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Monday
November 4, 1991

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

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THE FEDERAL REGISTER

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.

WASHINGTON, DC

WHEN: November 25, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202-523-5240.
DIRECTIONS: North on 11th Street from Metro Center to southwest corner of 11th and L Streets

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Presidential Documents

Title 3—

The President

Executive Order 12780 of October 31, 1991

Federal Agency Recycling and the Council on Federal Recycling and Procurement Policy

WHEREAS, this Administration is determined to secure for future generations of Americans their rightful share of our Nation's natural resources, as well as a clean and healthful environment in which to enjoy them; and

WHEREAS, two goals of this Administration's environmental policy, cost-effective pollution prevention and the conservation of natural resources, can be significantly advanced by reducing waste and recycling the resources used by this generation of Americans; and

WHEREAS, the Federal Government, as one of the Nation's largest generators of solid waste, is able through cost-effective waste reduction and recycling resources to conserve local government disposal capacity; and

WHEREAS, the Federal Government, as the Nation's largest single consumer, is able through affirmative procurement practices to encourage the development of economically efficient markets for products manufactured with recycled materials;

NOW, THEREFORE, I, GEORGE BUSH, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Solid Waste Disposal Act, Public Law 89–272, 79 Stat. 997, as amended by the Resource Conservation and Recovery Act ("RCRA"), Public Law 94–580, 90 Stat. 2795 (1976), hereby order as follows:

PART 1—PREAMBLE

Section 101. The purpose of this Executive order is to:

(a) Require that Federal agencies promote cost-effective waste reduction and recycling of reusable materials from wastes generated by Federal Government activities.

(b) Encourage economically efficient market demand for designated items produced using recovered materials by directing the immediate implementation of cost-effective Federal procurement preference programs favoring the purchase of such items.

(c) Provide a forum for the development and study of policy options and procurement practices that will promote environmentally sound and economically efficient waste reduction and recycling of our Nation's resources.

(d) Integrate cost-effective waste reduction and recycling programs into all Federal agency waste management programs in order to assist in addressing the Nation's solid waste disposal problems.

(e) Establish Federal Government leadership in addressing the need for efficient State and local solid waste management through implementation of environmentally sound and economically efficient recycling.

Sec. 102. Consistent with section 6002(c)(1) of RCRA (42 U.S.C. 6962(c)(1)), activities and operations of the executive branch shall be conducted in an environmentally responsible manner, and waste reduction and recycling opportunities shall be utilized to the maximum extent practicable, consistent with economic efficiency.

Sec. 103. Consistent with section 6002(c)(2) of RCRA (42 U.S.C. 6962(c)(2)), agencies that generate energy from fossil fuel in systems that have the

technical capacity of using energy or fuels derived from solid waste as a primary or supplementary fuel shall use such capability to the maximum extent practicable.

PART 2—DEFINITIONS

For purposes of this order:

Sec. 201. "Federal agency" means any department, agency, or other instrumentality of the executive branch.

Sec. 202. "Procurement" and "acquisition" are used interchangeably to refer to the processes through which Federal agencies purchase products.

Sec. 203. "Recovered materials" is used as defined in section 1004(19) and 6002(h) of the Resource Conservation and Recovery Act (42 U.S.C. 6903(19) and 6962(h)), as amended.

Sec. 204. "Recycling" means the diversion of materials from the solid waste stream and the beneficial use of such materials. Recycling is further defined as the result of a series of activities by which materials that would become or otherwise remain waste, are diverted from the solid waste stream by collection, separation and processing and are used as raw materials in the manufacture of goods sold or distributed in commerce or the reuse of such materials as substitutes for goods made of virgin materials.

Sec. 205. "Waste reduction" means any change in a process, operation, or activity that results in the economically efficient reduction in waste material per unit of production without reducing the value output of the process, operation, or activity, taking into account the health and environmental consequences of such change.

PART 3—SOLID WASTE RECYCLING PROGRAMS

Sec. 301. *Recycling Programs.* Each Federal agency that has not already done so shall initiate a program to promote cost-effective waste reduction and recycling of reusable materials in all of its operations and facilities. These programs shall foster (a) practices that reduce waste generation, and (b) the recycling of recyclable materials such as paper, plastic, metals, glass, used oil, lead acid batteries, and tires and the composting of organic materials such as yard waste. The recycling programs implemented pursuant to this section must be compatible with applicable State and local recycling requirements.

Sec. 302. *Contractor Operated Facilities.* Every contract that provides for contractor operation of a Government-owned or leased facility, awarded more than 210 days after the effective date of this Executive order, shall include provisions that obligate the contractor to comply with the requirements of this Part as fully as though the contractor were a Federal agency.

PART 4—VOLUNTARY STANDARDS

Sec. 401. *Amendment of OMB Circular No. A-119.* The Director of the Office of Management and Budget ("OMB") shall amend, as appropriate, OMB Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards," to encourage Federal agencies to participate in the development of environmentally sound and economically efficient standards and to encourage Federal agency use of such standards.

PART 5—PROCUREMENT OF RECOVERED MATERIALS

Sec. 501. *Adoption of Affirmative Procurement Programs.* Within 180 days after the effective date of this order, each Federal agency shall provide a report to the Administrator of the Environmental Protection Agency regarding the Agency's adoption of an affirmative procurement program; such programs are required by section 6002(i) of RCRA (42 U.S.C. 6962(i)). Within 1 year of the issuance of this order, the Administrator of the Environmental Protection Agency shall report to the President regarding the compliance of each Federal agency with this requirement.

Sec. 502. *Annual Review of Affirmative Procurement Programs.* In accordance with section 6002(i) of RCRA (42 U.S.C. 6962(i)), each Federal agency shall review annually the effectiveness of its affirmative procurement program and shall provide a report regarding its findings to the Environmental Protection Agency and to the Office of Federal Procurement Policy, beginning with a report covering fiscal year 1992. Such report shall be transmitted by December 15 each year. Reports required by this section shall be made available to the public.

PART 6—RECYCLING COORDINATORS AND THE COUNCIL ON FEDERAL RECYCLING AND PROCUREMENT POLICY

Sec. 601. *Federal Recycling Coordinator.* Within 90 days after the effective date of this order, the Administrator of the Environmental Protection Agency shall designate a senior official of that Agency to serve as the Federal Recycling Coordinator. The Federal Recycling Coordinator shall review and report annually to OMB, at the time of agency budget submissions, the actions taken by the agencies to comply with the requirements of this order.

Sec. 602. *Designation of Recycling Coordinators.* Within 90 days after the effective date of this order, the head of each Federal agency shall designate an agency employee to serve as Agency Recycling Coordinator. The Agency Recycling Coordinator shall be responsible for:

(a) coordinating the development of an effective agency waste reduction and recycling program that complies with the comprehensive implementation plan developed by the Council on Federal Recycling and Procurement Policy;

(b) coordinating agency action to develop benefits, costs, and savings data measuring the effectiveness of the agency program; and

(c) coordinating the development of agency reports required by this Executive order and providing copies of such reports to the Environmental Protection Agency.

Sec. 603. *The Council on Federal Recycling and Procurement Policy.* (a) A Council on Federal Recycling and Procurement Policy is hereby established. It shall comprise the Federal Recycling Coordinator, the Chairman of the Council on Environmental Quality, the Administrator of the Office of Federal Procurement Policy, and the Agency Recycling Coordinator and the Procurement Executive of each of the following agencies: the Environmental Protection Agency, the Department of Defense, the General Services Administration, the National Aeronautics and Space Administration, the Department of Energy, the Department of Commerce, and the Department of the Interior. The Federal Recycling Coordinator shall serve as Chair of the Council.

(b) Duties. The Council on Federal Recycling and Procurement Policy shall:

(1) identify and recommend, to OMB, initiatives that will promote the purposes of this order, including:

(A) the development of appropriate incentives to encourage the economically efficient acquisition by the Federal Government of products that reduce waste and of products produced with recycled materials;

(B) the development of appropriate incentives to encourage active participation in economically efficient Federal waste reduction and recycling programs; and

(C) the development of guidelines for cost-effective waste reduction and recycling activities by Federal agencies;

(2) review Federal agency specifications and standards and recommend changes that will enhance Federal procurement of products made from recycled and recyclable materials, taking into account the costs and the performance requirements of each agency:

(3) collect and disseminate Federal agencies' information concerning methods to reduce wastes, types of materials that can be recycled, the costs and savings associated with recycling, and the current market sources and

prices of products that reduce waste and of products produced with recycled materials;

(4) assist the development of cost-effective waste reduction and recycling programs pursuant to this order by developing guidelines for agency waste reduction and recycling programs and by identifying long-range goals for Federal waste reduction and recycling programs;

(5) provide meaningful data to measure the effectiveness and progress of Federal waste reduction and recycling programs;

(6) provide guidance and assistance to the Agency Recycling Coordinators in setting up and reporting on agency programs; and

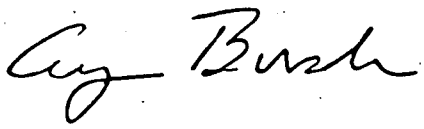
(7) review Federal agency compliance with section 103 of this order.

PART 7—LIMITATION

Sec. 701. This order is intended only to improve the internal management of the executive branch and shall not be interpreted to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers, or any other person.

Sec. 702. Section 502 and Part 6 of this order shall be effective for 5 years only, beginning on the effective date of this order.

Sec. 703. This order shall be effective immediately.



THE WHITE HOUSE,
October 31, 1991.

[FR Doc 91-26646
Filed 10-31-91; 12:42 pm]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 802

Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems

AGENCY: Federal Grain Inspection Service, USDA
ACTION: Final rule.

SUMMARY: This final rule revises the regulations under the United States Grain Standards Act, as amended, entitled Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems. It incorporates by reference the applicable requirements of the National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 1990 edition (Handbook 44) and all the requirements of NIST Handbook 105-1, "Specifications and Tolerances for Reference Standard Weights and Measures," 1990 revision (Handbook 105-1). Currently, the 1988 Edition of Handbook 44 and the 1972 Edition of Handbook 105-1 are incorporated into part 802 by reference.

EFFECTIVE DATE: December 4, 1991.

FOR FURTHER INFORMATION CONTACT: George Wollam, Federal Grain Inspection Service, USDA, room 0619 South Building, P.O. Box 96454, Washington, DC, 20090-6454, telephone (202) 382-0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, Federal Grain Inspection Service (FGIS), has determined that this final rule will not have a significant economic impact on a substantial number of small entities because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Background

In the March 25, 1991, **Federal Register** (56 FR 12359), FGIS proposed to revise part 802 of the regulations under the United States Grain Standards Act, as amended, entitled Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems, to incorporate by reference the applicable requirements of the National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 1990 edition (Handbook 44) and all the requirements of NIST Handbook 105-1, "Specifications and Tolerances for Reference Standard Weights and Measures," 1990 revision (Handbook 105-1). Currently, the 1988 Edition of Handbook 44 and the 1972 Edition of Handbook 105-1 are incorporated into Part 802 of the regulations by reference. Interested persons were invited to submit written comments on the proposed revision.

One comment was received from a grain industry association. The commenter supported the proposed rule, but requested clarification on FGIS's interpretation of the Handbook 105-1 provision that fabricated and laminated weight designs are no longer acceptable.

FGIS interprets this provision to mean that no new fabricated and laminated weights will be acceptable for commercial service from the effective date of this final rule. FGIS realizes that it would be unreasonable and impractical to require existing fabricated or laminated test weights to be removed from commercial service if the weights are and remain stable. However, test weights that are found to be unstable and are subsequently adjusted and recalibrated must be taken out of service within one year from the determination that the test weights are unstable.

Final Action

Accordingly, FGIS is revising § 802.0 of the regulations to incorporate by reference the applicable requirements of the 1990 edition of Handbook 44 and all of the requirements of the 1990 revision of Handbook 105-1 as stated in the March 25, 1991, proposed rule.

List of Subjects in 7 CFR Part 802

Administrative practice and procedure, Export, Grain, Incorporation by reference.

For reasons set out in the preamble, 7 CFR part 802 is amended as follows:

PART 802—OFFICIAL PERFORMANCE AND PROCEDURAL REQUIREMENTS FOR GRAIN WEIGHING EQUIPMENT AND RELATED GRAIN HANDLING SYSTEMS

1. The authority citation for Part 802 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 802.0 is revised to read as follows:

§ 802.0 Applicability.

(a) The requirements set forth in this part 802 describe certain specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X and Class Y weighing services and inspection services under the Act. All scales used for official grain weight and inspection certification shall meet applicable requirements contained in the FGIS Weighing Handbook, the General Code, the Scales Code, the Automatic Bulk Weighing Systems Code, and the Weights Code of the 1990 edition of National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" (Handbook 44); and NIST Handbook 105-1, (1990 Edition), "Specifications and Tolerances for Reference Standard Weights and

Measures" (Handbook 105-1). Pursuant to the provisions of 5 U.S.C. 552(a), with the expection of the Handbook 44 requirements listed in paragraph (b), the materials in Handbook 44 and 105-1 are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. The NIST Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20403. They are also available for inspection at the Office of the Federal Register, room 8401, 1100 "L" Street, NW., Washington, DC.

(b) The following Handbook 44 requirements are not incorporated by reference:

Scales Code (2.20)

S.1.8	Computing scales.
S.2.3.1	Monorail scales equipped with digital indications.
N.1.3.6	Monorail scales.
N.3	Recommended minimum test weights and test loads.
N.4	Nominal capacity of prescription scales.
T.1.5	Prescription scales.
T.1.6	Jewelers' scales.
T.1.7	Dairy-product-test scales.
T.1.9	Railway track scales weighing in motion.
T.1.10	Materials test on customer-operated bulk-weighing systems for recycled materials.
T.2.3	Prescription scales.
T.2.4	Jewelers' scales.
T.2.5	Dairy-product-test scales.
T.N.3.6	In-motion weighing, other than monorail scales.
T.N.3.7	In-motion weighing, monorail scales.
T.N.3.8	Materials test on customer operated bulk-weighing systems for recycled materials.

Dated: October 9, 1991.

John C. Foltz,

Administrator.

[FR Doc. 91-26146 Filed 11-1-91; 8:45 am]

BILLING CODE 3410-EN-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270 and 274

[Rel. Nos. 33-6921, IC-18381, International Series Rel. No. 336; File No. S7-15-90]

Exception From the Definition of Investment Company for Foreign Banks and Foreign Insurance Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rules and form; amendments to rule; rescission of rules and form.

SUMMARY: The Commission is adopting a new rule, rule 3a-6 under the Investment Company Act of 1940 (the "Act") excepting foreign banks and foreign insurance companies from the definition of the term "investment company" for all purposes under the Act. The primary effect of the rule is to permit foreign banks and insurance companies, and related entities, to sell their securities in the United States without registering as investment companies. The Commission is also amending rule 3a-5 under the Act, adopting new rule 12d2-1 under the Act and new rule 489 and new Form F-N under the Securities Act of 1933, and is rescinding rules 6c-9 and 12d1-1 and Form N-6C9 under the Act. Rule 3a-6 is intended to place foreign banks and insurance companies selling their securities in the United States on a more equal footing with domestic banks and insurance companies in furtherance of the policies of national treatment and open United States financial markets.

EFFECTIVE DATE: November 4, 1991.

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SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting a new rule, rule 3a-6, under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*). The rule provides an exception from the definition of the term "investment company" in sections 3(a)(1) and 3(a)(3) of the Act (15 U.S.C. 80a-3(a)(1) and 80a-3(a)(3)) for foreign banks and foreign insurance companies meeting the conditions of the rule. The holding companies and finance subsidiaries of foreign banks and insurance companies will be excepted from the definition of the term "investment company" through the operation of rule 3a-1 (17 CFR 270.3a-1) and rule 3a-5 (17 CFR 270.3a-5) as amended. The rule changes being adopted make rules 12d1-1 (17 CFR 270.12d1-1) and 6c-9 (17 CFR 270.6c-9) no longer necessary, and the Commission is rescinding them. However, limits on investment by registered investment companies in foreign insurance companies contained in rule 12d1-1 will be retained in new rule 12d2-1. The Commission is amending rule 3a-5 so that finance subsidiaries of foreign banks and insurance companies owned or controlled by sovereign entities can use the rule. Finally the Commission is rescinding Form N-6C9 (17 CFR 274.304) and replacing it with a new Form F-N under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (the "1933 Act"), to be filed by foreign banks and insurance companies and certain of their holding companies and finance subsidiaries relying on rules 3a-1, 3a-5 or 3a-6 when making public offerings of securities in the United States; and is adopting new rule 489 under the 1933 Act, which requires the filing of Form F-N.

I. Background

The broad definition of the term "investment company" in sections 3(a)(1) and 3(a)(3) of the Act includes not only those organizations typically regarded as investment companies, but also banks and insurance companies. Section 3(c)(3) of the Act (15 U.S.C. 80a-3(c)(3)) specifically excludes "banks" and "insurance companies," as those terms are defined in the Act, from being deemed investment companies, but these exclusions apply only to United States banks and insurance companies.[1]

The Commission has long recognized a distinction between investment companies and foreign banks. Beginning in 1979, the Commission granted exemptions to a number of foreign banks under section 6(c) of the Act (15 U.S.C. 80a-6(c)), permitting them to sell their debt securities, directly or through finance subsidiaries, in the United States without registering as investment companies under the Act.[2] These exemptions became routine and in 1987 the Commission adopted rule 6c-9 under the Act to codify them.[3] The rule has permitted foreign banks and their finance subsidiaries to sell their debt securities and non-voting preferred stock without registering as investment companies under the Act. Since 1986, the Commission has granted individual exemptive orders under section 6(c) of the Act (15 U.S.C. 80a-6(c)) to permit foreign banks to sell their equity securities in the United States.[4] On

[1] Sections 2(a)(5) [15 U.S.C. 80a-2(a)(5)] and 2(a)(17) [15 U.S.C. 80a-2(a)(17)] under the Act. The Commission has taken the interpretive position that United States branches and agencies of foreign banks are banks under the Act for the limited purpose of issuing securities in the United States. Investment Company Act Rel. No. 17681 (Aug. 17, 1990) (55 FR 34550 (Aug. 23, 1990)).

