we will calculate an *ad valorem* assessment rate by dividing PUDD by a proxy for entered value of sales. The proxy will be calculated based on the price information available and appropriate adjustments (*e.g.*, insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis).

Entries of products subject to the orders that had passed through a foreign trade zone before entry into U.S. Customs territory will be treated the same as other entries of products subject to the orders to the extent that such treatment is not inconsistent with our approach to FTZs. See the section on "Foreign Trade Zones" in the Issues Appendix.

When we refer to importers, we are referring to the U.S. customer, whether related or unrelated to the exporter, not the customs broker or brokerage house that might be the importer of record for any of these entries. Our liquidation instructions to Customs will identify the customer that these notices refer to as the importer.

The comments made by interested parties concerning the calculation of assessment and cash deposit rates are addressed in the "Assessment and Cash Deposit Rates" section of the Issues Appendix.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22 (1990)).

Dated: June 27, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-16161 Filed 7-10-91; 8:45 am]

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[A-475-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On March 15, 1991, the Department of Commerce published the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs), from Italy (56 FR 11181). The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, and cylindrical roller bearings and parts thereof. The reviews cover nine manufacturers/exporters and the period November 9, 1988 through April 30, 1990.

Based on our analysis of the comments received and the correction of certain inadvertent programming and clerical errors, we have changed the preliminary results. The final margins for the reviewed firms for each class or kind of merchandise are listed below in the section "Final Results of Review."

EFFECTIVE DATE: July 11,1991.

FOR FURTHER INFORMATION CONTACT: Edmond O'Neill (FAG Cuscinetti), Thomas McGinty (SNECMA, FiatAvio S.p.A., Dowty Rotol), Michael Diminich (RIV-SKF), Laurel Lynn (Meter S.p.A., Rolls Royce), Michael Rill (Japanese Aero Engines Corporation), or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, DC 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On June 11, 1990, in accordance with 19 CFR 353.22(c), the Department of Commerce (the Department) initiated administrative reviews of the antidumping duty orders on ball bearings and parts thereof, and cylindrical roller bearings and parts thereof, from Italy for the period November 9, 1988 through April 30, 1990 (55 FR 23575).

On March 15, 1991, we published the preliminary results, and termination in part, of these administrative reviews (56 FR 11181). We gave interested parties an opportunity to comment on our preliminary results. At the request of certain interested parties, we held public hearings during the week of April 22, 1991. Because there are concurrent administrative reviews of imports of AFBs from nine countries, we held a hearing on general issues pertaining to all nine countries on April 22, 1991, and a country-specific hearing for Italy on April 24, 1991.

Issues Appendix

All issues raised in the case and rebuttal briefs by parties to the nine concurrent administrative reviews of AFBs are addressed in the "Issues Appendix" which is appended to the "Notice of Final Results of Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany" which is published concurrently with this notice (hereinafter "Issues Appendix"). The first part of the Issues Appendix addresses all general issues raised in these reviews, and our determinations with respect to each issue. The next part

addresses all remaining comments filed by the parties to these proceedings according to subject and then by company within each subject. See the Table of Contents to the Issues Appendix for a complete listing of all issues raised and addressed:

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), and parts thereof, and constitute the following "classes or kinds" of merchandise: ball bearings and parts thereof (BBs), and cylindrical roller bearings and parts thereof (CRBs). For a detailed description of the products covered under BBs, CRBs, and SPBs, please see the section on "Scope" in the Issues Appendix.

Reporting Requirements

Our review of the information provided on the record by respondents disclosed that there were millions of AFB sales to the United States, the home market and third countries during the period of review (POR). The enormous number of transactions, coupled with the fact that reviews were requested for over sixty foreign producers and exporters, underscored the need to formulate a reasonable sampling methodology in order for the parties and the Department to cope with the resultant costs and administrative burdens.

In response to these problems, and after carefully considering comments on, and suggested alternatives to, our initial sampling proposal, we adopted a sampling plan as authorized under section 777A of the Tariff Act of 1930, as amended (the Act). Under this plan (see "Memorandum to File" dated August 27, 1990), respondents with over 2000 exporter's sales price (ESP) transactions for any class or kind of merchandise were requested to submit data for all U.S. sales of this class or kind that were made during a selected sample of nine one-week periods. These nine weeks were chosen at random, one from each two-month interval during the POR. For each U.S. sale reported during the selected weeks, we requested that respondents report all sales of identical and similar AFBs sold in the home market during the month corresponding to the sample week for U.S. sales. The dumping margins calculated for this sample group of ESP sales were weight-averaged with the dumping margins for purchase price transactions to calculate each respondent's overall dumping margin.

No comments were received from interested parties concerning the basic validity of our sampling process.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information otherwise available (BIA) is appropriate for several firms. For certain firms, total BIA was necessary, while for other firms, only partial BIA was applied. For a discussion of our general application of BIA, see the section on "Best Information Available" in the issues Appendix. The firms to which total BIA was applied are also identified in the "Best Information Available" section of the Issues Appendix.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes in these final results.

- Where applicable, certain programming and clerical errors in our preliminary results have been corrected. Any alleged programming or clerical errors pertaining to the calculation and treatment of charges and adjustments, cost of production and constructed value with which we do not agree are discussed in the relevant sections of the Issues Appendix.
- In accordance with section 773(b) of the Act, in determining whether to disregard home market sales made at prices below the cost of production, we examined whether such sales have been made in substantial quantities over an extended period of time. When less than 10 percent of the home market sales of each model were at prices below the cost of production, we did not disregard any sales and made normal price-to-price comparisons. When more than10 percent, but less than 90 percent of the home market sales of a particular model were determined to be below cost, we excluded the below-cost home market sales from our calculation of FMV provided that these below cost sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model for purposes of calculating foreign market value (FMV).

No home market below-cost sales were disregarded unless they were determined to be over an extended period of time.

We have determined that the threshold for "extended period of time" is met when there are below-cost home market sales in more than two months of the POR. We made an exception to this threshold requirement when a particular model was sold in less than three months during the POR. In such cases, where sales below cost occurred in each of the months in which such models had been sold, we concluded that these sales of particular models had been made below cost over an extended period of time.

Home market sales of obsolete merchandise and distress sales were not disregarded from our analysis unless there was documented information on the record demonstrating that such sales were outside the ordinary course of trade.

Since none of the respondents has submitted information indicating that any of its sales below cost were at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade," we are unable to conclude that the costs of production of such sales have been recovered within a reasonable period. For a more complete discussion of our determination with respect to the cost of production test, see the section on "Cost of Production" in the Issues Appendix.

- For our preliminary results, we compared U.S. and home market sales at the same level of trade. If we did not find contemporaneous sales of such or similar merchandise at the same level of trade, we used constructed value (CV) as the basis for FMV. However, as a result of our review of comments filed by the parties to these proceedings, we have changed our comparison procedures.

For purposes of these final results of review, we first sought contemporaneous sales of identical merchandise at the same level of trade in the home market as that of the U.S. sale. If we were unable to find a match, we then looked for contemporaneous sales of identical merchandise at the next level of trade. (Our analysis of the various levels of trade reported by the respondents led us to conclude that sales of AFBs are made at two levels of trade: (1) Original equipment manufacturers, and (2) distributors, retailers and aftermarket sellers.) If we were unable to find identical matches at the next level of trade, we then sought contemporaneous home market sales of the same family as the U.S. bearing at the same level of trade. If unsuccessful, we then sought contemporaneous home market sales of the same family at the next level of trade before using CV as the basis for FMV (see the section on "Level of Trade" in the Issues Appendix).

• Based on our analysis of comments filed by parties to these proceedings, we have modified or altered our treatment of certain charges and adjustments. These modifications or alterations are discussed in the relevant sections of the Issues Appendix. The most significant modification pertains to our treatment of value-added taxes (VAT) and consumption taxes. Under section 772(d)(1)(c) of the Act, U.S. price must be increased by the "* * * amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation." Accordingly, we have calculated an amount for the VAT or consumption tax, and added it to U.S. price. In order to ensure tax-neutral results, we have made a circumstance of sale adjustment to the home market price. When home market prices were reported net of VAT or consumption tax, we were able to effect a circumstance of sale adjustment by adding the amount of the tax calculated for the U.S. sale to the home market price. For a more complete discussion of our treatment of these taxes, see the section on "Value Added Taxes" in the Issues Appendix.

Analysis of Comments Received

See the Issues Appendix which is appended to the "Notice of Final Results of Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany" which is published concurrently with this notice.

Final Results of Review

We determine the following percentage margins to exist for the period November 9, 1988 through April 30, 1990.

Company	Ball bearings	Cylindrical roller bearings
FAG-Cuscinetti	4.40	(1)
Meter, S.p.A.	11.67	17.36
FiatAvio	0.00	17.36
RIV-SKF	4.06	1.87
Rolls-Royce	(1)	8.76
SNECMA	0.78	1.23
Somecat	155.99	(2)
Japanese Aero Engines	(1)	(1)
Dowty Rotol	11.67	(1)
All Others	11.67	17.36

[1] No sales to the U.S. during the period.
[2] Not subject to review.

Cash Deposit Requirements

To calculate the cash deposit rate for each respondent, we divided the total potential uncollected dumping duties (PUDD) for each exporter by the total net USP value for that exporter's sales during the review period under each order. In order to derive a single deposit rate for each class or kind of merchandise for each respondent (*i.e.*, each exporter or manufacturer included in these reviews), we weight-averaged the purchase price (PP) and exporter's sales price (ESP) deposit rates (using the combined U.S. value of PP sales and ESP sales as the weighting factor). To accomplish this where we sampled ESP sales, we first approximated a total PUDD for all ESP sales by dividing the sample ESP PUDD by the ratio of sampled weeks to total weeks in the review period. We then approximated a total net USP for all ESP sales during the review period by dividing the sample ESP total net USP by the ratio of sampled weeks to total weeks in the review period.

We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after, the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an unrelated customer in the United States will receive the exporter's deposit rate for the appropriate class or kind of merchandise.

Entries of products subject to the orders that had passed through foreign trade zones (FTZs) before entry into U.S. Customs territory will be treated the same as other entries of products subject to the orders to the extent that such treatment is not inconsistent with our handling of FTZs. See the section on "Foreign Trade Zones" in the Issues Appendix.

The following deposit requirements will be effective for all shipments of Italian-origin antifriction bearings (other than tapered roller bearings) and parts thereof, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act:

(1) For the reviewed companies, the cash deposit rate will be that established in the final results of these reviews;

(2) For merchandise exported by manufacturers or exporters not covered in these reviews, but covered in the final determinations of sales at less than fair value (the LTFV investigations), the cash deposit rate will continue to be the rate published in the final determinations in the LTFV investigations;

(3) If the exporter is not a firm covered in these reviews or the original investigations, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews or, if not covered in these reviews, the rate from the LTFV investigations;

(4) The cash deposit rate for all other manufacturers which export the subject merchandise shall be the "All Others" rate listed in the section "Final Results of Review" above for each class or kind of merchandise.

These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews. All comments submitted concerning the calculation of the cash deposit rates are addressed in the section on "Assessment and Cash Deposit Rates" in the Issues Appendix.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent us from doing entry-by-entry assessments, we will calculate, where possible, an exporter/importer-specific assessment rate for each class or kind of antifriction bearings. In our preliminary results of review (56 FR 11181), we stated that we would calculate this exporter/importer-specific rate based on the ratio of the total value of dumping duties calculated for the sales examined in the review period to the total entered customs values of those sales. We stated that this rate would be assessed uniformly on all entries of the class or kind of merchandise by that particular importer during the review period. We also stated that where we did not have entered customs value for all merchandise examined during the review period, we would calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the review period.

Based on comments received from interested parties and our analysis of the information on the record, we have modified the methodology described in the preliminary results. For purposes of these final results, assessment rates will be calculated as follows.

1. Purchase Price Sales

With respect to purchase price sales for these final results, we will divide the total PUDD (calculated as the difference between foreign market value and U.S. price) for each importer by the total number of units sold to that importer. We will direct Customs to assess the resulting unit dollar amount against each unit of subject merchandise in each of that importer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer under each order for the review period will be almost exactly equal to the total PUDD, which is the correct assessment amount.

2. Exporter's Sales Price Sales

For ESP sales (sampled and non-sampled), we will divide the total PUDD for the reviewed sales by the total entered value of those reviewed sales, for each importer. We will direct Customs to assess the resulting percentage margin against the entered Customs value of the subject merchandise in each of that importer's entries under the relevant order during the review period. Although this approach will result in the assessment of a dumping margin based, to some extent, on sales of merchandise imported outside the POR, it is the most accurate rate that can be calculated on the basis of the information on the record.

In the case of companies which did not report entered value of sales, we will calculate a proxy for entered value of sales, based on the price information available and appropriate adjustments (*e.g.*, insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis).

For calculation of the ESP assessment rate, entries for which liquidation was suspended, but which ultimately fell outside the scope of the orders through operation of the "Roller Chain" rule, will be included in the assessment rate denominator to avoid over-collecting. (The "Roller Chain" rule excludes from the scope of an order bearings which were imported by a related party and further-processed, and which comprise less than one percent of the finished product sold to the first unrelated customer in the United States. See the section on "Roller Chain" in the Issues Appendix.) Entries of parts incorporated into finished bearings before sale to an unrelated customer in the United States will be assessed the importer's weighted-average margin for the appropriate class or kind of merchandise.

3. Other Assessment Instructions

In the case of companies which chose to respond to the price list option (see Preliminary Results of Antidumping Duty Reviews: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof, from the Federal Republic of Germany, 56 FR 11200), we will calculate an *ad valorem* assessment rate by dividing PUDD by a proxy for entered value of sales. The proxy will be calculated based on the price information available and appropriate adjustments (e.g., insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis).

Entries of products subject to the orders that had passed through a foreign trade zone before entry into U.S. Customs territory will be treated the same as other entries of products subject to the orders to the extent that such treatment is not inconsistent with our approach to FTZs. See the section on "Foreign Trade Zones" in the Issues Appendix.

When we refer to importers, we are referring to the U.S. customer, whether related or unrelated to the exporter, not the customs broker or brokerage house that might be the importer of record for any of these entries. Our liquidation instructions to Customs will identify the customer that these notices refer to as the importer.

The comments made by interested parties concerning the calculation of assessment and cash deposit rates are addressed in the "Assessment and Cash Deposit Rates" section of the Issues Appendix.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22 (1990)).

Dated: June 27, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-16162 Filed 7-10-91; 8:45 am]

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[A-588-804]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On March 15, 1991, the Department of Commerce published the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs), from Japan (56 FR 11186). The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 22 manufacturers/exporters and the period November 9, 1988 through April 30, 1990.

Based on our analysis of the comments received and the correction of certain inadvertent programming and clerical errors, we have changed the preliminary results. The final margins for the reviewed firms for each class or kind of merchandise are listed below in the section "Final Results of Review."

EFFECTIVE DATE: July 11, 1991.

FOR FURTHER INFORMATION CONTACT: David M. Birdsey (Peer, Osaka Pump), Wendy J. Frankel (Minebea, NPB), Robert Hamilton (Fujino, Izumoto Seiko, Kuroe, Nankai Seiko, Tottori Yamakai (KYK, NTN, Isuzu), Breck J. Richardson (Takeshita), Michael R. Rill (Honda, IJK, JAEC, Koyo, NSK, Yamaha), Lynette Stoltzfus (Asahi Seiko, Nachi, Nakai, Showa Pillow Block, Wada Seiko), Ileana Crowley, or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On June 11, 1990, in accordance with 19 CFR 353.22(c), the Department of Commerce (the Department) initiated administrative reviews of the antidumping duty orders on ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof, from Japan for the period November 9, 1988 through April 30, 1990 (55 FR 23575).

On March 15, 1991, we published the preliminary results, and termination in part, of these administrative reviews (56 FR 11186). We gave interested parties an opportunity to comment on our preliminary results. At the request of certain interested parties, we held public hearings during the week of April 22, 1991. Because there are concurrent administrative reviews of imports of AFBs from nine countries, we held a

hearing on general issues pertaining to all nine countries on April 22, 1991, and a country-specific hearing for Japan on April 22, 1991.

Issues Appendix

All issues raised in the case and rebuttal briefs by parties to the nine concurrent administrative reviews of AFBs are addressed in the "Issues Appendix" which is appended to the "Notice of Final Results of Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany" which is published concurrently with this notice (hereinafter "Issues Appendix"). The first part of the Issues Appendix addresses all general issues raised in these reviews, and our determinations with respect to each issue. The next part addresses all remaining comments filed by the parties to these proceedings according to subject and then by company within each subject. See the Table of Contents to the Issues Appendix for a complete listing of all issues raised and addressed.

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), and parts thereof, and constitute the following "classes or kinds" of merchandise: ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). For a detailed description of the products covered under BBs, CRBs, and SPBs, please see the section on "Scope" in the Issues Appendix.

Reporting Requirements

Our review of the information provided on the record by respondents disclosed that there were millions of AFB sales to the United States, the home market and third countries during the period of review (POR). The enormous number of transactions, coupled with the fact that reviews were requested for over sixty foreign producers and exporters, underscored the need to formulate a reasonable sampling methodology in order for the parties and the Department to cope with the resultant costs and administrative burdens.

In response to these problems, and after carefully considering comments on, and suggested alternatives to, our initial sampling proposal, we adopted a sampling plan as authorized under section 777A of the Tariff Act of 1930, as amended (the Act). Under this plan (see "Memorandum to File" dated August 27, 1990), respondents with over 2000 exporter's sales price (ESP) transactions for any class or kind of merchandise were requested to submit data for all U.S. sales of this class or kind that were made during a selected sample of nine one-week periods. These nine weeks were chosen at random, one from each two-month interval during the POR. For each U.S. sale reported during the selected weeks, we requested that respondents report all sales of identical and similar AFBs sold in the home market during the month corresponding to the sample week for U.S. sales. The dumping margins calculated for this sample group of ESP sales were weight-averaged with the dumping margins for purchase price transactions to calculate each respondent's overall dumping margin.

No comments were received from interested parties concerning the basic validity of our sampling process.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information otherwise available (BIA) is appropriate for several firms. For certain firms, total BIA was necessary, while for other firms, only partial BIA was applied. For a discussion of our general application of BIA, see the section on "Best Information Available" in the Issues Appendix. The firms to which total BIA was applied are also identified in the "Best Information Available" section of the Issues Appendix.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes in these final results.

- Where applicable, certain programming and clerical errors in our preliminary results have been corrected. Any alleged programming or clerical errors pertaining to the calculation and treatment of charges and adjustments, cost of production and constructed value with which we do not agree are discussed in the relevant sections of the Issues Appendix.
- In accordance with section 773(b) of the Act, in determining whether to disregard home market sales made at prices below the cost of production, we examined whether such sales have been made in substantial quantities over an extended period of time. When less than 10 percent of the home market sales of each model were at prices below the cost of production, we did not disregard any sales and made normal price-to-price comparisons. When more than 10 percent, but less than 90 percent of the home market sales of a particular model were determined to be below cost, we excluded the below-cost home market sales from our calculation of FMV provided that these below cost sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model for purposes of calculating foreign market value (FMV).

No home market below-cost sales were disregarded unless they were determined to be over an extended period of time.

We have determined that the threshold for "extended period of time" is met when there are below-cost home market sales in more than two months of the POR. We made an exception to this threshold requirement when a particular model was sold in less than three months during the POR. In such cases, where sales below cost occurred in each of the months in which such models had been sold, we concluded that these sales of particular models had been made below cost over an extended period of time.

Home market sales of obsolete merchandise and distress sales were not disregarded from our analysis unless there was documented information on the record demonstrating that such sales were outside the ordinary course of trade.

Since none of the respondents has submitted information indicating that any of its sales below cost were at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade," we are unable to conclude that the costs of production of such sales have been recovered within a reasonable period. For a more complete discussion of our determination with respect to the cost of production test, see the section on "Cost of Production" in the Issues Appendix.

- For our preliminary results, we compared U.S. and home market sales at the same level of trade. If we did not find contemporaneous sales of such or similar merchandise at the same level of trade, we used constructed value (CV) as the basis for FMV. However, as a result of our review of comments filed by the parties to these proceedings, we have changed our comparison procedures.

For purposes of these final results of review, we first sought contemporaneous sales of identical merchandise at the same level of trade in the home market as that of the U.S. sale. If we were unable to find a match,

we then looked for contemporaneous sales of identical merchandise at the next level of trade. (Our analysis of the various levels of trade reported by the respondents led us to conclude that sales of AFBs are made at two levels of trade: (1) Original equipment manufacturers, and (2) distributors, retailers and aftermarket sellers.) If we were unable to find identical matches at the next level of trade, we then sought contemporaneous home market sales of the same family as the U.S. bearing at the same level of trade. If unsuccessful, we then sought contemporaneous home market sales of the same family at the next level of trade before using CV as the basis for FMV (see the section on "Level of Trade" in the Issues Appendix).

• Based on our analysis of comments filed by parties to these proceedings, we have modified or altered our treatment of certain charges and adjustments. These modifications or alterations are discussed in the relevant sections of the Issues Appendix. The most significant modification pertains to our treatment of value-added taxes (VAT) and consumption taxes. Under section 772(d)(1)(c) of the Act, U.S. price must be increased by the " * * * amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation." Accordingly, we have calculated an amount for the VAT or consumption tax, and added it to U.S. price. In order to ensure tax-neutral results, we have made a circumstance of sale adjustment to the home market price. When home market prices were reported net of VAT or consumption tax, we were able to effect a circumstance of sale adjustment by adding the amount of the tax calculated for the U.S. sale to the home market price. For a more complete discussion of our treatment of these taxes, see the section on "Value-Added Taxes" in the Issues Appendix.

Analysis of Comments Received

See the Issues Appendix which is appended to the "Notice of Final Results of Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany" which is published concurrently with this notice.

Final Results of Review

We determine the following percentage margins to exist for the period November 9, 1988 through April 30, 1990.

Company	Ball bearings	Cylindrical roller bearings	Spherical plain bearings
Asahi Seiko	45.83	(1)	(1)
Fujino Iron Works	2.67	(2)	(2)
Honda Motor Co	2.19	0.06	0.05
IJK	17.58	5.84	(1)
Isuzu Motors	0.90	0.07	3.08
Izumoto Seiko	8.50	(2)	(2)
Japanese Aero Engines	106.61	51.82	92.00
Koyo Seiko	9.82	1.45	(1)
Minebea	106.61	(2)	92.00
Nachi-Fujikoshi Corp	10.72	10.50	(1)
Nakai Bearing Co	12.62	(1)	(1)
Nankai Seiko	15.18	(1)	(1)
Nippon Pillow Block	45.83	(2)	(2)
NSK	6.33	51.82	(1)
NTN-Japan	14.23	15.82	0.66
Osaka Pump	0.59	(2)	(2)
Showa Pillow Block Mfg	19.00	(2)	(2)
Takeshita Seiko	0.66	(1)	(1)
Tottori Yamakai	5.70	(2)	(2)
Wada Seiko	23.88	(2)	(2)
Yamaha Motor Co	0.08	0.03	0.28
All Others	23.88	51.82	3.08

[1] No sales to the U.S. during the period.
[2] Not subject to review.

In preliminary results or review, we calculated rates for two resellers, Peer International and Kuroe Industries. However, the information on the record indicates that suppliers knew at the time of sale that the bearings they sold to Peer International and Kuroe Industries were destined for the United States. Accordingly, we have determined that these two resellers should not receive separate margins (see "Miscellaneous" section of the Issues Appendix for a more complete discussion of this issue).

Cash Deposit Requirements

To calculate the cash deposit rate for each respondent, we divided the total potential uncollected dumping duties (PUDD) for each exporter by the total net USP value for that exporter's sales during the review period under each order. In order to derive a single deposit rate for each class or kind of merchandise for each respondent (*i.e.*, each exporter or manufacturer included in these reviews), we weight-averaged the purchase price (PP) and exporter's sales price (ESP) deposit rates (using the combined U.S. value of PP sales and ESP sales as the weighting factor). To accomplish this where we sampled ESP sales, we first approximated a total PUDD for all ESP sales by dividing the sample ESP PUDD by the ratio of sampled weeks to total weeks in the review period. We then approximated a total net USP value for all ESP sales during the review period by dividing the sampled ESP total net value by the ration of sampled weeks to total weeks in the review period.

We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after, the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an unrelated customer in the United States will receive the exporter's deposit rate for the appropriate class or kind of merchandise.

Entries of products subject to the orders that had passed through foreign trade zones (FTZs) before entry into U.S. Customs territory will be treated the same as other entries of products subject to the orders to the extent that such treatment is not inconsistent with our handling of FTZs. See the section on "Foreign Trade Zones" in the Issues Appendix.

The following deposit requirements will be effective for all shipments of Japanese-origin antifriction bearings (other than tapered roller bearings) and parts thereof, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act:

(1) For the reviewed companies, the cash deposit rate will be that established in the final results of these reviews;

(2) For merchandise exported by manufacturers or exporters not covered in these reviews, but covered in the final determinations of sales at less than fair value (the LTFV investigations), the cash deposit rate will continue to be the

rate published in the final determinations in the LTFV investigations;

(3) If the exporter is not a firm covered in these reviews or the original investigations, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews or, if not covered in these reviews, the rate from the LTFV investigations;

(4) The cash deposit rate for all other manufacturers which export the subject merchandise shall be the "All Others" rate listed in the section "Final Results of Review" above for each class or kind of merchandise.

These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews. All comments submitted concerning the calculation of the cash deposit rates are addressed in the section on "Assessment and Cash Deposit Rates" in the Issues Appendix.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent us from doing entry-by-entry assessments, we will calculate, where possible, an exporter/ importer-specific assessment rate for each class or kind of antifriction bearings. In our preliminary results of review (56 FR 11186), we stated that we would calculate this exporter/importer-specific rate based on the ratio of the total value of dumping duties calculated for the sales examined in the review period to the total entered customs values of those sales. We stated that this rate would be assessed uniformly on all entries of the class or kind of merchandise by that particular importer during the review period. We also stated that where we did not have entered customs value for all merchandise examined during the review period, we would calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the review period.

Based on comments received from interested parties and our analysis of the information on the record, we have modified the methodology described in the preliminary results. For purposes of these final results, assessment rates will be calculated as follows.

1. Purchase Price Sales

With respect to purchase price sales for these final results, we will divide the total PUDD (calculated as the difference between foreign market value and U.S. price) for each importer by the total number of units sold to that importer. We will direct Customs to assess the resulting unit dollar amount against each unit of merchandise in each of that importer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer under each order for the review period will be almost exactly equal to the total PUDD, which is the correct assessment amount.

2. Exporter's Sales Price Sales

For ESP sales (sampled and non-sampled), we will divide the total PUDD for the reviewed sales by the total entered value of those reviewed sales, for each importer. We will direct Customs to assess the resulting percentage margin against the entered Customs value of the subject merchandise in each of that importer's entries under the relevant order during the review period. Although this approach will result in the assessment of a dumping margin based, to some extent, on sales of merchandise imported outside the POR, it is the most accurate rate that can be calculated on the basis of the information on the record.

In the case of companies which did not report entered value of sales, we will calculate a proxy for entered value of sales, based on the price information available and appropriate adjustment (*e.g.*, insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis). For calculation of the ESP assessment rate, entries for which liquidation was suspended, but which ultimately fell outside the scope of the orders through operation of the "Roller Chain" rule, will be included in the assessment rate denominator to avoid over-collecting. (The "Roller Chain" rule excludes from the scope of an order bearings which were imported by a related party and further-processed, and which comprise less than one percent of the finished product sold to the first unrelated customer in the United States. See the section on "Roller Chain" in the Issues Appendix.) Entries of parts incorporated into finished bearings before sale to an unrelated customer in the United States will be assessed the importer's weighted-average margin for the appropriate class or kind of merchandise.

3. Other Assessment Instructions

In the case of companies which chose to respond to the price list option (see Preliminary Results of Antidumping Duty Reviews: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof, from the Federal Republic of Germany, 56 FR 11200), we will calculate an *ad valorem* assessment rate by dividing PUDD by a proxy for entered value of sales. The proxy will be calculated based on the price information available and appropriate adjustments (*e.g.*, insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis).

Entries of products subject to the orders that had passed through a foreign trade zone before entry into U.S. Customs territory will be treated the same as other entries of products subject to the orders to the extent that such treatment is not inconsistent with our approach to FTZs. See the section on "Foreign Trade Zones" in the Issues Appendix.

When we refer to importers, we are referring to the U.S. customer, whether related or unrelated to the exporter, not the customs broker or brokerage house that might be the importer of record for any of these entries. Our liquidation instructions to Customs will identify the customer that these notices refer to as the importer.

The comments made by interested parties concerning the calculation of assessment and cash deposit rates are addressed in the "Assessment and Cash Deposit Rates" section of the Issues Appendix.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22 (1990)).

Dated: June 27, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-16163 Filed 7-10-91; 8:45 am]

Billing Code 3510-DS-M

[A-485-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Socialist Republic of Romania; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 15, 1991, the Department of Commerce published the preliminary results of its administrative

review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs), from Romania (56 FR 11190). The class or kind of merchandise covered by this review is ball bearings and parts thereof. The review covers one exporter and the period November 9, 1988 through April 30, 1990.

Based on our analysis of the comments received and the correction of certain inadvertent programming and clerical errors, we have changed the preliminary results. The final margin for the reviewed firm for the class or kind of merchandise is listed below in the section "Final Results of Review."

EFFECTIVE DATE: July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Breck Richardson or Ileana Crowley, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1131.

SUPPLEMENTARY INFORMATION:

Background

On June 11, 1990, in accordance with 19 CFR 353.22(c), the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on ball bearings and parts thereof from Romania for the period November 9, 1988 through April 30, 1990 (55 FR 23575).

On March 15, 1991, we published the preliminary results of this administrative review (56 FR 11190). We gave interested parties an opportunity to comment on our preliminary results. At the request of certain interested parties, we held public hearings during the week of April 22, 1991. Because there are concurrent administrative reviews of imports of AFBs from nine countries, we held a hearing on general issues pertaining to all nine countries on April 22, 1991, and a country-specific hearing for Romania April 26, 1991.

Issues Appendix

All issues raised in the case and rebuttal briefs by parties to the nine concurrent administrative reviews of AFBs are addressed in the "Issues Appendix" which is appended to the "Notice of Final Results of Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany" which is published concurrently with this notice (hereinafter "Issues Appendix"). The first part of the Issues Appendix addresses all general issues raised in these reviews, and our determinations with respect to each issue. The next part addresses all remaining comments filed by the parties to these proceedings according to subject and then by company within each subject. See the Table of Contents to the Issues Appendix for a complete listing of all issues raised and addressed.

Scope of Reviews

The products covered by this review are antifriction bearings (other than tapered roller bearings), and parts thereof, and constitute the following "class or kind" of merchandise: Ball bearings and parts thereof (BBs). For a detailed description of the products covered under BBs, please see the section on "Scope" in the Issues Appendix.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information otherwise available (BIA) is appropriate for several firms. For certain firms, total BIA was necessary, while for other firms, only partial BIA was applied. For a discussion of our general application of BIA, see the section on "Best Information Available" in the Issues Appendix. The firms to which total BIA was applied are also identified in the "Best Information Available" section of the Issues Appendix.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes in these final results.

- Where applicable, certain programming and clerical errors in our preliminary results have been corrected. Any alleged programming or clerical errors pertaining to the calculation and treatment of charges and adjustments, cost of production and constructed value with which we do not agree are discussed in the relevant sections of the Issues Appendix.
- Based on our analysis of comments filed by parties to these proceedings, we have modified or altered our treatment of certain charges and adjustments. These modifications or alterations are discussed in the relevant sections of the Issues Appendix.

Analysis of Comments Received

See the Issues Appendix which is appended to the "Notice of Final Results of Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany" which is published concurrently with this notice (hereinafter "Issues Appendix").

Final Results of Review

We determine the following percentage margins to exist for the period November 9, 1988 through April 30, 1990.

Company	Ball bearings
Tehnoimportexport (TIE)	1.85
All Others	1.85

Cash Deposit Requirements

To calculate the cash deposit rate for each respondent, we divided the total potential uncollected dumping duties (PUDD) for each exporter by the total net USP value for that exporter's sales during the review period under each order. We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after, the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an unrelated customer in the United States will receive the exporter's deposit rate for the appropriate class or kind of merchandise.

Entries of products subject to the orders that had passed through foreign trade zones (FTZs) before entry into U.S. Customs territory will be treated the same as other entries of products subject to the orders to the extent that such treatment is not inconsistent with our handling of FTZs. See the section on "Foreign Trade Zones" in the Issues Appendix.

The following deposit requirements will be effective for all shipments of Romanian-origin antifriction bearings (other than tapered roller bearings) and parts thereof, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act:

(1) For the reviewed companies, the cash deposit rate will be that established in the final results of these reviews;

(2) For merchandise exported by manufacturers or exporters not covered in these reviews, but covered in the final determinations of sales at less than fair value (the LTFV investigations), the cash deposit rate will continue to be the rate published in the final determinations in the LTFV investigations;

(3) If the exporter is not a firm covered in these reviews or the original investigations, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews or, if not covered in these reviews, the rate from the LTFV investigations;

(4) The cash deposit rate for all other manufacturers which export the subject merchandise shall be the "All Others" rate listed in the section "Final Results of Review" above for each class or kind of merchandise.

These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews. All comments submitted concerning the calculation of the cash deposit rates are addressed in the section on "Assessment and Cash Deposit Rates" in the Issues Appendix.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because simplification methods prevent us from doing entry-by-entry assessments, we will calculate an exporter/importer-specific assessment rate for each class or kind of antifriction bearings. In our preliminary results of review (56 FR 11190), we stated that we would calculate this exporter/importer-specific rate based on the ratio of the total value of dumping duties calculated for the sales examined in the review period to the total entered customs values of those sales. We stated that this rate would be assessed uniformly on all entries of the class or kind of merchandise by that particular importer during the review period. We also stated that where we did not have entered customs value for all merchandise examined during the review period, we would calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the review period.

Based on comments received from interested parties and our analysis of the information on the record, we have modified the methodology described in the preliminary results. For purposes of these final results, assessment rates will be calculated as follows.

1. Purchase Price Sales

Since TIE only made purchase price sale to the United States during the POR, we need only address the assessment instructions for purchase price (PP) sales in these final results. With respect to these sales, we will divide the total PUDD (calculated as the difference between foreign market value and U.S. price) for each importer by the total number of units sold to that importer. We will direct Customs to assess the resulting unit dollar amount against each unit of subject merchandise in each of that importer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer under each order for the review period will be almost exactly equal to the total PUDD, which is the correct assessment amount.

2. Other Assessment Instructions

Entries of products subject to the orders that had passed through a foreign trade zone before entry into U.S. Customs territory will be treated the same as other entries of products subject to the orders to the extent that such treatment is not inconsistent with our approach to FTZs. See the section on "Foreign Trade Zones" in the Issues Appendix.

When we refer to importers, we are referring to the U.S. customer, whether related or unrelated to the exporter, not the customs broker or brokerage house that might be the importer of record for any of these entries. Our liquidation instructions to Customs will identify the customer that these notices refer to as the importer.

The comments made by interested parties concerning the calculation of assessment and cash deposit rates are addressed in the "Assessment and Cash Deposit Rates" section of the Issues Appendix.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations (19 CFR 353.22 (1990)).

Dated: June 27, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-16164 Filed 7-10-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-559-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 15, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs), from Singapore (56 FR 11191). The class or kind of merchandise covered by these reviews is ball bearings and parts thereof. The review covers two manufacturers/ exporters and the period November 9, 1988 through April 30, 1990.

Based on our analysis of the comments received and the correction of certain inadvertent programming and clerical errors, we have changed the preliminary results. The final margin for the reviewed firms for ball bearings is listed below in the section "Final Results of Review."

EFFECTIVE DATE: July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Wendy J. Frankel or Ileana M. Crowley, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On June 11, 1990, in accordance with 19 CFR 353.22(c), the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on ball bearings and parts thereof from Singapore for the period November 9, 1988 through April 30, 1990 (55 FR 23575) with respect to NMB Singapore Ltd. (NMB) and Pelmec Industries (Pte.) Ltd. (Pelmec). Since NMB and Pelmec are related companies we are treating them as one entity for purposes of this review.

On March 15, 1991, we published the preliminary results of this administrative review (56 FR 11191). We gave interested parties an opportunity to comment on our preliminary results. At the request of certain interested parties, we held public hearings during the week of April 22, 1991. Because there are concurrent administrative reviews of imports of AFBs from nine countries, we held a hearing on general issues pertaining to all nine countries on April 22, 1991, and a country-specific hearing for Singapore on April 25, 1991.

Issues Appendix

All issues raised in the case and rebuttal briefs by parties to the nine concurrent administrative reviews of AFBs are addressed in the "Issues Appendix" which is appended to the "Notice of Final Results of Review: Antifriction Bearings (Other than

Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany" which is published concurrently with this notice (hereinafter "Issues Appendix"). The first part of the Issues Appendix addresses all general issues raised in these reviews, and our determinations with respect to each issue. The next part addresses all remaining comments filed by the parties to these proceedings according to subject and then by company within each subject. See the Table of Contents to the Issues Appendix for a complete listing of all issues raised and addressed.

Scope of Reviews

The products covered by this review are antifriction bearings (other than tapered roller bearings), and parts thereof, and constitute the following "class or kind" of merchandise: Ball bearings and parts thereof (BBs). For a detailed description of the products covered under BBs, please see the section on "Scope" in the Issues Appendix.

Reporting Requirements

Our review of the information provided on the record by respondents disclosed that there were millions of AFB sales to the United States, the home market and third countries during the period of review (POR). The enormous number of transactions, coupled with the fact that reviews were requested for over sixty foreign producers and exporters, underscored the need to formulate a reasonable sampling methodology in order for the parties and the Department to cope with the resultant costs and administrative burdens.

In response to these problems, and after carefully considering comments on, and suggested alternatives to, our initial sampling proposal, we adopted a sampling plan as authorized under section 777A of the Tariff Act of 1930, as amended (the Act). Under this plan (see "Memorandum to File" dated August 27, 1990), respondents with over 2000 ESP transactions for any class or kind of merchandise were requested to submit data for all U.S. sales of this class or kind that were made during a selected sample of nine one-week periods. These nine weeks were chosen at random, one from each two-month interval during the POR. For each U.S. sale reported during the selected weeks, we requested that respondents report all sales of identical and similar AFBs sold in the home market during the month corresponding to the sample week for U.S. sales. The dumping margins calculated for this sample group of ESP sales were weight-averaged with the dumping margins for purchase price transactions to calculate each respondent's overall dumping margin.

No comments were received from interested parties concerning the basic validity of our sampling process.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information otherwise available (BIA) is appropriate for several firms. For certain firms, total BIA was necessary, while for other firms, only partial BIA was applied. For a discussion of our general application of BIA, see the section on "Best Information Available" in the Issues Appendix. The firms to which total BIA was applied are also identified in the "Best Information Available" section of the Issues Appendix.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes in these final results.

- Where applicable, certain programming and clerical errors in our preliminary results have been corrected. Any alleged programming or clerical errors pertaining to the calculation and treatment of charges and adjustments, cost of production and constructed value with which we do not agree are discussed in the relevant sections of the Issues Appendix.
- For our preliminary results, we compared U.S. and home market sales at the same level of trade. If we did not find contemporaneous sales of such or similar merchandise at the same level of trade, we used constructed value (CV) as the basis for FMV. However, as a result of our review of comments filed by the parties to these proceedings, we have changed our comparison procedures.

For purposes of these final results of review, we first sought contemporaneous sales of identical merchandise at the same level of trade in the home market as that of the U.S. sale. If we were unable to find a match, we then looked for contemporaneous sales of identical merchandise at the next level of trade. (Our analysis of the various levels of trade reported by the respondents led us to conclude that sales of AFBs are made at two levels of trade: (1) Original equipment manufacturers, and (2) distributors, retailers and aftermarket sellers.) If we were unable to find identical matches at the next level of trade, we then sought contemporaneous home market sales of the same family as the U.S. bearing at the same level of trade. If unsuccessful, we then sought contemporaneous home market sales of the same family at the next level of trade before using CV as the basis for FMV (see the section on "Level of Trade" in the Issues Appendix).

- Based on our analysis of comments filed by parties to these proceedings, we have modified or altered our treatment of certain charges and adjustments. These modifications or alterations are discussed in the relevant sections of the Issues Appendix. The most significant modification pertains to our treatment of value-added taxes (VAT) and consumption taxes. Under section 772(d)(l)(c) of the Act, U.S. price must be increased by the " * * * amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation." Accordingly, we have calculated an amount for the VAT or consumption tax, and added it to U.S. price. In order to ensure tax-neutral results, we have made a circumstance of sale adjustment to the home market price. When home market prices were reported net of VAT or consumption tax, we were able to effect a circumstance of sale adjustment by adding the amount of the tax calculated for the U.S. sale to the home market price. For a more complete discussion of our treatment of these taxes, see the section on "Value-Added Taxes" in the Issues Appendix.

Analysis of Comments Received

See the Issues Appendix which is appended to the "Notice of Final Results of Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany" which is published concurrently with this notice.

Final Results of Review

We determine the following percentage margins to exist for the period November 9, 1988 through April 30, 1990.

Company	Ball bearings	
NMB/Pelmec	4.85	(Cash Deposit Rate=1.88).
All Others	4.85	(Cash Deposit Rate=1.88).

Company	Ball bearings	
		(*See*, next section "Cash Deposit Requirements").

Cash Deposit Requirements

To calculate the cash deposit rate for each respondent, we divided the total potential uncollected dumping duties (PUDD) for each exporter by the total net USP for that exporter's sales during the review period under each order. In order to derive a single deposit rate for each class or kind of merchandise for each respondent (*i.e.*, each exporter or manufacturer included in these reviews), we weight-averaged the purchase price (PP) and exporter s sales price (ESP) deposit rates (using the combined U.S. value of PP sales and ESP sales as the weighting factor). To accomplish this where we sampled ESP sales, we first approximated a total PUDD for all ESP sales by dividing the sample ESP PUDD by the ratio of sampled weeks to total weeks in the review period. We then approximated a total net USP value by the ratio of sampled weeks to total weeks in the review period.

We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an unrelated customer in the United States will receive the exporter's deposit rate for the appropriate class or kind of merchandise.

Entries of products subject to the orders that passed through foreign trade zones (FTZs) before entry into U.S. Customs territory will be treated the same as other entries of products subject to the orders to the extent that such treatment is not inconsistent with our handling of FTZs. See the section on "Foreign Trade Zones" in the Issues Appendix.

Normally, we would direct Customs to collect a cash deposit equal to the weighted-average amount by which the foreign market value of ball bearings from Singapore exceeds the U.S. price, which in this review is 4.85 percent for NMB/Pelmec Singapore and 4.85 percent for all other manufacturers, producers, an exporters of ball bearings from Singapore. However, Article VI.5 of the General Agreement on Tariffs and Trade provides that "(n)o * * * product shall be subject to both antidumping and countervailing duties (CVD) to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since AFBs from Singapore are subject to countervailing duties (see, Final Results of Review: Countervailing Duty Orders on Antifriction Bearings and Parts Thereof from Singapore, 56 FR 26384 (1991), the antidumping duty cash deposit rate must be adjusted for any export subsidies found in the corresponding countervailing duty case.

Accordingly, the antidumping duty cash deposit rate in this review of subject merchandise from Singapore will be reduced by the rate attributable to the export subsidies found in the concurrent countervailing duty review. That rate for NMB/Pelmec Singapore is 2.97 percent; the rate for all other manufacturers, producers and exporters is 2.97 percent. Therefore, the cash deposit rate for purposes of the antidumping duty order will be 1.88 percent for NMB/Pelmec Singapore and all other producers and exporters of Singapore-origin AFBs.

The following deposit requirements will be effective for all shipments of Singapore-origin antifriction bearings (other than tapered roller bearings) and parts thereof, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act:

(1) For the reviewed companies, the cash deposit rate will be that established in the final results of these reviews as adjusted for the rate attributable to the export subsidies found in the concurrent countervailing duty determination for those companies;

(2) If the exporter is not a firm covered in these reviews or the original investigations, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews or, if not covered in these reviews, the rate from the LTFV investigations, as adjusted for the rate attributable to the export subsidies found in the concurrent countervailing duty determination for those companies;

(3) The cash deposit rate for all other manufacturers which export the subject merchandise shall be the "All Others" rate listed in the section "Final Results of Review" above for each class or kind of merchandise, as adjusted, for the "all others" rate attributable to the export subsidies found in the concurrent countervailing duty review.

These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews. All comments submitted concerning the calculation of the cash deposit rates are addressed in the section on "Assessment and Cash Deposit Rates" in the Issues Appendix.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent us from doing entry-by-entry assessments, we will calculate where possible, an exporter/importer-specific assessment rate for each class or kind of antifriction bearing. In our preliminary results of review (56 FR 11191), we stated that we would calculate this exporter/importer-specific rate based on the ratio of the total value of dumping duties calculated for the sales examined in the review period to the total entered customs values of those sales. We stated that this rate would be assessed uniformly on all entries of the class or kind of merchandise by that particular importer during the review period. We also stated that where we did not have entered customs value for all merchandise examined during the review period, we would calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the review period.

The current antidumping duty administrative review period covering antifriction bearings from Singapore extends from November 9, 1988 through April 30, 1990. The corresponding countervailing duty administrative review period extends from September 6, 1988 through January 3, 1989, and from May 3, 1989 through December 31, 1989. There was a hiatus in suspension of countervailing duty liquidation for the period January 4, 1989 through May 2, 1989. Because the CVD review for the period January 1, 1990 through December 31, 1990 has not yet been completed, we have no concurrent CVD rate for the period January 1, 1990–April 30, 1990 with which to adjust the antidumping duty liability to account for export subsidies for those four months for purposes of assessment. Therefore, we will not issue or forward to the U.S. Customs Service liquidation instructions for entries of subject merchandise from Singapore during that four-month period until issuance of the final results of the next countervailing duty reviews.

Based on comments received from interested parties and our analysis of the information on the record, we have modified the methodology described in the preliminary results. For purposes of these final results, assessment rates will be calculated as follows.

Purchase Price Sales

For assessment of purchase price sales from Singapore, we will increase the U.S. price by the rate attributable to the export subsidies found in the current countervailing duty review. See, Final Results of Review: Countervailing Duty Orders on Antifriction Bearings and Parts Thereof from Singapore, 56 FR 26384 (1991). The adjustment to U.S. price will be made to reflect the different rates in effect during the period of review. From November 9, 1988 through January 3, 1989, the rate was 0.00 percent; from January 3, 1989 through May 2, 1989, there was no suspension of CVD liquidation; from May 3, 1989 through December 31, 1989 the rate was 2.97 percent. We will calculate the PUDD using this increased USP. We will then divide the total PUDD (calculated as the difference between foreign market value and U.S. price) for each importer by the total number of units sold to that importer. We will direct Customs to assess the resulting unit dollar amount against each unit of merchandise in each of that importer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer under each order for the review period will be almost exactly equal to the total PUDD, which is the correct assessment amount.

2. Exporter's Sales Price Sales

For ESP sales (sampled and non-sampled), we will divide the total PUDD for the reviewed sales by the total entered value of those reviewed sales, for each importer. We will then reduce the antidumping duty rate by the rate attributable to the export subsidies found in the concurrent countervailing duty administrative review. See Final Results of Review: Countervailing Duty Orders on Antifriction Bearings and Parts Thereof from Singapore, 56 FR 26384 (1991).

We will direct Customs to assess the resulting percentage margin against the entered Customs value of the subject merchandise in each of that importer's entries under the relevant order during the review period. Although this approach will result in the assessment of a dumping margin based, to some extent, on sales of merchandise imported outside the POR, it is the most accurate rate that can be calculated on the basis of the information on the record.

In the case of companies which did not report entered value of sales, we will calculate a proxy for entered value of sales, based on the price information available and appropriate adjustments (*e.g.*, insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis).

For calculation of the ESP assessment rate, entries for which liquidation was suspended, but which ultimately fell outside the scope of the orders through operation of the "Roller Chain" rule, will be included in the assessment rate denominator to avoid over-collecting. (The "Roller Chain" rule excludes from the scope of an order bearings which were imported by a related party and further-processed, and which comprise less than one percent of the finished product sold to the first unrelated customer in the United States. See the section on "Roller Chain" in the Issues Appendix.) Entries of parts incorporated into finished bearings before sale to an unrelated customer in the United States will be assessed the importer's weighted-average margin for the appropriate class or kind of merchandise.

3. Other Assessment Instructions

In the case of companies which chose to respond to the price list option (see Preliminary Results of Antidumping Duty Reviews: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof, from the Federal Republic of Germany, 56 FR 11200, we will calculate an *ad valorem* assessment rate by dividing the PUDD by a proxy for entered value of sales. The proxy will be calculated based on the price information available and appropriate adjustments (*e.g.*, insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items as appropriate on a company-specific basis).

Entries of products subject to the orders that passed through a foreign trade zone before entry into U.S. Customs territory will be treated the same as other entries of products subject to the orders to the extent that such treatment is not inconsistent with our approach to FTZs. See the section on "Foreign Trade Zones" in the Issues Appendix.

When we refer to importers, we are referring to the U.S. customer, whether related or unrelated to the exporter, not the customs broker or brokerage house that might be the importer of record for any of these entries. Our liquidation instructions to Customs will identify the customer that these notices refer to as the importer.

The comments made by interested parties concerning the calculation of assessment and cash deposit rates are addressed in the "Assessment and Cash Deposit Rates" section of the Issues Appendix.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22 (1990)).

Dated: June 27, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-16165 Filed 7-10-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-401-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Sweden; Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On March 15, 1991, the Department of Commerce published the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs), from Sweden (56 FR 11193). The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, and cylindrical roller bearings and parts thereof. The reviews cover one manufacturer/exporter and the period November 9, 1988 through April 30, 1990.

Based on our analysis of the comments received and the correction of certain inadvertent programming and clerical errors, we have changed the preliminary results. The final margins for the reviewed firms for each class or kind of merchandise are listed below in the section "Final Results of Review."

EFFECTIVE DATE: July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Diminich or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On June 11, 1990, in accordance with 19 CFR 353.22(c), the Department of Commerce (the Department) initiated administrative reviews of the antidumping duty orders on ball bearings and parts thereof and cylindrical roller bearings and parts thereof from Sweden for the period November 9, 1988 through April 30, 1990 (55 FR 23575).

On March 15, 1991, we published the preliminary results, of these administrative reviews (56 FR 11193). We gave interested parties an opportunity to comment on our preliminary results. At the request of certain interested parties, we held public hearings during the week of April 22, 1991. Because there are concurrent administrative reviews of imports of AFBs from nine countries, we held a hearing on general issues pertaining to all nine countries on April 22, 1991, and a country-specific hearing for Sweden on April 24, 1991.

Issues Appendix

All issues raised in the case and rebuttal briefs by parties to the nine concurrent administrative reviews of AFBs are addressed in the "Issues Appendix" which is appended to the "Notice of Final Results of Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany" which is published concurrently with this notice (hereinafter "Issues Appendix"). The first part of the Issues Appendix addresses all general issues raised in these reviews, and our determinations with respect to each issue. The next part addresses all remaining comments filed by the parties to these proceedings according to subject and then by company within each subject. See the Table of Contents to the Issues Appendix for a complete listing of all issues raised and addressed.

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), and parts thereof, and constitute the following "classes or kinds" of merchandise: ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs). For a detailed description of the products covered under BBs and CRBs, please see the section on "Scope" in the Issues Appendix.

Reporting Requirements

Our review of the information provided on the record by respondents disclosed that there were millions of AFB sales to the United States, the home market and third countries during the period of review (POR). The enormous number of transactions, coupled with the fact that reviews were requested for over sixty foreign producers and exporters, underscored the need to formulate a reasonable sampling methodology in order for the parties and the Department to cope with the resultant costs and administrative burdens.

In response to these problems, and after carefully considering comments on, and suggested alternatives to, our initial sampling proposal, we adopted a sampling plan as authorized under section 777A of the Tariff Act of 1930, as amended (the Act). Under this plan (see "Memorandum to File" dated August 27, 1990), respondents with over 2000 exporter's sales price (ESP) transactions for any class or kind of merchandise were requested to submit data for all U.S. sales of this class or kind that were made during a selected sample of nine one-week periods. These nine weeks were chosen at random, one from each two-month interval during the POR. For each U.S. sale reported during the selected weeks, we requested that respondents report all sales of identical and similar AFBs sold in the home market during the month corresponding to the sample week for U.S. sales. The dumping margins calculated for this sample group of ESP sales were weight-averaged with the dumping margins for purchase price transactions to calculate each respondent's overall dumping margin.

No comments were received from interested parties concerning the basic validity of our sampling process.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information otherwise available (BIA) is appropriate for several firms. For certain firms, total BIA was necessary, while for other firms, only partial BIA was applied. For a discussion of our general application of BIA, see the section on "Best Information Available" in the Issues Appendix. The firms to which total BIA was applied are also identified in the "Best Information Available" section of the Issues Appendix.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes in these final results.

- Where applicable, certain programming and clerical errors in our preliminary results have been corrected. Any alleged programming or clerical errors pertaining to the calculation and treatment of charges and adjustments, cost of production and constructed value with which we do not agree are discussed in the relevant sections of the Issues Appendix.
- In accordance with section 773(b) of the Act, in determining whether to disregard home market sales made at prices below the cost of production, we examined whether such sales have been made in substantial quantities over an extended period of time. When less than 10 percent of the home market sales of each model were at prices below the cost of production, we did not disregard any sales and made normal price-to-price comparisons. When more than 10 percent, but less than 90 percent of the home market sales of a particular model were determined to be below cost, we excluded the below-cost home market sales from our calculation of FMV provided that these below cost sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model for purposes of calculating foreign market value (FMV).

No home market below-cost sales were disregarded unless they were determined to be over an extended period of time.

We have determined that the threshold for "extended period of time" is met when there are below-cost home market sales in more than two months of the POR. We made an exception to this threshold requirement when a particular model was sold in less than three months during the POR. In such cases, where sales below cost occurred in each of the months in which such models had been sold, we concluded that these sales of particular models had been made below cost over an extended period of time.

Home market sales of obsolete merchandise and distress sales were not disregarded from our analysis unless there was documented information on the record demonstrating that such sales were outside the ordinary course of trade.

Since none of the respondents has submitted information indicating that

any of its sales below cost were at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade," we are unable to conclude that the costs of production of such sales have been recovered within a reasonable period. For a more complete discussion of our determination with respect to the cost of production test, see the section on "Cost of Production" in the Issues Appendix.

• For our preliminary results, we compared U.S. and home market sales at the same level of trade. If we did not find contemporaneous sales of such or similar merchandise at the same level of trade, we used constructed value (CV) as the basis for FMV. However, as a result of our review of comments filed by the parties to these proceedings, we have changed our comparison procedures.

For purposes of these final results of review, we first sought contemporaneous sales of identical merchandise at the same level of trade in the home market as that of the U.S. sale. If we were unable to find a match, we then looked for contemporaneous sales of identical merchandise at the next level of trade. (Our analysis of the various levels of trade reported by the respondents led us to conclude that sales of AFBs are made at two levels of trade: (1) Original equipment manufacturers, and (2) distributors, retailers and aftermarket sellers.) If we were unable to find identical matches at the next level of trade, we then sought contemporaneous home market sales of the same family as the U.S. bearing at the same level of trade. If unsuccessful, we then sought contemporaneous home market sales of the same family at the next level of trade before using CV as the basis for FMV (see the section on "Level of Trade" in the Issues Appendix).

• Based on our analysis of comments filed by parties to these proceedings, we have modified or altered our treatment of certain charges and adjustments. These modifications or alterations are discussed in the relevant sections of the Issues Appendix. The most significant modification pertains to our treatment of value-added taxes (VAT) and consumption taxes. Under section 772(d)(1)(c) of the Act, U.S. price must be increased by the "* * * amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation." Accordingly, we have calculated an amount for the VAT or consumption tax, and added it to U.S. price. In order to ensure tax-neutral results, we have made a circumstance of sale adjustment to the home market price. When home market prices were reported net of VAT or consumption tax, we were able to effect a circumstance of sale adjustment by adding the amount of the tax calculated for the U.S. sale to the home market price. For a more complete discussion of our treatment of these taxes, see the section on "Value-Added Taxes" in the Issues Appendix.

Analysis of Comments Received

See the Issues Appendix which is appended to the "Notice of Final Results of Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany" which is published concurrently with this notice (hereinafter "Issues Appendix").

Final Results of Review

We determine the following percentage margins to exist for the period November 9, 1988 through April 30, 1990.

Company	Ball Bearings	Cylindrical roller bearings
SKF Sverige	6.43	4.12
All Others	6.43	4.12

Cash Deposit Requirements

To calculate the cash deposit rate for each respondent, we divided the total potential uncollected dumping duties (PUDD) for each exporter by the total net USP value for that exporter's sales during the review period under each order. In order to derive a single deposit rate for each class or kind of merchandise for each respondent (*i.e.* each exporter or manufacturer included in these reviews), we weight-averaged the purchase price (PP) and exporter's sales price (ESP) deposit rates (using the combined U.S. value of PP sales and ESP sales as the weighting factor). To accomplish this where we sampled ESP sales, we first approximated a total PUDD for all ESP sales by dividing the sample ESP PUDD by the ratio of sampled weeks to total weeks in the review period. We then approximated a total net USP value for all ESP sales during the review period by dividing the sampled ESP total net value by the ratio of sampled weeks to total weeks in the review period.

We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after, the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an unrelated customer in the United States will receive the exporter's deposit rate for the appropriate class or kind of merchandise.

Entries of products subject to the orders that had passed through foreign trade zones (FTZs) before entry into U.S. Customs territory will be treated the same as other entries of products subject to the orders to the extent that such treatment is not inconsistent with our handling of FTZs. See the section on "Foreign Trade Zones" in the Issues Appendix.

The following deposit requirements will be effective for all shipments of Swedish-origin antifriction bearings (other than tapered roller bearings) and parts thereof, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act:

(1) For the reviewed companies, the cash deposit rate will be that established in the final results of these reviews;

(2) For merchandise exported by manufacturers or exporters not covered in these reviews, but covered in the final determinations of sales at less than fair value (the LTFV investigations), the cash deposit rate will continue to be the rate published in the final determinations in the LTFV investigations;

(3) If the exporter is not a firm covered in these reviews or the original investigations, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews or, if not covered in these reviews, the rate from the LTFV investigations;

(4) The cash deposit rate for all other manufacturers which export the subject merchandise shall be the "All Others" rate listed in the section "Final Results of Review" above for each class or kind of merchandise.

These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews. All comments submitted

concerning the calculation of the cash deposit rates are addressed in the section on "Assessment and Cash Deposit Rates" in the Issues Appendix.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent us from doing entry-by-entry assessments, we will calculate where possible, an exporter/importer-specific assessment rate for each class or kind of antifriction bearings. In our preliminary results of review (56 FR 11193), we stated that we would calculate this exporter/importer-specific rate based on the ratio of the total value of dumping duties calculated for the sales examined in the review period to the total entered customs values of those sales.

We stated that this rate would be assessed uniformly on all entries of the class or kind of merchandise by that particular importer during the review period. We also stated that where we did not have entered customs value for all merchandise examined during the review period, we would calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the review period.

Based on comments received from interested parties and our analysis of the information on the record, we have modified the methodology described in the preliminary results. For purposes of these final results, assessment rates will be calculated as follows.

1. Purchase Price Sales

With respect to purchase price sales for these final results, we will divide the total PUDD (calculated as the difference between foreign market value and U.S. price) for each importer by the total number of units sold to that importer. We will direct Customs to assess the resulting unit dollar amount against each unit of subject merchandise in each of that importer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer under each order for the review period will be almost exactly equal to the total PUDD, which is the correct assessment amount.

2. Exporter's Sales Price Sales

For ESP sales (sampled and non-sampled), we will divide the total PUDD for the reviewed sales by the total entered value of those reviewed sales, for each importer. We will direct Customs to assess the resulting percentage margin against the entered Customs value of the subject merchandise in each of that importer's entries under the relevant order during the review period. Although this approach will result in the assessment of a dumping margin based, to some extent, on sales of merchandise imported outside the POR, it is the most accurate rate that can be calculated on the basis of the information on the record.

In the case of companies which did not report entered value of sales, we will calculate a proxy for entered value of sales, based on the price information available and appropriate adjustments (*e.g.*, insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis).

For calculation of the ESP assessment rate, entries for which liquidation was suspended, but which ultimately fell outside the scope of the orders through operation of the "Roller Chain" rule, will be included in the assessment rate denominator to avoid over-collecting. (The "Roller Chain" rule excludes from the scope of an order bearings which were imported by a related party and further-processed, and which comprise less than one percent of the finished product sold to the first unrelated customer in the United States. *See* the section on "Roller Chain" in the Issues Appendix.) Entries of parts incorporated into finished bearings before sale to an unrelated customer in the United States will be assessed the importer's weighted-average margin for the appropriate class or kind of merchandise.

3. Other Assessment Instructions

In the case of companies which chose to respond to the price list option (see Preliminary Results of Antidumping Duty Reviews: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof, from the Federal Republic of Germany, 56 FR 11200, we will calculate an *ad valorem* assessment rate by dividing PUDD by a proxy for entered value of sales. The proxy will be calculated based on the price information available and appropriate adjustments (*e.g.*, insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis).

Entries of products subject to the orders that had passed through a foreign trade zone before entry into U.S. Customs territory will be treated the same as other entries of products subject to the orders to the extent that such treatment is not inconsistent with our approach to FTZs. See the section on "Foreign Trade Zones" in the Issues Appendix.

When we refer to importers, we are referring to the U.S. customer, whether related or unrelated to the exporter, not the customs broker or brokerage house that might be the importer of record for any of these entries. Our liquidation instructions to Customs will identify the customer that these notices refer to as the importer.

The comments made by interested parties concerning the calculation of assessment and cash deposit rates are addressed in the "Assessment and Cash Deposit Rates" section of the Issues Appendix.These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22 (1990)).

Dated: June 27, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-19166 Filed 7-10-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-549-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Thailand; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On March 15, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs), from Thailand (56 FR 11195). The class or kind of merchandise covered by this review is ball bearings and parts thereof. The review covers two related manufacturers/exporters and the period November 9, 1988 through April 30, 1990.

Based on our analysis of the comments received and the correction of certain inadvertent programming and clerical errors, we have changed the preliminary results. The final margin for the reviewed firms for ball bearings is listed below in the section "Final Results of Review."

EFFECTIVE DATE: July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Wendy J. Frankel or Ileana M. Crowley, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On June 11, 1990, in accordance with 19 CFR 353.22(c), the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on ball bearings and parts thereof from Thailand for the period November 9, 1988 through April 30, 1990 (55 FR 23575) with respect to NMB Thailand Ltd. (NMB) and Pelmec Industries (Pte.) Ltd. (Pelmec). Since NMB and Pelmec are related companies, we are treating them as one entity for purposes of this review.

On March 15, 1991, we published the preliminary results of this administrative review (56 FR 11195). We gave interested parties an opportunity to comment on our preliminary results. At the request of certain interested parties, we held public hearings during the week of April 22, 1991. Because there are concurrent administrative reviews of imports of AFBs from nine countries, we held a hearing on general issues pertaining to all nine countries on April 22, 1991, and a country-specific hearing for Thailand on April 25, 1991.

Issues Appendix

All issues raised in the case and rebuttal briefs by parties to the nine concurrent administrative reviews of AFBs are addressed in the "Issues Appendix" which is appended to the "Notice of Final Results of Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany" which is published concurrently with this notice (hereinafter "Issues Appendix"). The first part of the Issues Appendix addresses all general issues raised in these reviews, and our determinations with respect to each issue. The next part addresses all remaining comments filed by the parties to these proceedings according to subject and then by company within each subject. See the Table of Contents to the Issues Appendix for a complete listing of all issues raised and addressed.

Scope of Reviews

The products covered by this review are antifriction bearings (other than tapered roller bearings), and parts thereof, and constitute the following "class or kind" of merchandise: Ball bearings and parts thereof (BBs). For a detailed description of the products covered under BBs, please see the section on "Scope" in the Issues Appendix.

Reporting Requirements

Our review of the information provided on the record by respondents disclosed that there were millions of AFB sales to the United States, the home market and third countries during the period of review (POR).

The enormous number of transactions, coupled with the fact that reviews were requested for over sixty foreign producers and exporters, underscored the need to formulate a reasonable sampling methodology in order for the parties and the Department to cope with the resultant costs and administrative burdens.

In response to these problems, and after carefully considering comments on, and suggested alternatives to, our initial sampling proposal, we adopted a sampling plan as authorized under section 777A of the Tariff Act of 1930, as amended (the Act). Under this plan (see "Memorandum to File" dated August 27, 1990), respondents with over 2000 exporter's sales price (ESP) transactions for any class or kind of merchandise were requested to submit data for all U.S. sales of this class or kind that were made during a selected sample of nine one-week periods. These nine weeks were chosen at random, one from each two-month interval during the POR. For each U.S. sale reported during the selected weeks, we requested that respondents report all sales of identical (and if no identical, similar) AFBs sold in the home market during the month corresponding to the sample week for U.S. sales. The dumping margins calculated for this sample group of ESP sales were weight-averaged with the dumping margins for purchase price transactions to calculate each respondent's overall dumping margin.

No comments were received from interested parties concerning the basic validity of our sampling process.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information otherwise available (BIA) is appropriate for several firms. For certain firms, total BIA was necessary, while for other firms, only partial BIA was applied. For a discussion of our general application of BIA, see the section on "Best Information Available" in the Issues Appendix. The firms to which total BIA was applied are also identified in the "Best Information Available" section of the Issues Appendix.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes in these final results.

- Where applicable, certain programming and clerical errors in our preliminary results have been corrected. Any alleged programming or clerical errors pertaining to the calculation and treatment of charges and adjustments, cost of production and constructed value with which we do not agree are discussed in the relevant sections of the Issues Appendix.
- In accordance with section 773(b) of the Act, in determining whether to disregard home market sales made at prices below the cost of production, we examined whether such sales have been made in substantial quantities over an extended period of time. When less than 10 percent of the home market sales of each model were at prices below the cost of production, we did not disregard any sales and made normal price-to-price comparisons. When more than 10 percent, but less than 90 percent of the home market sales of a particular model were determined to be below cost, we excluded the below-cost home market sales from our calculation of FMV provided that these below cost sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model for purposes of calculating foreign market value (FMV).

No home market below-cost sales were disregarded unless they were determined to be over an extended period of time.

We have determined that the threshold for "extended period of time" is met when there are below-cost home market sales in more than two months of the POR. We made an exception to this threshold requirement when a particular model was sold in less than three months during the POR. In such cases, where sales below cost occurred in each of the months in which such models had been sold, we concluded that these sales of particular models had been made below cost over an extended period of time.

Home market sales of obsolete merchandise and distress sales were not disregarded from our analysis unless there was documented information on the record demonstrating that such sales were outside the ordinary course of trade.

Since none of the respondents has submitted information indicating that

any of its sales below cost were at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade," we are unable to conclude that the costs of production of such sales have been recovered within a reasonable period. For a more complete discussion of our determination with respect to the cost of production test, see the section on "Cost of Production" in the Issues Appendix.

• For our preliminary results, we compared U.S. and home market sales at the same level of trade. If we did not find contemporaneous sales of such or similar merchandise at the same level of trade, we used constructed value (CV) as the basis for FMV. However, as a result of our review of comments filed by the parties to these proceedings, we have changed our comparison procedures.

For purposes of these final results of review, we first sought contemporaneous sales of identical merchandise at the same level of trade in the home market as that of the U.S. sale. If we were unable to find a match, we then looked for contemporaneous sales of identical merchandise at the next level of trade. (Our analysis of the various levels of trade reported by the respondents led us to conclude that sales of AFBs are made at two levels of trade: (1) Original equipment manufacturers, and (2) distributors, retailers and aftermarket sellers.) If we were unable to find identical matches at the next level of trade, we then sought contemporaneous home market sales of the same family as the U.S. bearing at the same level of trade. If unsuccessful, we then sought contemporaneous home market sales of the same family at the next level of trade before using CV as the basis for FMV (see the section on "Level of Trade" in the Issues Appendix).

• Based on our analysis of comments filed by parties to these proceedings, we have modified or altered our treatment of certain charges and adjustments. These modifications or alterations are discussed in the relevant sections of the Issues Appendix. The most significant modification pertains to our treatment of value-added taxes (VAT) and consumption taxes. Under section 772(d)(1)(c) of the Act, U.S. price must be increased by the " * * * amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation." Accordingly, we have calculated an amount for the VAT or consumption tax, and added it to U.S. price. In order to ensure tax-neutral results, we have made a circumstance of sale adjustment to the home market price. When home market prices were reported net of VAT or consumption tax, we were able to effect a circumstance of sale adjustment by adding the amount of the tax calculated for the U.S. sale to the home market price. For a more complete discussion of our treatment of these taxes, see the section on "Value-Added Taxes" in the Issues Appendix.

Analysis of Comments Received

See the Issues Appendix which is appended to the "Notice of Final Results of Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany" which is published concurrently with this notice.

Final Results of Review

We determine the following percentage margins to exist for the period November 9, 1988 through December 31, 1989.

Company	Ball bearings
NMB/Pelmec [1]	0.54
All Others [2]	0.54

[1] Cash Deposit Rate=0.00%.
[2] Cash Deposit Rate=0.00%. See, next section "Cash Deposit Requirements".

Cash Deposit Requirements

To calculate the cash deposit rate for each respondent, we divided the total potential uncollected dumping duties (PUDD) for each exporter by the total net USP value for that exporter's sales during the review period under each order. In order to derive a single deposit rate for each class or kind of merchandise for NMB and Pelmec, we weight-averaged the purchase price (PP) and exporter's sales price (ESP) deposit rates (using the combined U.S. value of PP sales and ESP sales as the weighting factor). To accomplish this where we sampled ESP sales, we first approximated a total PUDD for all ESP sales by dividing the sample ESP PUDD by the ratio of sampled weeks to total weeks in the review period. We then approximated a total net USP value for all ESP sales during the review period by dividing the sampled ESP total net value by the ratio of sampled weeks to total weeks in the review period.

We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after, the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an unrelated customer in the United States will receive the exporter's deposit rate for the appropriate class or kind of merchandise.

Entries of products subject to the orders that had passed through foreign trade zones (FTZs) before entry into U.S. Customs territory will be treated the same as other entries of products subject to the orders to the extent that such treatment is not inconsistent with our handling of FTZs. See the section on "Foreign Trade Zones" in the Issues Appendix.

Normally, we would direct Customs to collect a cash deposit equal to the weighted-average amount by which the foreign market value of ball bearings from Thailand exceeds the U.S. price, which in this review is 0.54 percent for NMB/Pelmec Thai and all other manufacturers, producers, and exporters of ball bearings from Thailand. However, Article VI.5 of the General Agreement on Tariffs and Trade provides that "(n)o * * * product shall be subject to both antidumping and countervailing duties (CVD) to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since AFBs from Thailand are subject to countervailing duties (see, Final Affirmative Countervailing Duty Determination and Partial Countervailing Duty Order: Ball Bearings and Parts Thereof from Thailand; Final Negative Countervailing Duty Determinations: Antifriction Bearings (Other than Ball or Tapered Roller Bearings) and Parts Thereof from Thailand, 54 FR 19130 (1989), the antidumping duty cash deposit rate must be adjusted for any export subsidies found in the countervailing duty case.

Since no concurrent countervailing duty review has been requested on AFBs from Thailand, the antidumping duty cash deposit rate determined in this review of subject merchandise from Thailand will be reduced by the final rate attributable to the export subsidies found in the original countervailing duty investigation. That rate for NMB/Pelmec Thai and all other manufacturers, producers and exporters is 21.54 percent. Therefore, the cash deposit rate

for purposes of the antidumping duty order will be zero.

The following deposit requirements will be effective for all shipments of Thai-origin antifriction bearings (other than tapered roller bearings) and parts thereof, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act:

(1) For the reviewed companies, the cash deposit rate will be that established in the final results of these reviews as adjusted for the rate attributable to the export subsidies found in the original countervailing duty investigation for those companies;

(2) If the exporter is not a firm covered in these reviews or the original investigations, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews or, if not covered in these reviews, the rate from the LTFV investigations, as adjusted for the rate attributable to the export subsidies found in the original countervailing duty investigation;

(3) The cash deposit rate for all other manufacturers which export the subject merchandise shall be the "All Others" rate listed in the section "Final Results of Review" above for each class or kind of merchandise, as adjusted for the "all others" rate attributable to the export subsidies found in the original countervailing duty investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews. All comments submitted concerning the calculation of the cash deposit rates are addressed in the section on "Assessment and Cash Deposit Rates" in the Issues Appendix.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent us from doing entry-by-entry assessments, we will calculate where possible, an exporter/importer-specific assessment rate for each class or kind of antifriction bearings. In our preliminary results of review (56 FR 11195), we stated that we would calculate this exporter/importer-specific rate based on the ratio of the total value of dumping duties calculated for the sales examined in the review period to the total entered customs values of those sales. We stated that this rate would be assessed uniformly on all entries of the class or kind of merchandise by that particular importer during the review period. We also stated that where we did not have entered customs value for all merchandise examined during the review period, we would calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the review period.

The current antidumping duty administrative review period covering antifriction bearings from Thailand extends from November 9, 1988 through April 30, 1990. The corresponding countervailing duty administrative review period extends from September 6, 1988 through January 3, 1989, and from May 3, 1989 through December 31, 1989. There was a hiatus in suspension of countervailing duty liquidation for the period January 4, 1989 through May 2, 1989. Because the CVD review for the period January 1, 1990 through December 31, 1990 has not yet been completed, we have no concurrent CVD rate for the period January 1, 1990–April 30, 1990 to adjust the antidumping duty liability to account for export subsidies for those four months for purposes of assessment. Therefore, we will not issue or forward to the U.S. Customs Service liquidation instructions for entries of subject merchandise from Thailand during that four-month period until issuance of the final results of the next countervailing duty reviews.

Based on comments received from interested parties and our analysis of the information on the record, we have modified the methodology described in the preliminary results. For purposes of these final results, assessment rates will be calculated as follows.

1. Purchase Price Sales

For assessment of purchase price sales from Thailand, we will increase the U.S. price by the rate attributable to the export subsidies found in the original countervailing duty (CVD) investigation (since a review of the CVD order on AFBs from Thailand was not requested). The adjustment to U.S. price will be made to reflect the different rates in effect during the period of review. From November 9, 1988 through January 3, 1989 the rate was 17.83 percent; from January 3, 1989 through May 2, 1989 there was no suspension of CVD liquidation; from May 3, 1989 through December 31, 1989 the rate was 21.54 percent. We will calculate the PUDD using this increased USP. We will then divide the total PUDD (calculated as the difference between foreign market value and U.S. price) for each importer by the total number of units sold to that importer. We will direct Customs to assess the resulting unit dollar amount against each unit of subject merchandise in each of that importer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer under each order for the review period will be almost exactly equal to the total PUDD, which is the correct assessment amount.

2. Exporter's Sales Price Sales

For ESP sales (sampled and non-sampled), we will divide the total PUDD for the reviewed sales by the total entered value of those reviewed sales, for each importer. We will then reduce the antidumping duty rate by the rate attributable to the export subsidies found in the original countervailing duty investigation (since a review of the CVD order on AFBs from Thailand was not requested). See Final Affirmative Countervailing Duty Determination and Partial Countervailing Duty Order: Ball Bearings and Parts Thereof from Thailand; Final Negative Countervailing Duty Determinations: Antifriction Bearings (Other than Ball or Tapered Roller Bearings) and Parts Thereof from Thailand, 54 FR 19130 (1989).

We will direct Customs to assess the resulting percentage margin against the entered Customs value of the subject merchandise in each of that importer's entries under the relevant order during the review period. Although this approach will result in the assessment of a dumping margin based, to some extent, on sales of merchandise imported outside the POR, it is the most accurate rate that can be calculated on the basis of the information on the record.

In the case of companies which did not report entered value of sales, we will calculate a proxy for entered value of sales, based on the price information available and appropriate adjustments (*e.g.*, insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis).

For calculation of the ESP assessment rate, entries for which liquidation was suspended, but which ultimately fell outside the scope of the orders through operation of the "Roller Chain" rule, will be included in the assessment rate denominator to avoid over-collecting. (The "Roller Chain" rule excludes from the scope of an order bearings which were imported by a related party and further-processed, and which comprise less than one percent of the finished product sold to the first unrelated customer in the United States. See the

section on "Roller Chain" in the Issues Appendix.) Entries of parts incorporated into finished bearings before sale to an unrelated customer in the United States will be assessed the importer's weighted-average margin for the appropriate class or kind of merchandise.

3. Other Assessment Instructions

In the case of companies which chose to respond to the price list option (see Preliminary Results of Antidumping Duty Reviews: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof, from the Federal Republic of Germany, 56 FR 11200, we will calculate an *ad valorem* assessment rate by dividing the PUDD by a proxy for entered value of sales. The proxy will be calculated based on the price information available and appropriate adjustments (*e.g.*,insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis).

Entries of products subject to the orders that had passed through a foreign trade zone before entry into U.S. Customs territory will be treated the same as other entries of products subject to the orders to the extent that such treatment is not inconsistent with our approach to FTZs. See the section on "Foreign Trade Zones" in the Issues Appendix.

When we refer to importers, we are referring to the U.S. customer, whether related or unrelated to the exporter, not the customs broker or brokerage house that might be the importer of record for any of these entries. Our liquidation instructions to Customs will identify the customer that these notices refer to as the importer.

The comments made by interested parties concerning the calculation of assessment and cash deposit rates are addressed in the "Assessment and Cash Deposit Rates" section of the Issues Appendix.

These administrative reviews and notice are in accordance with section 751(a) (1) of the Act (19 U.S.C. 1675(a) (1)) and § 353.22 of the Department's regulations (19 CFR 353.22 (1990)).

Dated: June 27, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-16167 Filed 7-10-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the United Kingdom; Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On March 15, 1991, the Department of Commerce published the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs), from United Kingdom (56 FR 11197). The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, and cylindrical roller bearings and parts thereof. The reviews cover 10 manufacturers/exporters and the period November 9, 1988 through April 30, 1990.

Based on our analysis of the comments received and the correction of certain inadvertent programming and clerical errors, we have changed the preliminary results. The final margins for the reviewed firms for each class or kind of merchandise are listed below in the section "Final Results of Review."

EFFECTIVE DATE: July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Diminich (SKF), Laurel M. Lynn (Barden, Cooper, Pratt & Whitney, Rolls Royce), Thomas A. McGinty (Dowty Rotol, Fiat Aviazione, S.p.A.), Edmond A. O'Neill (FAG-UK, RHP), or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130 or 377-1131.

SUPPLEMENTARY INFORMATION:

Background

On June 11, 1990, in accordance with 19 CFR 353.22(c), the Department of Commerce (the Department) initiated administrative reviews of the antidumping duty orders on ball bearings and parts thereof, and cylindrical roller bearings and parts thereof, from the United Kingdom for the period November 9, 1988 through April 30, 1990 (55 FR 23575).

On March 15, 1991, we published the preliminary results, and termination in part, of these administrative reviews (56 FR 11197). We gave interested parties an opportunity to comment on our preliminary results. At the request of certain interested parties, we held public hearings during the week of April 22, 1991. Because there are concurrent administrative reviews of imports of AFBs from nine countries, we held a hearing on general issues pertaining to all nine countries on April 22, 1991, and a country-specific hearing for the United Kingdom on April 24, 1991.

Issues Appendix

All issues raised in the case and in rebuttal briefs by parties to the nine concurrent administrative reviews of AFBs are addressed in the "Issues Appendix" which is appended to the "Notice of Final Results of Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany" which is published concurrently with this notice (hereinafter "Issues Appendix"). The first part of the Issues Appendix addresses all general issues raised in these reviews, and our determinations with respect to each issue. The next part addresses all remaining comments filed by the parties to these proceedings according to subject and then by company within each subject. See the Table of Contents to the Issues Appendix for a complete listing of all issues raised and addressed.

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), and parts thereof, and constitute the following "classes or kinds" of merchandise: ball bearings and parts thereof (BBs) and cylindrical roller bearings and parts thereof (CRBs). For a detailed description of the products covered under BBs and CRBs, please see the section on "Scope" in the Issues Appendix.

Reporting Requirements

Our review of the information provided on the record by respondents disclosed that there were millions of AFB sales to the United States, the home market and third countries during the period of review (POR). The enormous number of transactions, coupled with the fact that reviews were requested for over sixty foreign producers and exporters, underscored the need to formulate a reasonable sampling methodology in order for the parties and the Department to cope with the resultant costs and administrative burdens.

In response to these problems, and after carefully considering comments on, and suggested alternatives to, our initial sampling proposal, we adopted a

sampling plan as authorized under section 777A of the Tariff Act of 1930, as amended (the Act). Under this plan (see "Memorandum to File" dated August 27, 1990), respondents with over 2,000 exporter's sales price (ESP) transactions for any class or kind of merchandise were requested to submit data for all U.S. sales of this class or kind that were made during a selected sample of nine one-week periods. These nine weeks were chosen at random, one from each two-month interval during the POR. For each U.S. sale reported during the selected weeks, we requested that respondents report all sales of identical and similar AFBs sold in the home market during the month corresponding to the sample week for U.S. sales. The dumping margins calculated for this sample group of ESP sales were weight-averaged with the dumping margins for purchase price transactions to calculate each respondent's overall dumping margin.

No comments were received from interested parties concerning the basic validity of our sampling process.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information otherwise available (BIA) is appropriate for several firms. For certain firms, total BIA was necessary, while for other firms, only partial BIA was applied. For a discussion of our general application of BIA, see the section on "Best Information Available" in the Issues Appendix. The firms to which total BIA was applied are also identified in the "Best Information Available" section of the Issues Appendix

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes in these final results.

• Where applicable, certain programming and clerical errors in our preliminary results have been corrected. Any alleged programming or clerical errors pertaining to the calculation and treatment of charges and adjustments, cost of production and constructed value with which we do not agree are discussed in the relevant sections of the Issues Appendix.