[2] See Investment Company Act Rel. No. 17682 (Aug. 17, 1990) (55 FR 34569 (Aug. 23, 1990)) at n.10 ("Proposing Release").

[3] Investment Company Act Rel. No. 16093 (Oct. 29, 1987) (52 FR 42280 (Nov. 4, 1987)) ("Release 16093"). The rule was proposed in Investment Company Act Rel. No. 15314 (Sept. 17, 1986) (51 FR 34221 (Sept. 26, 1986)).

[4] Proposing Release, *supra* note 2, at n.14.

August 17, 1990, the Commission proposed to extend the scope of rule 6c-9 to provide an exemption from registration under the Act for foreign banks offering their equity securities in the United States (the "1990 Proposal").[5]

Foreign insurance companies have been accorded treatment similar to foreign banks by the Commission. The Commission has granted a number of individual exemptive orders under section 6(c) of the Act of foreign insurance companies contemplating both debt and equity offerings.[6] In the 1990 Proposal the Commission proposed to exempt foreign insurance companies and their finance subsidiaries from the registration requirements of the Act on generally the same basis as foreign banks and their finance subsidiaries.

Section 3(c)(6) of the 1940 Act (15 U.S.C. 80a-3(c)(6)) exempts United States bank and insurance holding companies from the Act. Section 3(c)(6) does not extend to bank and insurance holding companies primarily engaged in the business of banking or insurance through foreign bank or insurance company subsidiaries which themselves are investment companies under the Act. Because foreign bank and insurance holding companies generally do not operate as investment companies, in the 1990 Proposal the Commission also proposed to amend rule 6c-9 to expand the rule's exemption to include foreign bank and insurance company holding companies.[7]

II. Discussion

The Commission received comments from fifteen commenters on the proposed amendments to rule 6c-9.[8] Generally, the commenters favored their adoption, although many commenters suggested modifications. One of the matters upon which the Commission specifically requested comment was the advisability of a "definitional exception" of foreign banks and insurance companies from the provisions of the Act—that is, a rule specifically excepting foreign banks and insurance companies from the definition of the term "investment company." A number of commenters favored this type of rule instead of rule 6c-9 as proposed to be amended.

These comments have persuaded the Commission to adopt a new rule, rule 3a-6 under the Act, rather than to adopt amendments to rule 6c-9. Rule 6c-9 exempted foreign banks from the requirement to register under the Act. In contrast, rule 3a-6 excepts foreign banks and insurance companies from the definition of an "investment company" in sections 3(a)(1) and (3)(a)(3) of the Act, in effect, treats them as foreign operating (*i.e.*, non-investment) companies are treated under the Act.[9] The rule thus would adopt the general approach that the Act takes with regard to United States banks and insurance companies.[10] The Commission favors this approach because foreign banks and insurance companies do not operate as investment companies.

The adoption of rule 3a-6 will have several effects. First, the rule enables foreign banks and insurance companies to sell their securities in the United States without registering as investment companies. Second, adoption of rule 3a-6 allows the finance subsidiaries of foreign banks, insurance companies, and their holding companies to be exempt under rule 3a-5, the rule applicable to most other finance subsidiaries. Third, the rule permits foreign bank and insurance company holding companies to qualify for exemption under rule 3a-1 in the same manner as other holding companies. Finally, the effect of the rule is to eliminate the restrictions placed by section 12(d)(1)(A) of the Act (15 U.S.C. 80a-12(d)(1)(A)) on the acquisition of securities of registered investment companies by foreign banks and insurance companies. The impact of rule 3a-6 on various provisions of the Act and rules is discussed more fully below.

The "definitional approach" reflected in rule 3a-6 is a more comprehensive approach than the approach taken in the 1990 proposal. Rule 3a-6 will provide a simpler and more consistent regulatory structure under which foreign banks and insurance companies may offer their securities in the United States without being subject to the Act. The broad scope of the rule will eliminate the need for the individual exemptive applications that foreign banks and insurance companies have had to file with the Commission.[11] The use of current Commission rules to exempt foreign bank and insurance company holding companies and finance subsidiaries will provide these entities more equal treatment with their United States counterparts in like circumstances.

1. Foreign Banks

The term "foreign bank" employed in new rule 3a-6 is the same as that used in the proposed amendments to rule 6c-9. Thus, although rule 3a-6 operates differently from rule 6c-9, it covers the same group of banks.[12]

In comments on the proposed amendments to rule 6c-9, a few commenters urged the Commission to broaden the rule's definition of "foreign bank."[13] Specifically, commenters suggested that the rule not be limited to foreign institutions "engaged substantially in commercial banking activity" as defined in the rule. These commenters argued that there are many institutions that are regarded as banks in their home countries that do not make a significant amount of commercial loans or engage in extensions of credit as that term is traditionally understood.

[5] Proposing Release, *supra* note 2.

[6] Proposing Release, *supra* note 2, at n.16.

[7] A detailed discussion of the applicability of the Act to foreign banks, foreign insurance companies, and their holding companies is set forth in the Proposing Release, *supra* note 2, at nn. 5-6 & 31-35, and accompanying text.

[8] These comments and a summary prepared by the staff are available for public inspection in Commission File No. S7-15-90.

[9] The Commission is not adopting the type of definitional rule supported by some commenters that would include a foreign bank within the definition of "bank" in section 2(a)(5) and foreign insurance company within the definition of "insurance company" in section 2(a)(17) of the Act. The question of whether and under what conditions a foreign bank or insurance company should be permitted to fulfill the important roles assigned to domestic banks and insurance companies under the Act should be evaluated based upon the particular role involved. See *e.g.*, rule 17f-5 under the Act (17 CFR 270.17f-5) (foreign bank as investment company custodian).

[10] See section 3(c)(3) of the Act.

[11] Subsequent to the proposal to amend rule 6c-9, the Commission issued a number of individual exemptive orders to foreign banks and insurance companies and their finance subsidiaries and holding companies, the applications for which include a condition whereby the applicant agreed to comply with rule 6c-9 as proposed to be amended and as it may be reproposed, adopted or amended. See, *e.g.*, Exel Limited, Investment Company Act Rel. No. 17733 (Sept. 7, 1990) (55 FR 37995 (Sept. 14, 1990)). The recipients of these exemptive orders will be deemed to be in compliance with their respective orders if they comply with rule 3a-6 as it is being adopted and as it may be amended in the future. Of course, entities that received exemptive relief to offer securities in the United States without registration under the Act, but did not explicitly agree to comply with rule 6c-9 as proposed to be amended, may rely upon rule 3a-6 in lieu of their exemptive orders if they meet the conditions of the rule.

[12] Rule 6c-9 limited the exemptive relief it provided to banks offering securities in the United States that were "direct obligations" of the bank and were not "interests in a collective trust fund or similar investment pool maintained by a foreign bank." See Release 16093, *supra* note 3. An equivalent provision is included in rule 3a-6 at paragraph (b)(1)(iii).

[13] A foreign bank is defined as a banking institution that is (1) regulated as such in its home country, (2) engaged substantially in commercial banking activity, and (3) not operated for the purpose of evading the provisions of the Act. "Engaged substantially in commercial banking activity" means engaging regularly in and deriving a substantial portion of its business from extending commercial and other credit, and accepting demand and other deposits, that are customary for commercial banks in the foreign bank's home country.

Other institutions regarded as banks may provide many traditional banking services, but not accept deposits. Commenters urged that such institutions be permitted to rely on rule 6c-9 as long as they are regarded as banks in their home countries and are not operated for the purpose of evading the provisions of the Act.

The Commission believes that a broader definition of the term "foreign bank," such as that suggested by the commenters, might bring within the scope of the rule entities that would not be banks under the Act if those entities were organized under the laws of the United States or of a State. This would not accord with the principal purpose of rule 3a-6, which is to put foreign banks selling securities in the United States on an equal footing under the Act with banks in like circumstances organized under the laws of the United States. Thus, the Commission is not expanding the coverage of the definition of the term "foreign bank" at this time, except for three types of foreign financial institutions.

In proposing amendments to rule 6c-9, the Commission included a specific provision that would have brought Canadian trust and loan companies within the rule's "foreign bank" definition. Canadian trust companies are similar to United States trust companies, which are excepted from the definition of "investment company" in the Act, and Canadian loan companies are similar to United States savings and loan associations, which are likewise excepted.[14] Canadian trust companies and loan companies might fall within the definition of the term "investment company" under the Act, but would not have been eligible to use rule 6c-9, absent a special provision. They would not have fallen within that rule's general definition of the term "foreign bank" since they are not regarded as "banks" under Canadian law. All commenters addressing this matter supported including Canadian trust companies and loan companies in the rule. Therefore, rule 3a-6 includes a special provision bringing Canadian trust and loan companies within the rule's definition of "foreign bank," so that the new rule will cover these institutions as well.

The Commission also requested comment as to whether entities similar to Canadian trust and loan companies organized in other countries should be treated as foreign banks, even though they would not be regarded as "banks" in their countries of organization and thus would not come within the general definition of the term "foreign bank." Two commenters suggested that the exemption provided by rule 6c-9 be extended to building societies organized under the laws of the United Kingdom. United Kingdom building societies share many of the characterics of Canadian loan companies. The are highly regulated under statutes separate from those that regulate commercial banks in the United Kingdom and concentrate their assets in making mortgage loans to a greater extent than commercial banks in the United Kingdom. United Kingdom building societies are also similar to their United States counterparts, savings and loan associations, which are specifically excepted from the Act by section 3(c)(3). Therefore, the Commission is including United Kingdom building societies in rule 3a-6. While the Commission is not adopting a general provision for foreign entities similar to Canadian loan companies and U.K. building societies which would except them from the definition of the term "investment company," such entities organized in other jurisdictions may file an application for individual exemptive relief under section 6(c) of the Act.[15]

2. Foreign Insurance Companies

The Commission proposed to amend rule 6c-9 to permit foreign insurance companies to sell their securities in the United States without registering under the Act. The proposed definition of the term "foreign insurance company" was the same as that of rule 12d1-1 under the Act, which was adopted by the Commission last year.[16] These amendments were generally supported by the commenters, and the Commission is carrying over the same definition to rule 3a-6.[17]

3. Finance Subsidiaries

Rule 6c-9 applied to sales of securities by foreign banks both directly and through finance subsidiaries, which are commonly employed by foreign banks to raise capital. The proposed amendments would have extended the rule 6c-9 exemption to cover finance subsidiaries of both foreign banks and foreign insurance companies making offers of securities in the United States. These finance subsidiaries could not rely on rule 3a-5, the rule providing exemptions from the Act for finance subsidiaries, because that rule requires that the parent company of a finance subsidiary either not be considered an investment company under section 3(a) (15 U.S.C. 80a-3(a)), or be excepted from the definition of investment company by section 3(b) (15 U.S.C. 80a-3(b)) or by the rules or regulations under section 3(a).[18] Finance subsidiaries of foreign banks and insurance companies could not meet this requirement because their parent companies were considered investment companies under section 3(a) and were not excepted or exempted from the definition of investment company by order or rule.[19]

Because the Commission now is excepting foreign banks and foreign insurance companies from the definition of investment company by a rule under section 3(a) of the Act, it is no longer necessary to provide specific relief for their finance subsidiaries. Rather, the finance subsidiaries of foreign banks and insurance companies will be eligible to use rule 3a-5, provided that they meet the other conditions of the rule.[20] These conditions are designed to ensure that the finance subsidiary functions primarily as a conduit to its parent company for financing purposes.[21]

Rule 3a-5 currently requires, among other things, that the parent company of a finance subsidiary not organized under the laws of the United States or of a state be a "foreign private issuer." [22]

[14] United States trust companies are included in the definition of "bank" in section 2(a)(5)(C) (15 U.S.C. 80a-2(a)(5)(C)) and are thereby excepted from the "investment company" definition by section 3(c)(3) of the Act. United States savings and loan associations are specifically excepted by section 3(c)(3). See Proposing Release, *supra* note 2, at n.28.

[15] Commenters also suggested that certain other types of foreign financial entities, including government development companies and export-import banks, be included within rule 6c-9. While some of these institutions may not function as investment companies, their activities are sufficiently dissimilar to those of commercial banks that further analysis would be required to formulate standards under which they should be excepted from the Act.

[16] Investment Company Act Rel. No. 17357 (Feb. 26, 1990) (55 FR 7706 (Mar. 5, 1990)). See discussion of rule 12d1-1 at section II.5. of this Release, *infra*.

[17] Paragraph (b)(3) of rule 3a-6.

[18] Paragraph (b)(2)(i) of rule 3a-5 (17 CFR 270.3a-5(b)(2)(i)).

[19] See Release 16093, *supra* note 3, at n.7.

[20] Finance subsidiaries of foreign banks and insurance companies relying on rule 3a-5 are required to file new Form F-N. See section II.6 of this Release, *infra*.

[21] Many commenters suggested changes to the finance subsidiary provisions of rule 6c-9. Most of these comments involved making the requirements of rule 6c-9 concerning finance subsidiaries correspond to the requirements imposed on finance subsidiaries by rule 3a-5. These suggestions have been addressed by enabling finance subsidiaries of foreign banks and insurance companies to rely on rule 3a-5.

[22] Paragraph (b)(2)(ii) of rule 3a-5 (17 CFR 270.3a-5(b)(2)(ii)). In addition, a company controlled by the parent company that is the direct owner of the finance subsidiary or is to receive proceeds from the securities offered by the finance subsidiary must also be a foreign private issuer. Paragraph (b)(3)(ii) of rule 3a-5 (17 CFR 270.3a-5(b)(3)(ii)).

Many foreign banks and some insurance companies may not meet this requirement because they are owned by a foreign government or a political subdivision of a foreign government.[23] Therefore, the Commission is amending paragraphs (b)(2)(ii) and (b)(3)(ii) of rule 3a-5 to make the exemption provided by the rule available to the finance subsidiaries of all foreign banks and insurance companies which are themselves eligible for exemption under rule 3a-6.[24]

Rule 3a-5 requires that the parent of the finance subsidiary unconditionally guarantee the securities of the finance subsidiary.[25] One commenter requested that the Commission clarify that this requirement is satisfied by the guaranty of a United States branch or agency of a foreign bank parent as long as under the laws of the foreign bank's home jurisdiction, the obligation of the branch or agency is considered an obligation of the foreign bank and the holders of the securities may proceed directly against the foreign bank. In the Commission's view, the guaranty requirement would be satisfied by the guaranty of the United States branch or agency under these circumstances.

In addition, one commenter noted that many banks are not permitted under applicable banking law to provide guaranties.[26] Therefore, a new paragraph (a)(7) is being added to rule 3a-5 to permit a foreign bank, in lieu of providing the unconditional guaranty, to issue an irrevocable letter of credit which could be drawn upon to fund payments due under the finance subsidiary's debt securities and non-voting preferred stock.

4. Holding Companies

The Commission also proposed to extend the exemption provided by rule 6c-9 to foreign bank and insurance holding companies, which are not able to rely on the exemption provided by section 3(c)(6) of the Act to their United States counterparts.[27] These foreign holding companies could not rely on either the exception in the definition of an investment company in section 3(a)(3) of the Act [28] on rule 3a-1 under Act (17 CFR 270.3a-1), which provide exceptions from the Act only to holding companies of operating companies (*i.e.*, not investment companies), since their foreign bank and insurance company subsidiaries were regarded as "investment companies." With the adoption of rule 3a-6, foreign banks and insurance companies are no longer regarded as "investment companies" under the Act. Therefore, foreign bank or insurance company holding companies qualify for the exception from the definition of an investment company in section 3(a)(3) or rule 3a-1 on the same basis as United States bank or insurance company holding companies.[29]

The proposed definition of holding company in rule 6c-9 would have required that the company be engaged in the banking or insurance businesses, through subsidiaries. Commenters asked that the rule make clear that the holding company could engage in both the banking and insurance businesses. Other commenters argued that holding companies be permitted to engage in businesses other than banking and insurance, as are United States bank holding companies. Rule 3a-6 addresses these concerns by permitting foreign bank and insurance holding companies to rely on rule 3a-1, under which an exempt holding company is prohibited only from holding investment company subsidiaries.[30]

5. Rescission of Rule 12d1-1 and Adoption of Rule 12d2-1

Section 12(d)(1)(A) of the Act limits the amount of securities of any investment company that may be purchased by an investment company registered under the Act.[31] Because foreign banks and insurance companies are regarded as investment companies under the Act, section 12(d)(1)(A) restricts the ability of registered investment companies to purchase their securities. In 1990, the Commission adopted rule 12d1-1 under the Act permitting registered investment companies to purchase the securities of foreign banks and foreign insurance companies, and their finance subsidiaries, without regard to the limitations of section 12(d)(1)(A) of the Act.[32]

Upon the adoption of rule 3a-6, rule 12d1-1 is no longer necessary to permit registered investment companies to purchase the securities of foreign banks and insurance companies and their finance subsidiaries in excess of the limitations of section 12(d)(1)(A).[33]

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[23] See *e.g.*, Banque Nationale de Paris, Investment Company Act Rel. No. 16752 (Jan. 11, 1989) (54 FR 2025 (Jan. 18, 1989)) (100% of voting stock owned by Republic of France). Paragraph (b)(4) of rule 3a-5 (17 CFR 270.3a-5(b)(4)) currently defines the term "foreign private issuer" inclusively as "any issuer which is incorporated or organized under the laws of a foreign country, but not a foreign government or political subdivision of a foreign government."

[24] Rule 3a-5 is also available to the finance subsidiaries of foreign bank and insurance holding companies, which may now rely on rule 3a-1 for their exemption from the Act. *See* section II.4 of this Release, *infra*.

[25] Paragraph (a)(1) of rule 3a-5 (17 CFR 270.3a-5(a)(1)).

[26] See, *e.g.*, *Federal Deposit Insurance Corp.* v. *Fruedenfeld*, 492 F. Supp. 763, 767 (E.D. Wisc. 1980) (national banks lack authority to provide guaranties).

[27] Proposing Release, *supra* note 2, at nn. 31 through 37, and accompanying text.

[28] 15 U.S.C. 80a-3(a)(3)(C). Section 3(a)(3) of the Act provides that certain issuers holding "investment securities having a value exceeding 40 per centum of the value of such issuer's total assets" are investment companies, but section 3(a)(3)(C) excepts "securities issued by majority-owned subsidiaries of the owner which are not investment companies" from the definition of "investment securities."

[29] Although neither the rule nor its administrative history address the question, United States bank and insurance holding companies may rely on rule 3a-1 under the Act if they meet its conditions, as well as on section 3(c)(6), which specifically provides them with an exemption from section 3(a) of the Act. However, neither foreign nor domestic persons may rely on rule 3a-1 if they come within the definition of investment company in section 3(a)(1) of the Act. See rule 3a-1(b) [17 CFR 270.3a-1(b)]. Section 3(a)(1) defines an investment company as "any issuer which * * * is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities," while the section 3(a)(3) definition includes issuers "in the business of investing, reinvesting, owning, holding, or trading in securities." Most holding companies fall within the definition of investment company solely by reason of the reference to owning or holding securities in section 3(a)(3). See The Atlantic Coast Line Co., 11 S.E.C. 661 (1942).

[30] Paragraph (a)(3) of rule 3a-1 [17 CFR 270.3a-1(a)(3)].

[31] Section 12(d)(1)(A) of the Act reads as follows:

It shall be unlawful for any registered investment company (the "acquiring company"), and any company or companies controlled by such acquiring company to purchase or otherwise acquire any security issued by any other investment company (the "acquired company"), and for any investment company (the "acquiring company") and any company or companies controlled by such acquiring company to purchase or otherwise acquire any security issued by any registered investment company (the "acquired company"), if the acquiring company and any company or companies controlled by it immediately after such purchase or acquisition own in the aggregate—

(i) more than 3 per centum of the total outstanding voting stock of the acquired company;

(ii) securities issued by the acquired company having an aggregate value in excess of 5 per centum of the value of the total assets of the acquiring company; or

(iii) securities issued by the acquired company and all other investment companies (other than Treasury stock of the acquiring company) having an aggregate value in excess of 10 per centum of the value of the total assets of the acquiring company.

[32] Investment Company Act Rel. No. 17357, supra note 16.

[33] Registered investment companies will also be able to purchase the securities of foreign bank and insurance holding companies without regard to the limitations of section 12(d)(1)(A). However, rule 3a-6 would not provide relief from section 12(d)(3) of the Act (15 U.S.C. 80a-12(d)(3)) for a registered investment company acquiring securities of a foreign bank, insurance company or a related entity that is also a broker, dealer, registered investment adviser, or engaged in the business of underwriting, in which case the registered investment company must look to rule 12d3-1 under the Act (17 CFR 270.12d3-1). Rule 12d3-1 has been proposed to be

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Accordingly, the Commission is rescinding rule 12d1-1.

However, one provision of rule 12d1-1 is being retained in the form of new rule 12d2-1. Section 12(d)(2) (15 U.S.C. 80a-12(d)(2)) of the Act limits the acquisition by an investment company of securities of a United States insurance company. Paragraph (a)(2) of rule 12d1-1 (17 CFR 270.12d1-1(a)(2)) imposes a similar restriction on the acquisition of securities of a foreign insurance company. Rule 12d2-1 would retain this limitation by defining insurance company for the purpose of section 12(d)(2) to include a foreign insurance company. This will provide equal treatment for purchases of securities of United States insurance companies and foreign insurance companies by registered investment companies.[34]

An additional result of the adoption of rule 3a-6 is that the limitations of section 12(d)(1)(A) will no longer apply to the purchase by foreign banks and foreign insurance companies of securities of registered investment companies.[35] This change was supported by several commenters and is consistent with the underlying policies of rule 3a-6 that foreign banks and insurance companies (and their related entities) that meet the eligibility requirements of rule 3a-6 do not operate as investment companies and should not be treated as such under the Act.

6. Rescission of Rule 6c-9 and Form N-6C9; Adoption of Rule 489 and Form F-N

The adoption of rule 3a-6 and amendment of rule 3a-5 will provide all of the exemptive relief to foreign banks and their finance subsidiaries selling their securities in the United Sates that has been provided by rule 6c-9. Therefore, the Commission is rescinding the rule.

As a condition for relying on Rule 6c-9, foreign banks have been required to file Form N-6C9 appointing a United States agent for service of process. In the 1990 Proposal the form was proposed to be revised to reduce the number of signatures required. Commenters urged that the form be repealed or simplified.

Because rule 3a-6 effectively removes foreign banks and insurance companies from the scope of the Act, the Commission is rescinding Form N-6C9 under the Act and replacing it with a new form under the 1933 Act, Form F-N. Foreign banks and insurance companies relying on rule 3a-6 to make a public offering of securities in the United States, as well as holding companies and finance subsidiaries of such entities relying on rules 3a-1 and 3a-5, respectively, are required to file Form F-N by new rule 489 under the 1933 Act.[36] Form F-N reflects the proposed simplification of Form N-6C9 but has been redesigned to follow Form F-X (17 CFR 239.41), the form of consent for Canadian issuers recently adopted by the Commission as a part of the multijurisdictional disclosure system.[37] Canadian banks and insurance companies and their finance subsidiaries and holding companies filing Form F-X are excepted from the requirement to file Form F-N. Also excepted are companies issuing debt and non-voting preferred stock that have on file with the Commission a currently accurate Form N-6C9. Unlike Form N-6C9, the obligation to file Form F-N would arise only in connection with the filing of a registration statement under the 1933 Act.

III. Cost/Benefit of Proposed Action

To evaluate the proposed amendments to rule 6c-9, the Commission specifically requested comments as to its assessments of the costs and benefits associated with the proposal. No comments were received in response to this request. The adoption of rule 3a-6 and related changes in the rules, which will have much the same effect as the proposed amendments to rule 6c-9, are not expected to impose any significant additional burdens on foreign banks or foreign insurance companies and related entities, and should significantly reduce the costs that they now incur by eliminating the need to file exemptive applications. The Commission will also benefit because its staff will no longer have to review exemptive applications in this area.

IV. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission certified at the time that the proposed amendments were published that the amendments to rule 6c-9 would not, if adopted, have a significant economic impact on a substantial number of small entities. No comments were received regarding the certification. Because a new rule, rule 3a-6, is being adopted in lieu of the proposed amendments to rule 6c-9, the Chairman of the Commission has certified that the adoption of rule 3a-6 and related actions would not have a significant economic impact on a substantial number of small entities. This certification is attached to this release as appendix B.

V. Effective Date

Rule 3a-6 and the related rule and form changes shall be effective upon publication in the **Federal Register**, in accordance with the Administrative Procedure Act, which allows effectiveness in less than thirty days after publication for, *inter alia*, "a substantive rule which grants or recognizes an exemption or relieves a restriction."[38]

VI. Statutory Authority

The Commission is adopting rule 3a-6, amending rule 3a-5, and adopting rule 12d2-1 under the exemptive and rulemaking authority set forth in sections 6(c) and 38(a) (15 U.S.C. 80a-37(a)) of the Investment Company Act of 1940. The Commission is adopting rule 489 and Form F-N pursuant to section 19 of the Securities Act of 1933, as amended (15 U.S.C. 77s) and section 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78w). The authority citations for these actions precede the text of the actions.

List of Subjects in 17 CFR Parts 230, 239, 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

VII. Text of Rule and Rule Amendments; Rescission of Rule Text

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows.

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amended to facilitate the acquisition by registered investment companies of the equity securities of foreign securities firms. Investment Company Act Rel. No. 17096 (Aug. 3, 1989) (54 FR 33027 (Aug. 11, 1989)).

[34] In addition, rule 12d2-1 defines an insurance company to include a foreign insurance company for purpose of section 12(g) of the Act (15 U.S.C. 80a-12(g)) to extend the Commission's authority to issue orders under that section to the purchase of foreign insurance company securities.

[35] The adoption of rule 3a-6 also affects section 12(d)(1)(B) (15 U.S.C. 80a-12(d)(1)(B)), which limits sales by registered open-end investment companies and other parties of securities of the registered open-end investment company, and section 12(d)(1)(C) (15 U.S.C. 80a-12(d)(1)(C)), which limits purchases by any investment company of the securities of a registered closed-end investment company.

[36] Foreign bank and insurance company holding companies and finance subsidiaries organized under either U.S. or foreign laws selling securities in the United States would rely on rule 3a-1 or 3a-5. However, only those organized under foreign law would be required to file Form F-N.

[37] Securities Act Rel. No. 6902 (June 21, 1991) (56 FR 30036 (July 1, 1991)).

[38] 5 U.S.C. 553(d)(1).

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o, 78w, 79t, and 80a-37, unless otherwise noted.

1A. The heading "General" preceding § 230.100 is moved under the authority citation.

2. The note preceding § 230.480 is revised to read as follows:

Note: The rules which comprise this section of Regulation C (§§ 230.480 to 230.489) are applicable only to investment companies and business development companies, except section 230.489, which applies to certain entities excepted from the definition of investment company by rules under the Investment Company Act of 1940. The rules comprising the rest of Regulation C (§§ 230.400 to 230.479 and §§ 230.490 to 230.494) are, unless the context specifically indicates otherwise, also applicable to investment companies and business development companies. See § 230.400.

3. By adding § 230.489 to read as follows:

§ 230.489 Filing of form by foreign banks and insurance companies and certain of their holding companies and finance subsidiaries.

(a) The following foreign issuers shall file Form F-N [17 CFR 239.43] under the Act appointing an agent for service of process when filing a registration statement under the Act:

(1) A foreign issuer that is a foreign bank or foreign insurance company excepted from the definition of investment company by rule 3a-6 (17 CFR 270.3a-6) under the Investment Company Act of 1940 (the "1940 Act");

(2) A foreign issuer that is a finance subsidiary of a foreign bank or foreign insurance company, as those terms are defined in rule 3a-6 under the 1940 Act, if the finance subsidiary is excepted from the definition of investment company by rule 3a-5 [17 CFR 270.3a-5] under the 1940 Act; or

(3) A foreign issuer that is excepted from the definition of investment company by rule 3a-1 (17 CFR 270.3a-1) under the 1940 Act because some or all of its majority-owned subsidiaries are foreign banks or insurance companies excepted from the definition of investment company by rule 3a-6 under the 1940 Act.

(b) The requirements of paragraph (a) of this section shall not apply to:

(1) A foreign issuer that has filed Form F-X (17 CFR 239.42) under the Securities Act of 1933 with respect to the securities being offered; and

(2) A foreign issuer filing a registration statement relating to debt securities or non-voting preferred stock that has on file with the Commission a currently accurate Form N-6C9 (17 CFR 274.304, rescinded) under the 1940 Act.

(c) Six copies of Form F-N, one of which shall be manually signed, shall be filed with the Commission at its principal office.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

4. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77a *et seq.*, unless otherwise noted.

* * * * *

5. By adding § 239.43 to read as follows:

§ 239.43 Form F-N, appointment of agent for service of process by foreign banks and foreign insurance companies and certain of their holding companies and finance subsidiaries making public offerings of securities in the United States.

Form F-N shall be filed with the Commission in connection with the filing of a registration statement under the Act by those entities specified in rule 489 (17 CFR 230.489).

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

6. The authority citation for part 270 continues to read as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-37, 80a-39 unless otherwise noted.

7. Section 270.3a-5 is amended by removing the word "and" at the end of paragraph (a)(5), removing the period at the end of paragraph (a)(6) and adding a semicolon and the word "and," by adding a new paragraph (a)(7), and revising paragraphs (b)(2)(ii) and (b)(3)(ii) to read as follows:

§ 270.3a-5 Exemption for subsidiaries organized to finance the operations of domestic or foreign companies.

(a) * * *

(7) Where the parent company is a foreign bank as the term is used in rule 3a-6 [17 CFR 270.3a-6 of this Chapter], the parent company may, in lieu of the [guaranty required by paragraph (a)(1) or (a)(2) of this section, issue, in favor of the holders of the finance subsidiary's debt securities or non-voting preferred stock, as the case may be, an irrevocable letter of credit in an amount sufficient to fund all of the amounts required to be guaranteed by paragraphs (a)(1) and (a)(2) of this section, *provided*, that:

(i) payment on such letter of credit shall be conditional only upon the presentation of customary documentation, and

(ii) the beneficiary of such letter of credit is not required by either the letter of credit or applicable law to institute proceedings against the finance subsidiary before enforcing its remedies under the letter of credit.

(b) * * *

(2) * * *

(ii) That is organized or formed under the laws of the United States or of a state or that is a foreign private issuer, or that is a foreign bank or foreign insurance company as those terms are used in rule 3a-6 (17 CFR 270.3a-6 of this Chapter); and

* * * * *

(3) * * *

(ii) That is either organized or formed under the laws of the United States or of a state or that is a foreign private issuer; or that is a foreign bank or foreign insurance company as those terms are used in rule 3a-6; and

* * * * *

8. By adding § 270.3a-6 to read as follows:

§ 270.3a-a6 Foreign banks and foreign insurance companies.

(a) Notwithstanding section 3(a)(1) or section 3(a)(3) of the Act, a foreign bank or foreign insurance company shall not be considered an investment company for purposes of the Act.

(b) For purposes of this section:

(1)(i) *Foreign bank* means a banking institution incorporated or organized under the laws of a country other than the United States, or a political subdivision of a country other than the United States, that is:

(A) Regulated as such by that country's or subdivision's government or any agency thereof;

(B) Engaged substantially in commercial banking activity; and

(C) Not operated for the purpose of evading the provisions of the Act;

(ii) The term *foreign bank* shall also include:

(A) A trust company or loan company that is:

(*1*) Organized or incorporated under the laws of Canada or a political subdivision thereof;

(*2*) Regulated as a trust company or a loan company by that country's or subdivision's government or any agency thereof; and

(*3*) Not operated for the purpose of evading the provisions of the Act; and

(B) A building society that is:

(1) Organized under the laws of the United Kingdom or a political subdivision thereof;

(2) Regulated as a building society by the country's or subdivision's government or any agency thereof; and

(3) Not operated for the purpose of evading the provisions of the Act.

(iii) Nothing in this section shall be construed to include within the definition of *foreign bank* a common or collective trust or other separate pool of assets organized in the form of a trust or otherwise in which interests are separately offered.

(2) *Engaged substantially in commercial banking activity* means engaged regularly in, and deriving a substantial portion of its business from, extending commercial and other types of credit, and accepting demand and other types of deposits, that are customary for commercial banks in the country in which the head office of the banking institution is located.

(3) *Foreign insurance company* means an insurance company incorporated or organized under the laws of a country other than the United States, or a political subdivision of a country other than the United States, that is:

(i) Regulated as such by that country's or subdivision's government or any agency thereof;

(ii) Engaged primarily and predominantly in:

(A) The writing of insurance agreements of the type specified in section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)), except for the substitution of supervision by foreign government insurance regulators for the regulators referred to in that section; or

(B) The reinsurance of risks on such agreements underwritten by insurance companies; and

(iii) Not operated for the purpose of evading the provisions of the Act. Nothing in this section shall be construed to include within the definition of "foreign insurance company" a separate account or other pool of assets organized in the form of a trust or otherwise in which interests are separately offered.

Note: Foreign banks and foreign insurance companies (and certain of their finance subsidiaries and holding companies) relying on rule 3a-6 for exemption from the Act may be required by rule 489 [17 CFR 230.489] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] to file Form F-N with the Commission in connection with the filing of a registration statement under the Securities Act of 1933.

§§ 270.6c-9 and 270.12d1-1 [Removed]

9. By removing § 270.6c-9 and § 270.12d1-1.

10. By adding § 270.12d2-1 to read as follows:

§ 270.12d2-1 Definition of insurance company for purposes of sections 12(d)(2) and 12(g) of the Act.

For purposes of sections 12(d)(2) and 12(g) of the Act [15 U.S.C. 80a-12(d)(2) and 80a-12(g)], *insurance company* shall include a foreign insurance company as that term is used in rule 3a-6 under the Act (17 CFR 270.3a-6).

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

Subpart D—Forms for Exemptions

11. The authority citation for Part 274, Subpart D, continues to read as follows:

Authority: Secs. 6(c), (15 U.S.C. 80a-6(c)), 6(e), (15 U.S.C. 80a-6(e)), 38(a), 15 U.S.C. 80a-37(a) of the Act.