• In accordance with section 773(b) of the Act, in determining whether to disregard home market sales made at prices below the cost of production, we examined whether such sales have been made in substantial quantities over an extended period of time. When less than 10 percent of the home market sales of each model were at prices below the cost of production, we did not disregard any sales and made normal price-to-price comparisons. When more than 10 percent, but less than 90 percent of the home market sales of a particular model were determined to be below cost, we excluded the below-cost home market sales from our calculation of FMV provided that these below cost sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model for purposes of calculating foreign market value (FMV).

No home market below-cost sales were disregarded unless they were determined to be over an extended period of time.

We have determined that the threshold for "extended period of time" is met when there are below-cost home market sales in more than two months of the POR. We made an exception to this threshold requirement when a particular model was sold in less than three months during the POR. In such cases, where sales below cost occurred in each of the months in which such models had been sold, we concluded that these sales of particular models had been made below cost over an extended period of time.

Home market sales of obsolete merchandise and distress sales were not disregarded from our analysis unless there was documented information on the record demonstrating that such sales were outside the ordinary course of trade.

Since none of the respondents has submitted information indicating that any of its sales below cost were at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade," we are unable to conclude that the costs of production of such sales have been recovered within a reasonable period. For a more complete discussion of our determination with respect to the cost of production test, see the section on "Cost of Production" in the Issues Appendix.

• For our preliminary results, we compared U.S. and home market sales at the same level of trade. If we did not find contemporaneous sales of such or similar merchandise at the same level of trade, we used constructed value (CV) as the basis for FMV. However, as a result of our review of comments filed by the parties to these proceedings, we have changed our comparison procedures.

For purposes of these final results of review, we first sought contemporaneous sales of identical merchandise at the same level of trade in the home market as that of the U.S. sale. If we were unable to find a match, we then looked for contemporaneous sales of identical merchandise at the next level of trade. (Our analysis of the various levels of trade reported by the respondents led us to conclude that sales of AFBs are made at two levels of trade: (1) Original equipment manufacturers, and (2) distributors, retailers and aftermarket sellers.) If we were unable to find identical matches at the next level of trade, we then sought contemporaneous home market sales of the same family as the U.S. bearing at the same level of trade. If unsuccessful, we then sought contemporaneous home market sales of the same family at the next level of trade before using CV as the basis for FMV (see the section on "Level of Trade" in the Issues Appendix).

• Based on our analysis of comments filed by parties to these proceedings, we have modified or altered our treatment of certain charges and adjustments. These modifications or alterations are discussed in the relevant sections of the Issues Appendix. The most significant modification pertains to our treatment of value-added taxes (VAT) and consumption taxes. Under section 772(d)(1)(c) of the Act, U.S. price must be increased by the " * * * amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation." Accordingly, we have calculated an amount for the VAT or consumption tax, and added it to U.S. price. In order to ensure tax-neutral results, we have made a circumstance of sale adjustment to the home market price. When home market prices were reported net of VAT or consumption tax, we were able to effect a circumstance of sale adjustment by adding the amount of the tax calculated for the U.S. sale to the home market price. For a more complete discussion of our treatment of these taxes, see the section on "Value-Added Taxes" in the Issues Appendix.

Analysis of Comments Received

See the Issues Appendix which is appended to the "Notice of Final Results of Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of

Germany" which is published concurrently with this notice.

Final Results of Review

We determine the following percentage margins to exist for the period November 9, 1988 through April 30, 1990.

Company	Ball bearings	Cylindrical roller bearings
Barden	14.73	(2)
Cooper Bearings	(2)	0.00
Dowty Rotol	10.71	4.58
FAG UK	20.89	0.00
FiatAvio	(1)	21.93
Pratt & Whitney Canada	6.03	2.55
RHP Bearings	15.96	31.07
Rolls-Royce	2.74	2.55
SKF-UK	4.92	(1)
SNFA	(1)	(2)
All Others	20.89	31.07

[1] No sales to the U.S. during the period.
[2] Not subject to review.

Cash Deposit Requirements

To calculate the cash deposit rate for each respondent, we divided the total potential uncollected dumping duties (PUDD) for each exporter by the total net USP value for that exporter's sales during the review period under each order. In order to derive a single deposit rate for each class or kind of merchandise for each respondent (*i.e.*, each exporter or manufacturer included in these reviews) we weight-averaged the purchase price (PP) and exporter's sales price (ESP) deposit rates (using the combined U.S. value of PP sales and ESP sales as the weighting factor). To accomplish this where we sampled ESP sales, we first approximated a total PUDD for all ESP sales by dividing the sample ESP PUDD by the ratio of sampled weeks to total weeks in the review period. We then approximated a total net USP value for all ESP sales during the review period by dividing the sampled ESP total net value by the ratio of sampled weeks to total weeks in the review period.

We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after, the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an unrelated customer in the United States will receive the exporter's deposit rate for the appropriate class or kind of merchandise.

Entries of products subject to the orders that had passed through foreign trade zones (FTZs) before entry into U.S. Customs territory will be treated the same as other entries of products subject to the orders to the extent that such treatment is not inconsistent with our handling of FTZs. See the section on "Foreign Trade Zones" in the Issues Appendix.

The following deposit requirements will be effective for all shipments of UK-origin antifriction bearings (other than tapered roller bearings) and parts thereof, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act:

(1) For the reviewed companies, the cash deposit rate will be that established in the final results of these reviews;

(2) For merchandise exported by manufacturers or exporters not covered in these reviews, but covered in the final determinations of sales at less than fair value (the LTFV investigations), the cash deposit rate will continue to be the rate published in the final determinations in the LTFV investigations;

(3) If the exporter is not a firm covered in these reviews or the original investigations, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews or, if not covered in these reviews, the rate from the LTFV investigations;

(4) The cash deposit rate for all other manufacturers which export the subject merchandise shall be the "All Others" rate listed in the section "Final Results of Review" above for each class or kind of merchandise.

These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews. All comments submitted concerning the calculation of the cash deposit rates are addressed in the section on "Assessment and Cash Deposit Rates" in the Issues Appendix.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent us from doing entry-by-entry assessments, we will calculate wherever possible, an exporter/ importer-specific assessment rate for each class or kind of antifriction bearings. In our preliminary results of review (56 FR 11197), we stated that we would calculate this exporter/importer-specific rate based on the ratio of the total value of dumping duties calculated for the sales examined in the review period to the total entered customs values of those sales. We stated that this rate would be assessed uniformly on all entries of the class or kind of merchandise by that particular importer during the review period. We also stated that where we did not have entered customs value for all merchandise examined during the review period, we would calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the review period.

Based on comments received from interested parties and our analysis of the information on the record, we have modified the methodology described in the preliminary results. For purposes of these final results, assessment rates will be calculated as follows.

1. Purchase Price Sales

With respect to purchase price sales for these final results, we will divide the total PUDD (calculated as the difference between foreign market value and U.S. price) for each importer by the total number of units sold to that importer. We will direct Customs to assess the resulting unit dollar amount against each unit of subject merchandise in each of that importer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer under each order for the review period will be almost exactly equal to the total PUDD, which is the correct assessment amount.

2. Exporter's Sales Price Sales

For ESP sales (sampled and non-sampled), we will divide the total PUDD for the reviewed sales by the total entered value of those reviewed sales, for each importer. We will direct Customs to assess the resulting percentage margin against the entered Customs value of the subject merchandise in each of that importer's entries under the relevant order during the review period. Although this approach will result in the assessment of a dumping margin based, to some extent, on sales of merchandise imported outside the POR, it is the most accurate rate that can be calculated on the basis of the information on the record.

In the case of companies which did not report entered value of sales, we will calculate a proxy for entered value of sales, based on the price information available and appropriate adjustments (*e.g.*, insurance, freight, U.S. brokerage

and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis).

For calculation of the ESP assessment rate, entries for which liquidation was suspended, but which ultimately fell outside the scope of the orders through operation of the "Roller Chain" rule, will be included in the assessment rate denominator to avoid over-collecting. (The "Roller Chain" rule excludes from the scope of an order bearings which were imported by a related party and further-processed, and which comprise less than one percent of the finished product sold to the first unrelated customer in the United States. *See* the section on "Roller Chain" in the Issues Appendix.) Entries of parts incorporated into finished bearings before sale to an unrelated customer in the United States will be assessed the importer's weighted-average margin for the appropriate class or kind of merchandise.

3. Other Assessment Instructions

In the case of companies which chose to respond to the price list option (see Preliminary Results of Antidumping Duty Reviews: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof, from the Federal Republic of Germany, 56 FR 11200), we will calculate an *ad valorem* assessment rate by dividing PUDD by a proxy for entered value of sales. The proxy will be calculated based on the price information available and appropriate adjustments *e.g.*,insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis).

Entries of products subject to the orders that had passed through a foreign trade zone before entry into U.S. Customs territory will be treated the same as other entries of products subject to the orders to the extent that such treatment is not inconsistent with our approach to FTZs. See the section on "Foreign Trade Zones" in the Issues Appendix.

When we refer to importers, we are referring to the U.S. customer, whether related or unrelated to the exporter, not the customs broker or brokerage house that might be the importer of record for any of these entries. Our liquidation instructions to Customs will identify the customer that these notices refer to as the importer.

The comments made by interested parties concerning the calculation of assessment and cash deposit rates are addressed in the "Assessment and Cash Deposit Rates" section of the Issues Appendix.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22 (1990)).

Dated: June 27, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-16168 Filed 7-10-91; 8:45 am]

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federal register

Thursday
July 11, 1991

Part III

Small Business Administration

13 CFR Part 107

Small Business Investment Companies; Miscellaneous Amendments; Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

[Rev. 6, Amdt. 7]

Small Business Investment Companies; Miscellaneous Amendments

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: On September 27, 1990, SBA proposed fifteen amendments to its regulations governing the Small Business Investment Company (SBIC) and Specialized Small Business Investment Company (SSBIC) (collectively Licensees) program which are presently in force, and afforded 60 days for the public to comment on these proposals. Thereafter, SBA extended the comment period until December 31, 1990. SBA received over 650 written comments on the proposal. SBA also has met with representatives of the SBIC and SSBIC industry during the comment period as extended to discuss various aspects of the proposal, and received the oral presentations of the industry on the record of this rulemaking. SBA has reviewed those comments and positions and is hereby presenting a series of final rules developed as a result of this rulemaking process.

DATES: These rules are effective July 11, 1991. However, comments will be accepted until August 12, 1991.

ADDRESSES: Written comments should be sent to Bernard Kulik, Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW., Code 6140, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Joseph L. Newell, Director, Office of Investment, Telephone (202) 205-6510.

SUPPLEMENTARY INFORMATION: On September 27, 1990, SBA proposed fifteen regulatory amendments designed to correct misunderstandings of present rules and to state SBA's position on several new program developments. (55 FR 39422).

Because of the extensive interest expressed by the public in these proposals, SBA extended the comment period until December 31, 1990. During this time, on several occasions representatives of SBA met with representatives of the industry to solicit comments on the proposals. The comment period closed on December 31, 1990, and thereafter SBA's Investment Division reviewed and analyzed all of the comments. SBA is now prepared to publish its final position on the proposals, and does so hereby.

SBA received over 650 comments during the course of this rulemaking proceeding. Not all of the comments addressed all aspects of the proposal. In this regard, the most heavily commented upon proposals were those regarding pension fund investment, size standards relevant to change of ownership transactions, subordination of SBA's creditor position and appropriate vehicles for idle funds investment. The comments on these proposals will be discussed in more detail below. However, the public should be assured that SBA carefully reviewed the record made with respect to all of the proposals before reaching its final position on each one.

The first proposal would have limited (but not prohibited) pension fund participation in the SBIC program. This limitation would have been stated in a new clause to the definition of "Private Capital" in § 107.3 of the regulations. (All references herein to section 107 are to 13 CFR part 107, 1990). The amended definition would have permitted investments by pension funds but would not have recognized them for regulatory purposes which are measured in terms of "Private Capital"; i.e., licensing, leveraging and regulatory compliance.

SBA received 224 written comments on this issue. Most of these comments took the position that neither State nor Federal regulation of pension funds prohibits all investment by them in SBIC's or SSBIC's. Rather, those regulations limit the extent of such investment. By eliminating pension fund investment in the industry, SBA would be taking a position in excess of that taken by other regulators and would be cutting off a valuable source of capital for the industry.

We are persuaded that pension fund investments in Licensees are not inconsistent with program intent, and in fact under prescribed conditions are desirable. Therefore, the final rule permits such investment under prescribed conditions. The conditions SBA has placed upon such investments by the final regulation are intended to permit public employee pension fund investment in Licensees to be considered as "Private Capital" for all program purposes, provided that a State or local government or entity thereof, does not manage the funds. By doing so, SBA is adhering to its longstanding policy of avoiding Leveraging of State funds. Generally, other forms of public and private pension funds are permitted to invest in Licensees and such investments will be considered "Private Capital" by SBA for all regulatory purposes.

The proposal included a definition of "Subdivider and developer" (§ 107.3) which was intended to clarify the meaning of that phrase, as it is used in § 107.901(c)(1)(i). That paragraph bans certain real estate investments, classified under Major Group 65 of the SIC Manual, but excepts from this prohibition subdividers and developers, who are also classified under Major Group 65. Very little comment was received on this proposal, and SBA has decided to adopt this proposal as final. The new definition states that these industry groups buy raw land which they subdivide, and make ready for construction, but which they sell as vacant lots, to be built on by others. This definition will resolve confusion by separating subdividers and developers from "operative builders for their own account"; the latter are classified under Major Group 15 (Building construction—general contractors and operative builders). The distinction between these two major groups and Major Group 70 (Hotels, Rooming Houses, etc.) becomes significant in relation to § 107.101(c) (2) and (3), where these major groups are treated differently for purposes of portfolio diversification.

The proposed regulation also contained a new paragraph to be added to § 107.201(b) which would have limited the automatic subordination of debentures sold with SBA's guarantee. At present, Licensee debentures guaranteed by SBA, although not required to be by statute, are generally subordinated to all other debts and obligations of the issuing SBIC as a matter of practice. The Agency uses its discretionary statutory authority to limit or deny subordination only rarely. This practice has at times resulted in considerable losses when SBA has been required to honor its guarantee, and then turned to the relevant Licensee for reimbursement. SBA proposed to limit the subordination of its position on debentures guaranteed after the effective date of the regulation to debt outstanding to State or federally regulated commercial lenders, and only to the extent that such debt aggregates no more than 200% of private capital or $10 million, whichever is less. Under the proposal, a Licensee could at any time request SBA to extend the subordination to additional loans "in exercise of (SBA's) reasonable investment prudence and in considering the financial soundness of such company," as permitted by the statute. The proposed regulation was drafted so that the "old-style" across the board subordination would expire with the "old-style" debentures. In the event of the "roll-

over" of an old debenture, the replacement debenture would not be automatically subordinated to all obligations of the Licensee, but only to the debt described above.

SBA received numerous (29) comments on this proposal. For the most part, they argued against the proposal. Generally, the comments argued that the proposal was unfair in that it would break faith with industry members who have relied on past Agency practice and would like to continue to do so. They also took exception to the imposition of a $10 million cap on subordinations, but did not oppose a 200% limitation. In fact, some argued for imposition of a limitation based on a percentage of private funds increasing with proportionate increases in such private capital. On the other hand, some argued for a limit based upon a ratio of private capital to total investments. Finally, most argued against limiting subordination to funds lent to Licensees by regulated lenders as overly restrictive.

SBA remains persuaded that its exercise of subordination should be limited in a way that protects its creditor position. The statute requires the exercise of reasonable judgment in deciding whether to refuse subordination, and this requirement does not contemplate a policy of non-review of subordination requests. In addition, it is our view that Licensees are entitled to a clear regulatory expression of the grounds upon which the Agency intends to conduct such reviews. Therefore, we have included some aspects of the proposal, as modified, in this final regulation.

The modification to the original proposal which is adopted here will permit SBA subordination to loans from sources other than "regulated lenders" such as from pension funds and insurance companies. However, SBA will not permit subordination to loans made by an Associate of the Licensee as that term is defined at § 107.3 without the prior written approval of SBA. Another modification has been adopted to clarify that, as set forth in the statute, SBA reserves the right on a case-by-case basis, to refuse to subordinate its guarantee to other obligations of the Licensee even within the new cap if the exercise of reasonable investment prudence and the financial soundness of the Licensee warrant that determination by SBA. Otherwise, the proposal as it was proposed is adopted as final.

Section 107.205 of SBA's present regulations, Leverage for section 301(d) Licensees, offers SSBIC's preferred stock leverage in excess of 100% of private capital, up to the amount of such Licensee's "qualified investments" subject to the additional limitation that the second level of leverage cannot exceed 100% of private capital. The definition of "qualified investments" includes "unsecured debt instruments." This phrase has sometimes been misinterpreted to mean debt instruments which were not secured by the borrower's assets, but could include such debt if that debt was secured by third parties of their assets; for example, the residence of the borrower company's owner. The proposed amendment made clear that only totally unsecured debt qualifies for purposes of this section. SBA is adopting this proposal as a final regulation.

SBA received 9 comments on the proposal. They argued that security given by third parties, such as principals of the small business being financed, is appropriate. However, we continue to interpret the statutory term "unsecured debt instruments" which must be read into the definition of qualified investment, to exclude instruments subject to the guaranties of third parties as well as their issuer.

Section 107.304 of SBA's present regulations sets forth requirements that must be met by a Licensee in connection with each investment. SBA proposed to revise this section to provide that the Licensee must require each prospective portfolio concern to provide the Licensee with financial statements and projections necessary to support its investment decision. If the Licensee makes the investment, the Licensee will require that the portfolio concern transmit to the licensee at least annually such financial statements certified by its chief financial officer, general partner or owner, as necessary to support the Licensee's valuation. This requirement is necessary to enable the Licensee to value its investments on a current basis, as it is required to do by appendix I to part 107.

The proposal is hereby adopted. SBA intends to enforce this rule vigorously. However, based on the comments received on the proposal, it recognizes that Licensees may not always be able to obtain necessary annual financial material from portfolio concerns on an expeditious basis. Therefore, in instances where the documentation has been sought but not obtained, compliance will be assumed if the Licensee's files demonstrate reasonable efforts to obtain the documentation.

Section 107.321 of SBA's present regulations states the conditions under which a Licensee may require a portfolio concern to redeem equity securities. The present regulation prohibits utilization of a put at a fixed price to facilitate such redemption, because such a put effectively changes the nature of the equity security into a debt instrument. Further, the parties to a financing are required to agree either on a formula to value the redemption, based on book value or earnings at the time of redemption. The proposed regulation provided that the redemption price may also be based upon fair market value as determined by independent professional appraisers agreed to by both parties. Appraisal costs are to be shared by the portfolio concern and the Licensee. SBA understands that it is important for Licensees to arrange for an exit from an investment, but such exit should not occur without regard to the small concern's financial health at the time of the put. SBA hereby adopts this proposal.

The amendment to § 107.401, governing financial assistance by Licensees in the form of guarantees, would have prohibited loan guarantees among Licensees. It also described a financing by the pledge of a Licensee's assets for purposes of analogizing it to a prohibited loan transaction under the proposed regulation. SBA is adopting this proposal as final.

The effect of this amendment is to prohibit loan guarantees of portfolio loans between Licensees. Such effect is intended to prevent double-encumbrance of program funds for the same loan. As a practical consideration, in such a transaction, a guarantor Licensee is not able to invest the funds underlying a guarantee for as long as the guarantee is not released. At the same time, the guaranteed SBIC has loaned its funds to the portfolio concern. Thus, in a guaranteed transaction twice the amount of the loan in program funds is committed, and one half of that amount remains unavailable for other investment. The original purpose of the regulation was to permit Licensees to guarantee the debt of small concerns to third parties and was designed to attract additional private capital (outside funds) into the small business sector of the economy. The use of this regulation for guarantees among Licensees, however, is counterproductive to this purpose. It has shrunk the available investment pool.

The proposed regulation equated a pledge on a nonrecourse basis of a Licensee's asset in support of a small concern's debt to the lesser of such debt or the value of that asset. This is to make clear that such a guarantee does not equal the amount guaranteed, unless the value of the asset equals or exceeds the amount of the guaranteed debt. For example, a Licensee may pledge a CD in

its portfolio, in support of a small concern's obligation to a creditor of the small concern. Such financial assistance amounts to the lesser of the value of the asset or the debt. If the value of the CD exceeds the debt, only the debt will measure the financing. If, on the other hand, the debt exceeds the value of the asset, the non-recourse provision of the financing will result in a financing equal to the value of the pledged asset.

SBA proposed to add a paragraph (d) to § 107.402 of the present regulations which would limit the commitment fee that may be charged on the undisbursed portion of a loan to the prime rate in effect on the date of commitment, to be computed from the date of commitment to the date of disbursement of the loan, or cancellation of the commitment. SBA received 22 comments on this proposal. All for the most part argued against restricting commitment fees. SBA is, however, adopting this proposal as published.

The reason for this regulation is that in a significant number of instances the commitment fees charged by Licensees have equaled or exceeded the rate at which the portfolio concern would have paid interest had the loan been disbursed at the time of commitment. This is so because the fee was calculated in advance, irrespective of disbursement, and because in some instances the disbursement followed within a few days of the commitment. In effect, such commitment fees amounted to "points". SBA does not view the collection of excessive fees as consistent with the provision of financing on terms contemplated by the Act. The regulation as adopted makes clear that any commitment fee exceeding the stated limit will be disallowed in its entirety for purposes of the exclusion of a good-faith commitment fee from the cost-of-money definition, thus resulting in its inclusion in the cost of money. It does, however, permit charging reasonable commitment fees calculated pursuant to its terms.

The proposed amendment to § 107.403(b)(1) would have limited the interim financing in contemplation of a long-term financing by a Licensee to an amount that cannot exceed the total long-term financing, and limited its term to one year or less. The reason for this proposal was SBA's awareness of disproportionately large short-term financings in contemplation of much smaller long-term financings. Since, at the time of the interim financing the amount of the long-term financing cannot be foreseen with certainty, the regulation merely requires that the total long-term financing at least equal the short-term financing. The one-year limit has the purpose of distinguishing between true interim or provisionial financings during negotiations of the long-term investment, and short-term financings which use this regulation to avoid the long-term requirement of the statute.

The comments indicated that this change should apply in the aggregate if the financing involves a group including the Licensee and others. After due consideration of the comments received on this proposal, SBA agrees to this amendment and adopts the amended proposal as final.

The proposed amendment to § 107.707 would have restricted exchanges and purchases of portfolio securities between Licensees to non-recourse transactions only. It has the same purpose as the amendment to § 107.401; to prevent the double-encumbrance of program funds. The prohibition against inter-Licensee loan guarantees would be easily avoided if a Licensee, instead of guaranteeing a loan, would make the loan and sell it with recourse to another Licensee. It is therefore necessary to bar inter-Licensee portfolio sales with recourse, in order to make the prohibition on loan guarantees effective. Therefore, SBA is adopting the proposed rule as final. This, however, will not be construed as a limitation on conventional participations among Licensees.

The proposed amendment to present § 107.708 of SBA's regulations was intended to clarify an ambiguity in the existing regulation. That regulation presently can be read to require so-called "idle funds" to be invested, among other options, either in one-year certificates of deposit (CDs) in any bank, or in federally insured deposit accounts. The intent of the proposed change was to restrict idle-funds investments to federally insured CD's or deposits up to the amount of federal insurance. Accordingly, the proposal provided that CD's and deposits of idle funds must be federally insured in their full amounts. The regulation also raises the limit of the "petty cash" fund that Licensees may keep from $500 to $1,000.

SBA received 32 comments on the proposal which indicated that restricting the types of accounts mentioned above is unnecessarily disruptive of normal investment practice. SBA agrees with those comments. However, SBA is still concerned with the financial integrity of "idle funds" and will continue to review this issue in future rulemakings.

The proposed amendment to § 107.711 was primarily designed to prohibit Licensee participation in leveraged buy-outs (LBOs) of concerns that are in fact large after the transactions, but which qualify as small only because of their heavy debt structure caused by the LBO. Such qualification became possible because one of the two alternative size standards which presently governs financings by Licensees, 13 CFR 121.802(a)(2)(i), focuses on net worth ($6 million) and 2-year average net income ($2 million), but does not consider total assets. It is therefore possible for a business to show a net worth figure below $6 million, even where total assets are greatly in excess of that figure, by deducting from the gross asset figure the debt incurred by it as a result of an LBO, and still qualify as a small business for purposes of financing by a Licensee.

SBA received 293 comments on this proposal. SBA is withholding publication of its final position on this aspect of the proposal until it completes further economic analysis of the issues raised by the comments.

Section 107.901(c)(2) was proposed to be amended to provide that if a small concern seeks SBIC financing for the acquisition of an existing building, or to construct or renovate a building for its own use and for rental to others that such a transaction is permissible if the small concern itself uses at least 51% of the space of an existing, or two-thirds of the space of a newly constructed or renovated building or its own eligible use. The amendment conforms the rules governing Licensees to the rules governing the business loan and the development company programs, where the same qualification is employed. The former regulation permitted such financing only if the real property is intended for resale. The amended regulation permits financing if the real property is intended for resale, but requires that the property be zoned for its intended use at the time of its financing by the Licensee. However, some commenters requested a clarification of the word "space" and suggested using "usable space." We agree with the comment and, as so amended, SBA is adopting this regulation.

Finally, SBA proposed an amendment to § 107.903(b) which was intended to make clear what was implicit before, that SBA approval of (otherwise prohibited) self-dealing transactions can be granted only before, and not also after the subject transaction has been consummated. Licensees have sometimes assumed that such approvals will be given retrospectively (*nunc pro tunc*), but this is clearly not the intent of the statute (15 U.S.C. 687d), which

requires SBA to control such conflicts of interest. This proposal is hereby adopted.

Compliance with Executive Orders 12291 and 12612, and the Regulatory Flexibility and Paperwork Reduction Acts

Executive Order 12291

SBA has determined that these final regulations, taken as a whole, will constitute a major rule for purposes of Executive Order 12291, because they are likely to have an annual impact on the national economy of $100 million or more. The proposed limitation of SBA's subordination in § 107.201 alone is estimated to prevent SBIC losses up to $50 million.

Executive Order 12612

SBA certifies that these final regulations have no federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Regulatory Flexibility Act

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, these final regulations may have a significant economic impact on a substantial number of small entities. Pursuant to Executive Order 12291 and 5 U.S.C. 603, SBA offers the following regulatory flexibility and impact analysis.

1. This action, taken as a whole, is intended to strengthen the original intent of the program which is to provide assistance to truly small businesses, to reduce losses being sustained by Licensees and by the SBA as their guarantor, and to clarify certain regulations that have been misinterpreted to the detriment of the program.

2. The legal basis for these final regulations is section 308(c) of the Small Business Investment Act, 15 U.S.C. 687(c).

3. These final rules apply to all 371 currently operating Licensees, including 131 section 301(d) companies.

4. The potential benefits of these regulations have been set forth in the respective discussions of these proposals above, under Supplementary Information.

5. The potential costs of these regulations cannot be quantified or even estimated, as for the most part these regulations are designed to prevent transactions from being consummated, such as excessive leveraging of Licensees at the expense of SBA as guarantor of indebtedness subordinated to such excessive leverage. Other examples are the investment of certain pension fund money in Licensees, utilization of fixed put prices, inter-Licensee loan guaranties and sales of portfolio items with recourse, and the limitation of short-term interim financing to the exclusion of contemplated long-term financing. Some of these regulations, such as the requirements of financial information from potential and actual investees, merely codify good business practice already in place at well-managed Licensees. Similarly, the mistaken notion that a debt is unsecured even though it is secured by a third party, is corrected only because it has existed, and thus made this statement of the obvious necessary.

6. There are no Federal rules which duplicate, overlap or conflict with these final rules.

7. SBA is not aware of regulatory alternatives that could achieve the same objectives at lower cost, as explained above under No. 5.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C., ch. 35, we hereby certify that these regulations will impose one new recordkeeping requirement. Proposed § 107.304(b) would provide that Licensees require prospective and actual portfolio concerns to furnish such financial statements and projections as will support the Licensee's investment decision and valuation. SBA is seeking approval of this requirement from the Office of Management and Budget.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs/business, Reporting and Recordkeeping Requirement, Small businesses.

For the reasons set forth above, part 107 of title 13, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 107 continues to read as follows:

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 et seq., as amended, Pub. L. 100–590 and Pub. L. 101–162. 15 U.S.C. 687(c); 15 U.S.C. 683, as amended by Pub. L. 101–162; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Pub. L. 100–590.

2. The Table of Contents of part 107 is amended by revising the heading of § 107.304 to read as follows:

Sec.

* * * * *

107.304 Size status and nondiscrimination; financial statements.

* * * * *

3. Section 107.3 is amended by revising the definition of "Private Capital"; by adding a definition for "Subdivider and Developer" in alphabetical order; and by revising footnote 4 in the definition of "SIC Manual" to read "As of January 1991, the latest edition of the SIC Manual was 1987.":

§ 107.3 Definition of terms.

* * * * *

Private Capital—(a) *General.* "Private Capital" means the combined private (non-governmental) paid-in capital and paid-in surplus of a Corporate Licensee, or of any Unincorporated License, the private partnership capital, exclusive of (1) any funds borrowed by the Licensee from any source, or (2) obtained from SBA through the sale of Preferred Securities, or (3) subject to the terms of paragraph (d) of this section, invested by a State or local government or instrumentality thereof, specifically including a pension fund managed by a State or local government or instrumentality thereof.

* * * * *

Subdivider and Developer. "Subdivider and Developer" means a Small Concern whose primary business involves the acquisition of unimproved land and its subsequent improvement for the purpose of selling vacant lots to others.

* * * * *

4. Section 107.201 is amended by redesignating present paragraphs (b) (2) and (3) as paragraphs (b) (3) and (4), and adding a new paragraph (b)(2) to read as follows:

§ 107.201 Funds to licensee.

* * * * *

(b) * * *

(2) In the event SBA pays a claim under its guarantee, it shall be subrogated fully to the rights satisfied by such payment; and no state law, and no Federal law, shall preclude or limit SBA's exercise of its ownership rights acquired by subrogation upon payment under its guarantee. With respect to debentures guaranteed after July 1, 1991, SBA's claims against any Licensee shall be subordinated, in the event of the insolvency of such Licensee, only in favor of present and future indebtednesss outstanding to lenders, not including Associates of a Licensee, and only to the extent that the aggregate amount of such indebtedness does not exceed the lesser of two hundred percent of such Licensee's Private Capital, or ten million dollars: Provided, however, that in its sole discretion SBA may agree in advance and in writing to

a subordination in favor of an Associate or in favor of one or more loans from Lending Institutions or other lenders that would cause the aggregate amount of outstanding senior debt to exceed the foregoing limitation; provided, further, that nothing contained herein shall limit the authority of SBA to refuse to subordinate its claims against any Licensee if SBA determines at the time of issuing its guarantee, that the exercise of reasonable investment prudence and the financial soundness of the Licensee warrant such a refusal; and Provided Further, That nothing contained herein shall affect the seniority of any indebtedness created prior to July 11, 1991, over the claims of SBA derived from any debenture(s) guarantee(s) outstanding as of that date.

* * * * *

4. Section 107.205 is amended by revising paragraph (d)(2) to read as follows:

§ 107.205 Leverage for section 301(d) licensees.

* * * * *

(d) * * *

(2) *Qualified Investments.* In no event shall the amount of preferred securities purchased by SBA in excess of one hundred percent of Private Capital exceed the amount of the Licensee's funds invested in, or legally committed to, qualified investments. As used herein, "qualified investments" means, subject to §§ 107.320 and 107.801, stock of any class (including preferred stock) or limited partnership interests in eligible small concerns, or shares of any eligible syndicate, business trust, joint stock company or association, mutual corporation, cooperative or other joint venture for profit; or unsecured debt instruments which are subordinated by their terms to all other borrowings (as distinguished from all other debts and obligations) of the issuer. "Qualified investments" shall not include a debt secured by any agreement with a third party, whether or not a security interest has been created in any asset of such third party, with or without recourse against such third party.

* * * * *

5. Section 107.304 is revised to read as follows:

§ 107.304 Size status and nondiscrimination; financial reports.

(a) *Size status and nondiscrimination.* No assistance shall be provided unless:

(1) The Licensee and the Small Concern have executed SBA Form 480, Size Status Declaration, including Licensee's determination that applicable size standards have been met, or SBA has determined at the request of the Licensee or of such concern that the latter is a Small Concern; and

(2) The Small Concern has certified on SBA Form 652-D that it will not illegally discriminate in its operations, employment practices or facilities as set forth in part 113 of this chapter. Such forms shall be kept available for SBA's examination: Provided, however, That the foregoing shall not apply when the Licensee acquires the securities from an underwriter in a public offering (see § 107.404), in which event the Licensee shall keep the prospectus showing the small size status of the issuer as part of its records for SBA's examination.

(b) *Financial reports*—(1) *Initial Financing decision.* In consideration any Financing for a Small Concern the Licensee shall require the concern to submit such financial statements, plans of operation, cash flow analyses and projections as are necessary to support the Licensee's investment decision, considering the size and type of the business, and the amount of the Financing in question. Such materials shall be in English and shall be retained by, and become a part of the permanent record of, the Licensee.

(2) *Subsequent reports.* The terms of the Financing shall require each assisted Small Concern to forward to the Licensee, at least annually, such financial statements as are necessary to verify the financial condition of such Small Concern, and for the valuation of its investment therein. Such statements shall be in English and be certified by the chief financial officer, general partner, or proprietor of such Small Concern and shall be retained by, and become a part of the permanent records of, the Licensee. If the Licensee shall deem it appropriate, considering the size and type of the business involved, the Licensee may accept, instead, a complete copy of the Federal income tax return, including all appropriate schedules thereto, filed by the business or by the proprietor, as the case may be: Provided, however, that the foregoing shall not apply when the Licensee acquires the securities from an underwriter in a public offering (see § 107.404), in which event the Licensee shall keep copies of all reports furnished by such concern to the holders of its securities. In instances where the above-mentioned documentation has been sought, but not obtained, compliance will be assumed if the Licensee's files demonstrate reasonable efforts to obtain the documentation.

6. Section 107.321 is amended by revising paragraph (b) to read as follows:

§ 107.321 Redemption provisions.

* * * * *

(b) The redemption price shall not be stated as a fixed dollar amount, or as an alternative dollar amount. Not later than the date of the Licensee's first disbursement, the parties may agree upon a formula for determination of the redemption price, which must be legal and reasonable, and based upon book value and/or earnings (for the current period as of the time of redemption or over a representative period including the time of redemption, as the parties may determine) of the Small Concern; or they may agree that the redemption price may be fixed at the fair market value at the time of redemption as established by one or more disinterested appraisers (who are members of a recognized professional association) as agreed to by both parties. The redemption agreement shall not require the appraisers to assume any fact not in existence at the time of the appraisal. The expense of any such appraisal shall be borne equally by each party.

* * * * *

7. Section 107.401 is amended by revising paragraph (a), and by adding of a new paragraph (a)(7) to read as follows:

§ 107.401 SBIC guaranty of loans.

(a) Subject to § 107.301(a) (Minimum Period of Financing), a Licensee may guarantee to any non-Associate creditor (other than another Licensee) the monetary obligation of a Small Concern: *Provided, however,* That:

* * * * *

(7) A guaranty limited to the pledge of a Licensee asset on a non-recourse basis shall be deemed a Financing equal to the lesser of the fair market value of such asset or assets, or the amount of the debt so guaranteed.

8. Section 107.402 is amended by the addition of new paragraph (d), to read as follows:

§ 107.402 Commitments.

* * * * *

(d) *Limit on commitment fee.* The amount of any commitment fee shall not exceed interest at the prime rate, on an annualized basis as printed in a national financial newspaper published each business day, in effect on the date of the commitment, for the number of days from the date that the commitment is accepted in writing by the Small Concern to the date of disbursement or cancellation, as the case may be, inclusive of both dates. Any commitment fee that exceeds the limitation set forth herein shall be deemed in its entirety to be outside the

scope of a "bona fide commitment fee" otherwise excludible from computation of the Small Concern's Cost of Money. See the definition of "Cost of Money" in § 107.3.

9. Section 107.403 is amended by revising paragraph (b)(1) to read as follows:

§ 107.403 Other permissible financing.

* * * * *

(b) * * *

(1) *Short-term Financing.* Financing with a term of less than five years when it constitutes interim financing in contemplation of long-term Financing of a Small Concern by the Licensee or a group including the Licensee and others in an amount at least equal to such total interim financing, or the protection of prior investments or financing ownership change pursuant to § 107.711: *Provided, however,* That the maximum aggregate period for short-term Financing in contemplation of long-term Financing shall not exceed one year. This paragraph (b)(1) supplements the authority to make short term investments in Disadvantaged Concerns under § 107.301(a).

* * * * *

10. Section 107.707 is revised to read as follows:

§ 107.707 Purchases of securities from another Licensee.

After July 11, 1991, a Licensee may exchange with or purchase for cash from another Licensee Portfolio securities (or any interest therein) only on a non-recourse basis: *Provided, however,* That: (a) A Licensee shall not have at any time more than one-third of its total assets (valued at cost) invested in such securities; and (b) a Licensee that has previously sold Portfolio securities (or any interest therein) on a recourse basis shall include the amount for which it may be contingently liable in its overline limit under § 107.303.

11. Section 107.708 is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 107.708 Deposits and investments of idle funds.

* * * * *

(c) * * * *Provided, however,* That (1) a Licensee may maintain a petty cash fund of up to $1,000 and (2) corporate assets of a corporate general partner not invested in the Licensee shall be excluded from the time limits imposed by this section.

12. Section 107.901 is amended by revising the introductory text of paragraph (c)(2) to read as follows:

§ 107.901 Prohibited uses of funds.

* * * * *

(c) * * *

(2) If the Financing is to be used by a Small Concern, regardless of SIC classification, to acquire realty or to discharge an obligation relating to the prior acquisition of realty unless (i) at least fifty-one percent of the usable square footage of an existing building that is to be acquired by the Small Concern or at least two-thirds of the usable square footage of a building that is to be built or renovated by the Small Concern is to be used by the Small Concern for business activity not prohibited by paragraph (c)(1) of this section; or (ii) such realty is to be promptly and substantially improved for sale to others, and all necessary zoning approvals have been obtained: * * *

* * * * *

13. Section 107.903 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 107.903 Conflicts of interest.

* * * * *

(b) *Prohibitions.* Except where a prior written exemption may be granted by SBA in special instances in furtherance of the purposes of the Act: * * *.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: June 21, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-16023 Filed 7-10-91; 8:45 am]

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Thursday
July 11, 1991

Part IV

Department of Health and Human Services

Administration for Children and Families

Emergency Child Abuse and Neglect Prevention Services Program; Availability of Funds and Request for Applications; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93554.911]

Availability of FY 1991 Funds and Request for Applications; Emergency Child Abuse and Neglect Prevention Services Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Notice of fiscal year 1991 financial assistance and request for applications for service demonstration projects under section 107A of the Child Abuse Prevention and Treatment Act.

SUMMARY: The National Center on Child Abuse and Neglect (NCCAN) in the Administration on Children, Youth and Families announces the availability of funds and Families announces the availability of funds to conduct service demonstration projects to prevent the abuse or neglect of children whose parents are substance abusers and to provide comprehensive, interdisciplinary/multi-disciplinary, coordinated services to address the needs of these children and their families.

DATES: The closing date for submittal of applications under this announcement is August 26, 1991.

ADDRESSES: Address applications to: FY 1991 Emergency Child Abuse Prevention Services, Administration for Children and Families, Grants and Contract Management Division, Hubert H. Humphrey Building, Room 341-F2, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Judy Coulter, (202) 245-0629.

SUPPLEMENTARY INFORMATION: This announcement consists of three parts. Part I provides background information on the National Center on Child Abuse and Neglect (NCCAN) and the statutory authority for this program. Part II states the problem and describes the priorities under which NCCAN is soliciting applications for fiscal year (FY) 1991 funding of Emergency Child Abuse Prevention Services projects. Part III provides general information and requirements for preparing and submitting applications along with the criteria for the review and evaluation of applications.

All forms and instructions necessary to submit an application are published as part of this announcement following Part III. Multi-year grants made under this program announcement are subject to satisfactory performance by the grantees and the availability of funds for support of these activities.

I. Background

In 1974, the Child Abuse Prevention and Treatment Act (the Act) established the National Center on Child Abuse and Neglect (NCCAN) in the Department of Health and Human Services (DHHS). NCCAN is located organizationally within the Administration for Children, Youth and Families, Administration for Children and Families.

NCCAN conducts activities designed to assist and enhance national, State and community efforts to prevent, identify and treat child abuse and neglect. These activities include: Conducting research and demonstrations; supporting service improvement projects; gathering, analyzing and disseminating information through a national clearninghouse; providing grants to eligible States for strengthening and improving child protective services programs; and coordinating Federal activities related to child abuse and neglect through an Inter-Agency Task Force on Child Abuse and Neglect composed of Federal agencies.

In 1989, the Act was amended by the addition of section 107A as part of the Drug-Free Schools and Communities Act amendments (Pub. L. 101-226), 42 U.S.C. 5106a-1. Although Congress authorized funding for the Emergency Child Abuse and Neglect Prevention Services program under these amendments, no funds were appropriated until FY 1991. The statute authorizes the Secretary of DHHS to establish a program to make grants to eligible entities to enable such entities to provide and improve the delivery of services to children whose parents are substance abusers. The statute provides that projects funded under this program must be comprehensive, coordinated with other public and/or private community service providers, and be multi-disciplinary in nature. Such projects may include the hiring and training of personnel; the creation or expansion of services to deal with individual and family crises related to substance abuse;and the establishment or improvement of coordination between the agency administering the grant and child advocates, public educational institutions, community organizations that serve substance abusing parents, parent groups and related agencies.