§ 274.304 [Removed]

12. By removing § 274.304.

13. By removing Form N-6C9.

By the Commission.

Dated: October 29, 1991.

Note: The text of the appendixes will not appear in the Code of Federal Regulations.

Margaret H. McFarland,

Deputy Secretary.

Appendix A—Form F-N

BILLING CODE 8010-01-M

U.S. Securities and Exchange Commission
Washington, D.C. 20549

OMB APPROVAL
OMB Number: 3235-0411
Expires: Oct. 31, 1994
Estimated average burden hours per response..1.0

Form F-N

APPOINTMENT OF AGENT FOR SERVICE OF PROCESS BY FOREIGN BANKS AND FOREIGN INSURANCE COMPANIES AND CERTAIN OF THEIR HOLDING COMPANIES AND FINANCE SUBSIDIARIES MAKING PUBLIC OFFERINGS OF SECURITIES IN THE UNITED STATES

GENERAL INSTRUCTIONS

I. Form F-N shall be filed with the Commission in connection with the filing of a registration statement under the Securities Act of 1933 by:

1. a foreign issuer that is a foreign bank or foreign insurance company excepted from the definition of an investment company by rule 3a-6 [17 CFR 270.3a-6] under the Investment Company Act of 1940 (the "1940 Act");

2. a foreign issuer that is a finance subsidiary of a foreign bank or foreign insurance company; as those terms are defined in rule 3a-6 under the 1940 Act, if such finance subsidiary is excepted from the definition of investment company by rule 3a-5 [17 CFR 270.3a-5] under the 1940 Act; or

3. a foreign issuer that is excepted from the definition of investment company by rule 3a-1 [17 CFR 270.3a-1] under the 1940 Act because some or all of its majority-owned subsidiaries are foreign banks or foreign insurance companies excepted from the definition of investment company by rule 3a-6 under the 1940 Act.

II. Notwithstanding paragraph (I), the following foreign issuers are not required to file Form F-N:

1. a foreign issuer that has filed Form F-X [17 CFR 239.42] under the Securities Act of 1933 with the Commission with respect to the securities being offered; and

2. a foreign issuer filing a registration statement relating to debt securities or non-voting preferred stock that has on file with the Commission a currently accurate Form N-6C9 [17 CFR 274.304, rescinded] under the 1940 Act.

III. Six copies of the Form F-N, one of which shall be manually signed, shall be filed with the Commission at its principal office. A Form F-N filed in connection with any other Commission form should not be bound together with or be included only as an exhibit to, such other form.

A. Name of issuer or person filing ("Filer"): _____

B. This is (select one):

[ ] an original filing for the Filer
[ ] an amended filing for the Filer

C. Identify the filing in conjunction with which this Form is being filed:

Name of registrant _____

Form type _____

File Number (if known) _____

Filed by _____

Date Filed (if filed concurrently, so indicate) _____

D The Filer is incorporated or organized under the laws of (Name of the jurisdiction under whose laws the filer is organized or incorporated)

_____

and has its principal place of business at (Address in full and telephone number)

_____

E. The Filer designates and appoints (Name of United States person serving as agent)

_____ ("Agent") located at (Address in full in the United States and telephone number)

_____ as the agent

of the Filer upon whom may be served any process, pleadings, subpoenas, or other papers in:

(a) any investigation or administrative proceeding conducted by the Commission, and

(b) any civil suit or action brought against the Filer or to which the Filer has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or any of its territories or possessions or of the District of Columbia,

arising out of or based on any offering made or purported to be made in connection with the securities registered by the Filer on Form (Name of Form) _____ filed on (Date) _____ or any purchases or sales of any security in connection therewith. The Filer stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, such agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be valid and binding as if personal service thereof had been made.

F. Each person filing this Form stipulates and agrees to appoint a successor agent for service of process and file an amended Form F-N if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time until six years have elapsed from the date of the Filer's last registration statement or report, or amendment to any such registration statement or report, filed with the Commission under the Securities Act of 1933 or Securities Exchange Act of 1934. Filer further undertakes to advise the Commission promptly of any change to the Agent's name or address during the applicable period by amendment of this Form referencing the file number of the relevant registration form in conjunction with which the amendment is being filed.

G. Each person filing this form undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to the securities registered pursuant to the form referenced in paragraph E or transactions in said securities.

The Filer certifies that it has duly caused this power of attorney, consent, stipulation and agreement to be signed on its behalf by the undersigned, thereunto duly authorized, in the

City of_____ Country of_____

this_____ day of_____19__A.D.

Filer: By (Signature and Title):

_____ _____

This statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature)_____

(Title)_____

(Date)_____

Instructions

1. The power of attorney, consent, stipulation and agreement shall be signed by the Filer and its authorized Agent in the United States.

2. The name of each person who signs Form F-N shall be typed or printed beneath his signature. Where any name is signed pursuant to a board resolution, a certified copy of the resolution shall be filed with each copy of the Form. If any name is signed pursuant to a power of attorney, a manually signed copy of each power of attorney shall be filed with each copy of the Form.

BILLING CODE 8010-01-C

Appendix B

Regulatory Flexibility Act Certification

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the adoption of rules 3a-6 and 12d2-1 under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (the "Act") and rule 489 and Form F-N under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the amendment of rule 3a-5 under the Act, and the rescission of rules 6c-9 and 12d1-1 and Form N-6C9 under the Act will not have a significant economic impact on a substantial number of small entities. The primary effect of the adoption of rules 3a-6, 12d2-1 and 489 and Form F-N and the amendments to rule 3a-5 would be to permit foreign banks and insurance companies, and related entities, to offer and sell their securities within the United States without filing individual applications for exemption pursuant to section 6(c) of the Act. Foreign banks and insurance companies, however, are not "small entities" under the Regulatory Flexibility Act. There will be no impact on United States finance subsidiaries of foreign banks because they are already exempt under rule 6c-9. In addition, there are fewer than five United States finance subsidiaries of foreign insurance companies, all of which have been granted exemptive relief under the Act. The adoption of rule 3a-6 would also have the effect of permitting foreign banks and insurance companies to purchase the securities of registered investment companies in excess of the limits of section 12(d)(1)(A). It does not appear that this change would have a significant economic impact on a substantial number of small investment companies. Because rule 12d2-1 is being adopted merely to retain one requirement of rule 12d1-1, which is being rescinded, its adoption would not have any significant economic impact on either large or small entities. Rule 489 and Form F-N would serve to require the appointment of an agent for service of process by foreign banks and insurance companies and related entities and would not affect any entities that are not affected by the other rule changes.

Dated: October 28, 1991.

Richard C. Breeden,

Chairman.

[FR Doc. 91-26426 Filed 11-1-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 52 and 602

[T.D. 8370]

RIN 1545-AO08; 1545-AP32; 1545-AP84

Excise Tax on Chemicals That Deplete the Ozone Layer and on Products Containing Such Chemicals

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the tax on chemicals that deplete the ozone layer and on products containing such chemicals. These regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1989 and the Omnibus Budget Reconciliation Act of 1990. They affect manufacturers and importers of ozone-depleting chemicals, manufacturers of rigid foam insulation, and importers of products containing or manufactured with ozone-depleting chemicals. In addition, these regulations affect persons, other than manufacturers and importers of ozone-depleting chemicals, holding such chemicals for sale or for use in further manufacture on January 1, 1990, and on subsequent tax-increase dates.

EFFECTIVE DATES: These regulations are effective January 1, 1990. Section 52.4682-2(d)(1)(ii) provides, however, that certain information included in the form of the registration certificates set forth in § 52.4682-2(d) need not be provided in certificates executed before January 1, 1992. In addition, § 52.4682-3(f)(2)(ii)(A) provides that listings preceded by a double asterisk (**) in the Imported Products Table set forth in § 52.4682-3(f)(6) are effective October 1, 1990, and § 52.4682-3(f)(2)(ii)(B) provides that listings preceded by a triple asterisk (***) in the Imported Products Table set forth in § 52.4682-3(f)(6) are effective January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, (202) 566-4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545-1153. The estimated average annual burden per recordkeeper is 0.5 hour. The estimated average annual burden per respondent is 0.4 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents and recordkeepers may require more or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, TR:FP, Washington, DC 20224, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Background

On September 6, 1990, temporary regulations (T.D. 8311) relating to the tax imposed under sections 4681 and 4682 of the Internal Revenue Code on ozone-depleting chemicals (ODCs) and on products containing ODCs were published in the **Federal Register** (55 FR 36612). A notice of proposed rulemaking (PS-73-89) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (55 FR 36659). Sections 4681 and 4682 were enacted as part of the Omnibus Budget Reconciliation Act of 1989, Public Law 101-239. On January 2, 1991, temporary regulations (T.D. 8327) amending the existing temporary regulations to reflect changes to sections 4681 and 4682 made by the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508 were published in the **Federal Register** (56 FR 18). A notice of proposed rulemaking (PS-97-90) cross-referencing the temporary regulations was published in the **Federal Register** (56 FR 50) for the same day. On August 14, 1991, temporary regulations (T.D. 8356) amending the existing temporary regulations with respect to the floor stocks tax imposed on certain ODCs in 1991 were published in the **Federal Register** (56 FR 40246). A notice of proposed rulemaking (PS-60-91) cross-referencing the temporary regulations was published in the **Federal Register** (56 FR 40286) for the same day.

Written comments responding to these notices were received. A public hearing was not requested and none was held. After consideration of all the comments, the proposed regulations under sections 4681 and 4682 are adopted as revised by this Treasury decision, and the corresponding temporary regulations are withdrawn. The comments and revisions are discussed below.

Explanation of Revisions and Summary of Comments

Returns, Payments, and Deposits of Tax

The proposed regulations provided rules relating to returns, payments, and deposits of the taxes imposed by sections 4681 and 4682. These final regulations do not include those procedural rules. The temporary regulations relating to procedural rules will remain in force until final regulations relating to procedural rules are issued under 26 CFR part 40.

Comments on the procedural rules in the proposed regulations, such as the comments requesting that the semimonthly deposit obligation not apply to taxpayers with a *de minimis* tax liability, will be considered in connection with the part 40 regulations.

Examples

In response to questions raised in comments, many additional examples have been added to the final regulations to illustrate the application of the regulations.

ODCs Used as a Feedstock

The proposed regulations provided that an ozone-depleting chemical (ODC) is used as a feedstock only if the ODC is entirely consumed in the manufacture of another chemical (within the meaning of 40 CFR 82.3(s) of the Environmental Protection Agency (EPA) regulations relating to protection of atmospheric ozone). Commenters raised questions regarding whether the use of ODCs in certain refining or incineration processes constituted use as a feedstock. The definition of feedstock use has been changed in the final regulations after consultation with the EPA to clarify that ODCs used in these processes are considered used as a feedstock.

The proposed regulations set forth the form of the certificate required to be provided in order for a sale of ODCs for use as a feedstock to be a qualifying sale and thus exempt from tax. At the request of the EPA, the final regulations modify slightly the form of the certificate relating to ODCs used as a feedstock to include information needed by the EPA on the number of kilograms of ODCs transformed. Certificates executed on and after January 1, 1992, must contain the additional information; a certificate executed before January 1, 1992, will remain valid, however, and may be used to qualify for exemption after 1991 whether or not the additional information is included. These regulations do not require that certificates be submitted to or otherwise made available to EPA.

Imported Products Table

In response to comments, explanations have been added to the Imported Products Table (Table) headings and Part I of the Table has been simplified.

Entry Into the United States

Sections 4681 and 4682 treat ODCs and products manufactured with ODCs as taxable imports if they are entered into the United States for consumption, use, or warehousing, and define the term "United States" to include foreign trade zones. The tax is imposed, however, only on ODCs and products that are sold or used in the United States. Thus, if a taxable product is admitted into a foreign trade zone, kept in a warehouse, and then shipped outside the United States, there is no tax. If, however, additional processing of the product is done in the zone, the use of the product in processing is a taxable event and tax is imposed. Examples clarifying this rule have been added to the final regulations.

Floor Stocks Tax on Stabilized ODCs

The proposed regulations generally provide that floor stocks tax is not imposed on ODCs that have been mixed with other ingredients. The proposed regulations published on January 2, 1991, provided a special rule that imposed floor stocks tax on ODCs that have been mixed only with stabilizers. Under the proposed regulations published on August 14, 1991, this special rule is not effective for the January 1, 1991, floor stocks tax. In response to comments on the proposed regulations, the final regulations provide additional guidance on the definition of a stabilizer.

Floor Stocks Tax on ODCs Held for Use by a Government

One comment requested clarification of whether ODCs are held for sale if they are held for use by a government agency and will be transferred between subdivisions of that agency. The proposed regulations do not address this issue. Under the final regulations, an ODC that is held by a government for its own use is not held by the government for sale even if the ODC is to be transferred between agencies or other subdivisions that may be treated as different taxpayers because they have or are required to have different employer identification numbers.

Floor Stocks Tax on ODCs Held in Fire Extinguishers

Under the proposed regulations, the floor stocks tax applies to ODCs held in storage containers for sale or for use in further manufacture, but not to ODCs that have been incorporated into manufactured articles in which the ODCs will be used for their intended purpose without being released from the article. The proposed regulations treat fire extinguishers as storage containers and not as manufactured articles. The intended purpose of ODCs contained in fire extinguishers is to extinguish fires, and this purpose is met by releasing the ODCs into the atmosphere. The final regulations retain the rules set forth in the proposed regulations under which the floor stocks tax applies to ODCs contained in fire extinguishers that are held for sale.

Floor Stocks Tax Inventory Requirement

The proposed regulations require that an inventory be prepared on each floor stocks tax date. In response to comments, the final regulations clarify that the inventory requirement does not apply to persons holding on a tax increase date only ODCs that are nontaxable by reason of a statutory exemption (*e.g.*, use as a feedstock) or regulatory exclusion other than the *de minimis* exception (e.g., mixtures). In addition, any person otherwise subject to the inventory requirement is not required to inventory any ODCs that are nontaxable under the provisions of § 52.4682–4(b)(2). The final regulations also clarify that the inventory requirement does apply to persons holding on a tax increase date any ODCs that are nontaxable only by reason of the *de minimis* exception.

Recycling and Export of ODCs

The sections of the proposed regulations addressing recycled ODCs and exports of ODCs were reserved. Comments were received regarding the need for guidance in these areas. Such guidance is not provided by the final regulations, but is expected to be provided in future regulations.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notices of proposed rulemaking were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of IRS and Treasury Department participated in their development.

List of Subjects 26 CFR Part 52

Chemicals, Excise taxes, Petroleum.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, title 26, parts 52 and 602 of the Code of Federal Regulations are amended as follows:

Paragraph 1. The authority for part 52 is revised to read as follows:

Authority: 26 U.S.C. 7805. Section 52.4682–3 also issued under 26 U.S.C. 4682(c)(2); §§ 52.6011(a)–1T and 52.6011(a)–2T also issued under 26 U.S.C. 6011(a); §§ 52.6071(a)–1, 52.6071(a)–2T, and 52.6071(a)–3T also issued under 26 U.S.C. 6071(a); § 52.6091–1T also issued under 26 U.S.C. 6091; § 52.6101–1T also issued under 26 U.S.C. 6101; § 52.6109(a)–1T also issued under 26 U.S.C. 6109(a); §§ 52.6302(c)–1, and 52.6302(c)–2T also issued under 26 U.S.C. 6302(a).

Par. 2. Sections 52.4681–0T, 52.4681–1T, 52.4682–1T, 52.4682–2T, 52.4682–3T, and 52.4682–4T are removed and new §§ 52.4681–0, 52.4681–1, 52.4682–1, 52.4682–2, 52.4682–3, and 52.4682–4 are added to read as follows.

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This section lists captions contained in §§ 52.4681–1, 52.4682–1, 52.4682–2, 52.4682–3, and 52.4682–4.

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§ 52.4681–1 Taxes imposed with respect to ozone-depleting chemicals.

(a) *Taxes imposed.* Sections 4681 and 4682 impose the following taxes with respect to ozone-depleting chemicals (ODCs):

(1) *Tax on ODCs.* Section 4681(a)(1) imposes a tax on ODCs that are sold or used by the manufacturer or importer thereof. Except as otherwise provided in § 52.4682–1 (relating to the tax on ODCs), the amount of the tax is equal to the product of—

(i) The weight (in pounds) of the ODC;

(ii) The base tax amount (determined under section 4681(b)(1) (B) or (C)) for the calendar year in which the sale or use occurs; and

(iii) The ozone-depletion factor (determined under section 4682(b)) for the ODC.

(2) *Tax on imported taxable products.* Section 4681(a)(2) imposes a tax on imported taxable products that are sold or used by the importer thereof. Except as otherwise provided in § 52.4682-3 (relating to the tax on imported taxable products), the tax is computed by reference to the weight of the ODCs used as materials in the manufacture of the product. The amount of tax is equal to the tax that would have been imposed on the ODCs under section 4681(a)(1) if the ODCs had been sold in the United States on the date of the sale or use of the imported product. The weight of such ODCs is determined under § 52.4682-3.

(3) *Floor stocks tax*—(i) *Imposition of tax.* Section 4682(h) imposes a floor stocks tax on ODCs that—

(A) Are held by any person other than the manufacturer or importer of the ODC on a date specified in paragraph (a)(3)(ii) of this section; and

(B) Are held on such date for sale or for use in further manufacture.

(ii) *Dates on which tax imposed.* The floor stocks tax is imposed on January 1 of 1990, 1991, 1992, 1993, and 1994.

(iii) *Amount of tax.* Except as otherwise provided in § 52.4682-4 (relating to the floor stocks tax), the amount of the floor stocks tax is equal to the excess of—

(A) The tax that would be imposed on the ODC under section 4681(a)(1) if a sale or use of the ODC by its manufacturer or importer occurred on the date the floor stocks tax is imposed (the tentative tax amount), over

(B) The sum of the taxes previously imposed (if any) on the ODC under sections 4681 and 4682.

(b) *Cross-references*—(1) *Tax on ODCs.* Additional rules relating to the tax on ODCs are contained in §§ 52.4682-1 and 52.4682-2.

(2) *Tax on imported taxable products.* Additional rules relating to the tax on imported taxable products are contained in § 52.4682-3.

(3) *Floor stocks tax.* Additional rules relating to the floor stocks tax are contained in § 52.4682-4.

(4) *Returns, payments, and deposits of tax.* Rules requiring returns reporting the taxes imposed under sections 4681 and 4682 are contained in §§ 40.6011(a)-1T and 40.6011(a)-2T of this chapter. Rules relating to the time for filing such returns are contained in § 40.6071(a)-2T of this chapter and in § 52.6071(a)-3T. Rules relating to the use of Government depositaries in connection with taxes imposed under section 4681 are contained in §§ 40.6302(c)-1T and 40.6302(c)-2T of this chapter.

(c) *Definitions of general application.* The following definitions set forth the meaning of certain terms for purposes of the regulations under sections 4681 and 4682:

(1) *Ozone-depleting chemical.* The term "ozone-depleting chemical" (ODC) means any chemical listed in section 4682(a)(2).

(2) *United States.* The term "United States" has the meaning given such term by section 4612(a)(4). Under section 4612(a)(4)—

(i) The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

(ii) The term includes—

(A) Submarine seabed and subsoil that would be treated as part of the United States (as defined in paragraph (c)(2)(i) of this section) under the principles of section 638 relating to continental shelf areas; and

(B) Foreign trade zones of the United States.

(3) *Manufacture; manufacturer.* The term "manufacture" when used with respect to any ODC or imported product includes its production, and the term "manufacturer" includes a producer.

(4) *Entry into United States for consumption, use, or warehousing*—(i) *In general.* Except as otherwise provided in this paragraph (c)(4), the term "entered into the United States for consumption, use, or warehousing" when used with respect to any goods means—

(A) Brought into the customs territory of the United States (the customs territory) if applicable customs law requires that the goods be entered into the customs territory for consumption, use, or warehousing;

(B) Admitted into a foreign trade zone for any purpose if like goods brought into the customs territory for such purpose would be entered into the customs territory for consumption, use, or warehousing; or

(C) Imported into any other part of the United States (as defined in paragraph (c)(2) of this section) for any purpose if like goods brought into the customs territory for such purpose would be entered into the customs territory for consumption, use, or warehousing.

(ii) *Entry for transportation and exportation.* Goods entered into the customs territory for transportation and exportation are not goods entered for consumption, use, or warehousing.

(iii) *Entries described in two or more provisions.* In the case of any goods with respect to which entries are described in two or more provisions of paragraph (c)(4)(i) of this section, only the first such entry is taken into account. Thus, if the admission of goods into a foreign trade zone is an entry into the United States for consumption, use, or warehousing, the subsequent entry of such goods into the customs territory will not be treated as an entry into the United States for consumption, use, or warehousing.

(iv) *Certain imported products not entered for consumption, use, or warehousing.* Imported products that are entered into the United States for consumption, use, or warehousing do not include any imported products that—

(A) Are entered into the customs territory under Harmonized Tariff Schedule (HTS) heading 9801, 9802, 9803, or 9813;

(B) Would, if entered into the customs territory, be entered under any such heading; or

(C) Are brought into the United States by an individual if the product is brought in for use by the individual and is not expected to be used in a trade or business other than a trade or business of performing services as an employee.

(5) *Importer.* The term "importer" means the person that first sells or uses goods after their entry into the United States for consumption, use, or warehousing (within the meaning of paragraph (c)(4) of this section).

(6) *Sale.* The term "sale" means the transfer of title or of substantial incidents of ownership (whether or not delivery to, or payment by, the buyer has been made) for consideration which may include money, services, or property. The determination as to the time a sale occurs shall be made under applicable local law.

(7) *Use*—(i) *In general.* Except as otherwise provided in regulations under sections 4681 and 4682, ODCs and imported taxable products are used when they are—

(A) Used as a material in the manufacture of an article, whether by incorporation into such article, chemical transformation, release into the atmosphere, or otherwise; or

(B) Put into service in a trade or business or for production of income.

(ii) *Loss, destruction, packaging, warehousing, and repair.* The loss, destruction, packaging (including repackaging), warehousing, or repair of ODCs and imported taxable products is not a use of the ODC or product lost,

destroyed, packaged, warehoused, or repaired.

(iii) *Cross-references to exceptions.* For exceptions to the rule contained in paragraph (c)(7)(i) of this section, see—

(A) Section 52.4682–1(b)(2)(iii) (relating to mixture elections);

(B) Section 52.4682–3(c)(2) (relating to the election to treat entry of an imported taxable product as use); and

(C) Section 52.4682–3(c)(3) (relating to treating sale of an article incorporating an imported taxable product as the first sale or use of the product).

(8) *Pound.* The term "pound" means a unit of weight that is equal to 16 avoirdupois ounces.

(9) *Post-1990 ODC; post-1989 ODC.* The term "post-1990 ODC" means any ODC that is listed below Halon–2402 in the table contained in section 4682(a)(2). The term "post-1989 ODC" means any ODC other than a post-1990 ODC.

(d) *Effective date.* Sections 52.4681–0, 52.4681–1, 52.4682–1, 52.4682–2, 52.4682–3, and 52.4682–4 are effective as of January 1, 1990, and apply to—

(1) Post-1989 ODCs that the manufacturer or importer thereof first sells or uses after December 31, 1989, and post-1990 ODCs that the manufacturer or importer thereof first sells or uses after December 31, 1990;

(2) Imported taxable products that the importer thereof first sells or uses after December 31, 1989 (but, in the case of products first sold or used before January 1, 1991, by taking into account only the post-1989 ODCs used as materials in their manufacture); and

(3) Post-1989 ODCs held for sale or for use in further manufacture by any person other than the manufacturer or importer thereof on January 1, 1990, and post-1989 and post-1990 ODCs that are so held on January 1 of 1991, 1992, 1993, or 1994.

§ 52.4682–1 Ozone-depleting chemicals.

(a) *Overview.* This section provides rules relating to the tax imposed on ozone-depleting chemicals (ODCs) under section 4681, including rules for identifying taxable ODCs and determining when the tax is imposed and rules prescribing special treatment for certain ODCs (*i.e.*, ODCs used as feedstocks, ODCs used in the manufacture of rigid foam insulation, and Halons). See § 52.4681–1(a)(1) and (c) for general rules and definitions relating to the tax on ODCs.

(b) *Taxable ODCs; taxable event*—(1) *Taxable ODCs*—(i) *In general.* Except as provided in paragraphs (c) through (g) of this section, an ODC is taxable if—

(A) It is listed in section 4682(a)(2) on the date it is sold or used by its manufacturer or importer; and

(B) It is manufactured in the United States or entered into the United States for consumption, use, or warehousing.

(ii) *Storage containers.* An ODC described in paragraph (b)(1)(i) of this section is taxable without regard to the type or size of storage container in which the ODC is held.

(iii) *Example.* The application of this paragraph (b)(1) may be illustrated by the following example:

Example. A brings CFC–12, an ODC listed in section 4682(a)(2), into the customs territory and enters the CFC–12 for transportation and exportation. The ODC is not taxable because it is not entered for consumption, use, or warehousing. The ODC also would not be taxable if it were admitted to a foreign trade zone (rather than brought into the customs territory) for transportation and exportation.

(2) *Taxable event*—(i) *In general*—(A) *General rule.* The tax on an ODC is imposed when the ODC is first sold or used (as defined in § 52.4681–1(c)(6) and (7)) by its manufacturer or importer.

(B) *Example.* The application of this paragraph (b)(2)(i) may be illustrated by the following example:

Example. A enters CFC–113, an ODC listed in section 4682(a)(2), into the United States for consumption, use, or warehousing. A warehouses the CFC–113 and then decides to ship the ODC to its factory outside the United States (as defined in § 52.4681–1 (c)(2)). The CFC–113 is a taxable ODC because the requirements of paragraph (b)(1)(i) of this section have been met. However, tax is not imposed on the ODC because there is no taxable event. A did not sell the ODC and, under § 52.4681–1(c)(7), warehousing is not a use.

(ii) *Mixtures.* Except as otherwise provided in paragraph (b)(2)(iii) of this section, the creation of a mixture containing two or more ingredients is treated as a use of the ODCs contained in the mixture. Thus, except as otherwise provided in paragraph (b)(2)(iii) of this section—

(A) The tax on the post-1989 ODCs (as defined in § 52.4681–1(c)(9)) contained in mixtures created after December 31, 1989, or on the post-1990 ODCs (as defined in § 52.4681–1(c)(9)) contained in mixtures created after December 31, 1990, is imposed when the mixture is created and not on any subsequent sale or use of the mixture; and

(B) No tax is imposed under section 4681 on the post-1989 ODCs contained in mixtures created before January 1, 1990, or on the post-1990 ODCs contained in mixtures created before January 1, 1991.

(iii) *Mixture elections*—(A) *Permitted elections.* The only elections permitted under this paragraph (b)(2)(iii) are—

(*1*) An election for the first calendar quarter beginning after December 31, 1989, and all subsequent periods (the 1990 election); and

(*2*) An election for the first calendar quarter beginning after December 31, 1990, and all subsequent periods (the 1991 election).

(B) *In general.* A manufacturer or importer may elect to treat the sale or use of mixtures containing ODCs as the first sale or use of the ODCs contained in the mixtures. If a 1990 election is made under this paragraph (b)(2)(iii), the tax on post-1989 ODCs contained in a mixture sold or used after December 31, 1989 (including any such mixture created before January 1, 1990) is imposed on the date of such sale or use. Similarly, if a 1991 election is made under this paragraph (b)(2)(iii), the tax on post-1990 ODCs contained in a mixture sold or used after December 31, 1990 (including any such mixture created before January 1, 1991) is imposed on the date of such sale or use.

(C) *Applicability of elections.* An election under this paragraph (b)(2)(iii) applies—

(*1*) In the case of a 1990 election, to all post-1989 ODCs contained in mixtures sold or used by the manufacturer or importer after December 31, 1989 (including any such mixture created before January 1, 1990); and

(*2*) In the case of a 1991 election, to all post-1990 ODCs contained in mixtures sold or used by the manufacturer or importer after December 31, 1990 (including any such mixture created before January 1, 1991).

(D) *Making the election; revocation.* An election under this paragraph (b)(2)(iii) shall be made in accordance with the instructions for the return on which the manufacturer or importer reports liability for tax under section 4681. After October 9, 1990, the election may be revoked only with the consent of the Commissioner.

(c) *ODCs used as a feedstock*—(1) *Exemption from tax.* No tax is imposed on an ODC if the manufacturer or importer of the ODC—

(i) Uses the ODC as a feedstock in the manufacture of another chemical; or

(ii) Sells the ODC in a qualifying sale (within the meaning of paragraph (c)(4) of this section) for use as a feedstock.

(2) *Excess payments*—(i) *In general.* Under section 4682(d)(2)(B), a credit or refund is allowed to a person if—

(A) The person uses an ODC as a feedstock; and

(B) The amount of any tax paid with respect to the ODC under section 4681 or 4682 was not determined under section 4682(d)(2)(A).

(ii) *Procedural rules.* See section 6402 and the regulations thereunder for rules

relating to claiming a credit or refund of tax paid with respect to ODCs that are used as a feedstock. A credit against the income tax is not allowed for the amount determined under section 4682(d)(2)(B).

(3) *Definition.* An ODC is used as a feedstock only if the ODC is entirely consumed (except for trace amounts) in the manufacture of another chemical. Thus, the transformation of an ODC into one or more new compounds (such as the transformation of CFC-113 into chlorotrifluoroethylene (CTFE or 1113), of CFC-113 into CFC-115 and CFC-116, or of carbon tetrachloride into hydrochloric acid during petroleum refining or incineration) is treated as use as a feedstock. On the other hand, the ODCs used in a mixture (including an azeotrope such as R-500 or R-502) are not used as a feedstock.

(4) *Qualifying sale.* A sale of ODCs for use as a feedstock is a qualifying sale if the requirements of § 52.4682-2(b)(1) are satisfied with respect to such sale.

(d) *ODCs used in the manufacture of rigid foam insulation*—(1) *Phase-in of tax*—(i) *In general.* The amount of tax imposed on an ODC is determined under section 4682(g) if the manufacturer or importer of the ODC—

(A) Uses the ODC during 1990, 1991, 1992, or 1993 in the manufacture of rigid foam insulation; or

(B) Sells the ODC in a qualifying sale (within the meaning of paragraph (d)(5) of this section) during 1990, 1991, 1992, or 1993.

(ii) *Amount of tax.* Under section 4682(g), ODCs described in paragraph (d)(1)(i) of this section are not taxed if sold or used during 1990 and are taxed at a reduced rate if sold or used during 1991, 1992, or 1993.

(2) *Excess Payments*—(i) *In general.* Under section 4682(g)(3), a credit against income tax or a refund is allowed to a person if—

(A) The person uses an ODC during 1990, 1991, 1992, or 1993 in the manufacture of rigid foam insulation; and

(B) The amount of any tax paid with respect to the ODC under section 4681 or 4682 was not determined under section 4682(g).

(ii) *Procedural rules*—(A) The amount determined under section 4682(g)(3) shall be treated as a credit described in section 34(a) (relating to credits for gasoline and special fuels) unless a claim for refund has been filed.

(B) See section 6402 and the regulations thereunder for rules relating to claiming a credit or refund of the tax paid with respect to ODCs that are used in the manufacture of rigid foam insulation.

(3) *Definition*—(i) *Rigid foam insulation.* The term "rigid foam insulation" means any rigid foam that is designed for use as thermal insulation in buildings, equipment, appliances, tanks, railcars, trucks, or vessels, or on pipes, including any such rigid foam actually used for purposes other than insulation. Information such as test reports on R-values and advertising material reflecting R-value claims for a particular rigid foam may be used to show that such rigid foam is designed for use as thermal insulation.

(ii) *Rigid foam*—(A) *In general.* The term "rigid foam" means any closed cell polymeric foam (whether or not rigid) in which chlorofluorocarbons are used to fill voids within the polymer.

(B) *Examples of rigid foam products.* Rigid foam includes extruded polystyrene foam, polyisocyanurate foam, spray and pour-in-place polyurethane foam, polyethylene foam, phenolic foam, and any other product that the Commissioner identifies as rigid foam in a pronouncement of general applicability. The form of a product identified under this paragraph (d)(3)(ii)(B) does not affect its character as rigid foam. Thus, such products are rigid foam whether in the form of a board, sheet, backer rod, or wrapping, or in a form applied by spraying, pouring, or frothing.

(4) *Use in manufacture.* An ODC is used in the manufacture of rigid foam insulation if it is incorporated into such product or is expended as a propellant or otherwise in the manufacture or application of such product.

(5) *Qualifying sale.* A sale of an ODC for use in the manufacture of rigid foam insulation is a qualifying sale if the requirements of § 52.4682-2(b)(2) are satisfied with respect to such sale.

(e) *Halons; phase-in of tax.* The amount of tax imposed on Halon-1211, Halon-1301, or Halon-2402 (Halons) is determined under section 4682(g) if the manufacturer or importer of Halons sells or uses Halons during 1990, 1991, 1992, or 1993. Under section 4682(g), Halons are not taxed if sold or used during 1990 and are taxed at a reduced rate if sold or used during 1991, 1992, or 1993.

(f) *Recycling.* [Reserved]

(g) *Exports.* [Reserved]

§ 52.4682-2 Qualifying sales.

(a) *In general*—(1) *Special rules applicable to certain sales.* Special rules apply to sales of ODCs in the following cases:

(i) Under section 4682(d)(2), § 52.4682-1(c), and § 52.4682-4(b)(2)(v) (relating to ODCs used as a feedstock), ODCs sold in qualifying sales are not taxed.

(ii) Under section 4682(g), § 52.4682-1(d), and § 52.4682-4(d)(2) (relating to ODCs used in the manufacture of rigid foam insulation), ODCs sold in qualifying sales are not taxed in 1990 and are taxed at a reduced rate in 1991, 1992, and 1993.

(2) *Qualifying sales.* A sale of ODCs is not a qualifying sale unless the requirements of this section are satisfied. Although submission of a document to the Internal Revenue Service is not required to establish that a sale of ODCs is a qualifying sale, the registration certificates required by this section shall be made available for inspection by internal revenue agents and officers.

(b) *Requirements for qualification*—(1) *Use as a feedstock.* A sale of ODCs is a qualifying sale for purposes of §§ 52.4682-1(c) and 52.4682-4(b)(2)(v) if the manufacturer or importer of the ODCs—

(i) Obtains a registration certificate in substantially the form set forth in paragraph (d)(2) of this section from the purchaser of the ODCs; and

(ii) Relies on the certificate in good faith.

(2) *Use in the manufacture of rigid foam insulation.* A sale of ODCs is a qualifying sale for purposes of §§ 52.4682-1(d) and 52.4682-4(d)(2) if the manufacturer or importer of the ODCs—

(i) Obtains a registration certificate in substantially the form set forth in paragraph (d)(3) of this section from the purchaser of the ODCs; and

(ii) Relies on the certificate in good faith.