In 1990, Secretary Sullivan approved an action plan for the Department to focus greater attention on child abuse and neglect. A key feature of that initiative is the multi-disciplinary coordination of services across programs, including substance abuse treatment and child protection. Consequently, the successful implementation of the Emergency Child Abuse and Neglect Prevention Services Program, with its strong emphasis on such coordination, is a priority of the Secretary's program.

II. Fiscal Year 1991 Priorities for Emergency Child Abuse Prevention Service Projects

This part describes the priority areas for funding under the Emergency Child Abuse Prevention Program. It contains all the information needed in order to successfully apply for funding. Failure to comply with the eligibility criteria and the deadline for submittal of applications will result in an application being screened out and not considered for funding. Experience has shown that an application which is directly responsive to the concerns of a specific priority area is likely to score higher than one which is broad and general in concept.

A. Identification of Priority Areas

Applicants must identify the specific priority area under which they wish to have their application considered (see Section F below). On all applications developed jointly, one organization must be identified as the lead organization and applicant. An organization may apply for funding in more than one priority area; however, separate applications must be submitted for each priority area under which application is made.

B. Available Funds

Approximately $18,000,000 is available for grants in FY 1991.

Administrative Regulations

For State and local governments, including Federally recognized Indian Tribes, 45 CFR part 92 and selected parts of 45 CFR part 74 are applicable. For all other applicants, 45 CFR part 74 is applicable.

D. Statement of Problem

In the last five years, the entire child protective services sytem has become burdened beyond its capacity. Staff within the system have indicated that part of this situation results from problems directly attributable to expanded substance abuse by the adult, parenting population. There are not enough trained personnel to deal with

the problem, nor are there sufficient resources to effectively address the situation on a local level. Such an overburdened protective services system is forced to screen out all but those children deemed most at risk of serious abuse or neglect. The system cannot cope adequately with sporadic, but serious, abuse and neglect of young children, and often leaves abused adolescents with no protection and few options. Many adolescents see running away from home as their only choice.

The majority of drug and alcohol treatment agencies are geared to address the problems of adult male abusers, and lack either the capacity or an appropriate family orientation to serve a parent/child/adolescent population. The illegal nature of many substances, causing fear of apprehension by law enforcement agencies, and the potential loss of children and other consequences, frequently prevents affected families from seeking services. Similar fears for the family on the part of the community inhibit the reporting of situations which are harmful to children.

A recent study by Richard Famularo, et al., found a very strong association between substance abuse and child maltreatment. "Substance abuse" for the purpose of this study was defined as either substantiated allegations by two or more separate professionals (social service or mental health) of alcohol and/or drug misuse, or parental self reports of substance abuse of sufficient severity to meet research diagnostic criteria. Recreational or occasional use was not considered "substance abuse." The authors of the study reviewed 190 randomly selected records from the caseload of a large juvenile court. These records involved cases in which the State took legal custody of the children following a finding of significant child maltreatment, based on a "clear and convincing" standard of evidence. Sixty-seven percent of these cases involved parents who would be classified, based on the study definition, as substance abusers. The study revealed specific associations between alcohol and cocaine abuse and physical and sexual maltreatment.

Other studies and surveys throughout the nation have produced similar links between substance abuse and widespread neglect as well as physical and sexual abuse of children. The U.S. Advisory Board on Child Abuse and Neglect reported that, in a review of over 18,000 child abuse cases handled by the Los Angeles County Juvenile Court in 1989, substance abuse was a significant factor in at least 90 percent of the cases. Similar surveys in Washington, D.C. and Boston revealed that parental substance abuse was involved in a significant percentage of reported child abuse and neglect cases.

In addition, there are indications in the 1988 National Study of the Incidence of Child Abuse and Neglect that the risk of physical abuse and sexual abuse increases with the age of the child. However, because younger children are more at risk of death or severe injury from child abuse and neglect, they have more often been the focus of child protection efforts in an overburdened public child welfare system. Because of this, older children and adolescents often fail to receive services. It is estimated that approximately one million youth under the age of 18 leave or are forced out of their homes annually and stay away at least one night. A large percentage of these youth are, or become, truly homeless, i.e., their original homes have either collapsed or have become so dysfunctional that to return home is either not possible or may be dangerous. A compilation of interviews with 31,000 runaway and homeless youth who received services from youth crisis shelters across the country in FY 1990 indicates that alcohol or other substance abuse on the part of the parent or guardians is a major precipitating factor in a minimum of 20 percent of these runaway episodes, and a contributing factor in an additional 20 percent. These interviews further revealed the extremely violent nature of the homes from which many of the youth fled.

The Emergency Child Abuse Prevention Services legislation provides the opportunity to reach out to children and adolescents who are suffering abuse and neglect as a result of living with substance abusing parents or other care providers, and who are not now being served, as well as to children and families known to the protective services system. The House Appropriations Committee indicated that it is especially interested in children/youth who are the subjects of serious neglect by crack cocaine-abusing parents and who are not ordinarily the immediate concern of overburdened service agencies. The fact that the legislation recognizes the *emergency* implications inherent in drug/substance abuse situations provides States the opportunity to improve service programs.

It is important that all entities applying for funds under this announcement realize the importance of coordinating with youth service organizations, public schools, churches, drug and alcohol treatment providers, social service agencies, mental health agencies, public health facilities and maternal and child health providers. Mechanisms to directly serve the affected child/youth population on an emergency basis must be developed. Applications must emphasize programs that are structured to provide the coordinated, comprehensive, multi-disciplinary services required. Such services might include assessment, direct and ancillary services, e.g., child care, transportation, respite care (children may need respite from the multiple, ongoing problems of a substance abusing home life); and plans for the provision of effective follow-up services. Applicants must also indicate how they plan to overcome current obstacles such as waiting lists and multiple referrals for services. Children who are identified as in need of emergency services should be able to receive necessary care/treatment on an immediate basis.

E. Related Efforts

Because of the need for coordination and the necessity to avoid duplicating services and costs, all applicants are required to demonstrate their awareness of other related projects in their communities by discussing how they will establish joint planning processes and provide direct collaboration for service delivery. The Department is currently sponsoring a large number of research and demonstration projects related to substance abuse and its effects on parents and children. The following three examples are administered through the Public Health Service's Office of Substance Abuse Prevention (OSAP):

- Model Projects for Pregnant and Postpartum Women and Their Infants;
- Demonstration Grants for Youth in High-Risk Environments; and
- Community Partnership Demonstration Grants.

The Public Health Service's Alcohol, Drug Abuse, and Mental Health Administration is funding the Target Cities Grant Program, administered through the Office of Treatment Improvement. A list providing information about these programs is included in appendix III.

The Public Health Service also provides major funding for perinatal prevention of substance abuse through the Maternal and Child Health Block Grants.

The Administration on Children, Youth and Families (ACYF) is presently sponsoring projects in the following areas:

• Drug Abuse Prevention Programs for Runaway and Homeless Youth;
• Youth Gang Drug Prevention Programs;
• Respite Care and Crisis Nurseries;
• Abandoned Infants; and
• Head Start Family Service Centers.

Other Federal programs include:
• Special Volunteer Programs; After School, Weekend and Summertime Youth Illicit Drug Use Prevention sponsored by ACTION.
• Drug Abuse Treatment and Prevention Research Grant Programs sponsored by the National Institute on Drug Abuse.

Appendix III of this announcement provides additional lists of clearinghouses and other resources with information about these and other programs relevant to this request for applications.

F. Priority Areas

1. State and Local Coordinated, Multi-disciplinary, Comprehensive Emergency Services Delivery Models

Eligible Applicants: (a) State and local agencies that are responsible for administering child abuse or related child abuse intervention services; and (b) community and mental health agencies and nonprofit youth-serving organizations with experience in providing child abuse prevention services.

Purpose: To provide crisis intervention for children and youth of substance abusing families who have been reported to protective service agencies. There is a demonstrated need for innovative, coordinated, interdisciplinary services designed to react on an "emergency room" basis to reports of substance abuse-related abuse and neglect immediately on receipt of the report. A number of emergency situations arise, each of which may be only temporary, but which may have long term impact on children's lives. For example, children of substance abusing parents are often left at home to care for younger siblings while a parent is somewhere else either seeking or using drugs or alcohol. After several days in this situation, the caretaking child may realize that he/she needs help, but is fearful that in seeking such help, he/she will be making trouble for the parent, and may even be responsible for the dissolution of the family. Services must be available on a 24 or 48 hour basis to provide respite for a child or youth while the whole family situation is being dealt with.

The primary objective of these services should be not only to provide immediate relief for the child and family, but also to provide ongoing neighborhood-based, barrier-free and "user-friendly" services, for the purpose of getting children and their families into the service loop instead of the usual child welfare protective service/court action process.

In addition, a second objective of these services should be to improve children's lives over the long term and provide them with the counseling and resources to cope with ongoing problems that may occur in their lives as a result of parental substance abuse. Since adolescents are significantly underserved, NCCAN believes that it is especially important that services funded under this priority area are able to address needs of children and youth of all ages.

Applicants should emphasize the development or enhancement of model services in areas such as outreach, family support and self-help.

The target population may include: (a) Reported families who were not or will not be investigated because of the lack of agency resources and/or an assessment that the risk of serious maltreatment is less likely than in cases designated to be investigated; and (b) Investigated cases, both substantiated and unsubstantiated.

Background Information: A survey of all 50 State child welfare agencies revealed an unprecedented surge in the number of children removed from their parents and placed in foster care. Between June 1987 and June 1990 there was a 29 percent increase in these placements. (Source: American Public Welfare Association, "Children of Substance Abusing/Alcoholic Parents Referred to the Public Child Welfare System: Summaries of Key Statistical Data Obtained from the States.") These statistics indicate a need for more integrated services for children and adolescents in homes where parental substance abuse has figured significantly in child abuse and neglect.

Minimum Requirements for Program Design: In order to successfully compete under this priority area, the application should be responsive to the requirements of this part and Section 107A(c) of the Act. (See section III C. 1 of this announcement):

• Provide for coordination with and involvement of, at a minimum, a child protective services agency, a mental health services agency or an agency with a focus on alcohol and drug treatment, a youth serving agency and a public health services agency. Documentation of interagency participation must be provided: i.e., copies of interagency agreements or letters of commitment documenting the type and level of joint effort to be undertaken.

• Define the term "emergency" for the purpose of conducting this project and describe the criteria that would be employed for the receipt of services.

• Indicate how outreach would be provided, the type of intervention that would be available for various situations, and how the particular approach advocated by this proposal is innovative relative to other approaches.

• Describe the services that are currently available in the community to serve children, adolescents and their substance abusing families, and demonstrate how the proposed project would augment and enhance current services. Overall, the emphasis should be on the comprehensive, coordinated and multi-disciplinary nature of the services to be provided. That is, describe primary services now available, such as intervention, outreach, drug counseling, legal assistance, medical care, and follow-up, as well as ancillary services, such as child care and transportation, and how they would be coordinated with other expanded or new services.

• Provide for an evaluation of the effectiveness and impact of the project. Each applicant is required to obtain an independent third party evaluation of the project. The costs of this evaluation are to be included in the project budget. Clear statements of the project goals, the anticipated end results, and how outcomes would be measured are required of all applications. Additionally, applicants should express a willingness to participate in any national evaluation that ACYF may conduct.

• Document and describe how the project would become an ongoing part of the agency or organization's program following the termination of Federal funding and the steps the applicant would take to accomplish this. Among these steps should be the development or enhancement of interdisciplinary community coalitions, or other ongoing mechanisms of a similar nature. Describe how such a coalition will coordinate programs that impact on substance abuse and child abuse and neglect efforts in order to improve services to children and families, and reduce duplication of effort.

• Provide assurances that at least one key person from the project would attend an annual three day grantees' meeting in Washington, DC.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is $400,000 per budget period (normally 12 months).

Marching Requirements: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $400,000 is $100,000 for a total project cost of $500,000 per year. This constitutes 20 percent of the annual total project budget. The non-Federal matching requirement may be in cash or in-kind contributions.

Anticipated Number of Projects to be Funded: It is anticipated that 22 projects will be funded.

2. Innovative, Coordinated, Community-Based Public Information/Education Models to Address the Issue of Substance Abuse and Its Correlation With Child and Youth Maltreatment

Eligible Applicants: (a) State and local agencies that are responsible for administering child abuse or related child abuse intervention services; and (b) community and mental health agencies and nonprofit youth-serving organizations with experience in providing child abuse prevention services.

Purpose: To provide effective public education programs directed to all socio-economic levels of the community regarding the link between substance abuse and child abuse and neglect in order to prevent child maltreatment.

Background Information: There is a well documented link between the abuse of alcohol and other drugs and a number of forms of violence such as child abuse, domestic violence, and fatal accidents. The link is so strong that the prevention of substance abuse is essential to preventing other forms of abuse and violence. Although persons in the social service, mental health, law enforcement, and other human service professions are well aware of the devastating effects of alcohol and drug abuse on families and children, the public at large may not be as well informed. NCCAN is interested in funding efforts to institutionalize prevention education as well as the development of more traditional, coordinated, multi-disciplinary media models to educate the public about substance abuse and its correlation to child abuse and neglect.

Efforts in the area of institutionalized education should incorporate components directed at elementary, middle, and high school curricula and could include school-based programs with self-help networks for the children of substance abusing parents. Community-based efforts might incorporate businesses, community service and recreational organizations as sites for adult education campaigns.

Public education/outreach strategies should be culturally relevant and heavily oriented to the prevention of substance abuse and related child abuse and neglect. They may involve all facets of the media. It should also be clear from the message being promulgated that no stratum of society, or any cultural or ethnic group, is immune to the effect of parental alcohol and other substance abuse on children.

Minimum Requirements for Program Design: In order to successfully compete under this priority area, the application should be responsive to the requirements of this part and Section 107A(c) of the Act. (See section III C. 1 of this announcement):

- Demonstrate how a public education effort of the magnitude proposed can be successfully launched in the target area.
- Indicate how the lead agency and other responsible agencies or groups that would be involved in the proposed project are capable of coordinating public education efforts of the kind proposed by the project. Each project should involve, at a minimum, input from child protective agencies, youth shelters, mental health agencies with expertise in alcohol and drug counseling, and a public health agency. Documentation must be provided of the willingness of each agency or group to be involved, and the extent of involvement of each.
- Describe the public education and prevention activities currently available in the community and the ages and cultural and socioeconomic strata to which these efforts are directed. Demonstrate how the proposed project would augment and enhance current public education activities. If current activities lack coordination and a multi-disciplinary focus, or if they omit age groups or cultural segments of the population, indicate how the project would address this problem.
- Demonstrate that the managers of the proposed prevention education program have coordinated with existing family, mental health, youth shelters and drug and alcohol treatment service providers in order to more effectively equip the community to provide emergency follow-up and referral services to any youth, child, or adult who, because of the edcuational information provided by this program, identifies himself/herself as being a victim or an abuser.
- Provide for an evaluation of the effectiveness and impact of the project. Each applicant is required to obtain an independent third party evaluation of the project. The costs of this evaluation are to be included in the project budget. Clear statements of the project goals, the anticipated end results, and how outcomes would be measured are required of all applications. Additionally, applicants should express a willingness to participate in any national evaluation that ACYF may conduct.
- Document and describe how the project would become an ongoing part of the agency or organization's program following the termination of Federal funding and the steps the applicant would take to accomplish this.
- Provide assurances that at least one key person from the project would attend an annual three day grantees meeting in Washington, DC.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Cost: The maximum Federal share is $100,000 per budget year.

Matching Requirements: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $100,000 is $25,000 for a total project cost of $125,000 per year. This constitutes 20 percent of the annual total project budget. The non-Federal matching requirement may be in cash or in-kind contributions.

Anticipated Number of Projects to be Funded: It is anticipated that 20 projects will be funded.

3. Improving Services to Substance Abusing Parents, Families and Adolescents

Eligible Applicants: (a) State and local agencies that are responsible for administering child abuse or related child abuse intervention services; and (b) community and mental health agencies and nonprofit youth-serving organizations with experience in providing child abuse prevention services.

Purpose: The focus of applications in this priority area should be to improve and expand the delivery of services to prevent maltreatment and alleviate the effects of abuse and neglect of children by substance abusers with whom they share a home. Applicants may emphasize outreach and coordination of ancillary service strategies to facilitate the treatment of substance abusers in households with children and youth, i.e., parents, siblings or other housemates or substitute caregivers, including pregnant women who are substance abusers and adolescent substance abusers. Often the provision of ancillary services will make the difference in whether or not a

substance abusing caregiver is able to take advantage of available treatment services. Ancillary services may include, but are not limited to, transportation, child care, respite care, parenting education, and job counseling. Applicants may also use grant funds to augment current services to ensure that substance abusers not regularly served by providers, e.g. substance abusing pregnant women, are able to access drug treatment services.

Background Information: Substance abuse by men and women who live with children and youth impacts upon the lives of the children and adolescents in the home. Although applicants are not required to limit their projects to service provision for women who abuse alcohol and drugs, NCCAN is particularly interested in removing barriers to alcohol and drug treatment services for youth and pregnant women and women with families. Substance abuse treatment programs have historically been geared to adult male users. The phenomenon of the current crack-cocaine problem has affected an unprecedented number of women of childbearing and parenting ages. Existing treatment programs are often unprepared to meet the particular needs of women with children. Addiction is a chronic, relapsing disorder that is frequently accompanied by a host of social, emotional, familial, and financial problems. Typically, as it is cheap and available, crack-cocaine is the drug of choice for women with limited employment opportunities and with even more limited access to family and community support systems. One example of a key ancillary service support system is the network of Neighborhood Family Support Centers which offer supplemental education and recreational activities and provide respite care and after-school supervision for the children of parents seeking treatment. This concept could be expanded to include one-stop access to family and youth alcohol and drug counseling as well as substance abuse information and education. Many already existing entities such as Boys and Girls Clubs, churches, libraries, mental health clinics, Head Start Family Service Centers, schools, runaway and homeless youth shelters, and YMCA and YWCA agencies could be coordinated to provide the described services.

Minimum Requirements for Program Design: In order to successfully compete under this priority area, the application should be responsive to the requirements of this part and section 107A(c) of the Act. (See section III C. 1 of this announcement):

- Describe in what capacity the proposed project would involve, at a minimum, a child welfare agency, a family services agency, and a mental health agency or an agency with expertise in alcohol and drug counseling. Documentation of interagency participation must be provided, e.g., copies of existing interagency agreements or letters of commitment indicating the level and type of participation that would be required.
- Describe how the proposed project would remove barriers that now exist to youth or parents, especially women, receiving necessary services. Indicate how the proposed project would augment and enhance current services, with emphasis on the coordinated and multi-disciplinary nature of the services to be provided. That is, describe the primary services, such as drug counseling, legal assistance, medical care, and follow-up services, as well as the ancillary services, such as child care and transportation, and show how they would be provided and coordinated with services provided by other entities.
- Provide for an evaluation of the effectiveness and impact of the project. Each applicant is required to obtain an independent third party evaluation of the project. The costs of this evaluation are to be included in the project budget. Clear statements of the project goals, the anticipated end results, and how outcomes would be measured are required. Additionally, applicants should express a willingness to participate in any national evaluation that ACYF may conduct.
- Document and describe how the project would become an ongoing part of the agency or organization's program following the termination of Federal funding and the steps the applicant would take to accomplish this. Among these steps should be the development or enhancement of interdisciplinary community coalitions, or other ongoing mechanisms of a similar nature. Describe how such a coalition will coordinate programs that impact on substance abuse and child abuse and neglect efforts in order to improve services to children and families, and reduce duplication of effort.
- Provide assurances that at least one key person from the project would attend an annual three day grantees meeting in Washington, DC.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Cost: The maximum Federal share is $200,000 per project year.

Matching Requirements: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $200,000 is $50,000 for a total project cost of $250,000 per year. This constitutes 20 percent of the annual total project budget. The non-Federal matching requirement may be in cash or in-kind contributions.

Anticipated Number of Projects to be Funded: It is anticipated that 20 projects will be funded.

4. Coordinated Multi-disciplinary/ Interdisciplinary Training Models

Eligible Applicants: State and local agencies responsible for administering child abuse, or related intervention services.

Purpose: To provide for the development or expansion of short-term interdisciplinary training models specific to substance abuse as it relates to child abuse for current practitioners in the area serving abused and neglected children.

Background Information: When children who have been severely neglected or abused as a result of parental substance abuse come to the attention of child welfare agencies, a number of far-reaching decisions relating to out-of-home placement and service delivery must be made. From that point on, the process entails assorted disciplines (legal, social, health, mental health) and multiple service providers. Effective communication among them is essential to provide comprehensive care and to avoid fragmented or duplicate services.

Abused and neglected children, particularly those who come from homes where substance abuse is a way of life, present some special problems that are not present in children whose backgrounds are less dysfunctional. Working with these children and families is extremely difficult, and worker burn-out is prevalent throughout the system. Finding and maintaining well trained personnel for the child welfare system has been increasingly difficult as the abused and neglected population has burgeoned. Because of the urgency of the need for personnel, many child welfare agencies and mental health/substance abuse treatment facilities are hiring staff with little or no training specific to either child abuse and neglect and/or the relationship between parental substance abuse and child abuse and neglect. There is also a need for qualified professionals from other fields, such as law and psychology, who are knowledgeable about issues related to substance abuse

and child abuse and neglect. There are two distinct but complementary training needs: (a) Interdisciplinary, specialized training on substance abuse and child abuse available to persons from a variety of fields working with children; and (b) in-service training, interdisciplinary in nature, to provide specialized, immediately available information to persons working in child welfare systems, and particularly those persons providing services to children of substance abusers or substance abusing parents who have abused their children.

It is suggested that applicants, to the extent possible, incorporate currently available resources to reach the maximum number of professionals and para-professionals within the shortest possible time. Many interdisciplinary training and education models already exist that can be adapted to provide the desired information regarding substance abuse as it relates to child abuse. Information regarding existing interdisciplinary training programs can be obtained from the Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, DC 20013.

Existing curricula specific to child abuse and neglect could be adapted to include: (a) Community responses for providing services for substance abusing care providers; (b) community overviews of public health problems as they relate to substance abusing parents, including pregnant women; (c) physiological aspects of substances as they relate to child abuse and neglect; (d) effects of substances on newborns; (e) strategies for working with drug exposed and drug affected infants, older children, and adolescents; (f) risk assessment training for identifying and intervening with chemically abusing parents and other family members; and (g) strategies for working with substance abusing adults/parents.

Training may be developed by contracting with local colleges or universities, or may be developed within individual agencies in cooperation with educational facilities. The training may be provided either on-site at the service providing agency or may be provided at an educational institution. NCCAN is interested in funding (a) local in-service training models; and (b) training models developed for and available to professionals from all fields involved in intervention in the problems of substance abuse and child abuse, e.g., social work, psychology, health, law.

Minimum Requirements for Program Design: In order to successfully compete under this priority area, the application should be responsive to the requirements of this part and section 107A(c) of the Act. (See section III C. 1 of this announcement):

- Indicate the type of training that would be targeted by the project, i.e., the development of in-service multi-disciplinary professional training, or the provision of training through already existing resources that could be adapted to meet the requirements of this announcement.
- Identify the lead agency or educational entity and other responsible entities that would be involved in the proposed project. Training development should involve, at a minimum, input from the medical, legal, social work, and mental health disciplines in coordination with local drug and alcohol counseling, youth shelter and public health service providers. Documentation of interdisciplinary participation must be provided: *e.g.*, copies of existing agreements or letters of commitment indicating the level and type of participation that would be provided.
- Describe how the proposed project would enhance or expand that training that is already available. Describe the population to which the training would be directed. Describe the criteria for determining who would be trained.
- Describe the type of training that would be provided, the curriculum that would be used, the length of training, and the number of persons expected to benefit from the training during the life of the project.
- Provide for an evaluation of the effectiveness and impact of the project. Each applicant is required to obtain an independent third party evaluation of the project. The costs of this evaluation are to be included in the project budget. Clear statements of the project goals, the anticipated end results, and how outcomes will be measured are required of all applications. Additionally, applicants should express a willingness to participate in any national evaluation that ACYF may conduct.
- Document and describe how the project would become an ongoing part of the agency or organization's program following the termination of Federal funding and the steps the applicant would take to accomplish this.
- Provide assurances that at least one key person from the project would attend an annual three day grantees meeting in Washington, DC.

Project Duration: The length of the projects must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is $100,000 per budget year.

Matching Requirements: None

Anticipated Number of Projects to be Funded: It is anticipated that 30 projects will be funded.

III. General Information and Requirements for the Application Process and Review

This part contains general information for applicants and basic requirements for submitting applications in response to this announcement. Application forms are provided along with detailed instructions for developing and assembling the application package for submittal at the end of this section.

A. General Information

1. Review Process and Funding Decisions

Applications will be reviewed and scored competitively against the published evaluation criteria (see III D of this section) by experts in the field, generally persons from outside of the Federal government. The results of this review are a primary factor in making funding decisions. The Administration for Children and Families (ACF) reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. ACF may also solicit comments from other Federal agencies, Central and Regional Office staff, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by the Commissioner, Administration for Children, Youth and Families in making funding decisions.

2. Waiver of Executive Order 12372 Requirements for a 60-Day Comment Period for the State Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Virginia, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these areas need take no action regarding E.O.

12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

Other applicants should contact their SPOC as soon as possible to alert them of the prospective application and receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials to the Single Point of Contact (SPOC) and indicate the date of this submittal (or the date the SPOC was contacted, if no submittal is required) on the SF 424, item 16a. SPOCs will be notified of any applicant not indicating SPOC contact on the application, when the SPOC contact is required.

ACF must obligate the funds for these awards by September 30, 1991. Therefore, the required sixty (60) day comment period for State process review and recommendation has been reduced and will end on September 25, 1991, in order for ACF to receive, consider, and accommodate SPOC input.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule. It is helpful in tracking SPOC comments if the SPOC will clearly indicate the applicant organization as it appears on the application SF 424. When comments are submitted directly to ACF, they should be addressed to the application mailing address located in Part I of this announcement. A list of Single Points of Contact for each State and territory is included in Appendix I of this announcement.

3. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget for review and approval any information collection involving 10 or more respondents.

B. Application Screening Criteria

Applications must meet the following screening requirements or they will not be considered in the current competition; these requirements will be rigorously enforced:

1. Eligible Applicants

(a) Any State or local agencies that are responsible for administering child abuse or related child abuse intervention services; and (b) community and mental health agencies and nonprofit youth-serving organizations with experience in providing child abuse prevention services.

In addition, the application must meet any eligibility requirements specific to the priority area under which it is being submitted. An application can be submitted under more than one priority area; however, a separate application must be submitted for each priority area.

2. Deadline for Submittal of Applications

The closing date for receipt of applications is August 26, 1991.

(a) *Deadlines.* Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date at the address specified above; or (2) sent on or before the deadline date and received by the granting agency in time to be considered during the Competitive review and evaluation process under chapter 1–62 of the Health and Human Services Grants Administration Manual. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

(b) *Applications Submitted by Other Means.* Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before the close of business on or before the deadline date. Hand-delivered applications will be accepted at the ACF Grants and Contracts Management Division, during the working hours of 9 a.m. to 5:30 p.m., Monday through Friday.

(c) *Late Applications.* Applications which do not meet the criteria in the above paragraphs are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

(d) *Extension of Deadlines.* The Administration for Children, Youth and Families (ACYF) may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mails. However, if ACYF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

C. Application Requirements

Priority Area Responsiveness

The application must be responsive to the priority area under which it is being submitted, as identified at the top of page one of the SF 424. In order to be considered responsive, the application must address each of the minimum requirements for an application specified in the priority area description and must contain the following information as specified in section 107A of the legislation:

(a) An assurance that the applicant operates in a geographic area where child abuse and neglect related to parental substance abuse has placed substantial strains on State and local agencies and has resulted in substantial increases in the need for services and/or training that cannot be met without funds available under this announcement; (b) identify the responsible agency or agencies that will be involved in the use of funds provided under this announcement; (c) a description of emergency situations with regard to children of substance abusers who need services of the type described in this announcement; (d) a plan for improving the delivery of such services to children; and (e) assurances that such services or training will be provided in a comprehensive, multidisciplinary and coordinated manner.

2. Application Form

The application must be submitted on single-sided reproduced copies of the SF 424 (revised 1988).

3. Copies Required

Applicants must submit an original and two copies of the complete application prepared in accordance with the instructions provided. A complete application includes: the completed SF 424, a summary description of the proposed project, required certifications/assurances, and the program narrative. The full application package is described in III H below.

4. Signature

The signature of the Certifying Representative must be handwritten (preferably in black ink) and the signer's name and title must be typed in Item 18a of the original SF 424.

5. Length

All narrative sections of the application must meet the format specifications. Although no page limit has been established, applicants should seriously consider the information provided in the introduction to part II,

and provide narratives that are succinct, responsive to the priority area requirements, and are within the general recommended length requirements as specified in the instructions later in this part.

D. Evaluation Criteria

The Program Narrative Statement of the application should correspond to the evaluation criteria. The description of the four criteria below should be used as headings in developing the program narrative.

Applications will be reviewed by a panel of at least three individuals. These reviewers will comment on and score the applications, basing their comments and scoring decisions on the criteria below.

1. Objectives and Need for Assistance (25 Points)

The extent to which the application reflects a good understanding of the objectives of the project; pinpoints any relevant physical, economic, social, financial, institutional or other problems; states the principal objectives and expected outcomes of the project; and indicates an awareness of related services available in the community and how those services will be used in relation to the proposed project.

Describe the specific need for the project in terms of its national or regional significance. Describe the problem within the context of the services now available and services unavailable in the community. State the services objective of the project and, where applicable, give a precise location of the projects or area(s) to be served by the project. Discuss the state-of-the-art relative to the problem of substance abuse as it relates to child abuse and neglect, including a list of any relevant published work by the author(s) of the proposal.

2. Results or Benefits Expected (15 Points)

The extent to which the identified results and benefits to be derived are consistent with the objectives of the proposal, and there are clear and important anticipated contributions to practice and service in the community.

Describe the population to be targeted and the number of persons in that population expected to benefit. Indicate the reason for targeting that particular population, e.g., previous regional assessments or surveys. Describe the specific benefits to the targeted population. If, as for instance, in Priority Area 2, a product or information package is to be produced, indicate steps for its distribution and dissemination.

3. Approach (40 Points)

The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project and details how the proposed work will be accomplished; cites factors which might accelerate or delay the work and gives acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides projections of the accomplishments to be achieved. The application lists the activities to be carried out in chronological order and shows a reasonable schedule of accomplishments and target dates. It relates the workplan to the evaluation objectives; i.e., identifies the kind of data to be collected and maintained relevant to goals and objectives to be evaluated; discusses the criteria to be used to evaluate the results and impact of the project. The application explains the methodology that will be used to determine if the needs that have been identified and discussed are met, and the expected results and benefits are achieved. The application also lists each organization, agency, consultant, or other key individuals or groups with whom work on the project will be coordinated, and describes the nature of the interaction and the benefits expected to be derived from the proposed coordination of programs and activities.

4. Staff Background and Organization's Experience (20 Points)

The extent to which the resumes of the program director and key project staff (including names, addresses, training, background and other qualifying experience) and the organization's experience demonstrate the ability to effectively and efficiently administer a project of this size, complexity and scope and reflect the ability to use and coordinate activities with other agencies for the delivery of comprehensive support services. The application describes the relationship between this project and other work planned, anticipated or underway under Federal assistance

Describe the background experience, training and qualifications of the key staff and consultants, including any experiences working on child abuse and neglect and/or programs or services related to substance abuse (curriculum vitae or resumes must be included with the application.) Describe the adequacy of available resources and organizational experience related to the tasks of the proposed project. An organizational capability statement must be included with the application. Describe any collaborative efforts with other organizations including the nature of their contribution to the project. Interagency agreements or letters indicating the type, extent and duration of commitment must be included with the application.

Describe the staffing pattern for the proposed project, listing key staff and consultants, their responsibilities in conjunction with this project and the time they will be committing to the project. Identify the authors of the application and their role in the project.

E. The Components of the Application

A complete application consists of the following in this order:

1. Application Face Sheet, SF 424, page 1.
2. Budget Non-Construction, SF 424A, Budget Information: Section A (Budget Summary), Section B (Budget Categories), and Section E (Budget Estimates of Federal Funds Needed for Balance of the Project);
3. Budget justification (approximately three pages);
4. Project summary description with listing of key words (approximately 2 page);
5. Program Narrative (approximately 40 double-spaced pages is suggested as a reasonable length), organized with sections addressing the following four areas: (1) Objectives and Need for Assistance; (2) Results or Benefits Expected; (3) Approach; and (4) Staff Background and Experience;
6. Organizational capability statement;
7. Letters of commitment;
8. SF 424B Assurances-Non Construction, Debarment, and Drug Free Workplace; Certification Regarding Lobbying; and
9. Appendices/attachments, may include a bibliography (approximately two pages single-spaced); resume or curriculum vitae (approximately two pages each); and evaluation instruments/measurements.

F. Preparing the Application

1. Availability of Forms

Agencies and organizations interested in applying for grant funds should submit an application(s) on the Standard Form 424 (revised April 1988) which is included in this announcement (Appendix II).

Each application must be executed by an individual authorized to act on behalf of the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in this announcement and the instructions in the attached application package.

2. Application Submission and Notification

Completed applications must be sent to: FY 1991 Emergency Services Child Abuse Prevention Services, Grants and Contracts Management Division, Hubert H. Humphrey Building, room 341-F2, 200 Independence Avenue, SW., Washington, DC 20201.

The program announcement number (93554.911) must be clearly identified on the application.

Successful applicants will be notified through a Notice of Financial Assistance Awarded. The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the grant, the total project period, the budget period and the amount of the non-Federal matching share. Unsuccessful applicants will be notified by letter.

3. Program Narrative

The Program Narrative is a very important part of the application. It should be clear, concise and specific to the priority area being addressed as described in Part II. The narrative should provide information on how the application meets the evaluation criteria. This narrative should be no less than 6 double-spaced pages and up to approximately 40 double-spaced pages. It should be typed on a single-side of 8½ by 11" plain white paper with 1" margins on both sides. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page one. Applicants should not submit reproductions of larger size paper reduced to meet the size requirement.

Applicants are required to follow the format described below in preparing their applications, using the four headings for the sections of the narrative. However, the number of specific pages for each section is given as a suggestion only. The specific information to be included under each heading was discussed previously under the "Evaluation Criteria."

The four sections are:

(1) Objectives and Need for Assistance (nine pages double-spaced);

(2) Results or Benefits Expected (three pages double-spaced);

(3) Approach (twenty pages double-spaced);

(4) Staff Background and Experience (eight pages double-spaced).

4. Organizational Capability Statement

Applicants should provide a brief (approximately two pages double-spaced) background description of how the applicant is organized and the types and quantities of services it provides or the research capabilities it possesses. This statement may also include descriptions of current work, descriptions of relevant past experience as well as the competence of the project team and its demonstrated ability to produce a final product that is comprehensive and usable.

5. Assurances and Certifications

Applicants must file a standard form 424B, Assurances-Non-Construction Programs, and Certifications Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must provide certification regarding: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. These two certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements and the Debarment and Other Responsibilities certifications.

G. The Application Package

To expedite the processing of applications, each applicant is requested to adhere to the following instructions. Each application package must include:

1. A copy of the Checklist for a Complete Application with all the items checked as being included in the application.

2. An original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance as page one. To facilitate handling, please do not use covers, binders, tabs or include extraneous materials such as agency promotion brochures, slide, tapes, film clips, minutes of meetings or articles of incorporation.

Do not include a self-addressed, stamped acknowledgment card. All applicants will be automatically notified of the receipt of, and the four digit identification number assigned to, their application. This number and priority area must be referred to in all subsequent communication with ACF concerning the application. After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number to aid in quick retrieval. It will not be possible for ACF staff to provide a timely response to inquiries about a specific application unless the identification number and the priority area are given. Applicants should be advised that ACF staff cannot release pre-decisional information relative to an application other than that it has been received and that it is going through the review process. Once a decision is reached, the applicant will be notified as soon as possible of the acceptance or rejection of the application.

H. Checklist for a Complete Application

The Checklist below should be typed on 8½" by 11" plain white paper, completed and included in the application package.

Checklist

I have checked my application package to ensure that it includes the following:

____ Checklist for a Complete Application;
____ One original application signed in black ink and dated plus two copies;
____ A complete SPOC certification with the date of SPOC contact entered in item 16 page 1 of the SF 424;
____ Each package contains the application (original and two copies) for one priority area.

The original and both copies of the application include the following:

____ SF 424, page 1, Application Face Sheet;
____ SF 424A;
____ Budget justification;
____ Summary description and key words;
____ Program narrative;
____ Organizational Capability Statement;
____ Interagency agreements; Letters of commitment;
____ Certification Regarding Lobbying;
____ SF 424B Assurances
____ Appendices/attachments.

(Federal Catalog of Domestic Assistance Program Number 93.554 Child Abuse and Neglect Prevention and Treatment).

Dated: May 22, 1991.

Wade F. Horn,

Commissioner, Administration for Children, Youth and Families, Administration for Children and Families.

Approved: May 29, 1991.

Donna N. Givens,

Deputy Assistant Secretary for Children and Families.

Appendix I—Executive Order 12372—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125-0347, Tel. (205) 284-8905

Arizona

Mrs. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Tel. (602) 280-1315

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371-1074

California

Loreen McMahon, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 323-7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Tel. (303) 866-2156

Connecticut

Under Secretary, ATTN: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106-4459, Tel. (203) 566-3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Tel. (302) 736-3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Tel. (202) 727-9111

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399-0001, Tel. (904) 488-8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Tel. (404) 656-3855

Hawaii

Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Tel. (808) 548-3016 or 548-3085

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782-8639

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232-5610

Iowa

Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Tel. (515) 281-3725

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564-2382

Maine

State Single Point of Contact, ATTN: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Tel. (207) 289-3261

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Tel. (301) 225-4490

Massachusetts

State Single Point of Contact, ATTN: Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Tel. (617) 727-7001

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Tel. (517) 373-7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373-6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Tel. (601) 960-4280

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Tel. (314) 751-4834

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Tel. (406) 444-5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, NV 89710, Tel. (702) 687-4420, ATTN: John B. Walker, Clearinghouse Coordinator

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271-2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625-0803, Tel. (609) 292-6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Tel. (609) 292-9025.