(c) *Good faith reliance*—(1) *In general.* The requirements of paragraph (b) of this section are not satisfied with respect to a sale of ODCs and the sale is not a qualifying sale if at the time of the sale—

(i) The manufacturer or importer has reason to believe that the purchaser will use the ODCs other than for the purpose set forth in the certificate; or

(ii) The Internal Revenue Service has notified the manufacturer or importer that the purchaser's right to provide a certificate has been withdrawn.

(2) *Withdrawal of right to provide a certificate.* The Internal Revenue Service may withdraw the right of a purchaser to provide a certificate to its supplier if such purchaser uses the ODCs to which its certificate applies other than for the purpose set forth in such certificate, or otherwise fails to comply with the terms of the certificate. The Internal Revenue Service may notify the supplier to whom the

purchaser provided the certificate that the purchaser's right to provide a certificate has been withdrawn.

(d) *Registration certificate*—(1) *In general*—(i) *Rules relating to all certificates.* This paragraph (d) sets forth the form of the registration certificates that satisfy the requirements of paragraphs (b) (1) and (2) of this section. The registration certificate shall consist of a statement executed and signed under penalties of perjury by a person with authority to bind the purchaser. A certificate provided under paragraph (d)(2) of this section may apply to a single purchase or to multiple purchases and need not specify an expiration date. A certificate provided under paragraph (d)(3) of this section may apply to a single purchase or multiple purchases, and will expire as of December 31, 1993, unless an earlier expiration date is specified in the certificate. A new certificate must be given to the supplier if any information on the current certificate changes. The certificate may be included as part of any business records normally used to document a sale.

(ii) *Special rule relating to certificates executed before January 1, 1992.* Certificates provided under this paragraph (d)(2) and executed before January 1, 1992, satisfy the requirements of paragraph (b) of this section if they are in substantially the same form as certificates set forth in § 52.4682-2T.

(2) *Certificate relating to ODCs used as a feedstock*—*(i) ODCs that will be resold for use by the second purchaser as a feedstock.* If the purchaser will resell the ODCs to a second purchaser for use by such second purchaser as a feedstock, the certificate provided by the purchaser must be in substantially the following form:

Certificate of Purchaser of Chemicals That Will Be Resold for Use by the Second Purchaser as a Feedstock

(To support tax-free sales under section 4682(d)(2) of the Internal Revenue Code.)

Date _____

The undersigned purchaser ("Purchaser") hereby certifies the following under penalties of perjury:

The following percentage of ozone-depleting chemicals purchased from

_____

(name and address of seller)

will be resold by Purchaser to persons (Second Purchasers) that certify to Purchaser that they are purchasing the ozone-depleting chemicals for use as a feedstock (as defined in § 52.4682-1(c)(3) of the Environmental Tax Regulations).

Product	Percentage
CFC-11	
CFC-12	
CFC-113	
CFC-114	
CFC-115	
Carbon tetrachloride	
Methyl chloroform	
Other (specify)	

This certificate applies to (check and complete as applicable):

_____ All shipments to Purchaser at the following location(s):

_____

_____ All shipments to Purchaser under the following Purchaser account number(s):

_____

_____ All shipments to Purchaser under the following purchase order(s):

_____

_____ One or more shipments to Purchaser identified as follows:

_____

Purchaser will not claim a credit or refund under section 4682(d)(2)(B) of the Internal Revenue Code for any ozone-depleting chemicals covered by this certificate.

Purchaser understands that any use by Purchaser of the ozone-depleting chemicals to which this certificate applies other than for the purpose set forth in this certificate may result in the withdrawal by the Internal Revenue Service of Purchaser's right to provide a certificate.

Purchaser will retain the business records needed to document the sales covered by this certificate and will make such records available for inspection by Government officers. Purchaser also will retain and make available for inspection by Government officers the certificates of its Second Purchasers.

Purchaser has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn. In addition, the Internal Revenue Service has not notified Purchaser that the right to provide a certificate has been withdrawn from any Second Purchaser who will purchase ozone-depleting chemicals to which this certificate applies.

Purchaser understands that the fraudulent use of this certificate may subject Purchaser and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Signature

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Name of Purchaser

_____

Address

_____

_____

Taxpayer Identifying Number

(ii) *ODCs that will be used by the purchaser as a feedstock.* If the purchaser will use the ODCs as a feedstock, the certificate provided by the purchaser must be in substantially the following form:

Certificate of Purchaser of Chemicals That Will Be Used by the Purchaser as a Feedstock

(To support tax-free sales under section 4682(d)(2) of the Internal Revenue Code.)

Date _____

The undersigned purchaser ("Purchaser") hereby certifies the following under penalties of perjury:

The following percentage of ozone-depleting chemicals purchased from

_____

(name and address of seller)

will be used by Purchaser as a feedstock (as defined in § 52.4682-1(c)(3) of the Environmental Tax Regulations).

Product	Percentage	Kilograms to be transformed
CFC-11		
CFC-12		
CFC-113		
CFC-114		
CFC-115		
Carbon tetrachloride		
Methyl chloroform		
Other (specify)		

This certificate applies to (check and complete as applicable):

_____ All shipments to Purchaser at the following location(s):

_____

_____ All shipments to Purchaser under the following Purchaser account number(s):

_____

_____ All shipments to Purchaser under the following purchase order(s):

_____

_____ One or more shipments to Purchaser identified as follows:

Purchaser will not claim a credit or refund under section 4682(d)(2)(B) of the Internal Revenue Code for any ozone-depleting chemicals covered by this certificate.

Purchaser understands that any use of the ozone-depleting chemicals to which this certificate applies other than as a feedstock may result in the withdrawal by the Internal Revenue Service of Purchaser's right to provide a certificate.

Purchaser will retain the business records needed to document the use as a feedstock of the ozone-depleting chemicals to which this certificate applies and will make such records available for inspection by Government officers.

Purchaser has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn.

Purchaser understands that the fraudulent use of this certificate may subject Purchaser and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

Signature

Printed or typed name of person signing

Title of person signing

Name of Purchaser

Address

Taxpayer Identifying Number

(3) *Certificate relating to ODCs used in the manufacture of rigid foam insulation*—(i) *ODCs that will be resold to a second purchaser for use by the second purchaser in the manufacture of rigid foam insulation.* If the purchaser will resell the ODCs to a second purchaser for use by such second purchaser in the manufacture of rigid foam insulation, the certificate provided by the purchaser must be in substantially the following form:

Certificate of Purchaser of Chemicals That Will Be Resold for Use by the Second Purchaser in the Manufacture of Rigid Foam Insulation

(To support tax-free or tax-reduced sales under section 4682(g) of the Internal Revenue Code.)

Effective Date _____

Expiration Date _____

(not after 12/31/93)

The undersigned purchaser ("Purchaser") hereby certifies the following under penalties of perjury:

The following percentage of ozone-depleting chemicals purchased from

(name and address of seller)

will be resold by Purchaser to persons (Second Purchasers) that certify to Purchaser that they are purchasing the ozone-depleting chemicals for use in the manufacture of rigid foam insulation (as defined in § 52.4682–1(d)(3) and (4) of the Environmental Tax Regulations).

Product	Percentage
CFC–11	
CFC–12	
CFC–113	
CFC–114	
CFC–115	
Carbon tetrachloride	
Methyl chloroform	
Other (specify)	

This certificate applies to (check and complete as applicable):

_____ All shipments to Purchaser at the following location(s):

_____ All shipments to Purchaser under the following Purchaser account number(s):

_____ All shipments to Purchaser under the following purchase order(s):

_____ One or more shipments to Purchaser identified as follows:

Purchaser will not claim a credit or refund under section 4682(g)(3) of the Internal Revenue Code for any ozone-depleting chemicals covered by this certificate.

Purchaser understands that any use by Purchaser of the ozone-depleting chemicals to which this certificate applies other than for the purpose set forth in this certificate may result in the withdrawal by the Internal Revenue Service of Purchaser's right to provide a certificate.

Purchaser will retain the business records needed to document the sales covered by this certificate and will make such records available for inspection by Government officers. Purchaser also will retain and make available for inspection by Government officers the certificates of its Second Purchasers.

Purchaser has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn. In addition, the Internal Revenue Service has not notified Purchaser that the right to provide a certificate has been withdrawn from any Second Purchaser who will purchase ozone-depleting chemicals to which this certificate applies.

Purchaser understands that the fraudulent use of this certificate may subject Purchaser and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

Signature

Printed or typed name of person signing

Title of person signing

Name of Purchaser

Address

Taxpayer Identifying Number

(ii) *ODCs that will be used by the purchaser in the manufacture of rigid foam insulation.* If the purchaser will use the ODCs in the manufacture of rigid foam insulation, the certificate provided by the purchaser must be in substantially the following form:

Certificate of Purchaser of Chemicals That Will Be Used by the Purchaser in the Manufacture of Rigid Foam Insulation

(To support tax-free or tax-reduced sales under section 4682(g) of the Internal Revenue Code.)

Effective Date _____

Expiration Date _____

(not after 12/31/93)

The undersigned purchaser ("Purchaser") hereby certifies the following under penalties of perjury:

The following percentage of ozone-depleting chemicals purchased from

(name and address of seller)

will be used by Purchaser in the manufacture of rigid foam insulation (as defined in § 52.4682–1(d) (3) and (4) of the Environmental Tax Regulations).

Product	Percentage
CFC–11	
CFC–12	
CFC–113	
CFC–114	
CFC–115	
Carbon tetrachloride	
Methyl chloroform	
Other (specify)	

This certificate applies to (check and complete as applicable):

_____All shipments to Purchaser at the following location(s):

_____

_____

_____

_____All shipments to Purchaser under the following Purchaser account number(s):

_____

_____

_____

_____All shipments to Purchaser under the following purchase order(s):

_____

_____

_____

_____One or more shipments to Purchaser identified as follows:

_____

_____

_____

Purchaser will not claim a credit or refund under section 4682(g)(3) of the Internal Revenue Code for any ozone-depleting chemicals covered by this certificate.

Purchaser understands that any use by Purchaser of the ozone-depleting chemicals to which this certificate applies other than in the manufacture of rigid foam insulation may result in the withdrawal by the Internal Revenue Service of Purchaser's right to provide a certificate.

Purchaser will retain the business records needed to document the use in the manufacture of rigid foam insulation of the ozone-depleting chemicals to which this certificate applies and will make such records available for inspection by Government officers.

Purchaser has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn.

Purchaser understands that the fraudulent use of this certificate may subject Purchaser and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Signature

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Name of Purchaser

_____

Address

_____

_____

Taxpayer Identifying Number

§ 52.4682-3 Imported taxable products.

(a) *Overview; references to Tables; special rule for 1990*—(1) *Overview.* This section provides rules relating to the tax imposed on imported taxable products under section 4681, including rules for identifying imported taxable products, determining the weight of the ozone-depleting chemicals (ODCs) used as materials in the manufacture of such products, and computing the amount of tax on such products. See § 52.4681-1(a)(2) and (c) for general rules and definitions relating to the tax on imported taxable products.

(2) *References to Tables.* When used in this section—

(i) The term "Imported Products Table" (Table) refers to the Table set forth in paragraph (f)(6) of this section; and

(ii) The term "current Imported Products Table" (current Table) used with respect to a product refers to the Table in effect on the date such product is first sold or used by the importer thereof.

(3) *Special rule for 1990.* In the case of products first sold or used before January 1, 1991, post-1990 ODCs (as defined in § 52.4681-1(c)(9)) shall not be taken into account in applying the rules of this section.

(b) *Imported taxable products*—(1) *In general*—(i) *Rule.* Except as provided in paragraph (b)(2) of this section, the term "imported taxable product" means any product that—

(A) Is entered into the United States for consumption, use, or warehousing; and

(B) Is listed in the current Table.

(ii) *Example.* The application of this paragraph (b)(1) may be illustrated by the following example:

Example. A brings a light truck with a Harmonized Tariff Schedule classification of 8704 into the customs territory and enters the truck for transportation and exportation. Although the truck is listed in the current Table, it is not an imported taxable product because it is not entered for consumption, use, or warehousing. The truck also would not be an imported taxable product if it were admitted to a foreign trade zone (rather than brought into the customs territory) for transportation and exportation.

(2) *Exceptions*—(i) *In general.* A product is not treated as an imported taxable product if—

(A) The product is listed in Part I of the current Table and the adjusted tax with respect to the product is *de minimis* (within the meaning of paragraph (b)(2)(ii) of this section); or

(B) The product is listed in Part II of the current Table, the adjusted tax with respect to the product is *de minimis* (within the meaning of paragraph (b)(2)(ii) of this section), and the ODCs (other than methyl chloroform) used as materials in the manufacture of the product were not used for purposes of refrigeration or air conditioning, creating an aerosol or foam, or manufacturing electronic components.

(ii) *De minimis adjusted tax.* The adjusted tax with respect to a product is *de minimis* if such tax is less than one/tenth of one percent of the importer's cost of acquiring such product. The term "adjusted tax" means the tax that would be imposed under section 4681 on the ODCs used as materials in the manufacture of such product if such ODCs were sold in the United States and the base tax amount were $1.00.

(c) *Taxable event*—(1) *In general.* Except as otherwise provided in paragraphs (c) (2) and (3) of this section, the tax on an imported taxable product is imposed when the product is first sold or used (as defined in § 52.4681-1(c) (6) and (7)) by its importer. Thus, for example, imported taxable products that are warehoused or repackaged after entry and then exported without being sold or used in the United States are not subject to tax.

(2) *Election to treat importation as use*—(i) *In general.* An importer may elect to treat the entry of products into the United States as the use of such products. In the case of imported taxable products to which an election under this paragraph (c)(2) applies—

(A) Tax is imposed on the products on the date of entry (as determined under paragraph (c)(2)(ii) of this section) if the products are entered into the United States after the election becomes effective;

(B) Tax is imposed on the products on the date the election becomes effective if the products were entered into the United States after December 31, 1989, and before the election becomes effective; and

(C) No tax is imposed if the products were entered into the United States before January 1, 1990.

(ii) *Date of entry.* The date of entry is determined by reference to customs law. If the actual date is unknown, the importer may use any reasonable and consistent method to determine the date of entry, provided that such date is within 10 business days of arrival of products in the United States.

(iii) *Applicability of election.* An election under this paragraph (c)(2) applies to all imported taxable products that are owned (and have not been used) by the importer at the time the election becomes effective and all imported taxable products that are entered into the United States by the importer after the election becomes effective. An election under this paragraph (c)(2) becomes effective at the beginning of the first calendar quarter to which the election applies. After October 9, 1990, the election may be revoked only with the consent of the Commissioner.

(iv) *Making the election.* An election under this paragraph (c)(2) shall be

made in accordance with the instructions for the return on which the importer is required to report liability for tax under section 4681.

(3) *Treating the sale of an article incorporating an imported taxable product as the first sale or use of such product*—(i) *In general.* In the case of articles to be sold, an importer may treat the sale of an article manufactured or assembled in the United States as the first sale or use of an imported taxable product incorporated in such article, but only if the importer—

(A) Has consistently treated the sale of similar articles as the first sale or use of similar imported taxable products; and

(B) Has not made an election under paragraph (c)(2) of this section.

(ii) *Similar articles and imported taxable products.* An importer may establish any reasonable criteria for determining whether articles or imported taxable products are similar for purposes of this paragraph (c)(3).

(iii) *Establishment of consistent treatment.* An importer has consistently treated the sale of similar articles as the first sale or use of similar imported taxable products only if such treatment is reflected in the computation of tax on the importer's returns for all prior calendar quarters in which such treatment would affect tax liability.

(iv) *Example.* The application of this paragraph (c)(3) may be illustrated by the following example:

Example. (a) An importer of printed circuits and other electronic components uses those products in assembling television receivers in the United States and also uses the printed circuits in assembling VCRs in the United States. Under the importer's criteria for determining similarity, printed circuits are similar to other printed circuits, but not to the other electronic components. In addition, television receivers are similar to other television receivers, but not to VCRs. The importer has not made an election under paragraph (c)(2) of this section.

(b) Under this paragraph (c)(3), the importer may treat the sale of the television receivers as the first sale or use of the imported printed circuits incorporated into the television receivers. In that case, the tax on the printed circuits would be imposed when the television receivers are sold rather than when the printed circuits are used in assembling the television receivers.

(c) The importer may treat the sale of the television receivers as the first sale or use of the printed circuits incorporated into the television receivers even if the sale of the television receivers is not treated as the first sale or use of the other electronic components incorporated into the television receivers and even if the sale of VCRs is not treated as the first sale or use of the printed circuits incorporated into the VCRs. Under paragraph (c)(3)(i)(A) of this section, however, the importer must have consistently treated the sale of television receivers as the first sale or use of printed circuits incorporated into the receivers. Thus, in the case of television receivers that were assembled before January 1, 1990, and sold after December 31, 1989, the importer must have treated the sale of the television receivers as the first sale or use of the printed circuits incorporated into the television receivers when reporting tax under section 4681 with respect to such printed circuits.

(d) *ODCs used as materials in the manufacture of imported taxable products*—(1) *ODC weight.* The tax imposed on an imported taxable product under section 4681 is computed by reference to the weight of the ODCs used as materials in the manufacture of the product (ODC weight). The ODC weight of a product includes the weight of ODCs used as materials in the manufacture of any components of the product.

(2) *ODCs used as materials in the manufacture of a product.* Except as provided in paragraph (d)(3) of this section, an ODC is used as a material in the manufacture of a product if the ODC is—

(i) Incorporated into the product;

(ii) Released into the atmosphere in the process of manufacturing the product; or

(iii) Otherwise used in the manufacture of the product (but only to the extent the cost of the ODC is properly allocable to the product).