New Mexico

Dorothy E. (Duffy) Rodriquez, Deputy Director, State Budget Division, Department of Finance & Administration, Room 190, Bataan Memorial Building, Sante Fe, New Mexico 87503, Telephone (505) 827-3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474-1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224-2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Tel. (614) 466-0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Tel. (405) 843-9770

Oregon

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, NE., Salem, Oregon 97310, Tel. (503) 373-1998

Pennsylvania

Sandra Kline, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783-3700

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277-2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Tel. (803) 734-0493

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Tel. (605) 773-3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Tel. (615) 741-1676

Texas

Tom Adams, Office of Budget and Planning, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, Tel. (512) 463-1778,

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 538-1547

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828-3326

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH-51, Olympia, Washington 98504-4151, Tel. (206) 753-4978

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Tel. (304) 348-4010

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707-7864, Tel. (608) 266-1741

Please direct correspondence and question to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration (608) 266-0267.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777-7574

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Tel. (671) 472-2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Tel. (809) 727-4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Tel. (809) 774-0750

BILLING CODE 4130-01-M

APPENDIX II

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d Signature of Authorized Representative		e Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4130-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4130-01-M

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

BILLING CODE 4130-01-C

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c) and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

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OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), FO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, required certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Control substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)

_____

Check ____ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office Management and Acquisition,

Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal debarment or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Organization

_____

Authorized Signature Title Date

NOTE: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201-0001

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Appendix III—OTI Target Cities Grants

The Los Angeles Treatment Network, State Department of Alcohol & Drug, 1700 K Street, Sacramento, CA 95814, Contact: John P. Erickson, (916) 323-2033

Project Spirit, Department of Human Resources, 878 Peachtree Street, NE, Room 319, Atlanta, GA 30309, Contact: Clinton Dye, (404) 894-4217

Baltimore Substance Abuse Treatment Improvement Project, Department of Health & Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201, Contact: Todd Rosendale, (301) 225-6925

Boston Drug Treatment Improvement Project, Department of Public Health, 150 Fremont Street, Boston, MA 02111, Contact: Dennis McCarty, (617) 727-1960

Albuquerque Drug Treatment Improvement, New Mexico Health & Environment Department, 1190 Saint Francis Drive, Room N3200, Santa Fe, NM 87503, Contact: Miriam Brownstein, (505) 827-0578

Drug Abuse Treatment Improvement Project, State Division of Substance Abuse, Executive Park South, Albany, NY 12203, Contact: John Gustafson, (518) 457-7629

Puerto Rico/San Juan Cooperative Agreement, Puerto Rico Department of Anti-Addiction Services, 414 Barbosa Avenue, Hato Key, PR 00918, Contact: Jose Gonzalez, (809) 758-7330

Milwaukee System Improvement Plan, Department of Health & Social Services, 1 West Wilson Street, P.O. Box 7851, Madison, WI 53707, Contact: Bruce Fry, (608) 266-0007

Comprehensive Child Development Program

Directory of Grantees (4/15/91)

Region I

Project AFRIC, Dimock Community Health Center, 55 Dimock St., Richards Bldg., Roxbury, MA 02119, Phone: 617/442-1113, Fax: 617/445-0091
- La-Motte Hyman, Project Director Jackie Jenkins-Scott, Executive Director
- Dale Simmons, Data Management Coordinator
- Connie Williams, Ethnographer

Windham County Family Support Project, Brattleboro Town School District, 218 Canal St., Brattleboro, VT 05301, Phone: 802/254-3742, Fax: 802/254-3750
- Susan Billings, Home Visitor
- Marcia Bloom, Home Visitor
- Irene Burtis, Nurse/Health Educator
- Julie Cunningham, Home Visitor
- Ann Darling, Family Services Coordinator
- Wendy DeBell, Data Manager
- Kathy Emerson, Home Visitor
- Lynn Holappa, Home Visitor
- Judith Jerald, Project Director
- Raymond McNulty, School Superintendant
- Gladys Mock, Home Visitor
- Martha O'Connor, Chair, Advsry. Board
- Carol Robbins, Administrative Assistant
- Gloria Rudolf, Ethnographer
- Jan Slyck, Home Visitor
- Janice Stockman, Early Chiuldhood Educator
- Janet Finck Gross, Coordinator of Children's Programs

Region II

Project CHANCE, 136 Lawrence Street 3A & B, Brooklyn NY 11201, Phone: 718/330-0845, Fax: 718/330-0846
- Sally Butler, Executive Director
- Angel Miranda, Case Mngmnt. Team Leader
- Carol Parker, Nutrit./Parent Educ. Team Leader
- Cherylee Sherry, Project Director
- Jose Santiago, Data Manager/Admin. Coord.
- Earl Thomas, Ethnographer
- Cheryl Washington, Early Child. Team Leader

Region III

Parent Child Resource Center, Edward C. Mazique Parent Child Center, Inc., 1325 W St., N.W., Washington, DC 20009, Phone: 202/462-3375, Fax: 202/939-8696
- Rashid Ali, Case Coordinator
- Michael Childs, Case Coordinator
- Roberta Clark, PCRC Program Director
- Ruby DeLeon, Case Coordinator
- Colleen Edwards, Upper Cardozo Center Dir.
- Nigel Fanfair, Data Manager
- Cynthia Faust, PCRC Program Coordinator
- Michael Howard, Case Coordinator
- Frances Jones, Case Coordinator
- Gertrude Marlowe, Ethnographer
- Sam Ndubuisi, Data Analyst
- Queen Pagon, Case Coordinator
- Ruth Rucker, Executive Director
- Barbara Whitted, Case Coordinator Juliana Yachtis, PCRC Center Director, (East of the River)

Family Start, Friends of the Family, Inc., 1510 West Lafayette Avenue, Baltimore, MD 21217, Phone: 301/669-1193-1194, Fax: 301/462-3576
- Linah Allanna, Child Development Specialist
- Marva Berry, Child Development Specialist
- Rosalyn Branson, Project Director
- Stephanie Cannon, Data Manager
- Mattie Davis, Head Teacher
- Rosalind Dyches, Family Services Coordinator
- Patricia Fernandez-Kelly, Ethnographer
- Stanley Fuller, Male Program Coordinator
- Linda Gaithers, Program Administrator
- Jane Harrison, Self Employment Specialist
- Vera Harrison, Data Entry
- Barbara Hughes, Receptionist
- Doug Klayman, Data Collector
- Cristina Pena, Family Services Coordinator
- Rosalie Streett, Executive Director

Family Foundations, Community Human Services, 374 Lawn Street, Pittsburgh, PA 15213, Phone: 412/687-6610, Fax: 412/687-6642.
- Hattye Board, Nutritionist
- Heather Fisher, Data Manager
- Chris Groark, Project Admin./Exec. Director
- Carol McAllister, Ethnographer*

*Women's Studies Program 2630 Cathedral of Learning University of Pittsburg Pittsburgh, PA 15260

- Vivian Herman, Early Childhood Coordinator
- Janet Crawford, Neighborhood Coordinator
- Glynda Lowery, Neighborhood Coordinator
- Laurie Mulvey, Project Director
- Dian Perkins, Neighborhood Coordinator

Region IV

T.I.P.P. (Toddlers, Infants, Preschoolers, and Parents), Dade County Community Action Agency, 1325 N.W. 71st St., Miami, FL 33147, Phone: 305/694-2704, Fax: 305/694-2712.
- William Atkins, Division Director, R&D
- Stephanye Johnson, Data Manager
- O. Jacqueline Crute, Project Director
- Dorothy Davis, Executive Director
- Maxine Thurston, Ethnographer

Operation Family, Community Action Council, P.O. Box 11610, Lexington, KY 40576, 606/233-4600.
- Jack Burch, Executive Director
- Stefan Cooper, Data Manager
- Steve Fricker, Asst. Dir., Commty. Systems
- Kathy Padgett, Asst. Dir., Case Management
- Ben Robinson, Ethnographer
- Mary Twitty, Project Director

Tennessee CAREs, Bureau of Educational Research and Services, TN State University 330 Tenth Ave. North, Nashville, TN 37203-3401, 615/251-1540.
- Sherry Jo Anderson, Data Collector
- Vickie Ballance, Project Manager
- Mary Fairless, Administrative Assistant
- Pam McElhiney, Educational Coordinator/Program Manager
- Barbara A. Nye, Project Director
- Terry Summers, Fiscal Officer
- DeAnna Tate, Ethnographer

Region V

Project Focus, Grand Rapids Child Guidance Clinic, 1309 Madison, S.E., Grand Rapids, MI 49506, Phone: 616/243-8240, Fax: 616/243-8554.
- Denise Champion, MIS Manager
- Tena Heacock, Center Services Manager
- Linda Johnson, Ethnographer
- Kashaka Kikelomo, Social Services Supervisor
- Connie Long, Early Childhood Educator
- Brooks Mikita-Filonow, Field Service Manager Shirley Rapier, Program Director
- Gerald Vanderling, Executive Director

West CAP Full Circle Project, P.O. Box 308, Lot #20 Mobile Estates, Glenwood City, WI 54013-0308, Phone: 715/265-4271, Fax: 715/265-7031.
- Becky Bearheart, Family Dev. Specialist
- Irl Carter, Ethnographer
- Jill Einum, Family Development Specialist
- Patrick Herriges, Executive Director
- Patti Huettl, Family Development Specialist
- Elizabeth Jackson-Johnson, Family Dev. Spec.
- Kathy Johnson, Commnty. Developmnt Coord.
- Kathy Kuntz, Systems Coordinator
- Stacey Larson, Family Development Specialist
- Lori Olson, Administrative Assistant
- Terry Olson, Family Development Specialist
- Judy Rivard, Family Services Coordinator

Sheryl Sarsland, Data Assistant
Kathy Shafer, Family Development Specialist
Joan Sharkey-Lauver, Project Director
Karen Smith, Family Development Specialist

Region VI

Project Family, P.O. Box 120, (4208 Frazier Pike), College Station, AR 72053, Phone: 501/490-1929, Fax: 501/370-4264.
Loretta Alexander, Project Administrator
Dr. Patrick Casey, Project (Exec) Director
Dr. Dorethea Davis, Education Director
Scott Gordon, Associate Administrator
Dr. Terri Hymel, Medical Director
J.D. Robson, Ethnographer
Joan Rorex, Education

City of Albuquerque CCDP, Albuquerque Dept. of Human Services, Children's Services Section, 601 Yale, S.E., Aluquerque, NM 87106, Phone: 505/764-6180, Fax: 505/768-3204.
Mary Boston, Educational Services Specialist
Martha Fresquez, Accountant
Felipe Gonzales, Ethnographer
Jorja Knudsen, Manager
Geraldine Loretto, Data Manager
Michael Passi, Executive Director
Denise Watson, Social Services Specialist

Primero Los Niños, La Clíonica de Familia, 225 E. Idaho, La Misión Pl. #26, Las Cruces, NM 88005, 505/526-2007.
Arva Chappelle, Early Childhood Coord.
Shirley Dundon, Acting Director
Theresa Pacheco, Data Manager
David Roddy, Financial Director (La Clínica)
Mary Snachez-Bane, Executive Director
Silvia Sierra, Ethnographer
Connie Tosch, Family Support Coordinator

Avance CCDP, Avance-San Antonio, Inc., 301 S. Frio, Ste. 103, San Antonio, TX 78207, Phone: 512/270-4611, Fax: 512/270-4612.
Robin Cameron, Center Manager
Gilberto Cardenas, Ethnographer
Isaac Cardenas, Youth Development Specialist
Delma Fuentes, Parent Educator
Anna Mercedes Herrera, Health & Nutrition
Mercedes Perez de Colon, CCDP Director
Gloria Rodriguez, Executive Director
Bob Rosa, Senior Counselor
Rita San Miguel, Adult Literacy Coordinator
Rosie Soliz, Parent Educator
Ruben Torrez, Parent Educator
Rebecca Tovar, Data Records Manager
Todd Walker, Director of Research & Evaluat.
Zaida Yzaguirre, Early Childhood Specialist
Richard Zorola, Center Manager

Share Care Program, Day Care Association of Fort Worth & Tarrant County, 121 North Rayner, Ft. Worth, TX 76111, 817/831-8115.
Angelica Arcpreste, Project Secretary
Terry Arzac, Family Team Leader
Murlene Barber, Family Team Leader
Bonnie Bayles, Family Team Leader
Kathy Kates, Family Team Leader
Nancy McKusick, Parent Dev. Coordinator
Mary Montes, Data Manager
Hester Nayes, Early Childhood Coordinator
Barbara Sevrens, Family Team Leader
Coleen Shannon, Ethnographer
Marilyn Van Cleave, Family Team Leader
Rosalie Wells, Project Director
John Widner, Executive Director

Region VII

Mid-Iowa Community Action, 1500 East Linn St., Marshalltown, IA 50158, Phone: 515/752-7162, Fax: 515/752-9724
John Else, Ethnographer
Carol Harper, Ethnographer
Vicki Keeley, Marshall County Coord.
Betty Luethje, Tama County Coordinator
Arlene McAtee, Family Services Manager
Kathie Readout, CCDP Project Director
Sharon Smith, Data Manager
Gary Stokes, Executive Director
Gloria Symons, Story County Coord.
Art Thayer, Powashiek Cnty. Coord.

Project EAGLE, Gateway Centre, Tower 2, Suite 1001, Fourth and State Avenues, Kansas City, KS 66101, 913/281-2648.
Ed Canda, Ethnographer
Anne Merrill-Steskal, Data Manager
Luel H. Slover, Coordinator
Martha Staker, Project Director
Earl Thomas, Audult Education
Ken Wible, M.D., Co-Principal Investigator

Region VIII

Famiuly Futures, 3801 Martin Luther King, Jr. Blvd., Denver, CO 80205 Att: Proj. Dir., Phone: 303/355-2008 Fax: 303/331-0248.
Katherine Dougherty, Ethnographer
Anna Jo Haynes, Co-Executive Director
Meera Mani, Project Director
Linanne Moseley, Project Coord. (MIS)
Adele Phelan, Executive Director

Little Hoop Community College, P.O. Box 269, Ft. Totten, ND 58335, 701/766-4415 -4070
Sharon Georgeson, Family Support Coord.
Beverly Graywater, Project Director
Robin Herman, Data Manager
Robert Stahl, Ethnographer

Community-Family Partnership Project, Developmental Ctr. for Handicapped Persons, UMC 6800, Logan, UT 84322, Phone: 801/750-2008 -3819, Fax: 801/750-2044
Todd Braeger, Data Coordinator
Nic Eastmond, Ethnographer
Marilyn Kidd, Preschool Teacher
Michaelle Ann Robinson, Project Admin.
Sebastian Striefel, Project Director
Pat Truhn, Family Consultant Coordinator
Kathleen Watts, Substance Abuse Counselor/Community Liaison Coordinator

Region IX

Conocimiento, Southwest Human Development, Inc., 1366 East Thomas Rd., Suite 100, Phoenix, AZ 85014-5739, 602/266-5976
Heidi Baldwin, Child. Educ. Facilitator
Becky Castillo, Literacy Trainer
Linda Cutright, Avondale Site Coordinatory
Gary DeLago, Research Director
Shari Just, Nurse
Gilda Lima, Child Dev. Specialist
Jan Martner, Project Director
Cecilia Rocha, Phoenix Site Coordinator
Cindy Russell, Ethnographer
Celia Schween, Adult Educ. Facilitator
Rosemarie Tirelli, Data Manager
Ginger Ward, Executive Director

ENRICH, Venice Family Clinic, 604 Rose Ave., Venice, CA 90291, Phone: 213/392-8630 x300, Fax: 213/392-6642
Connie Bautista, Family Care Coord.
Hilda Benites-Palma, Case Mngmnt. Coord.
Manuel Castellanos, Jr., Director
Patricia Green, Assistant Director
Angela Jordon, Family Care Coordinator
Susan Mackenson, M.D., Health Coordinator
Raquel Martinez, Family Care Coordinator
Martha Mercado, Data Manager
Terri Morgan, Family Care Coordinator
Susan Morrow, Early Child. Educ. Coord.
Vania Parente, Family Care Coordinator
Fern Seizer, Executive Director
Lisa Taub, Parent Coordinator
Jane Wellenkamp, Ethnographer
Gerald White, Family Care Coordinator

Region X

Families First, Children's Home Society of Washington, P.O. Box 1997, Auburn, WA 98071, Phone: 206/854-0700 Fax: 206/852-3119
Nick Bellotto, Data/Facilities Manager
Patty Burrell, Volunteer Coordinator
M.J. Davidson, King Co. Work Training
Deborah Davis, Head Teacher
Wendy Jans, Master Teacher
Brenda Jones, Assistant to Grant Admin.
Musa Khalaf, Grant Administrator
Liz Kohlenberg, Ethnographer (Assoc. Resrch.)
Peg Mazen, Director
Margaret McKenna, Ethnographer
Alan McJunkin, Head Teacher
Susan Nelson, Community Develop. Coord.
Sharon Osborne, Executive Director
Teresa Rafael, NW Regional Vice-Pres.
Judi Sorensen, Office/Facilities Mgr.
Rob Stanton, Program & Data Assistant
Sandra Wright, Family Center Coordinator
KENT 206/850-2570 Fax: 206/850-2576
Martha Scoville, Family Center Coordinator
Carol Withrow, Child Development Coord.
MUCKLESHOOT Marie Wilson, Head Teacher

Single State Authorities (SSAs): January 1990

State and Territorial Alcoholism and Drug Abuse Program Directors

Note

"To learn more about prevention-related programs and resources in your state, you are encouraged to seek information from your SSA listed on the attached pages. This will help to foster cooperation and collaboration between and among existing programs and potential applicants."

This directory of State and Territorial Alcoholism and Drug Abuse Program Directors is intended as a communication aid. Because names, addresses, and telephone numbers may change, periodic updates are made.

Alabama

James V. Laney, Director, Division of Mental Illness and Substance Abuse Community Programs, Department of Mental Health, 200 Interstate Park Drive, P.O. Box 3710, Montgomery 36193, (205) 271-9250

Alaska

Matthew Felix, Coordinator, Office of Alcoholism and Drug Abuse, Department of Health and Social Services, Pouch H-05-F, Juneau 99811, (907) 586-6201

Arizona

Ed Zborower, Program Representative for Alcoholism and Drug Abuse, Office of Community Behavioral Health, Arizona Department of Health Service, 411 N. 24th Street, Phoenix, 85008, (602) 220-6455

Arkansas

Paul T. Behnke, Director, Office on Alcohol and Drug Abuse Prevention, Donaghey Plaza, North, Suite 400, P.O. Box 1437, Little Rock 72203-1437, (501) 682-6650

California

Chauncey Veatch III, Director, Department of Alcohol and Drug Programs, 111 Capitol Mall, Suite 450, Sacramento 95814, (916) 445-0834

Colorado

Robert Aukerman, Director, Alcohol and Drug Abuse Div., Department of Health, 4210 East 11th Avenue, Denver 80220, (303) 331-8201

Connecticut

Donald J. McConnell, Executive Director, Connecticut Alcohol and Drug Abuse Commission, 999 Asylum Avenue, 3rd Floor, Hartford 06105, (203) 566-4145

Delaware

Neil Meisler, Director, Delaware Division of Alcoholism, Drug Abuse and Mental Health, 1901 N. DuPont Highway, Newcastle 19720, (302) 421-6101

District of Columbia

Simon Holliday, Chief, Health Planning and Dev., 1660 L Street, N.W., Washington 20036, (202) 673-7481

Florida

Linda Lewis, Deputy Assistant Secretary, Alcohol and Drug Abuse Program, Department of Health and Rehabilitative Services, 1317 Winewood Boulevard, Tallahassee 32301

Georgia

Patricia A. (Pam) Redmond, Director, Alcohol and Drug Services Section, 878 Peachtree Street, NE., Suite 318, Atlanta 30309, (404) 894-6352

Hawaii

Henry Foley, Acting Branch Chief, Alcohol and Drug Abuse Division, Department of Health, P.O. Box 3378, Honolulu 96801, (808) 548-4280

Idaho

Ray Winterowd, Administrator, Division of Family and Children and Services, Department of Health and Welfare, 450 West State Street—7th Floor, Boise 83720, (208) 334-5935

Illinois

William T. Atkins, Director, Illinois Department of Alcoholism and Substance Abuse, 100 West Randolph Street, Suite 5-600, Chicago 60601, (312) 814-3840

Indiana

Bob Tyburski, Director, Division of Addiction Services, Department of Mental Health, 117 East Washington Street, Indianapolis 46204, (317) 232-7816

Iowa

Janet Zwick, Director, Iowa Department of Public Health, Division of Substance Abuse and Health Promotion, Lucas State Office Building, 4th Floor, Des Moines 50319, (515) 281-3641

Kansas

Andrew O'Donovan, Commissioner, Alcohol and Drug Abuse Services, 300 S.W. Oakley, Biddle Building, Topeka 66606-1861, (913) 296-3925

Kentucky

Michael Townsend, Director, Division of Substance Abuse, Department for MH-MR Services, 275 East Main Street, Frankfort 40621, (502) 564-2880

Louisiana

Robert L. Perkins, Ph.D., Director, Office of Human Services, Div. of Alcohol and Drug Abuse, 1201 Capitol Access Road, P.O. Box 3868, Baton Rouge 70821-3868, (504) 342-9354

Maine

Neill Miner, Director, Office of Alcoholism and Drug Abuse Prevention, Bureau of Rehabilitation, State House Station #11, Augusta 04333, (207) 289-2781

Maryland

Rick Sampson, Director, Maryland State Alcohol and Drug Abuse Administration, 201 West Preston Street, Baltimore 21201, (301) 225-6925

Massachusetts

Dennis McCarty, Director, Division of Substance Abuse Services, 150 Tremont Street, Boston 02111, (617) 727-8614

Michigan

Joan Walker, Administrator, Office of Substance Abuse Services, Department of Public Health, 2150 Apollo Drive, P.O. Box 30206, Lansing 48909, (517) 335-8809

Minnesota

Cynthia Turnure, Ph.D., Director, Chemical Dependency Program Division, Department of Human Services, 444 Lafayette Road, St. Paul 55155-3823, (612) 296-4610

Mississippi

Anne D. Robertson, Director, Division of Alcohol and Drug Abuse, Department of Mental Health, Robert E. Lee State Office Building, 11th Floor, Jackson 39201, (601) 359-1288

Missouri

Lois Olson, Director, Division of Alcohol and Drug Abuse, Department of Mental Health, 1915 South Ridge Drive, P.O. Box 687, Jefferson City 65102, (314) 751-4942

Montana

Robert Anderson, Administrator, Alcohol and Drug Abuse Division, Department of Institutions, Helena 59601, (406) 444-2827

Nebraska

Malcolm Herd, Director, Division of Alcoholism and Drug Abuse, Department of Public Inst., P.O. Box 94728, Lincoln 68509, (402) 471-2851, Ext. 5583

Nevada

Liz Breshears, Acting Chief, Bureau of Alcohol and Drug Abuse Department of Human Resources, 505 East King Street, Carson City 89710, (702) 885-4790

New Hampshire

Geraldine Sylvester, Director, Office of Alcohol and Drug Abuse Prevention, Health and Welfare Building, Hazen Drive, Concord 03301, (603) 271-4627

New Jersey

Christine Grant, Deputy Commissioner, Department of Health, CN 360, Trenton 08625, (609) 292-3147

New Jersey

John Farrell, Assistant Commissioner, Division of Narcotic and Drug Abuse Control, 129 East Hanover Street, Trenton 08625, (609) 292-5760

New Mexico

Mel Salazar, Chief, Substance Abuse Bureau, 190 St. Francis Drive, Room 3350 North, Santa Fe 87503, (505) 827-2589

New York

Marguerite T. Saunders, Director, New York Division of Alcoholism and Alcohol Abuse, 194 Washington Avenue, Albany 12203, (518) 474-5417

John S. Gustafson, Deputy Director, Division of Substance Abuse Services, Executive Park S., Box 8200, Albany 12203, (518) 457-7629

North Carolina

William Carroll, Acting Director, Alcohol and Drug Abuse Section, Division of Mental Health and Mental Retardation Services, 325 North Salisbury Street, Raleigh 27611, (919) 733-4670

North Dakota

John Allen, Director, Division of Alcoholism and Drug Abuse, North Dakota Department of Human Services, State Capitol/Judicial Wing, Bismarck 58505, (701) 224-2769

Ohio

Suzanne C. Tolbert, Chief, Bureau of Alcohol Abuse and Recovery, Ohio Department of Health, 170 North High Street, 3rd Fl., Columbus 43266-0586, (614) 466-3445

Oklahoma

Don Anderson, ACSW, Commissioner, Oklahoma Department of Mental Health and Substance Abuse Services, P.O. Box 53277, Capitol Station, Oklahoma City 73152, (405) 271-7474

Oregon

Jeffrey Kushner, Assistant Director, Office of Alcohol and Drug Abuse Programs, 1178 Chemeketa Street, NE, #102, Salem 97310, (503) 378-2163

Pennsylvania

Jeannine Peterson, Deputy Secretary for Drug and Alcohol Programs, PA Department of

Health, P.O. Box 90, Harrisburg 17108, (717) 787-9857

Rhode Island

William Pimentel, Director, Division of Substance Abuse, Department of Mental Health, Retardation and Hospitals, P.O. Box 20363, Cranston 02920, (401) 464-2091

South Carolina

William J. McCord, Director, South Carolina Commission on Alcohol and Drug Abuse, 3700 Forest Drive, Columbia 29204, (803) 734-9520

South Dakota

Robert Anderson, Director, Division of Alcohol and Drug Abuse, Joe Foss Building, 523 East Capitol, Pierre 57501, (605) 773-3123

Tennessee

George G. Riggall, Assistant Commissioner, Alcohol and Drug Abuse Services, Tennessee Department of Mental Health and Mental Retardation, 706 Church Street, 4th Floor, Nashville 37219, (615) 741-1921

Texas

Bob Dickson, Executive Director, Texas Commission on Alcohol and Drug Abuse, 1705 Guadalupe Street, Austin 78701, (512) 463-5510

Utah

Leon PoVey, Director, Division of Substance Abuse, Department of Social Services, 120 N. 200 West, 4th Floor, P.O. Box 45500, Salt Lake City 84145-0500, (801) 538-3939

Vermont

Richard Powell II, Director, Office of Alcohol and Drug Abuse Programs, 103 South Maine Street, Waterbury 05676, (802) 241-2170/241-2175

Virginia

Wayne Thacker, Director, Office of Substance Abuse Services, Department of Mental Health and Mental Retardation and Substance Services, P.O. Box 1797, 109 Governor Street, Richmond 23214, (804) 786-3906

Washington

Ken Stark, Director, Bureau of Alcoholism and Substance Abuse, Washington Department of Social and Health Services, Mail Stop, OB-44W, Olympia 98504, (206) 753-5866

West Virginia

Jack Clohan, Jr., Director, Division of Alcohol and Drug Abuse, State Capitol, 1800 Washington Street, East, Room 451, Charleston 25305, (304) 348-2276

Wisconsin

Larry W. Monson, ACSW, Director, Office of Alcohol and Other Drug Abuse, 1 West Wilson Street, P.O. Box 7851, Madison 53707, (608) 266-3442

Wyoming

Jean DeFratis, Director, Alcohol and Drug Abuse Programs, Hahtaway Building, Cheyenne 82002, (307) 777-7115, Ext. 7118

Guam

Marilyn L. Wingfield, Director, Department of Mental Health and Substance Abuse, P.O. Box 9400, Tamuning 96911, (671) 646-9262-69

Puerto Rico

Isabel Suliveres de Martinez, Secretary, Department of Anti-Addiction Services, Box 21414, Rio Piedras Station, Rio Piedras 00928-1414, (809) 764-3795

Virgin Islands

Doreen Hendrickson, Assistant Director, Division of Mental Health Alcoholism and Drug Dependency Services, P.O. Box 520, St. Croix 00820, (809) 773-1992

American Samoa

Fualaau Hanipale, Assistant Director, Social Services Division, Alcohol and Drug Program, Government of American Samoa, Pago Pago 96799

Dr. Lefiga Liaiga, Director, Public Health Services, LBJ Tropical Medical Center, Pago Pago 96799

The RADAR Network

The Regional Alcohol and Drug Awareness Resource (RADAR) Network works in partnership with NCADI and consists of State clearinghouses, specialized information centers of national organizations, the Department of Education Regional Training Centers, and others. Each RADAR Network member can offer the public a variety of information services.

State RADAR Network Centers

Crystal Jackson, Alabama Dept. of Mental Health/Mental Retardation, Montgomery, AL, 205/271-9258

Joyce Paulus, Alaska Council on Prevention of Alcohol & Drug Abuse, Anchorage, AK, 907/349-6602

Allen Brown, Arizona State University, Tempe, AZ, 602/965-7046

Patsy Wagner, Office on Alcohol and Drug Abuse Prevention, Little Rock, AR, 501/682-6653

Scott Whitney, Dept. of Human Resources, Govt. of American Samoa, Pago Pago, AS, 684/633-4485

Peggy Blair, State of California Dept. of Alcohol and Drug Programs, Sacramento, CA, 916/324-7262

Linda M. Garrett, Resource Department Colorado Alcohol & Drug Abuse Division, Denver, CO, 303/331-8201

Judith Bloch, Connecticut Clearinghouse, Plainville, CT, 203/793-9791

Doris A. Bolt, Resource Center, YMCA of Delaware, Wilmington, DE, 302/571-6975

Karen Wright, Washington Area Council on Alcoholism and Drug Abuse, Washington, DC, 202/682-1716

Cindy Colvin, Florida Alcohol and Drug Abuse Assoc., Tallahassee, FL, 904/878-6922

Marie Albert, Georgia Prevention Resource Center, Atlanta, GA, 404/894-4204

Barbara Benavente, Dept. of Mental Health & Substance Abuse, Tamuning, GU, 671/646-9261, 9269

Dr. Ken Willinger, Alcohol & Drug Division, State of Hawaii Dept. of Health, Honolulu, HI, 808/548-4280

Richard Baylis, Jack Quast, Health Watch Foundation, Boise, ID, 208/377-0068

Caroline Murphy, Prevention Resource Center Library, Springfield, IL, 217/525-3456

Maggie Harter, Jim Pershing, Indiana Prevention Resource Center for Substance Abuse, Bloomington, IN, 812/855-1237

Tressa Youngbear, Cedar Rapids Public Library, Cedar Rapids, IA, 319/398-5133

Judy Donovan, Kansas Alcohol and Drug Abuse Services, Topeka, KS, 913/296-3925

Dianne Shuntich, Drug Information Service for Kentucky, Franfort, KY, 502/564-2880

Sanford W. Hawkins, Division of Alcohol and Drug Abuse, Baton Rouge, LA, 504/342-9352

Earle Simpson, Maine Alcohol and Drug Abuse Clearinghouse, Augusta, ME, 207/289-2781

Standola Reynolds, Alcohol/Drug Abuse Administration, Baltimore, MD, 301/225-6543

Donna Woods, Massachusetts Info. and Referral Service, Cambridge, MA, 617/445-6999

Gail Johnsen, Michigan Substance Abuse and Traffic Safety information Center, Lansing, MI, 517/482-9902

Mary F. Scheide, Minnesota Prevention Resource Center, Anoka, MN, 612/427-5310

Esther Rogers, Mississippi Department of Mental Health, Jackson, MS, 601/359-1288

Randy Smith, Missouri Division of Alcohol & Drug Abuse, Jefferson City, MO, 314/751-4942

Nancy Tunnicliff, Chemical Dependency Bureau, Helena, MT, 406/444-2878

Laurel Erickson, Alcoholism and Drug Abuse Council of Nebraska, Lincoln, NE, 402/474-0930, 1992

Ruth Lewis, Bureau of Alcohol and Drug Abuse, Carson City, NV, 702/885-4790

Mary Dube, New Hampshire Office of Alcohol and Drug Abuse Prevention, Concord, NH, 603/271-6100

Mark J. Byrne, New Jersey Div. of Alcoholism and Drug Abuse, Trenton, NJ, 609/292-0729

Courtney Cook, Health and Environment Department/BHSD/Substance Abuse Bureau, Santa Fe, NM, 505/827-2601

Leslie S. Connor, Prevention/Intervention Group, Albany, NY, 518/473-3460.

Judith M. Lukin, Narcotic and Drug Research, Inc., New York, NY, 212/966-8700, ext. 107
Betty Lane, North Carolina Alcohol/Drug Resource Center, Durham, NC, 919/286-5118.
Michele Edwards, North Dakota Prevention Resource Center, Bismarck, ND, 701/224-3703
Sharon L. Tention, Ohio Dept. of Alcohol & Drug Addiction Service, Columbus, OH, 614/466-7893
Jan Hardwick, Oklahoma State Department of Mental Health Oklahoma City, OK, 405/271-8755
Sue Ziglinski, Oregon Drug and Alcohol Information, Portland, OR, 503/280-3673
Gwen Miller, ENCORE, Pennsylvania Dept. of Health, Harrisburg, PA, 717/787-2606, 9761
Alma Negron, Department of Anti-Addiction Services, Rio Piedras, PR, 809/767-5990
Gillette Hunt, Division of Substance Abuse, Cranston, RI, 401/464-2140
Elizabeth Peters South Carolina Commission on Alcohol and Drug Abuse, Drug Store Info. Clearinghouse, Columbia, SC, 803/734-9559
Bob Anderson, Dept. of Health, Div. of Alcohol and Drug Abuse, Pierre, SD, 605/773-3123
Sharon Crockett, Tennessee Alcohol & Drug Association, Nashville, TN, 615/244-7066
Carlene Phillips, Texas Commission on Alcohol & Drug Abuse Resource Ctr., Austin, TX, 512/463-5510
Gary Swensen, Utah Federation of Parents, Salt Lake City, UT, 801/538-3949
Patricia Auger, Office of Alcohol & Drug Abuse Programs, Waterbury, VT, 802/241-2178
Darien Fisher Duke, Dept. MH/MR/SA, Richmond, VA, 804/786-3909
Director, Division of Mental Health, Alcoholism, & Drug Dependency, St. Croix, VI, 809/773-8443
Mary Goehring, Washington State Substance Abuse Coalition (WSSAC), Bellevue, WA, 206/747-9111
Shirley A. Smith, West Virginia Library Commission, Charleston, WV, 304/348-2041
Douglas White, Wisconsin Clearinghouse, Madison, WI, 608/263-2797
Sue Rardin, Wyoming CARE Program, Laramie, WY, 307/766-4119

Department of Education Regional Training Centers

Margaret Bradford, Southeast Regional Center for Drug Free Schools and Communities, Atlanta, GA, 404/688-9227
Mickey Sinn, Midwest Regional Center for Drug Free Schools and Communties, Chicago, IL, 312/883-8888
Karen Means, Northeast Regional Center for Drug Free Schools and Communities, Sayville, NY, 516/589-7022
Margretta Bartlett, Southwest Regional Center for Drug Free Schools and Communities, Norman, OK, 405/325-1454
Kathy Laws, Western Center for Drug-Free Schools & Communities, NW Regional Educational Lab, Portland, OR, 503/275-9500

Specialty Network Centers

Travis Jackson, Native American Clearinghouse for Alcohol & Drug Information, Colorado River Service Unit, Parker, AZ, 602/669-2137
Christina Miller, Prevention Research Center Library, Berkeley, CA, 415/486-1111
Nancy Kaihatsu, Tom Colthurst, Program on Alcohol and Drug Issues, La Jolla, CA, 619/534-6331
Elva Yanez, Marin Institute for the Prevention of Alcohol & Other Drug Problems, San Rafael, CA, 415/456-5692
Holly Lenz, National Association for Children of Alcoholics, South Laguna, CA, 714/499-3889
Andrea L. Mitchell, Medical Research Institute of San Francisco at Pacific Presbyterian Medical Center, Berkeley, CA, 415/642-5208
Ford S. Hatamiya, Multicultural Training Resource Center, San Francisco, CA, 415/861-2142
Margy Chan, Addiction Research Foundation Library, Toronto, ON, Canada, 416/595-6144
Paul Cardenas, National Coalition of Hispanic Health and Human Svcs. Orgs., Washington, DC, 202/371-2100
Ruth Marie Conolly, Interamerican Documentation Center, Washington, DC, 202/458-3809
Patricia Dietz, The National Network of Runaway and High-Risk Youth, Washington, DC, 202/682-4114
Paula Kemp, National Drug Information Center of Families in Action, Atlanta, GA, 404/934-6364
Beverly E. Allen, Multi-Media Center, Morehouse School of Medicine, Atlanta, GA, (404) 752-1530
Leonore Burts, National AIDS Information Clearinghouse, Rockville, MD, 800/458-5231
Glen Holley, Clearinghouse on Drugs and Crime, Rockville, MD, 301/251-5531
David Grant, Institute on Black Chemical Abuse Resource Center, Minneapolis, MN, 612/871-7878
Jean Kinney, Project CORK, Dartmouth University, Hanover, NH, 603/646-7540
Cathy Weglarz, Center of Alcohol Studies, Rutgers University, Piscataway, NJ, 201/932-4443
Jose Luis Rodriguez, Hispanic Information Telecommunication Network, New York, NY, 212/966-5660
Jeff Hon, National Council on Alcoholism and Drug Dependence, Inc., New York, NY, 212/206-6770
Penny Howe, Chemical People Institute, Pittsburgh, PA, 412/391-0900
Teresa Stayduhar, Chemical People Institute, Pittsburgh, PA 412/391-0900
Lcdo. Luis Rivera, Román Asesor del Gobernador, San Juan, PR, 809/721-7000
Richard Bickerton, Association of Employee Assistance Professionals, Arlington, VA, 703/522-6272
Paula Carney, WIC, Program Development Section, Alexandria, VA, 703/756-3730
Nancy Sutherland, Alcoholism and Drug Abuse Institute Library, Seattle, WA, 206/543-0937

OSAP; Office for Substance Abuse Prevention

March 1, 1991.

OSAP Grant Programs

Below is a description of five grants supported by OSAP. To obtain a copy of the complete application kit(s), contact the National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20852, 1-800-729-6686.

Community Partnership Demonstration Grants

OSAP invites proposals from local governments or nonprofit organizations to support the formation of public/private sector partnerships in individual communities across the Nation to develop comprehensive programs for the prevention and treatment of alcohol and other drug abuse. The purpose of the grant is to establish the effectiveness of community coalition of organizations representing parents, academia, local government, business, industry, and professional organizations in the planning and implementation of comprehensive prevention programs. Coalitions ordinarily have a minimum of seven members. Already OSAP's largest program, the $42 million appropriation in FY 1990 provided grants to 95 communities. Funds to award approximately 180 new partnerships are budgeted for FY 1991. Applications for the new grant cycle are due April 24, 1991. For program information, contact

the Division of Community Prevention and Training, OSAP, 5600 Fishers Lane, Rockwall II, Rockville, MD 20857, (301) 443-9438.

Demonstration Grants for Youth in High-Risk Environments

OSAP is soliciting applications proposing innovative methods for preventing alcohol and other drug use by high-risk youth. OSAP especially encourages applications to demonstrate effective models in the areas of primary prevention and early intervention. A strong program evaluation component is essential. OSAP has been funding High-Risk Youth grants since FY 1987. It is estimated that by the end of FY 1991, 275 grants will have been awarded and that 145 will be operational at that time. Applications for the new grant cycle are due May 20, 1991. For more information on this demonstration grant program, contact OSAP, Division of Demonstrations and Evaluation,5600 Fishers Lane, Rockwall II, Rockville, MD 20857, (301) 443-0353.

Demonstration Grants for Model Projects for Pregnant and Postpartum Women and Their Infants

OSAP funds projects that focus on prevention, education, and treatment in community, inpatient, outpatient, and residential settings for pregnant and postpartum women and their infants. This announcement solicits applications for service demonstration projects that propose promising models to prevent or minimize fetal exposure to alcohol and other drugs, improve birth outcomes, reduce functional impairment, and strengthen or expand service delivery of therapeutic programs, comprehensive supportive service, and medical care. Emphasis will be placed on maternal-child bonding and on the role of parents in meeting their children's needs at each stage of development. Proposals should consider the needs of women and their babies before, during, and after delivery. Particular emphasis is placed on programs for low-income women at high risk. A well-developed plan for both process and outcome evaluation is required. OSAP currently funds 100 grants under the PPWI initiative and by the end of 1991 anticipates supporting 130 projects. Applications for the new grant cycle are due May 20, 1991. For information on this grant program, contact OSAP, Division of Demonstrations and Evaluation, 5600 Fishers Lane, Rockwall II, Rockville, MD 20857, (301) 443-4564.

Cooperative Agreements for Communication Projects

OSAP is soliciting proposals for communication programs that will help prevent alcohol and other drug problems among specifically targeted high-risk audiences or in the environments in which they live. This program will support efforts that carefully develop, test, disseminate, and evaluate public information and education projects. Emphasis is on projects that involve the target audience in the development and testing of messages and materials, and on strengthening such projects by linking them with community resources. Also, funding is being provided for highly specialized information management tools such as a data base or an information center. Innovative approaches to reaching the intended audience are encouraged. The Program involves substantive interaction between grantee and OSAP staff. Support may be for up to three years. Fourteen awards were made under this program in 1990. Applications for the next grant cycle are due in the fall of 1991. For program information, contact Joan White Quinlan, Division of Communication Programs, OSAP, 5600 Fishers Lane, Rockwall II, Rockville, MD 20857, (301) 443-0373.

Conference Grants

This program announcement for conference support offers grants for coordinating, exchanging, and disseminating information to prevent alcohol and other drug use and abuse. The intended audiences are consumer- and service-oriented constituency groups—including those representing State and local governments, professional associations, voluntary organizations, and mutual self-help groups with interests shared by OSAP. A maximum of $50,000 per conference will be awarded. The funds support a one-time conference with priority given to those that (1) demonstrate potential for knowledge dissemination, (2) interface with other health promotion concepts and practices, and (3) encourage community coordination and mobilization. During FY 1990, 49 conference grant awards were made. Applications are due April 24, 1991. For program information, call Elaine Parry, OSAP, at (301) 443-6980.

Issued by the Office of Budget, Planning, and Evaluation, OSAP.

BILLING CODE 4130-01-M

OSAP GRANT INFORMATION

15-Mar-91

NAMES AND ADDRESSES APPLICANTS ORGANIZATION	Grant #	Type of Grant	First Month/Yr of Funding	PI	Telephone		COUNTY	ST	ZIP CODE
Arizona Health Sciences Center	SP01638	PV 5	Jul-90	Catherine Locke	602-626-6303	Dept. of Pediatrics, AZ Hlth Ctr	Tucson	AZ	85724
Matrix Community Services/Amity, Inc.	SP01530	PV 5	Jul-90	Harry Kressler	602-884-7413	1030 N Fourth Avenue	Tucson	AZ	85705
Pascuma Yaqui Tribe	SP02287	PV 5	Jul-90	Jorge Garcia	602-883-2838	7474 S. Camino De Oeste	Tucson	AZ	85745
San Joaquin Cnty Dept. Health Care Services	SP03015	PV 5	Mar-91	Michael Smith	209-468-6848	500 W Hospital Road	French Camp	CA	95231
Drug Detoxification Project	SP02387	PV 5	Jul-90	Tess Lusher, MD	415-565-1905	409 Clayton Street	San Francisco	CA	94117
Center for Drug Problems	SP01904	PV 5	Jul-90	Catherine Puccetti	805-654-3480	4651 Telephone Road, Suite 250	Ventura	CA	93003
Highland General Hospital	SP02265	PV 5	Jul-90	Sandra Holliday	415-437-4688	1411 East 31st Street	Oakland	CA	94602
Public Health Foundation of LA County, Inc.	SP01455	PV 3	Feb-90	Delores Alleyne	213-699-7320	4022 kenway Avenue	Los Angeles	CA	90008
Isla Vista Health Projects, Inc.	SP02950	PV 5	Sep-90	Pam Pratt	805-968-3044	970 Embarcadero Del Mar	Isla Vista	CA	93117
Ravenwood City School District	SP02129	PV 5	Jul-90	Harriet Morgan	415-329-2800	2160 Euclid Avenue	Palto Alto	CA	94303
Department of Public Health	SP01172	PV 5	Feb-90	Wayne Clark	415-255-3500	1380 Howard St, 4th Floor	San Francisco	CA	94103
CA State Univ. Div. of Special Ed.	SP01493	PV 4	Feb-90	Aja Lesh Tulleners, Ph	213-343-4412	5151 State University Drive	Los Angeles	CA	90032
Contra Costa SS Children Serv Bureau	SP02954	PV	Sep-90	Clare Friedman, Ph.D.	415-646-5612	2401 Stanwell Dr, PO Box 5488	Concord	CA	94524
Santa Clara County Health Dept.	SP01498	PV 5	Feb-90	Anthony Puentes	408-299-6002	595 Millich Drive	Campbell	CA	95008
Monterey County Dept. of Health	SP01947	PV 5	Jul-90	Elizabeth Stanley	408-755-4514	1270 Natividad Road	Salinas	CA	93906
Santeo County Dept. of Health Services	SP01500	PV 4	Jul-90	Cheryl Parker	415-573-2757	225 West 37th Avenue	San Mateo	CA	94403
Far Northern Rigional Center	SP02957	PV 5	Sep-90	Susan R. Ferrell	916-222-4791	PO Box 492418	Redding	CA	96049
Tarzana Treatment Center	SP02520	PV 5	Sep-90	Kenneth Bachrach, Ph.	0818-996-1051	18646 Oxnard Street	Tarzana	CA	91356
Logan Heights Family Health Center	SP01621	PV 5	Sep-89	Karen McCabe	619-234-0360	1809 National Avenue	San Diego	CA	92113
Charles R. Drew University	SP01509	PV 3	Jul-90	Xylina Bean, MD	213-603-4657	1621 East 120th Street	Los Angeles	CA	90059
Baart/Facet	SP01671	PV 5	Jul-90	Ron Kletter	415-552-7914	45 Franklin Street, 2N	San Francisco	CA	94102
Center Point Programs, Inc.	SP03042	PV 5	Mar-91	Sushma Taylor, Ph.D.	415-454-7777	1601 Second Street, Suite 104	San Rafael	CA	94901
East Los Angeles Alcholism Council	SP02258	PV 5	Jul-90	Carlos Garcia	213-268-9344	916 South Atlantic Boulevard	Los Angeles	CA	90022
Catholic Charities of SF County	SP02327	PV 5	Jul-90	Mary Lou Goeke	415-864-7400	1049 Market Street, Suite 200	San Francisco	CA	94103
San Francisco Community Clinic Consortium	SP01923	PV 5	Jul-90	Carroll Johnson	415-398-6935	1520 Stockton Street	San Francisco	CA	94133
Womens Alcholism Center	SP02431	PV 5	Jul-90	Carmella Woll	415-285-4484	3130 20th Street, Suite 308	San Francisco	CA	94110
Contra Costa County, CA. Helth Serv. Dept	SP01151	PV 4	Sep-89	Hope Ewing	415-646-1087	111 Allen Street	Martinez	CA	94553
Mendocino County Dept. of Public Health	SP02414	PV 5	Jul-90	Ned Walsh	707-463-4461	890 North Bush Street	Ukiah	CA	95482
Childrens Institute	SP02291	PV 5	Jul-90	Sheila Anderson	213-385-5100	711 South New Hampshire Ave	Los Angeles	CA	90005
Children's Hospital Oakland	SP01171	PV	Sep-90	Neal Halfon	415-652-3405	747 52nd St	Oakland	CA	94609
Hill Health Corporation	SP01590	PV 5	Feb-90	Scott Cornell	203-776-1134	400 Columbus Avenue	New Haven	CT	06519

OSAP GRANT INFORMATION

NAMES AND ADDRESSES

15-Mar-91

APPLICANTS ORGANIZATION	Grant #	Type of Grant	First Month/Yr of Funding	PI	Telephone		COUNTY	ST	ZIP CODE
Ct Dept. of Health Services, Comm Helth	SP01181	PW 5	Feb-90	Ardell Wilson	203-566-2887	150 Washington St	Hartford	CT	06106
New Endeavors By Women	SP02929	PW 5	Mar-91	Ann Ryan	202-682-5825	611 N Street, NW	Washington	DC	20001
Institute of Mental Hygiene	SP02351	PW 3	Jul-90	Joanna Ferman	202-232-2165	3000 Connecticut Avenue, NW	Washington	DC	20008
DC Commission of Public Health	SP01591	PW 5	Feb-90	Clayte Morgan	202-673-7481	801 North Capitol Street, NE	Washington	DC	20002
Dept. Health & Soc Serv, Div. of Pub Hlth	SP01160	PW 5	Feb-90	Kay Makar	302-736-4735	3301 Green Street	Claymont	DE	19703
University of Florida	SP02124	PW 5	Jul-90	Diane Dimperio	904-392-4491	730 NW Waldo Rd, Bldg A, Suite B	Gainesville	FL	32610
Shands Hosptial	SP01679	PW 5	Sep-89	Diane Mauldin	904 395-0224	Shads Hospital, Box J-306	Gainesville	FL	32610
Health Crisis Network, Inc.	SP02508	PW 5	Mar-91	Catherine Lynch	305-326-8833	PO Box 42-1280	Miami	FL	33242
Hillsborough County Public Health Unit	SP01559	PW 5	Sep-89	William Ward	813-974-4860	13301 Bruce B. Downs Blvd.	Tampa	FL	33612
Apalachee Center for Human Services, Inc.	SP01179	PW 3	Sep-89	Frank Beeman	904-487-2930	625 E Tennessee St., PO Box 1782	Tallahassee	FL	32302
The Center for Drug Free Living, Inc.	SP01608	PW 4	Feb-90	Nancy Rudner Lugo	407-297-2086	100 W Columbus Street	Orlando	FL	32806
University of Miami	SP01951	PW 5	Jul-90	Gene Burkett, MD	305-547-6626	PO Box 016960, R-136	Miami	FL	33101
Operation Par, Inc.	SP01758	PW 4	Feb-90	Shirley Coletti	813-577-5545	10901 C Roosevelt Blvd., Suite 1000	St. Petersburg	FL	33716
Emory University	SP01957	PW 5	Jul-90	Marion Howard, Ph.D.	404-589-3543	Emory University/School of Medicine	Atlanta	GA	30322
Bulloch County Board of Health	SP01189	PW 4	Sep-89	Nancy Waters	912-764-6971	21 North Zetterower Avenue	Statesboro	GA	30458
Emory University	SP01198	PW 3	Sep-89	Iris Smith	404-894-8288	1256 Brier Cliff Rd. NE, RM 324 W	Atlanta	GA	30306
State of Hawaii Dept. of Health	SP02132	PW 5	Jul-90	Lisa Simpson, MD	808-735-3056	741-A Sunset Avenue	Honolulu	HI	96816
Nez Perce Tribe	SP02107	PW 5	Jul-90	Michael Penny	208-843-2253	PO Box 305	Lapwai	ID	83540
Idaho Primary Care Association	SP01593	PW 5	Sep-89	Dean Hungerford	208-345-2335	PO Box 6756	Boise	ID	83707
Il Department of Health	SP01225	PW 5	Feb-90	Stephen Saunders, MD	217-782-2736	535 W Jefferson	Springfield	IL	62761
Lake County Health Department	SP02812	PW	Sep-90	Susan Bekenstein	708-360-6716	3010 Grand Avenue	Waukegan	IL	60085
Columbus Hospital	SP02239	PW 5	Jul-90	Maureen Kelly	312-883-8200	2520 North Lakeview Ave-5 West	Chicago	IL	60614
Ft. Wayne Women's Bureau	SP02739	PW 4	Mar-91	Harriet Miller	219-424-7977	303 East Washington Blvd	Fort Wayne	IN	46802
Model cities Health Center, Inc.	SP01610	PW 5	Sep-89	Beverly Hawkins	612-222-6029	430 North Dale Street	St. Paul	MN	55103
Children's Hospital	SP02269	PW 5	Jul-90	Michael Kaiser	504-866-2993	200 Henry Clay Avenue	New Orleans	LA	70118
Southwest Boston Community Services, Inc	SP02553	PW 5	Mar-91	Mary Lee Blais	613-325-6700	780 Amerian Legion Highway	Roslindale	MA	02131
Baystate Medical Center	SP01941	PW 5	Jul-90	Edward Bailey	413-784-5083	759 Chestnut Street	Springfield	MA	01199
HHS, Providence Hospital	SP01615	PW 5	Feb-90	Karen Engell	413-538-9400	Elm Street Center, 210 Elm St.	Holyoke	MA	01040
Health & Hospitals of the City of Boston	SP01860	PW 5	Jul-90	Teresa Kohlenberg, MD	617-534-4098	818 Harrison Avenue	Boston	MA	02118
Center for Human Services, Inc.	SP02888	PW	Sep-90	Brian Foss	508-999-8280	848 Pleasant St	New Bedford	MA	02741
Dimock community Health Center	SP01687	PW 3	Jul-90	Jackie Jenkins-Scott	617-442-8800	55 Dimock Street	Roxbury	MA	02119

OSAP GRANT INFORMATION

15-Mar-91

NAMES AND ADDRESSES APPLICANTS ORGANIZATION	Grant #	Type of Grant	First Month/Yr of Funding	PI	Telephone		COUNTY	ST	ZIP CODE
Baltimore Department of Health	SP01478	PW 5	Feb-90	Jane Galbraith	301-887-2708	1 Investment Place, 10th Floor	Towson	MD	21204
Baltimore City Health Department	SP01158	PW 3	Feb-90	Thomas Coyle	301-396-9945	303 E Fayette Street	Baltimore	MD	21202
Detroit Health Department	SP01619	PW 2	Sep-89	Darlinda Van Buren	313-876-4300	1151 Taylor	Detroit	MI	48202
Project Transition/League of Catholic Women	SP02244	PW 5	Jul-90	Barbara Sampson	313-862-3400	16260 Dexter	Detroit	MI	48221
Face to Face Health & Counseling Center	SP02021	PW 3	Jul-90	Ann Rickets	612-772-2539	642 E. 7th Street	St. Paul	MN	55106
Peoples Health Centers, Inc.	SP01553	PW 5	Feb-90	Betty Jean Kerr	314-367-7848	5701 Delmar	St. Louis	MO	63112
Robeson Health Care Corporation	SP01601	PW 5	Sep-89	James Martin, Ph.D.	919-521-9355	PO Box 1629	Pembroke	NC	28372
Bureau of Maternal & Child Health	SP01361	PW 5	Mar-91	Polly Kay Taylor	603-271-4543	6 Hazen Drive	Concord	NH	03301
Atlantic Mental Health Center	SP02982	PW 5	Mar-91	Mary Hunt	609-645-3572	2002 Black Horse Pike	McKee City	NJ	08232
New Jersey Dept. of Health	SP02017	PW 5	Jul-90	George Halpin, MD	609-292-5656	CN364, 363 West State Street	Trenton	NJ	08625
University of New Mexico, School of Medicine	SP01450	PW 5	Sep-89	Luis Curet	505-277-8386	2211 Lomas Boulevard,NE	Albuquerque	NM	87131
Bronx Perinatal Consortium, Inc.	SP02464	PW 5	Mar-91	Judith Gallaghher	212-792-6551	Bronx Municipal Hospital, N.R. 7 South	Bronx	NY	10461
New York State Dept. of Health	SP02769	PW 5	Mar-91	Barry Sherman	518-474-2749	PO Box 2077	Albany	NY	12220
Society for Seamen's Children	SP01876	PW 5	Jul-90	Debbin Stinson	718-447-7666	26 Bay Street	Staten Island	NY	10301
Presbyterian Hospital	SP01182	PW 5	Jul-90	Harold E. Fox, MD	212-305-3111	622 West 168th Street	New York	NY	10032
NY City Dept. of Health	SP01150	PW 5	Sep-89	Donna O'Hare	212-267-0900	225 Broadway, 17th Floor	New York	NY	10007
New York city Dept. of Health	SP01691	PW 5	Sep-89	Cindy Driver	212-566-7076	125 Worth St, Box 42B	New York	NY	10013
Women's Alcohol & Drug Education Project	SP01781	PW 5	Jul-90	Paula Roth	212-532-8330	370 Lexington Avenue, Suite 603	New York	NY	10017
St. Luke's Roosevelt Hospital Center	SP02887	PW	Sep-90	Alwyn T. Cohall, MD	212-523-6305	428 West 59th Street	New York	NY	10019
Miami Valley Hospital	SP01108	PW 5	Feb-90	Louis Buttino, Jr., MD	513-220-2294	One Wyoming Street	Dayton	OH	45409
St. Vicent Med Ctr, Hope for Families	SP01107	PW 3	Sep-89	Asha Patel, Ph.D.	419-321-3232	St. Vincent Med Ctr. 2213 Cherry St.	Toledo	OH	43608
OK State Department of Health	SP01704	PW 5	Feb-90	Terrie Fritz	405-271-4470	PO Box 53551	Oklahoma City	OK	73152
WA County Dept. of Health & Human Services	SP01173	PW 5	Feb-90	James Peterson	503-648-8881	155 North First Avenue	Hillsboro	OR	97124
Oregon Health Division	SP01675	PW 5	Feb-90	Grant Higginson, MD	503-229-6382	PO Box 231	Portland	OR	97201
Jefferson County Health Department	SP01922	PW 3	Jul-90	Linda Allen	503-475-2266	357 6th Street	Madras	OR	97741
Multnomah County, Justice Serv Div	SP01552	PW 4	Sep-89	Joanne Fuller	503-248-5374	610 S.W. Alder, Room 515	Portland	OR	97205
Emmuel Hospital & Health Center	SP01562	PW 5	Sep-89	Teri Joyer	503-280-4374	2801 N. Gantewbein Avenue	Portland	OR	97227
Tri County Youth Services	SP02758	PW 5	Mar-91	Robert Donough	503-277-6445	2000 SW First, Suite 100	Portland	OR	97201
Sacred Heart Medical Center Foundation	SP01633	PW 5	Feb-90	Demi Rewick	503-686-6343	PO Box 10905	Eugene	OR	97440
Clackamas County Mental Health Division	SP02732	PW 5	Mar-91	Michael Taylor	503-655-8651	998 Library Court	Oregon City	OR	97045
Medical College of Penn Pediatrics	SP01565	PW 3	Feb-90	Sonja Imaizumi	212-842-6689	3300 Henry Avenue	Philadelphia	PA	19129

OSAP GRANT INFORMATION

NAMES AND ADDRESSES

15-Mar-91

APPLICANTS ORGANIZATION	Grant #	Type of Grant		First Month/Yr of Funding	PI	Telephone		COUNTY	ST	ZIP CODE
Pennsylvania State University	SP01507	PV	5	Feb-90	Judith Vicary, Ph.D.	814-863-2223	304 E. Henderson	University Pk	PA	16802
Philadelphia Psychiatric Center	SP01187	PV	5	Feb-90	Alfred Friedman, Ph.D.	215-877-6408	Ford Rd. & Monument Avenue	Philadelphia	PA	19131
St. Francis Medical Center	SP01606	PV	3	Feb-90	Janice Zelenak, Ph.D.	412-622-6170	45th Street (Off Penn Ave)	Pittsburg	PA	15201
Health Federation	SP02174	PV	5	Jul-90	Natalie Levkovich	215-567-8001	1211 Chestnut Street, Suite 801	Philadelphia	PA	19107
Memorial Hospital of Rhode Island	SP02358	PV	5	Jul-90	Larry Culpepper	401-722-6000	111 Brewster Street	Pawtucket	RI	02860
Oglala Sioux Tribe	SP02653	PV	5	Sep-90	Roger Iron Cloud	605-867-5170	#1 preschool Rd, PO Box 279	Porcupine	SD	57772
Indian Health Service	SP02689	PV	5	Sep-90	Adelia Cuka	605-384-3621	111 Washington NW	Wagner	SD	57382
Meharry Medical College	SP02010	PV	5	Jul-90	Edward Hills	615-327-6199	1005 D.B. Todd Boulevard	Nashville	TN	37208
San Antonio Metropolitan Health District	SP01632	PV	5	Feb-90	Jorge Flores	512-299-8842	332 W. Commerce	San Antonio	TX	78249
Houston council/Alch/Drug/Abuse	SP01162	PV	5	Jul-90	Caroline Atwell	713-520-5502	3333 Eastside, Suite 111	Houston	TX	77098
Tarrant County Hospital District	SP02240	PV	3	Jul-90	Kimberly McCrief	817-927-1230	1500 South Main Street	Forth Worth	TX	76104
Univ. of Texas SW Medical Center	SP03100	PV	4	Mar-91	Perrie Adams, Ph.D.	214-688-3644	5323 Harry Hines Boulevard	Dallas	TX	75235
Spokane County Health District	SP02750	PV		Sep-90	Barbara Feyh	509-458-2567	W. 1101 College Avenue	Spokane	WA	99201
Univ of Washington Medical Center	SP02897	PV	5	Mar-91	Ann Streissguth	206-543-7155	2702 NE Blakeley Street	Seattle	WA	98195
Snohomish Health District	SP03056	PV	3	Mar-91	Elaine Conley	206-339-5210	3020 Rucker Avenue	Everett	WA	98201
University of Washington Medical Center	SP00472	PV	3	Sep-89	Candyce Berger	206-548-4370	4101 15th Aveneu, NE	Seattle	WA	98195
University of Wisconsin-Madison	SP01641	PV	5	Sep-89	Raymond Kessel	608-262-5407	610 Langdon St., 325 Lowell Hall	Madison	WI	53703
Combined Community Services Board	SP02123	PV	5	Jul-90	Patricia Towers	414-289-6660	235 W. Galena Street, Suite 270	Milwaukee	WI	53212
Gust Lakes Inter-Tribal Council, Inc.	SP01884	PV	5	Jul-90	Barbara Snyder-Wilcox	715-588-3324	561 Peace Pipe Road, PO Box 9	Lac du Flambeau	WI	54538
University of Wyoming	SP02000	PV	3	Jul-90	Norma Wilkerson	307-766-6576	School of Nursing, PO Box 3065	Laramie	WY	82071

BILLING CODE 4130-01-C

Clearinghouses/Resource Centers

The National Clearinghouse for Alcohol and Drug Information (NCADI)

Description

NCADI is a communication service of the Office for Substance Abuse Prevention (OSAP) and is the Nation's primary source for information about alcohol and other drug (AOD) abuse. Located in Rockville, MD, NCADI provides information to thousands of requestors on the latest research results, popular press and scholarly journal articles, prevention and education resources, and prevention programs. Most of NCADI's materials and services are free. In the AOD field, NCADI is known as a "one stop shop" for all information needs.

Audience and Services

Here are the services you can receive from NCADI:

Library and Reference Services—NCADI provides an extensive range of reference services through a team of information specialists who are trained to provide AOD abuse information and general reference services, including literature searches; assistance with the selection of materials in the NCADI inventory; general reference, statistical reference, library services, and referral to other organizations and resources. Although NCADI does not provide counseling or referral to treatment, information specialists can guide requestors to appropriate organizations for help.

In addition, NCADI has developed a computerized data base of information on prevention and education aspects of AOD abuse. This data base "IDA" (Information on Drugs and Alcohol) covers journals, books, reports, program materials, and videos. Copies of all referenced material are maintained in the NCADI library, which is open to the public. The data base can be accessed through the NCADI information specialists, who receive and process requests for literature searches.

Print Materials—NCADI distributes materials not only from OSAP, National Institute on Drug Abuse and National Institute on Alcohol Abuse and Alcoholism, but also from other Federal agencies that are involved in AOD abuse prevention such as the Departments of Education, Justice, Labor, and Transportation. Materials are available to the general public through the State clearinghouse system, the Regional Alcohol and Drug Awareness Resource (RADAR) Network, or from NCADI. When new materials for national distribution are needed, NCADI either adapts or adopts locally developed materials for national distribution or creates new materials if no appropriate materials are available in the field. In addition to NCADI materials, information on materials developed by other organizations can be obtained by requesting resource lists for specific target audiences (e.g., elementary school students) or by requesting a search of NCADI's computerized prevention materials data base.

Audiovisuals—NCADI maintains a free Audiovisual Loan Program that works just like a local library. The Clearinghouse can provide a list of current titles in its collection, which includes NCADI's Drugs in Work Series, prevention programs for grades K–12, and an array of television public service announcements (PSAs).

Prevention Pipeline: An Alcohol and Drug Awareness Service—For a $15 annual handling fee, anyone can receive this bimonthly news service for the AOD field. The Pipeline serves as a forum, a news bulletin, and a research alert that allows both professionals and volunteers to stay abreast of the latest research and program information and upcoming events.

Technical Support—As appropriate, NCADI offers a wide range of support to organizations in the AOD field through resource lists, referrals, direct mail, editorial support, and conference exhibits. NCADI runs an active outreach department that works with groups and individuals to strenghten their prevention efforts. This Clearinghouse service is available to support community-based prevention efforts like those that will be started by users of this directory.

The Regional Alcohol and Drug Awareness Resource Networks—Through NCADI, OSAP also sponsors the RADAR Network. RADAR Network Centers are part of the national resource system that responds to community needs for AOD information and anticipates future needs. The Centers bring to communities everywhere the products and services of NCADI. RADAR network members also provide customized packages of materials for use in special settings, including the home, school, worksite, recreation center, and religious and social settings.

State RADAR Network Centers must meet criteria set by OSAP to qualify for full Network membership. These criteria address the completeness and responsiveness of activities in the areas of library services, information and referral, outreach, promotion, equipment, materials, management operations and evaluation, pretesting services, and public education programs and campaigns. RADAR Network Centers also serve as the "eyes and ears" of OSAP, identifying emerging needs at the community level and providing feedback on the effectivness and quality of Federal and regional AOD services. RADAR Network Centers are primarily supported by State government agencies.

Each State RADAR Network Center has its own unique services and resources that are available to anyone in the community. Most centers are able to provide services such as:

- Helping community program planners find the most accurate and up-to-date information about AOD problems and effective materials and programs that can be adapted for their areas;
- Providing attention-getting posters, booklets, videotapes, and other materials with prevention and intervention messages for youths, parents, and many other target audiences;
- Promoting and supporting outreach efforts to groups at high risk for AOD-related problems (e.g., children of alcoholics and other drug abusers, school dropouts, pregnant teenagers, low-income communities, juvenile delinquents, disabled persons, suicidal teenagers, and people with mental health problems);
- Providing helpful referrals to national and local resources for prevention and intervention materials and services that are unavailable through the RADAR Network;
- Maintaining a collection of the most recent AOD resources (e.g., reference and program materials) for use on site;
- Responding to questions about prevention and intervention by mail or telephone and assisting visitors by providing "hands on" assistance; and
- Helping community program planners design and implement exciting, comprehensive prevention programs tailored to meet the special needs of their communitites. This includes assistance with the development of materials and services that are culturally sensitive and age-appropriate.

Community-based prevention efforts can also receive services from Specialty RADAR Network Centers. These are national organizations and federally funded agencies that deal with AOD issues. For example, the National Drug Information Center, operated by Families in Action, might help a caller track how the media are covering specific AOD-related issues. The Department of Education's Regional Training Centers can provide training

assistance and expertise to local school teams trying to prevent or stop AOD use by students. State RADAR Network Centers are listed in chapter 4 of this directory under each State's entry.

Contact

To obtain NCADI materials or services, or to find out more about NCADI operations, write or call: The National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, Maryland 20852, (301) 468-2600.

The National AIDS Information Clearinghouse (NAIC)

Description

The National AIDS Information Clearinghouse (NAIC) provides services and educational resources to assist in the development and management of AIDS information and education programs. Operated by the Centers for Disease Control (CDC), NAIC provides services to assist users to:

Audience and Services

- Identify organizations, such as clinics, hospitals, extended care facilities, public health departments, commercial enterprises, and religious groups whose work is related to AIDS;
- Locate and obtain single copies of hard-to-find educational materials such as brochures, pamphlets, curricula, State reports, posters, and audiovisuals;
- Order single or bulk copies of key publications that are the primary tools used by CDC in its national AIDS education effort.

NAIC maintains two online information data bases. One lists organizations that provide AIDS-related services and the other describes AIDS educational materials. Information specialists search these data bases to provide information on resources and educational materials related to user needs.

NAIC can supply citizens with single and bulk copies of important publications from the Public Health Service. They address key topics such as AIDS and the workplace, the connnection between AIDS and drug abuse, and the safety of the Nation's blood supply.

Contact

To respond to the general public's need for AIDS information, CDC maintains a national AIDS Hotline as part of its overall information and education program. The toll-free Hotline provides 24-hour service to answer questions about AIDS and to offer referrals to appropriate services. The number is (800) 342-AIDS (English) and (800) 344-SIDA (Spanish).

Office of Minority Health Resource Center (OMH-RC)

Description

The Office of Minority Health Resource Center maintains information on health-related resources available at the Federal, State, and local levels that target Asians, Pacific Islanders, Blacks, Hispanics, and Native Americans.

Audience and Services

OMH-RC was established by the U.S. Department of Health and Human Services' Office of Minority Health in October 1987. In addition to serving as a central source of minority health information, the OMH-RC works with the OMH in identifying information gaps and in stimulating the development of resources where none exist.

The activities of the OMH-RC concentrate on the six health priority areas, their associated risk factors, and crosscutting issues identified by the Secretary's Task Force on Black and Minority Health. The areas are cancer, chemical dependency, diabetes, cardiovascular disease/stroke, homicide/suicide/unintentional injury, infant mortality, and low birth weight. HIV infection/AIDS recently was added as a seventh topic area for the Resource Center.

OMH-RC staff are available to answer requests from consumers and health professionals, Monday through Friday, 9 a.m. to 5 p.m. (EST). Information specialists refer requests to appropriate organizations, locate relevant materials, and identify sources of technical assistance. Bilingual staff help Spanish-speaking requestors. Its toll-free number is (800) 444-6472. OMH-RC's mailing address is P.O. Box 37337, Washington, DC 20013-7337.

The OMH-RC maintains a computerized data base of minority health-related publications, organizations, and programs and includes sources of free or low-cost services and materials relating to minority health issues.

Contact

OMH-RC has prepared a series of fact sheets, *Closing the Gap*, on each of the minority health priority areas. The series describes the extent to which specific minority groups are affected, details avenues for prevention, and offers sources of additional information. Other publications focusing on minority health-related issues are also available through the Resource Center.

America's Drug Abuse Prevention Team (ADAPT)

Description

ADAPT, administered by the California Health Research Foundation, is a national resource center supporting a new era of cooperation among the hundreds of alcohol and other drug (AOD) abuse agencies and professionals that currently exist throughout the United States. ADAPT provides every person, family, organization, and community with "one phone call entry" to existing AOD abuse services, agencies, experts, and funding sources.

With accurate information and resources, every person, family, business, and community can play a significant role in solving the Nation's AOD problem. ADAPT provides a single qualified entry point to the legions of resources needed to assist this effort. ADAPT does not duplicate existing efforts. Rather, ADAPT builds access and effective use of under-used resources, making a significant impact on this critical problem.

Audience and Services

Here are the services that ADAPT provides:

- Support in the development of prevention councils in all 3,028 counties in the United States;
- Specialized prevention assistance for the workplace;
- A professional staff trained to assist individuals, businesses, and community organizations in developing prevention programs;
- A continually updated library of current and relevant state-of-the-art prevention information and data;
- Ongoing "think tanks" to continually build new prevention technology based upon the evaluation of current efforts;
- A regular newsletter and journal highlighting noteworthy projects;
- Regional and State conferences for information and technology transfer; and
- Preparation of articles for national businesses, voluntary organizations, and professional associations.

Contact

Anyone wishing to be on ADAPT's mailing list and have the toll-free number can write ADAPT at 1001 D Street, San Rafael, CA 94901; or call (415) 457-3663.

Drugs and Crime Data Center and Clearinghouse

Description

To obtain answers to questions about the relationship between crime and illegal drugs, citizens can contact the Drugs and Crime Data Center and Clearinghouse. This national center supports the development of drug control policy with accurate, easy-to-understand, and readily accessible data on illegal drugs and crime. Operated by the Bureau of Justice Statistics of the Department of Justice, the Data Center and Clearinghouse is dedicated to serving policymakers, drug policy analysts and researchers, and the public. In providing services, this program·

Audience and Services

- Assembles existing drug enforcement data reports and announces their availability;
- Operates a toll-free number staffed with qualified drug and crime information specialists;
- Answers requests for data related to specific illegal drugs;
- Performs special bibliographic searches to identify a full range of sources on specific topics;
- Maintains a library and reading room so that illegal drug and crime documents are available to clearinghouse users;
- Evaluates existing drug data for statistical quality; and
- Identifies and reports on methodological flaws and data gaps where they exist.

Contact

The Data Center and Clearinghouse will also analyze existing drug and crime data and publish reports intended to foster the development of sound public and private policy. To learn more about this program's services, call (800) 666-3332. The call is toll free.

HUD Drug Information and Strategy Clearinghouse

Description

This clearinghouse established in the Department of Housing and Urban Development's (HUD) Office for Drug-Free Neighborhoods, is described in detail under HUD's entry in chapter 2 of this directory.

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Part V

Department of Health and Human Services

Administration for Children and Families

Availability of FY 1991 Funds and Request for Applications; Head Start/ Public School Early Childhood Transition Demonstration Projects; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Program Announcement No. ACYF-HS-93600.91-3]

Availability of FY 1991 Funds and Request for Applications; Head Start/Public School Early Childhood Transition Demonstration Projects

AGENCY: Administration for Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Announcement of the availability of financial assistance for fiscal year 1991 and request for applications for Head Start/Public School Early Childhood Transition Demonstration Projects.

SUMMARY: The Head Start Bureau of the Administration for Children, Youth and Families announces the availability of fiscal year 1991 funds for competing Head Start/Public School Early Childhood Transition Demonstration Projects.

The purposes of these projects are: (1) To develop successful strategies where Head Start programs, parents, local education agencies and other community agencies join together, in a collaborative effort, to plan and implement a coordinated and continuous program of comprehensive services for low-income children and their families beginning in Head Start and continuing through kindergarten and the first three grades of public school; (2) to test the hypothesis that the provision of these continuous comprehensive services will maintain and enhance the early benefits attained by Head Start children and their families; and (3) to determine the impact on children and families when comprehensive Head Start-like services are delivered over a period of time after the child has entered elementary school.

DATES: The closing date for receipt of applications under this announcement is August 21, 1991.

ADDRESSES: Address applications to: ACF Grants and Contracts Management Division, Department of Health and Human Services, room 341.F2 Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Attn: William J. McCarron, ACF-91-ACYF-HS-Transition Demonstration.

FOR FURTHER INFORMATION CONTACT: For information about the programmatic aspects of the demonstration: E. Dollie Wolverton, Chief, Education Services Branch, Head Start Bureau, (202) 245-0418.

For information about the evaluation of the demonstration: Dr. Esther Kresh, Head Start Bureau, (202) 245-0115.

Part I General Information

A. Legislative Authority

The Head Start Transition Project Act (the Act) as enacted by title I of the Human Services Reauthorization Act of 1990, Public Law 101-501, (42 U.S.C. 9855 *et seq.*), authorizes the Secretary of Health and Human Services to make demonstration grants to Head Start agencies and local education agencies to develop and operate programs that assist low-income elementary students grades kindergarten through 3 (giving priority to students entering their first year of elementary school) and their families in—

(1) Obtaining supportive services that build on the strength of families, including health, immunization, mental health, nutrition, parenting education, literacy, and social services (including substance abuse treatment, education, and prevention services); and

(2) Supporting the active involvement of parents in the education of their children.

B. Purpose

The purposes of these demonstrations are to:

1. Develop successful strategies where Head Start programs, parents, local education agencies and other community agencies join together, in a collaborative effort, to plan and implement a coordinated and continuous program of comprehensive services for low-income children and their families beginning in Head Start and continuing through kindergarten and the first three grades of public school;

2. Test the hypothesis that the provision of these continuous comprehensive services will maintain and enhance the early benefits attained by Head Start children and their families; and

3. Determine the impact on children and families when comprehensive Head Start-like services are delivered over a period of time after the child has entered elementary school.

C. Background

Since its inception Head Start has provided comprehensive services in the areas of education, health, parent involvement and social services to primarily low-income preschool children and their families. As of June 1990, Head Start had served approximately 12 million children and their families. Over time the population served by Head Start has changed. Head Start is now faced with the problems that are afflicting the country at large and, particularly, low-income populations: Increases in single parent families, teenage pregnancies, illiteracy, substance abuse, child abuse, homelessness, welfare dependence and children with problems attributable to their mothers' substance abuse during pregnancy. As Head Start families' needs for additional and new services have manifested themselves, Head Start has added new services and programs to meet these needs. With the belief that children can only achieve maximum development in a safe and healthy physical and emotional environment that nurtures that development, Head Start is rapidly becoming a "full service" family development program.

Head Start's comprehensive program of services and its ability to continue to respond to the emerging needs of its target population have been successful in improving low-income children's cognitive, social and physical development. It is this success that was the impetus for the President's commitment to universal Head Start and for the national educational goal established jointly by the President and the Nation's Governors that all children shall enter school ready to learn.

The definition of "ready to learn" that is accepted by the child development field today goes well beyond the old notions of the child's "reading readiness" and "social readiness." The new definition of "ready to learn" also encompasses the schools' readiness to meet the needs of individual children at whatever level they may be and the family's ability to support the growth and development of the child. At any given age, children vary widely in their rate and areas of development. A child's developmental level is a function of the child's age and ability across a number of domains. Every child is ready to learn at some developmental level, provided that the child is in good health and comes from a stable, nurturing and encouraging home and community environment. Therefore, the child development community must meet several new challenges if "every child shall enter school ready to learn." These challenges include attention to the health status of children; the reduction of risk factors in the family and larger environment such as illiteracy, substance abuse and welfare dependence which affect the family's ability to provide a safe and nurturing environment; and efforts to increase parental encouragement, support and participation in the child's intellectual

and social development. An additional challenge is to assure that the learning environment and activities are suitable to the child's developmental level, and that the associated services that support the child's development are provided.

Child development experts are in agreement that Head Start programs and the public schools must be prepared to provide as wide a range of learning opportunities as the variation in the functional levels of the children they serve; services for families which assist them in providing a nurturing, stable and self-sufficient environment that can enhance the child's development; and opportunities for parents to participate as full partners in the education of their children. This new definition of "ready to learn" envisions a continuous, interactive process that extends well beyond the Head Start experience through at least the rest of the early childhood years, generally considered to be age eight or third grade.

The provision of these services is fundamental to a second concept that has greatly expanded in recent years, the concept of transition. The early research on Head Start demonstrated that children who were enrolled in a Head Start program were more advanced in their cognitive and social development and were healthier than their peers who did not attend Head Start. However, longitudinal data indicated that by third grade these early gains had largely disappeared. This finding, known as the "fade-out" effect, led early childhood researchers and practitioners to search for explanations for this phenomenon. They believed that the failure to maintain gains was caused by the lack of continuity in philosophy, methods, services and environment that existed between Head Start and the public schools. These beliefs served as the impetus for Head Start and public school collaborations concerning transition. These earlier efforts consisted of the forwarding of children's records, conferences between the Head Start and kindergarten teachers concerning individual children and visits by Head Start children and their parents to the public schools prior to entry.

This earlier view of the transition process has since been expanded to involve a continuous and integrated array of comprehensive services for children and their families that begins at entry into Head Start and continues through at least the third grade. In order to develop and implement the strategies necessary for Head Start programs and public schools to deliver this array of services, and to test the hypothesis that these programs can achieve the maintenance and enhancement of early gains, Head Start will conduct a Head Start/Public School Early Childhood Transition Demonstration. Head Start programs and public school systems will form consortia to create unified child and family development programs that span the early childhood period from preschool through third grade.

D. Definitions

The following definitions apply to the Head Start/Public School Early Childhood Demonstration projects.

1. *Head Start Agency*—The term "Head Start agency" means any agency designated as a Head Start agency under the Head Start Act. (Section 132(3).)

2. *Local Education Agency*—The term "local education agency" has the same meaning given such term in section 1471(12) of the Elementary and Secondary Education Act of 1965. (Section 132(4).)

3. *Head Start Site*—The term "Head Start site" means a single geographic location in which Head Start services are delivered either in a center or through a home-based option. Many Head Start grantees or delegate agencies have multiple sites.

4. *Elementary School*—The term "elementary school" means a single school building within a local education agency that contains, at a minimum, kindergarten through third grade.

5. *Transition Program*—The term "transition program" means an integrated and continuous array of comprehensive services to children and their families including a developmentally appropriate curriculum; health, mental health and nutritional services for children; supportive services that build on the strengths of families, including health, immunization, mental health, nutrition, parenting education, literacy and social services (including substance abuse treatment, education and prevention services); and parent involvement in the education of their children. This program begins in Head Start and continues through at least the third grade.

6. *Transition Elementary School*—The term "transition elementary school" means an elementary school in which the transition demonstration will be conducted.

7. *Unit*—The term "unit" means a Head Start site and the elementary schools that serve as receiving schools for some or all Head Start children from that site.

8. *Cluster*—The term "cluster" means one or more units which presently have sufficient children in third grade who attended Head Start within the cluster. (See section on evaluation, part IIB, 2.b.)

9. *Developmentally Appropriate Curriculum*—The term "developmentally appropriate curriculum" means a curriculum that is appropriate for the child's age and all areas of the individual child's development, including educational, physical, emotional, social, cognitive, and communication. (Section 132(1).)

10. *Supportive Service—The term "supportive service" means service that will enhance the physical, social, emotional and intellectual development of low-income children, including providing necessary support to the parents of such children and other family members. (Section 132(6).)*

11. *Family Services Coordinator*—The term "family services coordinator" means an individual who is trained to assist families in obtaining supportive services. Such individual may be an existing employee of the Head Start agency or the local education agency. (Section 132(2).)

12. *Collaborative Transition Activities*—The term "collaborative transition activities" refers to those activities designed to enhance coordination and collaboration between Head Start and public schools, with the goal of enhancing continuity for children and families. These may include, for example, joint planning by Head Start and public school staff regarding individual children's curricular activities and other child and family health and social services, coordination between Head Start and public school staff, and transfer of information. "Collaborative transition activities" exclude the actual provision of services.

E. Eligible Applicants

1. As stated in the Act:

Sec. 134. Eligibility

(a) *Head Start Agency.*—A Head Start agency shall be eligible for a grant under this subtitle if such Head Start agency has formed a consortium with one or more local educational agencies that received funds under part A of chapter I of title I of the Elementary and Secondary Education Act of 1965 and that serves children who have been served by such Head Start agency.

(b) *Local Education Agency.*—A local education agency shall be eligible for a grant under this subtitle if such agency receives funds under part A of chapter I of title I of the Elementary and Secondary Education Act of 1965 and has formed a consortium with one or more Head Start agencies serving children who will enroll in any

elementary school located within the school district of such local education agency.

(c) *Cooperating Agency.*—A nonprofit agency or institution of higher education with experience in child development may participate in any consortium formed under subsection (a) or (b) in developing, operating, and evaluating programs assisted under this subtitle.

(d) *Follow Through Grantees.*—A local education agency that is receiving assistance through a program under the Follow Through Act shall also be eligible for a grant under this subtitle if such agency meets the requirements of subsection (b).

Sec. 135. Requirements

(a) *In General.*—The Secretary shall award grants under this subtitle to Head Start agencies and local education agencies in both rural and urban areas.

(b) *Special Rule.*—The Secretary shall award at least one grant to one eligible applicant in each State before the Secretary may award a second grant within any one State.

(d) *Priority.*—The Secretary shall give priority to applicants that will operate a program under this subtitle at a school designated for a schoolwide project under section 1015(a) of the Elementary and Secondary Education Act of 1965."

Notes

Note 1. In order to conduct the local evaluation required under section 137(b)(1), applicants must include, as a cooperating agency, a institution of higher education which is a four-year college or university, or a nonprofit research institution as part of the consortium. Individuals who will conduct the local evaluation must have appropriate research and evaluation skills and must not be involved in any capacity in the operation of the demonstration.

Note 2. As authorized by section 669A(b) of the Follow Through Act and section 139 of the Head Start Transition Project Act, the Department of Health and Human Services and the Department of Education have agreed that local education agencies that applied for a Follow Through grant in fiscal year 1991 may incorporate into the Head Start Transition Project application those sections of their Follow Through application which meet the requirements for a Head Start Transition Project grant. Current Follow Through grantees are listed in Attachment II.

Note 3. If applicants plan to operate the demonstration at a school designated for a schoolwide project under section 1015(a) of the Elementary and Secondary Education Act of 1965, a statement of that intent should be included in the application.

2. Other Eligibility Requirements:

(1) Only one application will be accepted from a Head Start grantee or a local education agency. Neither agency may submit an application as a lead agency if they are already part of a consortium in another application under this announcement. Although a Head Start delegate agency may be responsible for the conduct of the demonstration, the delegate agency cannot be the grantee under a Transition Demonstration grant.

(2) Head Start grantees that are either applicants or a consortium member in a local educational agency application must be in compliance with the Head Start Performance Standards.

F. Availability of Funds

1. *Total Funds Available:* In fiscal year 1991 $19,500,000 are available under this subtitle inclusive of the local and national evaluations.