(3) *Protective packaging.* ODCs used in the manufacture of the protective material in which a product is packaged are not treated as ODCs used as materials in the manufacture of such product.

(4) *Examples.* The provisions of this paragraph (d) may be illustrated by the following examples:

Example 1. A, a manufacturer located outside the United States, uses ODCs as a solvent to clean the printed circuits it manufactures and as a coolant in the air-conditioning system of the factory in which the printed circuits are manufactured. The ODCs used as a solvent are released into the atmosphere, and, under paragraph (d)(2)(ii) of this section, are used as materials in the manufacture of the printed circuits. The ODCs used as a coolant in the air-conditioning system are also used in the manufacture of the printed circuits. Under paragraph (d)(2)(iii) of this section, these ODCs are used as materials in the manufacture of the printed circuits only to the extent the cost of the ODCs is properly allocable to the printed circuits.

Example 2. B manufactures television receivers outside the United States and wraps them for shipping in a protective packing material manufactured with ODCs. Under paragraph (d)(3) of this section, the ODCs used in the manufacture of the protective packing material are not treated as ODCs used as a material in the manufacture of the television receivers.

(e) *Methods of determining ODC weight; computation of tax*—(1) *In general.* This paragraph (e) sets forth the methods to be used for determining the ODC weight of an imported taxable product and a method to be used in computing the tax when the ODC weight cannot be determined. The amount of tax is computed separately for each imported taxable product and the method to be used in determining the ODC weight or otherwise computing the tax is separately determined for each such product. Thus, an importer may use one method in computing the tax on some imported taxable products and different methods in computing the tax on other products. For example, an importer of telephone sets may compute the tax using the exact method described in paragraph (e)(2) of this section for determining the ODC weight of telephone sets supplied by one manufacturer and using the Table method described in paragraph (e)(3) of this section for telephone sets supplied by other manufacturers that have not provided sufficient information to allow the importer to use the exact method.

(2) *Exact method.* If the importer determines the weight of each ODC used as a material in the manufacture of an imported taxable product and supports that determination with sufficient and reliable information, the ODC weight of the product is the weight so determined. Under this method, the ODC weight of a mixture is equal to the weight of the ODCs contained in the mixture. Representations by the manufacturer of the product to the importer as to the weight of the ODCs used as materials in the manufacture of the product may be sufficient and reliable information for this purpose. Thus, a letter to the importer signed by the manufacturer may constitute sufficient and reliable information if the letter adequately identifies the product and states the weight of each ODC used as a material in the product's manufacture.

(3) *Table method*—(i) *In general.* If the ODC weight of an imported taxable product is not determined using the exact method described in paragraph (e)(2) of this section and the current Table specifies an ODC weight for the product, the ODC weight of the product is the Table ODC weight, regardless of what ODCs were used in the manufacture of the product. In computing the amount of tax, the Table ODC weight shall not be rounded.

(ii) *Special rules*—(A) *Articles assembled in the United States.* An

importer that assembles finished articles in the United States may compute the amount of tax imposed on the imported taxable products incorporated into the finished article by using the Table ODC weight specified for the article instead of the Table ODC weights specified for the components. In order to compute the tax under this special rule, the importer must determine the actual number of articles manufactured. For example, if an importer manufactures 100 camcorders using imported subassemblies, the importer may compute the amount of tax on the subassemblies by using the Table ODC weight specified for camcorders. Thus, the tax imposed on the subassemblies is equal to the tax that would be imposed on 100 camcorders.

(B) *Combination method.* This paragraph (e)(3)(ii)(B) applies to an imported taxable product if the current Table specifies weights for two or more ODCs with respect to the product and the importer of the product can determine the weight of any such ODC (and of any ODC used as a substitute for such ODC) and can support such determination with sufficient and reliable information. In determining the ODC weight of any such product, the importer may replace the weight specified in the Table for such ODC with the weight (as determined by the importer) of such ODC and its substitutes. For example, if an importer has sufficient and reliable information to determine the amount of CFC-12 included in a product as a coolant (and to determine that no ODCs have been used as substitutes for CFC-12) but cannot determine the amount of CFC-113 used in manufacturing the product's electronic components, the importer may use the weight specified in the Table for CFC-113 and the actual weight determined by the importer for CFC-12 in determining the ODC weight of the product.

(C) *ODCs used in the manufacture of rigid foam insulation.* In computing the tax using the method described in this paragraph (e)(3), any ODC for which the Table specifies a weight followed by an asterisk (*) shall be treated as an ODC used in the manufacture of rigid foam insulation (as defined in § 52.4682-1(d)(3) and (4)).

(4) *Value method*—(i) *General rule.* If the importer cannot determine the ODC weight of an imported taxable product under the exact method described in paragraph (e)(2) of this section and the Table ODC weight of the product is not specified, the tax imposed on the product under section 4681 is one percent of the entry value of the product.

(ii) *Special rule for mixtures.* If, in the case of an imported taxable product that is a mixture, the tax was determined under the method described in this paragraph (e)(4), the Commissioner may redetermine the tax based on the ODC weight of the mixture.

(5) *Adjustment for prior taxes*—(i) *In general.* If any manufacture with respect to an imported taxable product occurred in the United States or the product incorporates a taxed component or a taxed chemical was used in its manufacture, the product's ODC weight (or value) attributable to manufacture within the United States or to taxed components or taxed chemicals shall be disregarded in computing the tax on such product using a method described in paragraph (e) (2), (3), or (4) of this section.

(ii) *Taxed component.* The term "taxed component" means any component that previously was subject to tax as an imported taxable product or that would have been so taxed if section 4681 had been in effect for periods before January 1, 1990.

(iii) *Taxed chemical.* The term "taxed chemical" means any ODC that previously was subject to tax.

(6) *Examples.* The application of this paragraph (e) may be illustrated by the following examples:

Example 1. A is an importer (as defined in § 52.4681-1(c)(5)) of VCRs. The HTS classification for the VCRs is 8528.10.40. VCRs classified under HTS heading 8528.10.40 are imported taxable products because they are listed in the Table (contained in paragraph (f)(6) of this section) by name and HTS heading (as described in paragraph (f)(3)(i) of this section). Each VCR is wrapped in protective packing material manufactured with ODCs. A imports and sells 100 VCRs during the first calendar quarter of 1991. A may determine the ODC weight for the VCRs by reference to the Table. The Table ODC weight specified for VCRs classified under HTS heading 8528.10.40 is 0.0586 pound of CFC-113. This weight does not take protective packaging into account. The amount of tax for the first quarter of 1991 is $6.42 (0.0586 (the ODC weight) x 100 (the number of VCRs sold in the quarter) x $1.37 (the base tax amount for CFC-113 in 1991) x 0.8 (the ozone-depletion factor for CFC-113)). If A uses the exact method (as described in paragraph (e)(2) of this section) to determine the ODC weight for the VCRs, A does not take into account the ODCs used in the manufacture of the protective packaging. (Imported protective packaging containing foams made with ODCs other than foams defined in § 52.4682-1(d)(3) is subject to tax, however, if the packaging is sold as packaging or first used as packaging in the United States.)

Example 2. The facts are the same as in *Example 1*, except that A's VCRs are manufactured using methyl chloroform as the solvent instead of CFC-113. If A does not use the exact method to determine the weight of the methyl chloroform used in the manufacture of the VCRs, A must, under paragraphs (e)(3)(i) and (e)(4)(i) of this section, determine the ODC weight by reference to the Table. If A uses the Table ODC weight, the computation of tax is the same as in *Example 1*, using the base tax amount and ozone-depletion factor for CFC-113. A does not substitute the base tax amount and ozone-depletion factor of methyl chloroform for those of CFC-113.

Example 3. B imports and sells mixtures of ethylene oxide and CFC-12. The mixture is 88 percent CFC-12 by weight. B also imports and sells R-502. The R-502 is 51 percent CFC-115 by weight. In the first calendar quarter of 1991 B sells 100 pounds of imported ethylene oxide/CFC-12 mixture and 10,000 pounds of imported R-502. The ethylene/CFC-12 mixture and the R-502 are imported taxable products because they are listed in Part I of the Table (contained in paragraph (f)(6) of this section). Under the exact method described in paragraph (e)(2) of this section, B computes the tax based on 88 pounds of CFC-12, the amount of ODCs contained in the imported ethylene oxide mixture, and based on 5100 pounds of CFC-115, the amount of ODCs in the imported R-502.

(f) *Imported Products Table*—(1) *In general.* This paragraph (f) contains rules relating to the Imported Products Table (Table) and sets forth the Table. The Table lists all the products that are subject to the tax on imported taxable products and specifies the Table ODC weight of each product for which such a weight has been determined.

(2) *Applicability of Table*—(i) *In general.* Except as provided in paragraph (f)(2)(ii) of this section, the Table contained in paragraph (f)(6) of this section is effective on January 1, 1990.

(ii) *Treatment of certain products*—(A) Products included in a listing that is preceded by a double asterisk (**) in the Table shall not be treated as imported taxable products until October 1, 1990.

(B) Products included in a listing that is preceded by a triple asterisk (***) in the Table shall not be treated as imported taxable products until January 1, 1992.

(3) *Identification of products*—(i) *In general.* Each listing in the Table identifies a product by name and includes only products that are described by that name. Most listings (other than listings for mixtures) identify a product by both name and HTS heading. In such cases, a product is included in that listing only if the product is described by that name and the rate of duty on the product is determined by reference to that HTS heading. However, the product is included in that listing even if it is manufactured with or contains a

different ODC than the ODC specified in the Table.

(ii) *Electronic items not listed by specific name*—(A) *In general.* Part II of the Table contains listings for electronic items that are not included within any other listing in the Table. An imported product is included in these listings only if such imported product—

(*1*) Is an electronic component listed in chapters 84, 85, or 90 of the Harmonized Tariff Schedule; or

(*2*) Contains components described in paragraph (f)(3)(ii)(A)(*1*) of this section and more than 15 percent of the cost of the imported product is attributable to such components.

(B) *Electronic component.* For purposes of this paragraph (f)(3)(ii), an electronic component is a component whose operation involves the use of nonmechanical amplification or switching devices such as tubes, transistors, and integrated circuits. Such components do not include passive electrical devices such as resistors and capacitors.

(C) *Certain items not included.* Items such as screws, nuts, bolts, plastic parts, and similar specially fabricated parts that may be used to construct an electronic item are not themselves included in the listing for electronic items not otherwise listed in the Table.

(iii) *Examples.* The application of this paragraph (f)(3) may be illustrated by the following examples:

Example 1. The Table lists "electronic integrated circuits and microassemblies; HTS heading 8542." A bipolar transistor under HTS heading 8542.11.00.05 is included in this listing because a bipolar transistor is a type of electronic integrated circuit and HTS heading 8542.11.00.05 is included within HTS heading 8542.

Example 2. The Table lists "radios; HTS heading 8527.19," "radio combinations; HTS heading 8527.11" and "radio combinations; HTS heading 8527.31." A radio classified under HTS heading 8527.19 is not included within either listing for radio combinations. However, a radio classified under HTS heading 8527.19.00.20 is included within the listing for radios; HTS heading 8527.19. A radio combination classified under HTS heading 8527.11.20 is included within the listing for radio combinations; HTS heading 8527.11 but not the listing for radio combinations; HTS heading 8527.31. Any radio or radio combination not classified under the HTS heading for any other listing is included in the listing for electronic items not otherwise listed.

(4) *Rules for listing products.* Products are listed in the Table in accordance with the following rules:

(i) *Listing in part I.* A product is listed in part I of the Table if it is a mixture containing ODCs. In addition, a product other than a mixture containing ODCs will be listed in part I of a revised Table if the Commissioner has determined that—

(A) The ODC weight of the product is not *de minimis* when the product is produced using the predominant method of manufacturing the product; and

(B) None of the ODCs used as materials in the manufacture of the product under the predominant method are used for purposes of refrigeration or air conditioning, creating an aerosol or foam, or manufacturing electronic components.

(ii) *Listing in part II.* A product is listed in part II of the Table if the Commissioner has determined that the ODCs used as materials in the manufacture of the product under the predominant method are used for purposes of refrigeration or air conditioning, creating an aerosol or foam, or manufacturing electronic components.

(iii) *Listing in part III.* A product is listed in part III of the Table if the Commissioner has determined that the product is not an imported taxable product and the product would otherwise be included within a listing in part II of the Table. For example, floppy disk drive units are listed in part III because they are not imported taxable products and they would, but for their listing in part III, be included within the part II listing for electronic items not specifically identified.

(5) *Table ODC weight.* The Table ODC weight of a product is the weight, determined by the Commissioner, of the ODCs that are used as materials in the manufacture of the product under the predominant method of manufacturing. The Table ODC weight is given in pounds per single unit of product unless otherwise specified.

(6) *Table.* The Table is set forth below:

Imported Products Table

Part I—Products that are mixtures containing ODCs

Mixtures containing ODCs, including but not limited to:
—anti-static sprays
—automotive products such as "carburetor cleaner," "stop leak," and "oil charge"
—cleaning solvents
—contact cleaners
—degreasers
—dusting sprays
—electronic circuit board coolants
—electronic solvents
—ethylene oxide/CFC-12
—fire extinguisher preparations and charges
—flux removers for electronics
—insect and wasp sprays
—mixtures of ODCs
—propellants
—refrigerants

Product Name	Harmonized Tariff Schedule Heading	ODC	ODC Weight
Part II—Products in which ODCs are used for purposes of refrigeration or air conditioning, creating an aerosol or foam, or manufacturing electronic components:			
Rigid foam insulation defined in § 52.4682-1(d)(3)			
Foams made with ODCs, other than foams defined in § 52.4682-1(d)(3)			
Scrap flexible foams made with ODCs			
Medical products containing ODCs:			
Surgical staplers			
Cryogenic medical instruments			
Drug delivery systems			
Inhalants			
Dehumidifiers, household	8415.82.00.50	CFC-12	0.344
Chillers:	8415.82.00.65		
Charged with CFC-12		CFC-12	1600.
Charged with CFC-114		CFC-114	1250.
Charged with R-500		CFC-12	1920.
Refrigerator-freezers, household:			
Not > 184 liters	8418.10.00.10	CFC-11	[1]1.08
		CFC-12	0.13
> 184 liters but not > 269 liters	8418.10.00.20	CFC-11	[1]1.32
		CFC-12	0.26
> 269 liters but not > 382 liters	8418.10.00.30	CFC-11	[1]1.54
		CFC-12	0.35

Product Name	Harmonized Tariff Schedule Heading	ODC	ODC Weight
> 382 liters	8418.10.00.40	CFC-11	[1]1.87
		CFC-12	0.35
Refrigerators, household:			
Not > 184 liters	8418.21.00.10	CFC-11	[1]1.08
		CFC-12	0.13
> 184 liters but not > 269 liters	8418.21.00.20	CFC-11	[1]1.32
		CFC-12	0.26
> 269 liters but not > 382 liters	8418.21.00.30	CFC-11	[1]1.54
		CFC-12	0.35
> 382 liters	8418.21.00.90	CFC-11	[1]1.87
		CFC-12	0.35
Freezers, household	8418.30	CFC-11	[1] 2.0
		CFC-12	0.4
Freezers, household	8418.40	CFC-11	[1]2.0
		CFC-12	0.4
Refrigerating display counters not > 227 kg	8418.50	CFC-11	[1] 50.0
		CFC-12	260.0
Icemaking machines	8418.69		
Charged with CFC-12		CFC-12	1.4
Charged with R-502		CFC-115	3.39
Drinking water coolers	8418.69		
Charged with CFC-12		CFC-12	0.21
Charged with R-500		CFC-12	0.22
Centrifugal chillers, hermetic	8418.69		
Charged with CFC-12		CFC-12	1600.
Charged with CFC-114		CFC-114	1250.
Charged with R-500		CFC-12	1920.
Reciprocating chillers	8418.69		
Charged with CFC-12		CFC-12	200.
Mobile refrigeration systems	8418.99		
Containers		CFC-12	15.
Trucks		CFC-12	11.
Trailers		CFC-12	20.
Refrigeration condensing units:			
not > 746W	8418.99.00.05	CFC-12	0.3
> 746W but not > 2.2KW	8418.99.00.10	CFC-12	1.0
> 2.2KW but not > 7.5KW	8418.99.00.15	CFC-12	3.0
> 7.5KW but not > 22.3KW	8418.99.00.20	CFC-12	8.5
> 22.3 KW	8418.99.00.25	CFC-12	17.0
Fire extinguishers, charged w/ODCs	8424		
Electronic typewriters and word processors	8469	CFC-113	0.2049
Electronic calculators	8470.10	CFC-113	0.0035
Electronic calculators w/printing device	8470.21	CFC-113	0.0057
Electronic calculators	8470.29	CFC-113	0.0035
Account machines	8470.40	CFC-113	0.1913
Cash registers	8470.50	CFC-113	0.1913
Digital automatic data processing machines w/cathode ray tube, not included in subheading 8471.20.00.90.	8471.20	CFC-113	0.3663
Laptops, notebooks, and pocket computers	8471.20.00.90	CFC-113	0.03567
Digital processing units w/entry value:			
Not > $100K	8471.91	CFC-113	0.4980
> $100K	8471.91	CFC-113	27.6667
Combined input/output units (terminals)	8471.92	CFC-113	0.3600
Keyboards	8471.92	CFC-113	0.0742
Display units	8471.92	CFC-113	0.0386
Printer units	8471.92	CFC-113	0.1558
Input or output units	8471.92	CFC-113	0.1370
Hard magnetic disk drive units not included in subheading 8471.93.10 for a disk of a diameter:			
Not > 9 cm (3½ inches)	8471.93	CFC-113	0.2829
> 9 cm (3½ inches) but not > 21 cm (8¼ inches)	8471.93	CFC-113	1.1671
Nonmagnetic storage units w/ entry value > $1,000	8471.93	CFC-113	2.7758
Magnetic disk drive units for a disk of a diameter over 21 cm (8¼ inches)	8471.93.10	CFC-113	4.0067
Power supplies	8471.99.30	CFC-113	0.0655
Electronic office machines	8472	CFC-113	0.001
Populated cards for digital processing units in subheading 8471.91 w/value:			
Not > $100K	8473.30	CFC-113	0.1408
> $100K	8473.30	CFC-113	4.82
Automatic goods-vending machines with refrigerating device	8476.11	CFC-12	0.45
Microwave ovens with electronic controls, with capacity of	8516.50		
0.99 cu. ft. or less		CFC-113	0.0300
1.0 through 1.3 cu. ft		CFC-113	0.0441
1.31 cu. ft. or greater		CFC-113	0.0485
Microwave oven combinations with electronic controls	8516.60.40.60	CFC-113	0.0595
Telephone sets w/entry value:			
Not > $11.00	8517.10	CFC-113	0.0225
> $11.00	8517.10	CFC-113	0.1
Teleprinters and teletypewriters	8517.20	CFC-113	0.1
Switching equipment not included in subheading 8517.30.20	8517.30	CFC-113	0.1267
Private branch exchange switching equipment	8517.30.20	CFC-113	0.0753
Modems	8517.40	CFC-113	0.0225