2. *Federal Share of Project Costs:* The maximum Federal share of the project for each 12-month budget period shall not exceed $650,000. Each grant awarded shall be not less than $200,000. A minimum of 12 percent of total project costs, but not less than $100,000 must be allocated for the evaluation each budget period. The funds for the evaluation shall not include the cost of the full-time data coordinator. Funds for the full-time data coordinator should be included in the program portion of the Federal share.

3. *Matching Requirements:* The non-Federal share shall be 20 percent of the total project costs. For example, if the total project cost is $812,500, the Federal share is $650,000 and the non-Federal share is $162,500. The non-Federal share of such costs may be in cash or kind fairly evaluated, including planned equipment or services. (Sec. 138(b)(2).)

4. *Supplementation of Funding* (Sec. 138(c).)

As specified in the Act:

"(1) *In General.*—All Federal funds and funds paid as a part of the non-Federal share under this subtitle shall be used to supplement the level of State and local public funds expended for services assisted under this subtitle in the previous fiscal year.

(2) *Satisfaction of Requirement.*—The supplementation requirement of this subsection shall be satisfied with respect to a particular program if the aggregate expenditure in the program for the fiscal year in which services are to be provided will not be less than the aggregate expenditure in the program in the previous year, excluding Federal and non-Federal funds provided under this subtitle."

5. *Anticipated Number of Projects to be Funded:* It is anticipated that 25 grants will be awarded.

6. *Project Duration:* The length of the project must not exceed 36 months. At the end of the 36 month period, depending on the availability of funds, a second grant competition may be held to implement transition services through the third grade. This second competition will be limited to the successful applicants under the present announcement. Successful grantees inclusion in the second competition is dependent on satisfactory performance during the first grant period.

G. Demonstration Program Participants

1. All children and their families who are enrolled in either Head Start or kindergarten in the Fall of 1992 in a cluster designated to receive transition services shall be eligible to participate in the Head Start/Public School Early Childhood Transition Demonstration.

For purposes of planning and evaluation, children enrolled in kindergarten in transition elementary schools in the Fall of 1992 are designated as Cohort I. Children enrolled in Head Start in the fall of 1992 are designated as Cohort II.

H. Program Implementation

1. Program Year I of the grant is to be used as a "start-up" year. Program Year I activities may include, but are not limited to, such activities as planning, hiring staff, training, development of necessary collaborative systems, curriculum development, etc. Grantees are encouraged, if feasible, to pilot test program elements during program Year I.

2. The first fully operational year of the demonstration project shall begin in the Fall of 1992. This is program Year II of the grant. Beginning in Program Year II, the demonstration will be implemented in one elementary school grade each year. Therefore, in Program Year II, demonstration funds shall be expended to provide the full range of services in the grantee's transition program to Cohort I, who will be in kindergarten at the time. Demonstration funds shall also be expended in relation to Cohort II, who will be in Head Start at the time, for collaborative transition activities. Services shall be provided to Head Start children and families through the basic Head Start grant.

3. In Program Year III of the grant, which begins in the fall of 1993, demonstration funds shall be expended to provide the full range of services in the grantee's transition program to both Cohorts I and II, when these children will be in first grade and kindergarten, respectively. In Program Year III, Cohort II will be expanded to include all kindergarten children in a transition elementary school for the receipt of services. However, for the purposes o

the evaluation, Cohort II shall continue to consist of children and families who had attended Head Start. Grantees may continue to provide collaborative transition activities for children and families in Head Start during Program Year III (Cohort III).

4. It is the expectation of the Administration for Children, Youth and Families that should additional funds become available to provide Federal support for program years IV, V, or VI, demonstration funds will be used to provide the full range of services in the grantee's transition program for children in Cohorts I and II until they have completed third grade. In the event that these funds do not become available, applicants should discuss in their proposals how these services will continue to be provided to Cohorts I and II using other resources so that the "maintenance of gains" hypothesis can be tested through the third grade. Applicants should also describe how children who are younger than Cohorts I and II but who enter transition elementary schools (e.g. children in kindergarten in program year IV) will be able to benefit from the transition program.

I. Allowable Uses of Demonstration Funds

1. Use of demonstration funds for the provision of supportive services is only allowable when expended in relation to kindergarten and elementary school children, and their families, who are enrolled in a transition elementary school.

2. Demonstration funds may not be used to expand, augment or otherwise modify regular Head Start services. However, these funds may be used to provide resources to the Head Start program necessary for collaborative transition activities. For example, demonstration funds may be used to hire additional staff in the Head Start program to support individual transition planning, coordination with kindergarten teachers and staff, transfer information, etc.

3. Both Head Start programs and public schools may use demonstration funds for necessary staff positions related to allowable transition program activities.

4. Although all children enrolled in the kindergarten classes in the transition demonstration schools will participate in the demonstration, provision of individualized services which take place outside of the classroom such as medical treatment for a specific condition, adult education classes, etc. shall be determined by the need for the service, unavailability of the service through other resources and the inability of the family to pay.

J. Additional Information

Legislative requirements

Section 135(c) of the Head Start Transition Project Act requires that, in awarding grants under this subtitle, the Secretary shall consider—

"(1) The commitment of the Head Start agency and local education agency to the program for which assistance under this subtitle is requested;

(2) The quality of the Head Start program operated by a Head Start agency desiring financial assistance under this subtitle, as measured by compliance with Head Start program performance standards;

(3) The proportion of low-income children in the school attendance area where the program assisted under this subtitle will be located;

(4) The suitability of the proposed program for replication in other locations;

(5) The quality of the information and plans in the application; and

(6) The commitment of the community to the proposed program, as evidenced by additional resources, in cash and in kind, available to the applicant to support the program."

Part II Responsibilities of the Grantee

A. The Head Start/Public School Early Childhood Transition Demonstration

The discussion under this section is for the purpose of assisting applicants to comply with the requirements in section 136 of the Head Start Transition Project Act and those which are required by the Secretary to insure the conduct of an effective demonstration.

1. Objectives of the Demonstration

The objectives of the Head Start/Public School Early Childhood Transition Project are to:

- Demonstrate effective strategies for coordination and cooperation among Head Start programs, school systems, parents, communities and other institutions to plan and implement a unified program of comprehensive services from Head Start through the third grade.
- Demonstrate effective methods to support the active involvement of parents in the education of their children.
- Test the hypothesis that the delivery of continuous and comprehensive services in Head Start and through the third grade can maintain and enhance the early gains of Head Start children and their families.

2. Participation and Oversight

All Head Start/Public School Early Childhood Transition Demonstration projects must include the following elements starting in Head Start and continuing through the third grade.

- Each project must form a consortium consisting, at a minimum, of a Head Start grantee, a local education agency and, as a cooperating agency, a four year college, university, or other nonprofit research institution in or near the demonstration community to conduct an independent local evaluation. Applicants may include, as cooperating agencies, other nonprofit agencies or institutions of higher education with experience in child development to participate in the planning and operation of the demonstration.
- Each project must form a governing board consisting of representatives of the Head Start agency, the local education agency, parents and representatives of State and local agencies and community-based organizations who will be providing supportive services to participating children and families. The local evaluators may not serve as members of the governing board. However, they must attend all meetings in order to carry out the requirements of section 137(b)(1).

At a minimum, 51 percent of the governing board members must be parents of children who will be participating in the demonstration. In Program Year I, this parental representation shall consist of two subsets of parents. Half of the parents should have a child in Head Start in the fall of 1991 who will be entering a transition school in the fall of 1992. The other half of the parents should have a non-Head Start child who will enter the transition schools in the fall of 1992. (These two subsets are parents of children identified as cohort I.) By Program Year II of the grant, beginning in the fall of 1992, the governing board must consist of an equal representation of parents of children from cohorts I and II. The grantees may achieve this through one of the two following methods:

(1) At the beginning of Program Year II, one-half of each subset of the parents shall be rotated off of the governing board. They shall be replaced on the governing board by an equal representation of parents who have a child in Head Start in the fall of 1992 who will enter a transition school in the fall of 1993 (i.e. children identified as cohort II), and parents who have a non-

Head Start child who will enter a transition school in the fall of 1993; or

(2) At the beginning of Program Year II, the governing board shall be expanded in size to provide for an equal number of parents of cohort II children as parents of cohort I children. Half of the parents who are added to the governing board to accomplish this must have a child in Head Start in the fall of 1992 who will enter a transition school in the fall of 1993. Half of the parents added must have a non-Head Start child who will enter a transition school in the fall of 1993. The increase in the size of the governing board may also allow for a proportional increase in non-parental members.

Regardless of which of the two above options are chosen by the grantee, the requirement that a minimum of 51% of the governing board shall be comprised of parents of participating children must be maintained throughout the demonstration.

The responsibilities of the governing board shall include review and approval in all matters of the demonstration relating to personnel, program design, and budget.

3. Transition Program

a. All Head Start/Public School Early Childhood Transition Demonstration must include the following elements as required by section 136.

• Specific plans for activities and services in each of the four components of education, health, parent involvement and social services. (136(a) (1) and (3).)

• A developmentally appropriate curriculum. (136(a)(3).)

• Transition plans for each child and family between Head Start and kindergarten and between each elementary school grade continuing through the third grade. These plans must address educational activities appropriate for the child's developmental level and the services that will be delivered for each child and family, when appropriate, participating in the demonstration, including—

—Meetings with the child's former teacher (if any), present teacher, parents, family service coordinator and, if necessary, an additional person to serve as an interpreter for the parents, to develop the plan;

—Ways in which parents will be involved in the execution of the plan; and

—The transfer of information about the child including written records from the preschool program to the public school which will become part of the child's school record. (136(a)(4)(E).)

• A supportive services team of family service coordinators which, at the kindergarten level and beyond, must include one family service coordinator for every 35 families. (136(a)(4) and 136(b).)

• Assist families, administrators and teachers to respond to health, immunization, mental health, nutrition, social service and educational needs of children, including training. (136(a)(4)(A).)

• Home visits to each family to assist them to obtain health, immunization, mental health, nutrition, parenting education, literacy training, education (including tutoring and remedial services), job training or employment, and social services (including substance abuse treatment, education and prevention) which children and their families may need and for which they are eligible. (136(a)(4)(B).)

• A family outreach and support program, including a plan for involving parents in the management of the program, in cooperation with parental involvement efforts undertaken pursuant to the Follow Through Act, chapter I of title I of the Elementary and Secondary Education Act of 1965, the Head Start Act, part B of chapter I of title I of the Elementary and Secondary Education Act of 1965 (Even Start), and the Education of the Handicapped Act of 1975. (136(a)(4)(C).)

• Training or other assistance for families, administrators, and teachers in enhancing developmental continuity between the programs assisted under the Head Start Act and elementary school classes. (136(a)(4)(D).)

b. Each demonstration should also include the following additional elements.

• Assessment procedures for the determination of the child's functional level and measurement of the child's progress.

• Provisions for the mainstreaming of children with disabilities.

• Incorporation of a set of activities into the transition demonstration appropriate for the various cultural groups represented in the demonstration site.

• Individual family support plans based on family intake interviews. The family support plans shall detail services needed and plans for providing or accessing these services.

4. Staffing

Each demonstration program must have:

• A designated director of the Head Start/Public School Early Childhood Transition Demonstration.

• A designated supervisor for the family service coordinators. (136.(a)(5).)

• A family service coordinator for every 35 families during kindergarten and the elementary school years. (136.(b).)

• A designated director for the evaluation. (137.(b).)

In addition each demonstration project should have:

• A designated full-time data coordinator.

B. Evaluation of the Head Start/Public School Transition Demonstration

1. Legislative Requirements

Section 137 of the Head Start Transition Project requires that:

"(a) Evaluation.—The Secretary shall, through grants, contracts or cooperative agreements, provide for the continuing evaluation of the programs assisted under this subtitle in order to determine the effectiveness of such programs in achieving stated goals, the impact of such programs on related programs, and the implications of the design and operation of such programs for the effective delivery of services.

(b) *Local Evaluation and Information.*—

(1) *Requirement*—Each Head Start agency or local educational agency receiving a grant under this subtitle shall carry out an evaluation of the program assisted under this subtitle in order to determine the effectiveness of the program in achieving stated goals, the impact of the program on the families served and the community, the problems encountered in the design and operation of the program and ways in which such problems were addressed, and the impact of the program on the Head Start agency and local educational agency.

(2) *Information.*—Each Head Start agency or local educational agency receiving a grant under this subtitle shall furnish to the Secretary any information the Secretary shall request in order to carry out the evaluation described in subsection (a).

(c) *Report.*—Not later than September 30, 1993, the Secretary shall, prepare and submit, to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report concerning evaluations conducted pursuant to subsections (a) and (b), including the strengths and weaknesses in the design and operation of programs assisted under this subtitle and the effectiveness of such programs in achieving stated goals.

2. Local Evaluation Requirements

In order to comply with subsections 137 (b) and (c), agencies receiving grants under this subtitle must include the following elements in the conduct of the local evaluation.

a. *Local Evaluation Team.*

• The evaluation team must be composed of staff of the cooperating four-year college, university or nonprofit research organization that is the cooperating agency participating in the consortium for purposes of evaluation. The evaluation team staff may not participate in any manner in the operation of the demonstration.

• Team members must have demonstrated competence in the evaluation of social programs and research methodology, including design, measurement and the collection and analysis of both quantitative and qualitative data.

• The lead team member must participate as a consortium member of a national evaluation team under the leadership of a national evaluation contractor funded directly by the Administration for Children, Youth and Families. This will require attendance at 4 3-day meetings in Washington, DC during Year I of the grant. The number of meetings for Year II and Year III will be determined at a later date.

• Evaluation team members must not be employees of the school system or the Head Start grantee. In the event that the Head Start grantee or participating delegate agency in the demonstration is a university, the evaluation team members must come from departments that are not involved in the operation of the Head Start program or participating in the operation of the demonstration.

• Each evaluation team should form an advisory panel consisting of persons with technical expertise in evaluation of social programs, research design, measurement, observation techniques and child development; representatives from each of the consortium members; and parents. The evaluation team should seek panel input in all phases of the evaluation.

b. *Evaluation Design.*

• The preferred evaluation design consists of the identification of two clusters of Head Start/elementary school units. Each of these clusters should have a minimum of 50 children presently in third grade who attended the Head Start sites within the cluster. To test the hypothesis of the maintenance of gains, at least 50 children must still be enrolled in the transition elementary schools at the end of third grade who participated in the transition program beginning in Head Start. The minimum of 50 children in third grade is to provide some assurance that, allowing for attrition, a sufficient number of children will still be available in cohorts I and II at the end of third grade for analysis purposes. Since not all communities will have a single unit with a sufficient sample size at the end of third grade, applicants may combine two or more units which will then be treated as a single demonstration or control group. Applicants may propose a smaller sample size if they can provide a strong justification that the smaller sample size will be sufficient for all proposed analyses. The evaluation team shall randomly assign one of the clusters to the demonstration and the other to serve as a control. Attachment I provides a suggested list of criterion variables for the selection of the matched clusters.

• In the event that the applicant does not have a sufficient population to fulfill the guidance above, or has other circumstances where such a design would not be feasible, the applicant must state the reasons in the application and propose an alternative design that will provide appropriate treatment and comparison groups and a rigorous evaluation of the demonstration.

• The proposed evaluation must include an analysis comparing the characteristics of the children and families in the demonstration cluster with the characteristics of children and families in the control/comparison cluster to determine the equivalence of the samples.

• Although demonstration program funds will be used to provide services to all children (Head Start and non-Head Start) and their families attending kindergarten in the transition elementary schools in the Fall of 1992 and 1993, demonstration funds allocated for the evaluation may only be used to longitudinally follow Head Start children and families who are enrolled in either Head Start (cohort II) or kindergarten (cohort I) in both the demonstration and control/comparison clusters in the Fall of 1992. Transition evaluation funds will also be used to collect baseline data only on non-Head Start children and their families who enter kindergarten in the Fall of 1992 and 1993.

• Each evaluation must identify and measure salient program, child, family and community independent and dependent variables using both quantitative and qualitative data.

• In addition to the evaluation information required in section 137(b)(1), the evaluation must be able to clearly document and describe differences in the demonstration and control/comparison clusters in organizational structure; the extent of joint planning, collaboration and cooperation among all participating organizations; services provided to and received by participants; parent participation opportunities and participation rates; and other major differences in important independent variables.

• The evaluation must provide for longitudinal follow-up of all Head Start demonstration and control/comparison children and families who are enrolled in Head Start and kindergarten in the fall of 1992 through the third grade.

c. *Relationship of Local and National Evaluations.*

• It is anticipated that there will be variations among the transition demonstrations both in approach and the populations and communities that are served. Therefore, each site will be treated as an independent study of the effectiveness of the transition concept. On a national level these studies, taken together, will produce a body of data on the effectiveness of the transition demonstration as a strategy for change in a community's approach toward the education of young children and the maintenance and enhancement of gains.

• For the purpose of the proposal, each evaluation team is to design an evaluation (including independent and dependent variables) which captures the distinct attributes of the particular site. Although it is expected that the design will probably undergo extensive changes during the start-up year, the design in the proposal will serve to define the unique aspects of the site and serve to demonstrate the evaluation team's competence in evaluation design.

• During Year I of the demonstration, the evaluation directors at each site will form a consortium under the leadership of the national evaluation contractor to establish a set of core variables and measures which must be incorporated into the individual site design. In addition to the core set, individual site evaluation teams may use any or all of the variables from the original proposal that are necessary to produce valid data for the site.

• Year I of the demonstration should be used by the evaluation team to work both with their demonstration consortium partners and their evaluation consortium partners to revise their evaluation designs. The revised evaluation designs must be submitted to the project officer by June 1, 1992 and will be subject to peer review. The revised design will require the signatures of both the Head Start and local education agency partners indicating their concurrence with the

design and their commitment to full cooperation with the conduct of the evaluation.

• Each site evaluation team shall be responsible for the conduct of the evaluation in that site, including data collection, analysis and preparation of individual site reports.

• The national evaluator shall chair the evaluation consortium. However, all decisions concerning core variables and measures shall be made jointly by all consortium members. The national evaluator shall also be responsible for quality control of the core data, maintenance and formatting for the national data base and conducting all the analyses necessary for the preparation of a national report.

d. *Special Considerations.*

• The purpose of a demonstration is to develop effective strategies to achieve a specific goal that can be adopted by other programs. Even though the demonstration program may bring needed services to the community in which it operates, the most important products it produces are evidence of its effectiveness and good descriptions of the methods used and services delivered. It is that information that both encourages and enables other communities to adopt it. Therefore, the quality of the evaluation is as important as the quality of the services. In evaluating the proposals for the Head Start/Public School Early Childhood Transition Projects, high priority will be placed on the competence and experience of the local evaluator selected to conduct the evaluation and the potential of the evaluation design, including the selection of independent and dependent variables and measures to produce important and valid findings.

• For the purpose of this demonstration, transition was previously defined as a unified and continuous program of comprehensive services starting in Head Start through the third grade. Therefore, the entire Head Start experience is part of transition. The proposals should reflect any necessary changes that will occur in the Head Start program to make the entire period the child and family is in Head Start part of this unified transition program.

• In order to insure that throughout the Head Start year appropriate coordination is achieved between Head Start and all the elementary schools that the Head Start children will enter, the applications must include assurances that information about the public school each Head Start child will attend is provided to the appropriate Head Start site at the beginning of the Head Start year in the transition demonstration cluster.

C. Application Requirements

Section 136 Application of the Head Start Transition Project Act states that:

(a) In General.—Each Head Start agency or local education agency desiring a grant under this subtitle shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require. Each such application shall include—

(1) A description of the activities and services for which assistance is sought;

(2) A description of members of the consortium established in accordance with section 134, including any cooperating agency;

(3) A self-assessment of the Head Start agency's and local education agency's programs to address the health, immunization, mental health, nutrition, parenting education, literacy, social service (including substance abuse treatment, education, and prevention), and educational needs of low-income students and their families, including the use of a developmentally appropriate curriculum such as a model approach under the Follow Through Act;

(4) A plan for the development of a supportive services team of family service coordinators to—

(A) Assist families, administrators and teachers to respond to health, immunization, mental health, nutrition, social service and educational needs of students;

(B) Conduct home visits and help students and their families to obtain health, immunization, mental health, nutrition, parenting education, literacy, education (including tutoring and remedial services), and social services (including substance abuse treatment, education and prevention), for which such students and their families are eligible;

(C) Coordinate a family outreach and support program, including a plan for involving parents in the management of the program assisted under this subtitle, in cooperation with parental involvement efforts undertaken pursuant to the Follow Through Act, chapter I of title I of the Elementary and Secondary Education Act of 1965, the Head Start Act, part B of chapter I of title I of the Elementary and Secondary Education Act of 1965 (Even Start) and the Education of the Handicapped Act of 1975;

(D) Assist families, administrators, and teachers in enhancing developmental continuity between the programs assisted under the Head Start Act and elementary school classes; and

(E) Prepare a plan for the transition of each child from Head Start or comparable programs to kindergarten, including—

(i) A meeting of the early childhood development program teacher with the kindergarten teacher and the child's parents to discuss the transition of each child and to address any particular educational needs of such child; and

(ii) The transfer of knowledge about the child, including the transfer (with parental consent) of written records from the early childhood development program teacher to become part of the school record of the child;

(5) The designation of a member of the supportive services team described in paragraph (4) who will serve as the supervisor of such supportive services team;

(6) Assurances that State agencies, local agencies, and community-based organizations that provide supportive services to low-income students served by such Head Start agency or local educational agency have been consulted in the preparation of the plan described in paragraph (4);

(7) Assurances that State agencies, local agencies, and community-based organizations that provide supportive services to low-income students served by such Head Start agency or local educational agency will designate an individual who will act as a liaison to the supportive services team described in paragraph (4);

(8) A description of the target population to be served by the supportive services team described in paragraph (4) including families previously served under the Head Start Act, part B of the chapter I of title I of the Elementary and Secondary Education Act of 1965 (Even Start), or comparable early childhood development programs;

(9) A description of the supportive services to be provided, directly or through referral;

(10) A plan to ensure the smooth transition of children served under the Head Start Act, part B of chapter I of title I of the Elementary and Secondary Education Act of 1965 (Even Start), Education of the Handicapped Act of 1975, and comparable early childhood development programs to elementary schools;

(11) Assurance that, and a plan describing how, families will be involved in the design and operation of the program assisted under this subtitle;

(12) A description of the Federal and non-Federal resources that will be used to carry out the program;

(13) If the applicant has applied for, or is receiving, assistance through a program under the Follow Through Act—

(A) A description of the activities that will be funded under this subtitle and activities that will be funded with assistance provided under the Follow Through Act; and

(B) A description of the manner in which activities funded under this subtitle and activities funded with assistance provided under the Follow Through Act will be coordinated within the elementary school;

(14) Assurances that the supportive services team described in paragraph (4) will be equipped to assist children and families with limited English proficiency and disabilities, if appropriate;

(15) A plan describing how the program assisted under this subtitle will be sustained, with chapter I funding or other Federal and non-Federal funding sources, after the grant has expired;

(16) Programs goals; and

(17) Such other information as the Secretary may reasonably require.

In order to successfully compete for a Head Start/Elementary School Early Childhood Transition grant and comply with section 136(a), applicants must include the following information in their application.

1. Objectives and Other General Information

The applicants must:

(a) Describe their goals in terms of changes they wish to effect in the Head Start and local education agency in order to maximize the potential of low-income children and their families.

(b) Describe the differences that exist between Head Start and the local education agency in philosophy, goals, methods, curriculum, services, parent involvement and family support that need to be resolved in order to achieve a unified and continuous progression through the early childhood years.

(c) Provide an assessment of the adequacy of the current Head Start agency's and local educational agency's programs to address the health, immunization, mental health, nutrition, parenting education, literacy, social services (including substance abuse treatment, education and prevention) and educational needs of low-income children and their families, including the use of a developmentally appropriate curriculum such as model curricula used under the Follow Through Act.

(d) Describe how they have achieved community support for the demonstration including the agencies that will be providing services to the demonstration families.

(e) Describe the expected outcomes for children, families, the Head Start program, the local education agency, the participating service providers and the community.

(f) Describe any features or conditions of the program or community that would make the demonstration a particularly useful model for other communities.

(g) Describe plans for the continuation of the Head Start/Public School Early Childhood Transition effort with chapter I funding or other Federal and non-Federal funds after funds allocated under this subtitle have been terminated.

2. Program Planning

The applicants should: (a) Provide a discussion of their understanding of the Head Start/Public School Early Childhood Transition concept.

(b) Provide specific plans for resolving each of the differences described in under Objectives and Other Information paragraph (b).

(c) Discuss the specific changes that will be necessary for both the Head Start program and the local education agency in order to address the health, immunization, mental health, nutrition, parenting education, literacy, social services (including substance abuse treatment, education and prevention) and educational needs of low-income students and their families, including the use of a developmentally appropriate curriculum such as model curriculum under the Follow Through Act.

(d) Provide a description of the members of the consortium, the State, local and community-based organizations and parents who participated in the planning and development of the proposal.

(e) Identify the specific composition of the governing board, and the roles of each board member in developing the proposal and in the operation of the project. Specifically, the applicant should describe the contribution of parents to the development of the proposal and how they will be involved in the operation of the program.

(f) For each of the four component areas (education, health, parent involvement and social services) describe the activities or services that will be provided to children and families both in Head Start and in the public school, including the identification of the curriculum or curricula that will be used and how it would assure developmentally appropriate experiences for all children.

(g) Describe the assessment procedures that will be used to determine the child's functional level and to measure progress.

(h) Describe how individual transition plans and individual family support plans will be developed.

(i) Describe how children with disabilities will be mainstreamed.

(j) Describe how activities to promote pride in one's own culture and respect for other cultures will be incorporated into the activities of the program.

(k) Describe the composition of the supportive services team, including the ratio of families to family service coordinators, ratio of family service coordinators to supervisors, the qualifications of family service coordinators and supportive services team supervisors, and the roles and responsibilities of the family service coordinators.

(l) Describe the qualifications of the supportive service teams to work with children and families with limited English proficiency and children with disabilities.

(m) Describe which supportive services will be provided directly and those which will be provided by other agencies.

(n) If the applicant has applied or is receiving assistance through a program under the Follow Through Act:

(1) Describe the activities that will be funded under this demonstration and the activities that will be funded with assistance provided under the Follow Through Act; and

(2) Describe how the activities funded under this demonstration and those funded under the Follow Through Act will be coordinated within the elementary school.

(o) Describe how Head Start and public school teachers will work together to insure a continuous progression of activities and services to children and families.

(p) Describe the specific activities what will occur to insure a smooth transition from Head Start and other preschool programs into the public school.

(q) Describe the role of the principal in the transition elementary schools and provide assurances of commitment from each of the principals of the proposed transition elementary schools which would serve as either treatment or controls.

Note: Any revisions to the original proposal based on Year I planning must be submitted for approval prior to Year II funding.

3. Evaluation

Note: This section should be written by the members of the evaluation team to demonstrate their ability to carry out the evaluation.

The applicants must: (a) Describe the characteristics of the two clusters of Head Start centers and public schools that will serve as the demonstration and the control/comparison group. These characteristics should be the ones included in Attachment I. Discuss any differences in the two clusters that may impact on the validity of the evaluation results.

(b) Present the research questions that will be addressed in the evaluation.

(c) Describe the research design, including:

- Dependent variables for children, families, the Head Start program and the local education agency and the community;
- Independent variables to address the questions of which variables appear to make the most difference for whom;
- The proposed measurement instruments, surveys, interviews, observation procedures or other data collection procedures;
- The proposed analyses that will be conducted;
- The data that will be collected on the control/comparison group; and
- How and by whom the data will be collected, including frequency of the data collection and the qualifications of the data collectors.

(d) Provide a plan for the pilot testing of all aspects of the evaluation design.

(e) Describe the composition of the advisory panel. For each panel member describe the aspects of that person's background, training and expertise that will contribute to the evaluation.

(f) Provide assurances that the evaluator will collaborate with the national evaluation team and make any modifications to the design that are deemed necessary.

Note: Half of the points allocated to the consideration of the approach section of the application will be allocated to the evaluation section.

4. Staffing

The applicants must: (a) Describe the background and experience of the project director and all other key staff who will participate in the operation of the program.

(b) Describe the qualifications that will be sought if new staff have to be hired for these positions.

(c) Describe the experience of the Head Start and local education agency in conducting similar demonstrations.

(d) Describe the evaluation director's qualifications for, and experience in conducting research or program evaluations in child development. The description should include a list of the evaluation director's relevant publications.

(e) Include resumes for all key personnel, including the evaluation director.

Note: Half of the points allocated to the evaluation of the Staff Background Section shall be allocated to the qualifications of the evaluation team.

5. Other Application Requirements

(a) Provide letters of commitment from each State agency, local agency and community-based organization which will be providing services regarding the services they will provide and stating that they will designate an individual to serve as liaison to the supportive services team. Also provide assurance that they have been consulted in the development of the proposal.

(b) Provide letters of commitment from all members of the governing board or, if such letters are not provided as part of the proposal, provide assurances that all required members of the governing board will participate, including the required proportion of parents. Discuss what methods will be used to insure appropriate parent participation.

(c) Provide letters of commitment from all members of the evaluation advisory panel.

(d) Provide assurances that at least one key staff member from the Head Start program and the local education agency and the director of evaluation shall attend a minimum of two three-day meetings each year in Washington, DC.

(e) Provide assurances that the evaluation director shall be required to attend a minimum of four additional three-day meetings with the National evaluation contractor in Washington, DC each year.

(f) Identify the specific members of the consortium who were responsible for the preparation of the proposal.

Part III Evaluation Criteria

In considering how the applicant will carry out the responsibilities described in part II of this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

1. Objectives and Need for Assistance (15 Points)

How the applicant:

- Identifies any relevant economic, social, financial, institutional or other problems requiring a solution; demonstrates the need for the assistance; and states the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant on the need for assistance may be used. Any relevant data based on planning studies should be included or footnoted.
- Identifies the precise location of the project and the area to be served by the proposed project. Maps and other graphic aids may be attached.

2. Results or Benefits Expected (15 Points)

How the applicant identifies the results and benefits to be derived which are consistent with the objectives of the proposal and indicates the anticipated contribution to policy or practice. Proposed project costs must be reasonable in view of the expected results.

3. Approach (40 Points)

How the applicant:

- Outlines a plan of action pertaining to the scope of work, and details how the proposed work will be accomplished for the project;
- Cites factors which might accelerate or decelerate the work and the reasons for taking this approach as opposed to others;
- Describes any unusual features of the project;
- Provides projections of the accomplishments to be achieved;
- Lists the activities to be carried out in chronological order to show a reasonable schedule of accomplishments and their target dates;
- Identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and success of the project;
- Describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved;
- Lists each organization, cooperator, consultant, or other key individual who will work on the project along with a short description of the nature of their effort or contribution.

4. Staff Background and Organization's Experience (30 Points)

How the applicant:

- Identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project;
- Describes the relationship between this project and other work planned, anticipated or underway by the applicant with Federal assistance.

Part V The Application Process

A. Availability of Forms: All of the forms and instructions needed for submitting an application under this announcement are included in appendix II. Single sided copies of these forms should be reproduced and used to prepare the application package.

A complete application consists of:

(1) *Standard Form 424:* Application for Federal Assistance;

(2) *Standard Form 424A:* Budget Information;

(3) *Assurances:* (a) Standard Form 424B: Non-Construction Programs;

(b) Drug-Free Workplace Certification (this form does not have to be returned);

(c) Debarment Certification (this form does not have to be returned); and

(d) Lobbying Certification.

(4) *Program Narrative:* A narrative description of the project, organized under the headings which address the four evaluation criteria identified in part V: (A) Objectives and Need for Assistance; (B) Results or Benefits Expected; (C) Approach; and (D) Staff Background and Organization's Experience.

The program narrative must be typed, double-spaced, on 8½ × 11-inch bond paper. All pages of the narrative (excluding charts, tables, and maps) must be sequentially numbered, beginning with the "Objective and Need for Assistance" section as page number one. The program narrative should not exceed 45 double-spaced pages exclusive of the charts, tables, and maps.

(5) *Project Abstract:* A brief (approximately 100 words) description of the project, typed on 8½ × 11-inch bond paper.

(6) *Appendices/Attachments:* Letters of support, exhibits, and other supporting documents should not exceed 10 pages exclusive of curriculum vitae.

B. *Application Submission:* Each application must be signed by an official authorized to act on behalf of the applicant agency, organization, institution, or other entity and to assume responsibility for the obligations imposed by the terms and conditions of any grant awarded.

Applications must be prepared in accordance with the guidance provided in this announcement and the instructions in the attached application package.

One signed original and two copies of the application, including all attachments, are required. Completed applications must be sent to: ACF Grants and Contracts Management Division, Room 341.F2, Hubert H. Humphrey Building, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC. 20201.

Attn: William J. McCarron, ACF-91-ACYF-HS.

Hand delivered applications will be accepted at the ACF Grants and Contracts Management Division office during normal working hours of 8:30 a.m. to 5:30 p.m. Monday through Friday.

C. *Closing Date for the Submission of Applications:* The closing date for receipt of applications under this announcement is August 21, 1991.

1. *Deadlines.* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the address specified in the application submission section of this announcement; or

b. Sent on or before the deadline date and received in time for the independent review under Chapter 1-62 of the HHS Grants Administration Manual. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. *Late Applications.* Applications which do not meet the criteria in the above paragraphs are considered late applications. The granting agency will notify each late applicant that its application will not be considered in the current competition.

3. *Extension of Deadline.* The Administration for Children, Youth and Families may extend the deadline for all applicants because of floods, hurricanes, etc. or when there is widespread disruption of the mail. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

D. *Screening of Applications:* All applications will be initially screened to determine conformance with the following requirements:

(1) Deadline for submittal;

(2) Applicant is a Head Start grantee or a local education agency;

(3) Signature of authorizing official; and

(4) Federal funding requests not exceeding the established limitations.

These preliminary screening requirements will be rigorously enforced. Applications which do not meet these requirements will not be considered in the competition and the applicant will be so informed.

E. *Application Consideration:* Each application will be reviewed and scored against the criteria outlined in part III of this announcement and its responsiveness to the minimum requirements identified in part II. The review will be conducted in Washington, DC. Reviewers will be persons knowledgeable about issues relating to Head Start, transition issues, family support and research and evaluation. The results of the competitive review will be the primary factor taken into consideration by the Associate Commissioner, Head Start Bureau, who, in consultation with ACF Regional Officials, will recommend to the Commissioner of ACYF the programs to be funded. The Commissioner of ACYF will make the final selections. Applications may be funded in whole or in part. Consideration will also be given to ensuring that a variety of geographic areas are served, and that both Head Start grantees and local education agencies are represented as grantees for this demonstration.

Successful applicants will be notified through the issuance of a Financial Assistance Award. The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the grant, the total project period, the budget period, and the amount of the non-Federal matching share. Organizations whose applications have been disapproved will be notified in writing by the Commissioner of the Administration for Children, Youth and Families.

F. *Paperwork Reduction Act of 1980:* Under the Paperwork Reduction Act of 1980, Public Law 96-511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval projects such as the National Head Start Transition Demonstration Evaluation involving the collection of information from 10 or more respondents. ACF will notify grantees when any proposed information collection associated with these grants is sent to OMB. At that time, the public may send comments to OMB on the proposed information collection.

G. *Waiver of Executive Order 12372 Requirements for a 60-Day Comment Period for the States' Single Point of Contact (SPOC):* This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human

Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories except Alaska, Idaho, Kansas, Louisiana, Nebraska, Minnesota, Virginia, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applications from Federally recognized Indian tribes are exempt from E.O. 12372. Applicants from these nine areas and from Federally recognized Indian tribes need take no action regarding E.O. 12372.

Other applicants should contact their SPOC as soon as possible to alert them of the prospective application and receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, Block 16a. ACF will notify the State of any applicant who fails to indicate SPOC contact (when required) on the application form. ACF must obligate the funds for these awards by September 30, 1991. Therefore, the required 60-day comment period for State process review and recommendation has been reduced and will end on September 25, 1991, in order for ACF to receive, consider, and accommodate SPOC input.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Grants and Contracts Management Division, room 345-F Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. A list of the Single Points of Contact for each State and Territory is included in appendix I of this announcement.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: May 28, 1991.

Wade F. Horn,

Commissioner, Administration for Children, Youth and Families.

Approved: May 29, 1991.

Donna N. Givens,

Deputy Assistant Secretary for Children and Families.

Attachment I—Suggested List of Matching Variables

a. For each of the two clusters of Head Start centers and public schools that will participate as either the demonstration or the comparison group:

(1) The number of Head Start centers and public schools in the cluster.

(2) The type of Head Start grantee or its delegate agency that will participate in the demonstration (e.g., CAA, school system, etc.).

(3) The total number of children presently enrolled in the Head Start sites in the cluster.

(4) The total number of kindergarten children in each cluster.

(5) Of the total number of kindergarten children, the number who attended Head Start.

(6) Of the total number of kindergarten children, the number who were enrolled in Even Start.

(7) Of the total number of kindergarten children, the number who attended a Chapter I preschool program.

(8) Of the total number of kindergarten children the number who are low-income using the OMB poverty guidelines.

(9) The total number of children presently in third grade in the cluster public schools who attended the Head Start sites in the cluster.

(10) The percent of children enrolled in the cluster Head Start centers who are:

- White, not of Hispanic origin
- Black
- Hispanic
- Asian or Pacific Islander
- American Indian or Alaskan native
- Other

(11) The percent of the total children enrolled in the cluster kindergartens who are:

- White, not of Hispanic origin
- Black
- Hispanic
- Asian or Pacific Islander
- American Indian or Alaskan native
- Other

(12) Percent of Head Start families that are single parent families.

(13) Percent of Head Start families that are AFDC recipients.

(14) Average income of the Head Start families in the cluster.

(15) Number of Head Start children enrolled in each of the following options:

Standard Head Start
  Full day
  Part day
Home-Based Option
Variations in Center Attendance
Locally Designed Options

(16) Whether there is a Follow-Through program in the elementary schools.

Appendix I—Executive Order 12372—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125-0347, Tel. (205) 284-8905

Arizona

Mrs. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Tel. (602) 280-1315

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371-1074

California

Loreen McMahon, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 323-7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Tel. (303) 866-2156

Connecticut

Under Secretary, ATTN: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106-4459, Tel. (203) 566-3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Tel. (302) 736-3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004, Tel. (202) 727-9111

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the

Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399-0001, Tel. (904) 488-6114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Tel. (404) 656-3855

Hawaii

Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Tel. (808) 548-3016 or 548-3085

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782-8639

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232-5610

Iowa

Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Tel. (515) 281-3725

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564-2382

Maine

State Single Point of Contact, ATTN: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Tel. (207) 289-3261

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Tel. (301) 225-4490

Massachusetts

State Single Point of Contact, ATTN: Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Tel. (617) 727-7001

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Tel. (517) 373-7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373-6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Tel. (601) 960-4280

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Tel. (314) 751-4834

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Tel. (406) 444-5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, NV. 89710, Tel. (702) 687-4420, ATTN: John B. Walker, Clearinghouse Coordinator

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271-2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625-0803, Tel. (609) 292-6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Tel. (609) 292-9025.

New Mexico

Dorothy E. (Duffy) Rodriquez, Deputy Director, State Budget Division, Department of Finance & Administration, Room 190, Bataan Memorial Building, Sante Fe, New Mexico 87503, Telephone (505) 827-3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474-1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-0499.

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmetnal Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224-2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Tel. (614) 466-0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Tel. (405) 843-9770

Oregon

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, NE., Salem, Oregon 97310, Tel. (503) 373-1998

Pennsylvania

Sandra Kline, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783-3700

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Tel (401) 277-2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Tel. (803) 734-0493

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Tel. (605) 773-3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Tel. (615) 741-1676

Texas

Tom Adams, Office of Budget and Planning, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, Tel. (512) 463-1778

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 538-1547

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828-3326

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH-51, Olympia, Washington 98504-4151, Tel. (206) 753-4978

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of

Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Tel. (304) 348-4010

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707-7864, Tel. (608) 266-1741

Please direct correspondence and question to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration (608) 266-0267.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777-7574

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Tel. (671) 472-2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Tel. (809) 727-4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Tel. (809) 774-0750

BILLING CODE 4130-01-M

APPENDIX II

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4130-01-M

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expectd to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amont of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

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OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will not continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ____ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of

Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below, without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transaction and in all solicitation for lower tier transactions.

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Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Organization

_____

Authorized Signature Title Date

NOTE: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201-0001

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federal register

Thursday
July 11, 1991

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 10 and 52
Federal Acquisition Regulation; Specifications Standards, and Other Purchase Descriptions; Proposed Rule

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 10 and 52

[FAR Case 91-32]

Federal Acquisition Regulation; Specifications, Standards, and Other Purchase Descriptions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering undertaking major revisions to FAR part 10. The part is being revised to clearly reflect the preference for use of voluntary standards, commercial item descriptions, and functional performance specifications over design type specifications. Defense Federal Acquisition Regulation System coverage concerning brand name or equal purchase descriptions is elevated to the FAR pursuant to the Defense Management Review.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 9, 1991 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, room 4041, Washington, DC 20405. Please cite FAR Case 91-32 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR Case 91-32.

SUPPLEMENTARY INFORMATION:

A. Background

Because several changes were being considered for FAR part 10 as a result of the Defense Management Review, the CAAC and DARC considered rewriting the entire FAR part 10. The proposed rule is a result of a review of the entire FAR part 10 by both Councils.

B. Regulatory Flexibility Act

The proposed changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The actual impact is not known. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C 601, *et seq.* (FAR Case 91-32) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning Specifications, Standards, and other Purchase Descriptions is being submitted to the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 10 and 52

Government procurement; Specifications, standards, and other purchase descriptions.

Dated: June 28, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 10 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 10 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Part 10 is revised to read as follows:

PART 10—PRODUCT DESCRIPTIONS AND RELATED DOCUMENTS

Sec.
10.000 Scope of part.
10.001 Definitions.
10.002 Policy.
10.003 Responsibilities.
10.004 Selecting and tailoring product descriptions.
10.005 Management of product descriptions.
10.006 Mandatory product descriptions.
10.007 Deviations.
10.008 Identification and availability of specifications.
10.009 User satisfaction.
10.010 Acquiring used or reconditioned material, former Government surplus property, and residual inventory.
10.011 Solicitation provisions and contract clauses.

PART 10—PRODUCT DESCRIPTIONS AND RELATED DOCUMENTS

10.000 Scope of subpart.

This part prescribes policies and procedures for using specifications, standards, and other purchase descriptions, and related considerations of acquisition streamlining (see 7.101).

10.001 Definitions.

Acquisition Management Systems and Data Requirements Control List means a listing of source documents and data item descriptions that have been approved for repetitive contractual application in Department of Defense (DOD) acquisitions.

Brand-name description, as used in this part, means a type of purchase description that identifies a product by its brand name and model or part number by which the product is offered for sale.

Brand-name or equal description, as used in this part, means a type of purchase description that references all known acceptable brand name products and includes required salient characteristics.

Commercial item description (CID), means an indexed, simplified product description managed by the General Services Administration, that describes, by functional or performance characteristics, the available, acceptable commercial products that will satisfy the Government's needs.

Coordination, as used in this part, means participation by designated Government activities and representative segments of industry having an interest in a standardization project.

Data item description, as used in this part, means a completed DD Form 1664, Data Item Description, that defines the data required of a contractor, preparation instructions, format, and intended use.

Department of Defense Index of Specifications and Standards (DODISS) means the Department of Defense (DOD) publication that lists unclassified Federal and military specifications and standards, related standardization documents, and voluntary standards approved for use by DOD

Federal specification or standard means a specification or standard issued or controlled by the GSA and listed in the Index of Federal

Specifications, Standards, and Commercial Item Descriptions.

Index of Specifications, Standards, and Commercial Item Descriptions means the GSA publication that lists Federal specifications, standards, and commercial item descriptions, including supplements, used by all Federal agencies.

Indexed, as used in this part, describes product descriptions that have been through the coordination process and are listed in the Index of Federal Specifications, Standards, and Commercial Item Descriptions or the DODISS.

Market Research, as used in this part, means the process used for collecting and analyzing information about the industry wide market available to satisfy the minimum agency needs to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services.

Product description, as used in this part, is the generic term for documents used for acquisition and management purposes, such as specifications, standards, voluntary standards, commercial item descriptions, or purchase descriptions.

Purchase description, as used in this part, means any product description prepared for one-time use, for small purchases, or when development of an indexed product description is not otherwise cost effective.

Specification, as used in this part, means a description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met.

Standard, as used in this part, means a document that establishes engineering and technical limitations and applications of items, materials, processes, methods, designs, and engineering practices. It includes any related criteria deemed essential to achieve the highest practical degree of uniformity in materials or products, or interchangeability of parts used in those products. Standards may be used in specifications, solicitations, and contracts.

Voluntary standard, or *non-Government standard*, as used in this part, means a standard established by a private sector association, organization, or technical society and available for public use. The term does not include private standards of individual firms. For further guidance, see OMB Circular No. A-119, Federal Participation in Development and Use of Voluntary Standards.

10.002 Policy.

(a) In fulfilling the requirements of 10 U.S.C. 2305(a)(1) and 41 U.S.C. 253a(a) regarding the preparation for acquisition of supplies and services—

(1) Agencies shall specify needs in a manner designed to promote full and open competition (see Part 6);

(2) Agencies shall develop product descriptions using market research in a manner designed to promote full and open competition;

(3) In solicitations, agencies shall include product descriptions that—

(i) Permit full and open competition; and

(ii) Include restrictive provisions or conditions only to the extent necessary to satisfy the minimum needs of the agency or as authorized by law.

(4) Agencies shall prepare product descriptions which reflect the minimum needs of the agency and the market available to satisfy such needs. Product descriptions may be stated in terms of—

(i) Function, so that a variety of products or services may qualify;

(ii) Performance, including specifications of the range of acceptance characteristics or of the minimum acceptable standards; or

(iii) Design requirements.

(b) Acquisition policies and procedures shall promote the use of commercial products and require descriptions of agency requirements, whenever practicable, to be stated in terms of functions to be performed or performance required.

(c) The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205a *et seq.*) designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce. It also requires that each Federal agency, by a date certain and to the extent economically feasible by the end of Fiscal Year 1991, use the metric system of measurement in its procurements, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms. Requiring activities are responsible for establishing guidance implementing this policy in formulating their requirements for acquisitions.

(d)(1) In fulfilling the requirements of OMB Circular A-119, Federal Participation in Development and Use of Voluntary Standards, and FAR part 11, agencies shall, to the maximum practicable extent, use—

(i) Voluntary standards in lieu of other product descriptions, or as part of other product descriptions;

(ii) Commercial item descriptions in the acquisition of commercial or commercial-type products whenever voluntary standards cannot be used;

(iii) Government specifications stated in terms of functions to be performed or performance required, when voluntary standards or commercial item descriptions cannot be used;

(iv) Government specifications stated in terms of material, finish, schematics, tolerances, operating characteristics, component parts, or other design requirements only when no other form of product description can be used.

(2) The above order of preference shall apply unless it—

(i) Is inconsistent with requirements of law; or

(ii) Does not meet the Government's needs.

(e) Requiring agencies, for programs which they have designated as subject to acquisition streamlining, should apply specifications, standards, and related documents initially for guidance only, making final decisions on the application and tailoring of these documents as a product of the design and development process. Requiring agencies should not dictate detailed design solutions prematurely. The objective of acquisition streamlining is to reduce the time and cost, and improve the quality of systems acquisitions, by ensuring that contracts contain only those necessary specifications, standards, and related documents which have been tailored for application at the most appropriate time in the system acquisition cycle. To the extent practicable, contractors should be involved in recommending application and tailoring of such specifications, standards, and related documents in one phase for proposed application to the succeeding phase of the acquisition cycle.

10.003 Responsibilities.

Requirements and technical groups are responsible for the adequacy of product descriptions. When requested by the contracting officer, requirements and technical groups shall provide sufficient information to enable the contracting officer to determine whether or not the product description is consistent with the requirements of law and regulation, good business judgment, and the best interests of the Government.

10.004 Selecting and tailoring product descriptions.

(a) *General.* (1) Items to be acquired shall be described—

(i) By citing the applicable specifications, standards, and related documents; or

(ii) By a purchase description containing the necessary requirements.

(2) Specification, standards, and related documents shall be selectively applied and tailored.

(i) "Selective application" is the process of reviewing and selecting from available specifications, standards, and related documents those which apply to a particular acquisition.

(ii) "Tailoring" is the process by which individual sections, paragraphs or sentences of the selected specifications, standards, and related documents are reviewed and modified so that each one selected states only the Government's minimum requirements. Tailoring of specifications for items of supply is limited to the selection of options within the specification, and shall not be used to modify the specifications in such a way as to alter the item being supplied.

(3) *Purchase descriptions.* When authorized by 10.006, or when no other applicable product description exists, agencies may use a purchase description, subject to agency restrictions on repetitive use and consistent with the requirements at 10.002. Purchase descriptions shall not be written so as to specify a particular brand name product, or feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless—

(i) The particular brand name, product, or feature is essential to the Government's requirements, and that other companies similar products, or products lacking the particular feature, would not meet the minimum requirement for the item; and

(ii) The authority to contract without providing for full and open competition is supported by the required justification and approvals (see 6.302-1).

(4) As many of the following characteristics as are necessary to express the Government's minimum requirements should be used in preparing purchase descriptions:

(i) Common nomenclature.

(ii) Kind of material; i.e., type, grade, alternatives, etc.

(iii) Electrical data, if any.

(iv) Dimensions, size, or capacity.

(v) Principles of operation.

(vi) Restrictive environmental conditions.

(vii) Intended use, including—

(A) Location within an assembly; and

(B) Essential operating condition.

(viii) Equipment with which the item is to be used.

(ix) Other pertinent information that further describes the item, material, or service required.

(b) *Brand name or equal*—(1) *General.* (i) The least preferred product description is the identification of a requirement by reference to one or more brand name products followed by the words "or equal." This technique may be used only when a purchase description is authorized under 10.004(a)(3) and 10.006. A brand name or equal description should be used only when a more detailed product description cannot be made available in time for the acquisition under consideration. All known acceptable brand name products should be referenced. If a "brand name or equal" description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name, if such other products will meet the needs of the Government in essentially the same manner as those referenced.

(ii) Brand name or equal descriptions shall contain the following information to the extent available, and include other information necessary to describe the item required.

(A) Complete common generic identification of the item required;

(B) Applicable model, make, or catalog number for each brand name product referenced; and

(C) Name of manufacturer, producer, or distributor of each brand name product referenced (and address, if not well known).

"Brand name or equal" descriptions shall set forth those salient characteristics of the referenced products which are essential to the needs of the Government.

(iii) When necessary to adequately describe the item required, an applicable commercial catalog description, or pertinent extracts therefrom, may be used, if such description is identified in the solicitation as being that of the particular named manufacturer, producer, or distributor. The contracting officer will ensure that a copy of any catalog referenced (except parts catalogs) is available on request for review by offerors at the purchasing office.

(2) Solicitations, brand name or equal descriptions.

(i) If a brand name or equal description is included in a solicitation, an entry substantially as follows shall be inserted after each item so described in the solicitation, for completion by the offeror:

Offering on:
Manufacturer's Name
Brand
Model/Part No.

(ii) If a solicitation contains a brand name or equal description, offerors who offer brand name products referenced in such descriptions shall not be required to furnish bid samples of the referenced brand name products; however, solicitations may require the submission of bid samples in the case of offerors offering "or equal" products.

(3) *Evaluation and award, brand name or equal descriptions.* Offers of products which differ from brand name products referenced in a brand name or equal description shall be considered for award if the contracting officer determines in accordance with the terms of the provision at 52.210-8, Brand Name or Equal, that the offered products fully meet the salient characteristics stated in the solicitation. Offers shall not be rejected because of differences in design, construction, or features which do not affect the suitability of the products for their intended use, or failure to equal a characteristic of the brand name product not specified in the brand name or equal description.

(c) *Foreign product descriptions.* Unless precluded by law, products that are acquired overseas may be acquired by using product descriptions prepared by foreign governments or foreign industry associations, if the descriptions will satisfy the agency's actual minimum requirements.

(d) *Packing, packaging, and marking requirements.* In accordance with agency regulations, contracting officers shall require adequate packaging and marking of supplies to prevent deterioration and damage during shipping, handling, and storage. In acquiring commercial products, contracting officers should rely on standard commercial packing, packaging, and marking to the greates' extent practicable, and should not routinely add additional requirements (see part 11 and agency regulations).

10.005 Management of product descriptions.

(a) Agencies responsible for preparation of specifications, standards, and commercial item descriptions shall ensure compliance with the policies prescribed in this part for all documents under their control.

(b) If an agency determines, in accordance with its established procedures and criteria, that a listed specification, standard, or commercial item description does not meet a particular minimum need of the

Government, applicable amendments, revisions, or new descriptions shall be prepared and used. (See section 10.007 with regard to deviations.)

10.006 Mandatory product descriptions.

(a) Unless otherwise authorized by law or approved under section 10.007(a), product descriptions listed in the Index of Federal Specifications, Standards and Commercial Item Descriptions are mandatory for use by all agencies, and product descriptions listed in the DODISS are mandatory for use by DOD, if acquiring supplies or services covered by such product descriptions, except if the acquisition is—

(1) Required under an unusual and compelling urgency, and using the indexed product description would delay obtaining the requirement;

(2) Conducted in accordance with the procedures in Part 13;

(3) For products acquired and used overseas;

(4) For items, excluding military clothing, acquired for authorized resale;

(5) For construction or new installations of equipment, where nationally recognized industry or technical source specifications and standards are available; or

(6) For a product or service for which an adequate and appropriate voluntary standard is known to exist but has not yet been adopted and listed in the above indexes.

(b) Product descriptions shall be selected in accordance with the order or preference at 10.002(d).

(c) *Commercial exception.* (1) In addition to the exceptions given in paragraph (a) of this section, agencies should consider stating their needs in a purchase description, when appropriate under Part 11 and implementing agency regulations, even though there is an indexed specification.

(2) The agency responsible for a specification may designate it as one for which this exception cannot be used, if the agency head or a designee determines this to be necessary.

10.007 Deviations.

When the exceptions in section 10.006 of this part do not apply and an existing specification does not meet an agency's minimum needs, agencies may authorize deviations as follows:

(a) Each agency taking deviations shall establish procedures whereby a designated official having substantial contracting responsibility shall be responsible for ensuring that—

(1) Federal specifications are used, and requirements for exceptions and deviations are complied with;

(2) Justification for exceptions and deviations are subject to competent review before authorization, and that such justifications can be fully substantiated if post audit is required;

(3) Major or repeated deviations are not taken except as prescribed in paragraph (b) of this section; and

(4) Notification of deviation or recommendation for change in the specification is sent promptly in duplicate to the General Services Administration (FCM), Washington, DC 20406. (A statement of the deviations with a justification and, where applicable, recommendation for revision or amendment of the specification shall be included. A notification is required for major deviations such as those that will result in the introduction of a new item identification, or when a deviation is taken repeatedly.)

(b) Deviations taken and reported by the agency in accordance with paragraph (a) of this section may not be continued, except under the following conditions:

(1) When an agency submits notification of major or repeated deviations that have been taken but makes no recommendation for change in the specification, GSA will notify the agency as to whether such deviations may be continued in subsequent contracting. In cases where continued deviations are not approved and the agency contracting has progressed to a point where it would be impracticable to amend or cancel the action, such action may be completed, but the deviation shall not be continued by the agency in subsequent contracts.

(2) When the agency has recommended changing the specification consistent with the deviations it has taken and reported, those deviations may be continued until such time as the recommended change is incorporated in the specification. When coordination with Federal agencies and industry does not result in acceptance of the change, such deviations shall not be continued by the agency in subsequent contracts.

(c) Deviations from product descriptions listed in the DODISS shall be in accordance with DOD regulations.

10.008 Identification and availability of specifications.

(a) Solicitations citing specifications listed in the Index of Federal Specifications, Standards and Commercial Item Descriptions, DODISS, or other agency index shall identify each specification's approval date and the dates of any applicable amendments and revisions. The contracting officer will not normally furnish these cited specifications with the solicitation, except if—

(1) The product being acquired will be so complex that the specification must be furnished with the solicitation to enable prospective contractors to make a competent initial evaluation of the solicitation;

(2) In the judgment of the contracting officer, it would be impracticable for prospective contractors to obtain the specifications in reasonable time to respond to the solicitation; or

(3) A prospective contractor who has not previously offered on the product requests a copy of the specification.

(b) Solicitations shall not contain general identification references such as "the issue in effect on the date of the solicitation".

(c) Solicitations citing voluntary standards shall advise offerors to obtain the standards from the publisher.

(d) The contracting officer shall clearly identify in the solicitation those specifications and any other pertinent documents not listed in the Index of Federal Specification, Standards and Commercial Item Descriptions or DODISS including new or revised documents not yet listed, and data item descriptions not listed in the Acquisition Management Systems and Data Requirements Control List, DOD 5010.12-L, and furnish them with the solicitation, except as provided at section 10.011(a).

(e) When specifications refer to other specifications, such references shall (1) be restricted to documents, or appropriate portions of documents, that shall apply in the acquisition; (2) cite the extent of their applicability; (3) not conflict with other specifications and provisions of the solicitation; and (4) identify all applicable first tier references.

(f) Contracting officers shall furnish with the solicitation any brand name or equal description used.

(g) Contracting officers or prospective contractors may obtain copies of the indexes or the documents referenced in the indexes by following the procedures in the provisions at 52.210-1 and 52.210-2.

10.009 User satisfaction.

(a) Agencies shall encourage users to communicate with acquisition organizations on—

(1) The adequacy of specifications to communicate the user's minimum needs;

(2) Product capability;

(3) Product failures and deficiencies; and

(4) Suggestions for corrective actions.

(b) Whenever practicable, the agency may provide affected industry an opportunity to comment on the critiques.

(c) Acquisition organizations shall consider user critiques and take appropriate action on bona fide complaints and suggestions.

10.010 Acquiring used or reconditioned material, former Government surplus property, and residual inventory.

(a) Generally, all contractually furnished supplies and their components, including former Government property, will be new, including recycled (see subpart 23.4 for policy on recovered materials). However, agencies may acquire used or reconditioned material, former Government surplus property, or residual inventory conforming to the solicitation's requirements, if the contracting officer determines that it is acceptable. If such a determination is made, the solicitation shall clearly identify the supplies or their components that need not be new, along with the necessary details on their acceptability. Offerors wishing to provide such used or reconditioned material, former Government surplus property, or residual inventory shall do so in accordance with the clause at 52.210–5, or the provision at 52.210–6, as appropriate.

10.011 Solicitation provisions and contract clauses.

(a) If it is not feasible to furnish specifications or related documents with the solicitation, because the documents are so voluminous that distribution is impracticable, there are a limited number of copies available, the contracting officer is not in possession of complete sets of documents, the documents are classified, or for some other valid reason, the contracting officer shall—

(1) Insert the provision at 52.210–1, Availability of Specifications, Standards, and Commercial Item Descriptions Listed in the Index of Federal Specifications, Standards and Commercial Item Descriptions, in solicitations that cite documents listed in the Index that are not furnished with the solicitation;

(2) Insert the provision at 52.210–2, Availability of Specifications and Standards Listed in the DOD Index of Specifications and Standards (DODISS) and Data Item Descriptions Listed in DOD 5010.12–L, in solicitations that cite documents listed in the DODISS, or cite data item descriptions listed in DOD 5010.12–L, Acquisition Management Systems and Data Requirements Control List, that are not furnished with the solicitation;

(3) Insert a provision substantially the same as the provision at 52.210–3, Availability of Specifications and Standards Not Listed in the Index of Federal Specifications, Standards and Commercial Item Descriptions or the DOD Index of Specifications and Standards; Data Item Descriptions Not Listed in DOD 5010.12–L; and Plans, Drawings and Other Pertinent Documents, in solicitations that cite documents that are not indexed, are not furnished with the solicitation, but may be obtained from a designated source; and

(4) Insert the provision at 52.210–4, Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents, in solicitations that cite documents that are not indexed, are not furnished with the solicitation, but are available for examination at a specified location.

(b) The contracting officer shall insert the clause at 52.210–5, New Material, in solicitations and contracts for supplies unless, in the judgment of the contracting officer, the clause would serve no useful purpose.

(c) The contracting officer shall insert the provision at 52.210–6, Listing of Used or Reconditioned Material, Residual Inventory, in Former Government Surplus Property, in solicitations for supplies, unless, in the judgment of the contracting officer, the provision would serve no useful purpose.

(d) The contracting officer shall insert the clause at 52.210–7, Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property, in solicitations and contracts for supplies, unless, in the judgment of the contracting officer, the clause would serve no useful purpose.

(e) The contracting officer shall insert the provision at 52.210–8, Brand Name or Equal, in solicitations for supplies, if a brand name or equal description is included.

(f) The contracting officer shall insert the provision at 52.210–9, Surplus Material—Certification and Information, in solicitations for supplies, when the provision at 52.210–6 and the clause at 52.210–7 are used.

(g) The contracting officer may insert the provision at 52.210–10, Superseding Part Numbers and Superseding Parts, in solicitations for supplies citing items identified by part number.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Sections 52.210–1 through 52.210–4 are revised to read as follows:

52.210–1 Availability of Specifications Standards, and Commercial Item Descriptions Listed in the Index of Federal Specifications, Standards and Commercial Item Descriptions.

As prescribed in 10.011(a)(1), insert the following provision:

Availability of Specifications Standards, and Commercial Item Descriptions Listed in the Index of Federal Specifications, Standards and Commercial Item Descriptions (Date)

(a) A single copy of each specification cited in this solicitation is available without charge from the GSA Specification Unit, 7th & D Sts., SW., Washington, DC 20407 (Tel. 202–708–9205 or 708–7140), or from any of the General Services Administration Business Service Centers which are located in Boston, MA; New York, NY; Philadelphia, PA; Atlanta, GA; Chicago, IL; Kansas City, MO; Ft. Worth, TX; San Francisco, CA; Los Angeles, CA; and Auburn, WA. Additional copies may be purchased from the GSA Specifications Unit in Washington, DC. Requesters should allow approximately 2 weeks after the date of their request for the documents to be mailed; however, the Government will not be responsible for any failure to process requests within that time period.

(b) Voluntary standards, which are not available to offerors and contractors from Government sources, may be obtained from the organization responsible for their preparation, maintenance or publication.

(c) The Index of Federal Specifications, Standards and Commercial Item Descriptions may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(End of Provision)

52.210–2 Availability of Specifications and Standards Listed in the DOD Index of Specifications and Standards (DODISS) and Data Item Descriptions Listed in DOD 5010.12–L

As prescribed in 10.011(a)(2), insert the following provision:

Availability of Specifications and Standards Listed in the DOD Index of Specifications and Standards (DODISS) and Data Item Descriptions Listed in DOD 5010.12–L (Date)

(a) Requests for copies of specifications or data item descriptions cited in this solicitation may be submitted by Telephone Order Entry System (TOES), mail, or facsimile. All requests should include customer number, or Contractor and Government Entity (CAGE) Code; complete mailing address, including any "mark for" information required; specification or data item description number, date, and applicable amendment(s); solicitation or contract number; and quantity (up to 5). For first orders from Contractors that do not have a CAGE Code, a customer number will be

assigned for future orders. Requesters should allow approximately 2 weeks after the date of their request for the documents to be mailed; however, the Government will not be responsible for any failure to process requests within that time period.

(1) Telephone Order Entry System (TOES) number is (215) 697-1187. To use TOES, you must first obtain a customer number. If you have already used the Print On Demand System (PODS), a customer number was assigned and is shown on the shipping invoice or the status letter. For urgent requests, customer numbers may be obtained from the Customer Assistance Desk, (215) 697-2667. When placing an order utilizing TOES, you must use a touch tone telephone. Since the telephone does not have the letters "Q" or "Z", TOES allows you to replace the letter "Q" with the number "7" and the letter "Z" with the number "9".

(2) Written requests may be mailed to: Standardization Document, Order Desk, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094.

(3) Facsimile Number is (215) 697-2978

(4) Customer service telephones are available to assist with special inquiries about the services available or status on orders previously placed. For inquiries, the telephone number is (215) 697-2667. Orders will not be accepted on these lines.

(b) The pamphlet, "A Guide to Private Industry", provides additional information about the standardization document program. For a copy, call (215) 697-2179, or write to the Standardization Document Order Desk at the above address.

(c) Copies of the DODISS and the Acquisition Management Systems and Data Requirements Control List, DOD 5010.12-L, are available on a subscription basis. Call (215) 697-2569, or write to the subscription desk, Code NPA, 700 Robbins Avenue, Philadelphia, PA 19111-5094 for additional information.

(d) Voluntary standards, which are not available to offerors and contractors from Government sources, may be obtained from the organization responsible for their preparation, maintenance, or publication.

(End of provision)

52.210-3 Availability of Specifications and Standards Not Listed in the Index of Federal Specifications, Standards and Commercial Item Descriptions or the DOD Index of Specifications and Standards; Data Item Descriptions Not Listed in DOD 5020.12-L; and Plans, Drawings, and Other Pertinent Documents.

As prescribed in 10.011(a)(3), insert a provision substantially the same as the following:

Availability of Specifications and Standards Not Listed In the Index of Federal Specifications, Standards and Commercial Item Descriptions or the DOD Index of Specifications and Standards; Data Item Descriptions Not Listed in DOD 5020.12-L; and Plans, Drawings, and Other Pertinent Documents (Date)

The specifications, standards, plans, drawings, data item descriptions, and other pertinent documents cited in this solicitation may be obtained by submitting a request to the solicitation issuing office, unless otherwise provided below—

(Activity) _____
(Complete Address) _____
_____
_____
(Telephone Number) _____
(Person to be contacted) _____

The request should identify the solicitation number, and the date, title, and number of the specification, standard, plan, drawing, or other pertinent document requested, exactly as cited in the solicitation.

(End of provision)

52.210-4 Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents.

As prescribed in 10.011(a)(4), insert the following provision:

Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, And Other Pertinent Documents (Date)

The specifications, standards, plans, drawings, data item descriptions, and other pertinent documents cited in this solicitation are not available for distribution. However, they may be examined at the following location(s):

(Activity) _____
(Complete Address) _____
_____
_____
(Telephone Number) _____
(Person to be contacted) _____
(Time(s) for viewing) _____
(End of provision)

5. Sections 52.210-5 through 52.210-7 are amended by revising the introductory paragraph of each section to read as follows:

52.210-5 New Material.

As prescribed in 10.011(b), insert the following clause:

* * * * *

52.210-6 Listing of Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property.

As prescribed in 10.011(c), insert the following provision:

* * * * *

52.210-7 Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property.

As prescribed in 10.011(d), insert the following clause:

* * * * *

6. Sections 52.210-8 through 52.210-10 are added to read as follows:

52.210-8 Brand Name or Equal.

As prescribed in 10.011(e), insert the following provision:

Brand Name or Equal (Date)

(a) As used in this provision, the term "brand name" means the identification of a product by its brand name and model or part number by which the product is offered for sale.

(b) If items called for by this solicitation have been identified in the Schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Offers of "equal" products, including products of the brand name manufacturer other than the one described by brand name, will be considered for award if such products are clearly identified in the offers and are determined by the Government to meet fully the salient characteristics stated in the solicitation.

(c) Unless the offeror clearly indicates in the offer that the product being offered is an "equal" product, the offer shall be considered as offering a brand name product referenced in the solicitation.

(d)(1) If the offeror proposes to furnish an "equal" product, the brand name of the product to be furnished shall be inserted in the space provided in the solicitation, or such product shall be otherwise clearly identified in the offer. The evaluation of offers and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in the offer, as well as other information reasonably available to the Contracting Officer. Offerors are cautioned that the Contracting Officer is not responsible for locating or securing any information which is not identified in the offer and reasonably available to the Contracting Officer. Accordingly, to ensure that sufficient information is available, the offeror must furnish as a part of the offer all descriptive material (such as illustrations, drawings, or other information) necessary for the Contracting Officer to (i) determine whether the product offered meets the salient characteristics stated in the solicitation and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to acquire by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the Contracting Officer.

(2) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, the offeror shall (i) include in the offer a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) In sealed bidding, modifications proposed after bid opening to make a produce conform to a brand name product referenced in the Invitation for Bids will not be considered.

(End of provision)

Alternate I (DATE). Add the following paragraph (e) to the basic provision if component parts of an end item are described by a "brand name or equal" description and

the Contracting Officer determines that application of the basic provision to such component parts would be impracticable, but the provision is included for other reasons:

(e) This provision does not apply to the following components parts: *[The Contracting Officer shall list the component parts to which the clause does not apply.]*

Alternate II (DATE). Add the following paragraph (e) to the basic provision if the Contracting Officer determines that the basic provision should apply to only certain component parts:

(e) This provision applies to the following component parts: *[The Contracting Officer shall list the component parts to which the provision applies.]*

52.210-9 Surplus Material—Certification and Information.

As prescribed in 10.011(f), insert the following provision:

Surplus Material—Certification and Information (Date)

(a) Complete this provision only if you are offering surplus material.

(b) With respect to the surplus supplies being offered, the offeror certifies that—

(1) the supplies are new, unused, and were manufactured by—

_____

_____

(insert name and address)

(2) the supplies were purchased by the offeror from the Government selling agency or other source identified below. If the supplies were purchased from the Government by a source other than the offeror, identify that source; (If complete information is not available, attach an explanation as to when, where, and how the property was acquired:)

Selling agency source	Contract date (month, year)	Contract No. (if available)
_____	_____	_____
_____	_____	_____
_____	_____	_____

(3) the supplies (i) ☐ have ☐ have not been altered, modified, or refurbished; (ii) ☐ have ☐ have not been 100 percent inspected for correct part number and for absence of corrosion or any defects; or (iii) and ☐ do ☐ do not contain cure dated components or shelf-life items; and

(4) the supplies ☐ will ☐ will not be reconditioned, refurbished, or altered. If the supplies contain cure dated or shelf-life items, identify components to be replaced and the applicable rebuild standard. If the supplies are to be reconditioned or altered, attach a complete description of the work to be done.

(c) For items identified by manufacturer's code and part number, furnish the following information:

(1) Identify the applicable specification/drawing in possession of the offeror—

Specification/ drawing No.	Revision (if any)	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____

Note: (The offeror is responsible for furnishing supplies conforming to the requirement of the product description, even though the applicable specifications/drawings are not available.)

(2) The offeror ☐ has ☐ does not have the supplies. If the offerors do not have the supplies, attach an explanation as to how the offered quantities will be secured, their present location, the basis for the certification in paragraph (a)(1) of this clause, and where a preaward survey of the supplier can be performed.

(3) If items have data plates attached, furnish a copy of information contained thereon.

(4) If the items are marked with serial/part numbers, indicate these numbers:

_____

_____

If the items are not marked with serial/part number, the offeror must be able to identify the items by manufacturer's drawing or other data acceptable to the Government inspector.

(5) The offered item(s) ☐ have ☐ have not been previously packaged and ☐ are ☐ are not in their original package. If the original package is being used, state here or furnish a copy of all markings and data, including contract number, cited on the package:

_____

_____

(d) The offeror agrees that in the event of award and notwithstanding the provisions of this solicitation, inspection and acceptance of the surplus supplies will be performed at origin or destination subject to all applicable provisions for origin or destination inspection.

(e) Failure to provide the information requested by this provision may require rejection of the offer.

(End of provision)

52.210-10 Superseding Part Numbers and Superseding Parts.

As prescribed in 10.011(g), insert the following provision:

Superseding Part Numbers and Superseding Parts (Date)

(a) If any part number shown herein is obsolete, has been or is being changed, or is considered by the manufacturer to be incorrect for any reason, provide the superseding part number in your offer.

(b) If the part has changed, provide the superseding part number in your offer and explanatory information setting forth the differences between the part specified in this solicitation and the part you are offering. Also, provide two copies of each of the following, as applicable:

(1) Installation drawing.

(2) Assembly drawing.

(3) Manufacturer's test report.

(4) Complete set of performance data.

(End of provision)

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federal register

Thursday
July 11, 1991

Part VII

The President

Proclamation 6313—To Modify Temporarily the Import Quota on Peanuts

Federal Register
Vol. 56, No. 133
Thursday, July 11, 1991

Presidential Documents

Title 3—

The President

Proclamation 6313 of July 9, 1991

To Modify Temporarily the Import Quota on Peanuts

By the President of the United States of America

A Proclamation

1. Heading 9904.20.20 of the Harmonized Tariff Schedule of the United States (HTS) provides that no more than 775,189 kilograms of peanuts described therein may be entered into the United States during any 12-month period beginning August 1 in any year. This limitation was proclaimed by the President in Proclamation No. 3019 of June 8, 1953 (18 FR 3361), and was modified in subsequent proclamations, under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended (the 1933 Act) (7 U.S.C. 624).

2. On the basis of the investigation and report of the United States International Trade Commission, which conducted an investigation into this matter pursuant to section 22 of the 1933 Act, I find and declare that changed circumstances require a quantity of 100 million pounds (45,359,702 kilograms) of peanuts to be permitted entry during the quota period ending July 31, 1991, as hereinafter proclaimed, to carry out the purposes of section 22. I also find and declare that the entry of such quantities of peanuts, under the conditions hereinafter proclaimed, will not render or tend to render ineffective, or materially interfere with, the price support program of the Department of Agriculture with respect to peanuts.

3. Section 604 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2483), requires the President, from time to time, as appropriate, to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions taken thereunder, including the removal, modification, continuance, or imposition of any import restriction.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to section 22 of the 1933 Act and section 604 of the Trade Act, do hereby proclaim:

(1) In order to modify temporarily the import quota on peanuts of the type described in HTS heading 9904.20.20 and to facilitate its administration:

(a) Heading 9904.20.20 of the HTS is modified by striking out the quota quantity "775,189" and by inserting in lieu thereof "45,359,702"; and

(b) The following new note 5 is added to the U.S. Notes to subchapter IV of chapter 99 of the HTS:

"5. *Peanuts.*—

No peanuts provided for in heading 9904.20.20, other than peanuts blanched or otherwise prepared or preserved, shall be entered, or withdrawn from warehouse for consumption, through July 31, 1991, unless the following certificates (or a bond for their production) for such peanuts are filed with the appropriate customs officer at the time of such entry or withdrawal:

(a) A certificate issued by the U.S. Department of Agriculture attesting to the fact that the peanuts meet the requirements as to quality, size, and wholesomeness that are specified in the Outgoing Quality Regulation—1990 Crop Peanuts (7 CFR 998.200), and

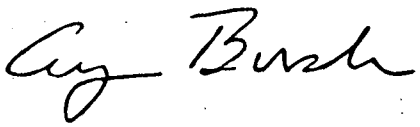
(b) A certificate issued by a U.S. Department of Agriculture laboratory or a designated laboratory approved by the Peanut Administrative Committee attesting to the fact that the peanuts tested 'negative' as to aflatoxin.".

(2) In order to restore the previous quota quantity for such peanuts, HTS heading 9904.20.20 is modified by striking out the quota quantity "45,359,700" and by inserting in lieu thereof "775,189", and U.S. note 5 to subchapter IV of chapter 99 of the HTS is deleted.

(3)(a) The modifications made by paragraph (1) of this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of publication of this proclamation in the **Federal Register.**

(b) The modifications made by paragraph (2) of this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after August 1, 1991.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of July, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



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Editorial note: For the White House statement on the import quota, see the *Weekly Compilation of Presidential Documents* (vol. 27, no. 28.)

Reader Aids

Federal Register

Vol. 56, No. 133

Thursday, July 11, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

29889-30306 1
30307-30492 2
30483-30678 3
30679-30856 5
30857-31042 8
31043-31304 9
31305-31532 10
31533-31854 11

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Memorandums:
June 25, 1991 31041

Presidential Determinations:
No. 91-41 of June 19, 1991 31303
No. 91-42 of June 21, 1991 30483
No. 91-43 of June 24, 1991 31037
No. 91-44 of June 24, 1991 31039

Proclamations:
3019 (See Proc. 6313)
6310 30303
6311 30307
6312 30855
6313 31853

Executive Orders:
12473 (See EO 12767) 30283
12484 (See EO 12767) 30283
12550 (See EO 12767) 30283
12586 (See EO 12767) 30283
12700 (Amended by EO 12768) 30301
12708 (See EO 12767) 30283
12767 30283
12768 30301

5 CFR

532 31305

Proposed Rules:
842 30701
843 30701

7 CFR

29 31533
58 30485
220 30309
301 29889
458 30489
947 31534
1205 31284
1220 31043
1530 30857
1942 31535
1944 ..... 30311, 30494

Proposed Rules:
28 30618
210 30339
235 30339
245 30339
800 ..... 29907, 30342
810 ..... 29907, 30342
910 ..... 30878, 30879
916 30881
917 30881
1205 31209
1211 30517
1421 29912
1942 31548
1943 30347
1951 30347
1980 30347
3400 30254

8 CFR

103 31060
214 31305
245a 31060
251 31305
258 31305
338 30679

Proposed Rules:
204 30703
214 31553

10 CFR

50 31306
52 31472
71 31472
170 31472
171 31472

Proposed Rules:
707 30644

12 CFR

312 29893
563 31061
584 31061
1618 30836

13 CFR

107 ..... 30850, 31774

14 CFR

39 ..... 30313-30316, 30319-30324, 30680-30683, 31070-31072, 31324-31326
71 ..... 30684, 30685, 31689
73 30685
95 30686
97 30317
129 30122
158 30867
1214 31073

Proposed Rules:
39 ..... 30350, 30351
71 ..... 30353, 30354, 30618, 30883
73 30355
91 30618
207 31092
208 31092
212 31092
294 31092

298 ... 31092
380 ... 31092

15 CFR

8a ... 29896
29a ... 29896
29b ... 29896

16 CFR

305 ... 30494
1000 ... 30495

Proposed Rules:

1500 ... 31348
1700 ... 30355

17 CFR

200 ... 30036
201 ... 30036
210 ... 30036
229 ... 30036
230 ... 30036
239 ... 30036
240 ... 30036
249 ... 30036
260 ... 30036
269 ... 30036

Proposed Rules:

240 ... 31349

18 CFR

4 ... 31327
284 ... 30692
401 ... 30500

19 CFR

Proposed Rules:

24 ... 31576

20 CFR

Proposed Rules:

320 ... 30714
404 ... 31266
416 ... 30884

21 CFR

520 ... 31075
522 ... 31075
524 ... 31075
558 ... 29896

Proposed Rules:

101 ... 30452, 30468
102 ... 30452

22 CFR

40 ... 30422
41 ... 30422
42 ... 30422
43 ... 30422
44 ... 30422

24 CFR

50 ... 30325
58 ... 30325
86 ... 30430

Proposed Rules:

961 ... 30176

26 CFR

1 ... 31689

Proposed Rules:

1 ... 30718-30721, 31349, 31350
20 ... 31362
25 ... 31362
48 ... 30359
301 ... 31362

27 CFR

4 ... 31076
5 ... 31076
6 ... 31076
7 ... 31076
9 ... 31076
19 ... 31076
24 ... 31076
53 ... 31076
70 ... 31076
252 ... 31076

Proposed Rules:

4 ... 29913

28 CFR

0 ... 30693
2 ... 30867-30872
500 ... 31350
503 ... 31350
524 ... 30676
541 ... 31350
545 ... 31350
546 ... 31350

Proposed Rules:

75 ... 29914

29 CFR

500 ... 30326
1600 ... 30502

30 CFR

901 ... 30502

Proposed Rules:

913 ... 31577
914 ... 31093
917 ... 30722
920 ... 30517
963 ... 31094

32 CFR

Ch. I ... 31085, 31537
352 ... 31537
362 ... 31540
861 ... 30327

Proposed Rules:

199 ... 30360, 30887
228 ... 30365

33 CFR

1 ... 30242
100 ... 29897-29899, 30507, 31085
117 ... 30332
165 ... 30334, 30507-30509, 31086

Proposed Rules:

100 ... 29916

34 CFR

Proposed Rules:

361 ... 30620

35 CFR

Proposed Rules:

101 ... 31362

36 CFR

7 ... 30694

37 CFR

Proposed Rules:

201 ... 31580

38 CFR

21 ... 31331
36 ... 29899

Proposed Rules:

3 ... 30893

39 CFR

Proposed Rules:

265 ... 31363

40 CFR

52 ... 30335
82 ... 30873
141 ... 30264
142 ... 30264
143 ... 30264
180 ... 29900
261 ... 30192
262 ... 30192
264 ... 30192, 30200
265 ... 30192, 30200
270 ... 30192
271 ... 30336
721 ... 29902, 29903

Proposed Rules:

28 ... 29996
52 ... 29918, 31364
80 ... 29919, 31148-31176
86 ... 30228
136 ... 30519
260 ... 30519
261 ... 30519
264 ... 30201
265 ... 30201
280 ... 30201
761 ... 30201

42 CFR

405 ... 31332
442 ... 30696

Proposed Rules:

417 ... 30723, 31597

43 CFR

Proposed Rules:

11 ... 30367
415 ... 31601
3160 ... 29920
3800 ... 31602
3810 ... 30367
3820 ... 30367
4700 ... 30372

44 CFR

64 ... 31337-31339
302 ... 29903

46 CFR

16 ... 31030
221 ... 30654

Proposed Rules:

586 ... 30373

47 CFR

73 ... 30337, 30510-30512, 31087, 31545, 31546
94 ... 30698

Proposed Rules:

Ch. I ... 30373
2 ... 31095
73 ... 30374, 30375, 30524-30526
76 ... 30526, 30726
90 ... 31097

48 CFR

232 ... 31341
252 ... 31341
519 ... 30618

Proposed Rules:

10 ... 31844
28 ... 31278
52 ... 31278, 31844

49 CFR

1 ... 31343
40 ... 30512
190 ... 31087
192 ... 31087
193 ... 31087
195 ... 31087
199 ... 31087
1039 ... 31546
1051 ... 30873
1220 ... 30873

Proposed Rules:

571 ... 30528

50 CFR

630 ... 29905, 31347
641 ... 30513
650 ... 30514
663 ... 30338
672 ... 30874, 31547
675 ... 30515, 30699, 30874
685 ... 31689

Proposed Rules:

642 ... 29920
646 ... 29922
651 ... 29934
680 ... 30893
685 ... 30376

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 8, 1991