Product Name	Harmonized Tariff Schedule Heading	ODC	ODC Weight
Intercoms	8517.81	CFC-113	0.0225
Facsimile machines	8517.82	CFC-113	0.0225
Loudspeakers, microphones, headphones, and electric sound amplifier sets, not included in subheading 8518.30.10.	8518	CFC-113	0.0022
Telephone handsets	8518.30.10	CFC-113	0.042
Turntables, record players, cassette players, and other sound reproducing apparatus	8519	CFC-113	0.0022
Magnetic tape recorders and other sound recording apparatus, not included in subheading 8520.20.	8520	CFC-113	0.0022
Telephone answering machines	8520.20	CFC-113	0.1
Color video recording/reproducing apparatus	8521.10.00.20	CFC-113	0.0586
Videodisc players	8521.90	CFC-113	0.0106
Cordless handset telephones	8525.20.50	CFC-113	0.1
Cellular communication equipment	8525.20.60	CFC-113	0.4446
TV cameras	8525.30	CFC-113	1.423
Camcorders	8525.30	CFC-113	0.0586
Radio combinations	8527.11	CFC-113	0.0022
Radios	8527.19	CFC-113	0.0014
Motor Vehicle radios with or w/o tape player	8527.21	CFC-113	0.0021
Radio combinations	8527.31	CFC-113	0.0022
Radios	8527.32	CFC-113	0.0014
Tuners w/o speaker	8527.39.00.20	CFC-113	0.0022
Television receivers	8528	CFC-113	0.0386
VCRs	8528.10.40	CFC-113	0.0586
Home satellite earth stations	8528.10.80.55	CFC-113	0.0106
Electronic assemblies for HTS headings 8525, 8527, & 8528	8529.90	CFC-113	0.0816
Indicator panels incorporating liquid crystal devices or light emitting diodes	8531.20	CFC-113	0.0146
Printed circuits	8534	CFC-113	0.001
Computerized numerical controls	8537.10.00.30	CFC-113	0.1306
Diodes, crystals, transistors and other similar discrete semiconductor devices	8541	CFC-113	0.0001
Electronic integrated circuits and microassemblies	8542	CFC-113	0.0002
Signal generators	8543.20	CFC-113	0.6518
Avionics	8543.90.40	CFC-113	0.915
Signal generators subassemblies	8543.90.80	CFC-113	0.1265
Insulated or refrigerated railway freight cars	8606	CFC-11	[1]100.
Passenger automobiles	8703		
Foams (interior)		CFC-11	0.8
Foams (exterior)		CFC-11	0.7
With charged a/c		CFC-12	2.0
Without charged a/c		CFC-12	0.2
Electronics		CFC-113	0.5
Light trucks	8704		
Foams (interior)		CFC-11	0.6
Foams (exterior)		CFC-11	0.1
With charged a/c		CFC-12	2.0
Without charged a/c		CFC-12	0.2
Electronics		CFC-113	0.4
Heavy trucks and tractors, GVW 33,001 lbs or more: [2]	8704		
Foams (interior)		CFC-11	0.6
Foams (exterior)		CFC-11	0.1
With charged a/c		CFC-12	3.0
Without charged a/c		CFC-12	0.2
Electronics		CFC-113	0.4
Motorcycles with seat foamed with ODCs	8711	CFC-11	0.04
Bicycles with seat foamed with ODCs	8712	CFC-11	0.04
Seats foamed with ODCs	8714.95	CFC-11	0.04
Aircraft	8802	CFC-12	0.25 lb/1000 lbs Operating Empty Weight (OEW).
		CFC-113	30.0 lbs./1000 lbs.OEW
Optical fibers	9001	CFC-12	0.005 lb/thousand feet.
Electronic cameras	9006	CFC-113	0.01
Photocopiers	9009	CFC-113	0.0426
Avionics	9014.20	CFC-113	0.915
Electronic drafting machines	9017	CFC-113	0.12
Complete patient monitoring systems	9018.19.80	CFC-12	0.94
		CFC-113	3.4163
Complete patient monitoring systems; subassemblies thereof	9018.19.80.60	CFC-113	1.9320
Physical or chemical analysis instruments	9027	CFC-12	0.0003
		CFC-113	0.0271
Oscilloscopes	9030	CFC-11	0.49
		CFC-12	0.5943
		CFC-113	0.2613
Foam chairs	9401	CFC-11	0.30
Foam sofas	9401	CFC-11	0.75
Foam mattresses	9404.21	CFC-11	1.60
Electronic games and electronic components thereof	9504	CFC-113	
Electronic items not otherwise listed in the Table: included in HTS chapters 84, 85, 90		CFC-113	0.0004 pound/$1.00 of entry value.
Not included in HTS chapters 84, 85, 90 [3]		CFC-113	0.0004 pound/$1.00 of entry value.

Product Name	Harmonized Tariff Schedule Heading	ODC	ODC Weight
PART III—Products that are not Imported Taxable Products:			
Room air conditioners	8415.10.00.60		
Dishwashers	8422.11		
Clothes washers	8450.11		
Clothes dryers	8451.21		
Floppy disk drive units	8471.93		
Transformers and inductors	8504		
Toasters	8516.72		
Unrecorded media	8523		
Recorded media	8524		
Capacitors	8532		
Resistors	8533		
Switching apparatus	8536		
Cathode tubes	8540		

[1] See paragraph (e)(3)(ii)(C) of this section. Denotes an ODC used in the manufacture of rigid foam insulation.
[2] See paragraph (f)(2)(ii)(A) of this section. Denotes product for which the effective date is October 1, 1990.
[3] See paragraph (f)(2)(ii)(B) of this section. Denotes products for which the effective date is January 1, 1992.

(g) *Requests for modification of Table*—(1) *In general.* Any manufacturer or importer of a product may request that the Secretary modify the Table in any of the following respects:

(i) Adding a product to the Table and specifying its Table ODC weight.

(ii) Removing a product from the Table.

(iii) Changing or specifying the Table ODC weight of a product.

(2) *Form of request.* The Secretary will consider a request for modification that includes the following:

(i) The name, address, taxpayer identifying number, and principal place of business of the requester.

(ii) For each product with respect to which a modification is requested:

(A) The name of the product;

(B) The HTS heading or subheading;

(C) The type of modification requested;

(D) The Table ODC weight that should be specified for the product if the request relates to adding a product or changing or specifying its Table ODC weight; and

(E) The data supporting the request.

(3) *Address.* The address for submission of requests under this paragraph (g) is: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (Imported Products Table), room 5228, Washington, DC 20044.

(4) *Public inspection and copying.* Requests submitted under this paragraph (g) will be available in the Internal Revenue Service Freedom of Information Reading Room for public inspection and copying.

§ 52.4682-4 Floor stocks tax.

(a) *Overview.* This section provides rules for identifying ozone-depleting chemicals (ODCs) that are subject to the floor stocks tax imposed by section 4682(h)(1), determining the person that is liable for the tax, and computing the amount of the tax. See § 52.4681-1(a)(3) and (c) for general rules and definitions relating to the floor stocks tax.

(b) *Identifying rules*—(1) *ODCs subject to floor stocks tax; ODCs held for sale or for use in further manufacture*—(i) *In general.* The floor stocks tax is imposed only on an ODC that is held for sale or for use in further manufacture on the date the tax is imposed. This paragraph (b)(1) provides rules for identifying ODCs held for sale or for use in further manufacture.

(ii) *Held for sale*—(A) *In general.* For purposes of determining whether an ODC is held for sale, the term "sale" shall have the meaning set forth in § 52.4681-1(c)(6). ODCs held for sale include ODCs that will be sold in connection with the provision of services or in connection with the sale of a manufactured article and, in such cases, include ODCs that will be sold without the statement of a separate charge for those ODCs.

(B) *ODCs held by a government.* An ODC that is held by a government for its own use is not held for sale even if the ODC will be transferred between agencies or other subdivisions that have or are required to have different employer identification numbers.

(iii) *Held for use in further manufacture.* Except as otherwise provided in paragraph (b)(2)(v) of this section, an ODC is held for use in further manufacture if—

(A) The ODC will be used as a material (within the meaning of paragraph (b)(1)(iv) of this section) in the manufacture of an article; and

(B) Such article will be held for sale.

(iv) *Use as material*—(A) *In general.* Except as provided in paragraph (b)(1)(iv)(B) of this section, an ODC will be used as a material in the manufacture of an article if the ODC will be—

(*1*) Incorporated into the article; or

(*2*) Released into the atmosphere in the process of manufacturing the article.

(B) *ODCs used in equipment.* For purposes of the floor stocks tax, an ODC is not used as a material in the manufacture of an article if the ODC is (or will be) contained in equipment used in such manufacture and the ODC will be used for its intended purpose without being released from such equipment. Thus, ODCs that are (or will be) used as coolants in a factory's air-conditioning system are not used as materials in the manufacture of articles produced in the factory.

(v) *Storage containers.* The floor stocks tax is imposed on an ODC without regard to the type or size of the storage container in which the ODC is held. Thus, the tax may apply to an ODC whether it is in a 14-ounce can or a 30-pound tank.

(vi) *Examples.* The provisions of this paragraph (b)(1) may be illustrated by the following examples:

Example 1. A, a manufacturer of air conditioners, holds an ODC for use in air conditioners that it will manufacture and sell. A holds the ODC for use in further manufacture.

Example 2. B, a manufacturer of electronic components, holds an ODC for use as a solvent to clean printed circuits that it will sell to computer manufacturers. B holds the ODC for use in further manufacture.

Example 3. C, an automobile dealer, holds an ODC for use in charging air conditioners installed in automobiles that it sells to retail customers. C does not hold the ODC for use in further manufacture. C does, however, hold the ODC for sale, even if the customers are not separately charged for ODCs used in the automobile air conditioners.

Example 4. D operates an air-conditioning repair service and holds an ODC for use in repairing air conditioners for its customers. D holds the ODC for sale even if the customers are not separately charged for ODCs used in the repairs.

Example 5. E, a grocery-store chain, holds an ODC for use in its refrigeration units. E does not hold the ODC for sale or for use in further manufacture.

Example 6. F, a bank, holds an ODC for use in its fire extinguishers to protect the computer system. F does not hold the ODC for sale or for use in further manufacture.

Example 7. G, a government agency, holds an ODC for use in the refrigeration equipment of its various units. The units have separate employer identification numbers. The ODC is stored in a central warehouse until needed by a unit and then transferred to the unit upon request. G does not hold the ODC for sale or for use in further manufacture.

(2) *Nontaxable ODCs.* Except as otherwise provided in paragraphs (d)(2) and (d)(3) of this section, the floor stocks tax is not imposed on any ODC in any year in which the base tax amount does not increase.

(i) *Mixtures*—(A) *Tax imposed on January 1, 1990.* In the case of the floor stocks tax imposed on January 1, 1990, the tax is not imposed on an ODC that has been mixed with any other ingredients.

(B) *Taxes imposed after 1990*—(*1*) *In general.* In the case of the floor stocks tax imposed on January 1 of 1991, 1992, 1993, or 1994, the tax is not imposed on an ODC that has been mixed with any other ingredients, but only if it is established that such ingredients contribute to the accomplishment of the purpose for which the mixture will be used. A mixture is not exempt from tax under this paragraph (b)(2)(i)(B), however, if it contains only an ODC and an inert ingredient that does not contribute to the accomplishment of the purpose for which the mixture will be used.

(*2*) *Exception.* In the case of a floor stocks tax imposed on or after January 1, 1992, a mixture is not exempt from floor stocks tax under this paragraph (b)(2)(i)(B) if it contains only ODCs and one or more stabilizers. For this purpose, the term "stabilizer" means an ingredient needed to maintain the chemical integrity of the ODC.

(C) *Examples.* The provisions of this paragraph (b)(2)(i) may be illustrated by the following examples:

Example 1. The floor stocks tax is not imposed on the ODCs contained in refrigerants such as R-500 and R-502 because such products are mixtures of ODCs and other chemicals that contribute to the accomplishment of the purpose for which the mixture will be used.

Example 2. The floor stocks tax is not imposed on the ODCs contained in automotive products used for checking for leaks because such products are a mixture of ODCs and small amounts of dyes and oils that contribute to the accomplishment of the purpose for which the mixture will be used.

Example 3. The floor stocks tax is not imposed on Halon 1301 pressurized with nitrogen. Although nitrogen is an inert ingredient, it contributes to the accomplishment of the purpose for which the mixture will be used.

Example 4. On January 1, 1993, the floor stocks tax is imposed on methyl chloroform that is stabilized to prevent hydrolization or chemical reaction during transportation or use, unless the stabilized methyl chloroform has also been mixed with other ingredients that contribute to the accomplishment of the purpose for which the mixture will be used.

(ii) *Manufactured articles.* The floor stocks tax is not imposed on an ODC that is contained in a manufactured article in which the ODC will be used for its intended purpose without being released from such article. For example, the tax is not imposed on the ODCs contained in the cooling coils of a refrigerator even if the refrigerator is held for sale. However, the tax is imposed on a can of ODC used to recharge an air conditioning unit because the ODC must be expelled from the can in order to be used. Similarly, beginning in 1991, the tax is imposed on Halons contained in a fire extinguisher held for sale because such ODCs must be expelled from the fire extinguisher in order to be used.

(iii) *Recycled ODCs.* The floor stocks tax is not imposed on ODCs that have been reclaimed or recycled. For example, the tax is not imposed on an ODC that is held for use in further manufacture after being used as a solvent and recycled.

(iv) *ODCs held by the manufacturer or importer.* The floor stocks tax is not imposed on ODCs held by their manufacturer or importer.

(v) *ODCs used as a feedstock*—(A) *In general.* The floor stocks tax is not imposed on any ODC that was sold in a qualifying sale for use as a feedstock (as defined in § 52.4682-1(c)).

(B) *Post-1989 ODCs sold before January 1, 1990; post-1990 ODCs sold before January 1, 1991.* A post-1989 ODC that was sold by its manufacturer or importer before January 1, 1990, or a post-1990 ODC that was sold by its manufacturer or importer before January 1, 1991, shall be treated, for purposes of this paragraph (b)(2)(v), as an ODC that was sold in a qualifying sale for purposes of § 52.4682-1(c) if the ODC will be used as a feedstock (within the meaning of § 52.4682-2(c)(3)).

(c) *Person liable for tax*—(1) *In general.* The person liable for the floor stocks tax on an ODC is the person that holds the ODC on a date on which the tax is imposed. The person who holds the ODC is the person who has title to the ODC (whether or not delivery to such person has been made) as of the first moment of such date. The person who has title at such time is determined under applicable local law.

(2) *Special rule.* Each business unit that has, or is required to have, its own employer identification number is treated as a separate person for purposes of the floor stocks tax. For example, a chain of automotive parts stores that has one employer identification number is one person for purposes of the floor stocks tax, and a parent corporation and subsidiary corporation that each have a different employer identification number are two persons for purposes of the floor stocks tax.

(d) *Computation of tax; tentative tax amount*—(1) *In general*—(i) *Generally applicable rules.* This paragraph (d) provides rules for determining the tentative tax amount and the amount of the floor stocks tax. Section 52.4681-1(a)(3) provides that the amount of the floor stocks tax on an ODC is determined by reference to a tentative tax amount. The tentative tax amount is the amount of tax that would be imposed on the ODC under section 4681(a)(1) if a sale of the ODC by the manufacturer or importer had occurred on the date the floor stocks tax is imposed.

(ii) *Floor stocks tax imposed on post-1989 ODCs on January 1, 1990.* The floor stocks tax imposed on post-1989 ODCs (as defined in § 52.4681-1(c)(9)) on January 1, 1990, is equal to the tentative tax amount. See paragraph (d)(2) of this section for rules relating to the floor stocks tax imposed on ODCs used in the manufacture of rigid foam insulation. See paragraph (d)(3) of this section for rules relating to the floor stocks tax imposed on Halons.

(iii) *Floor stocks tax imposed on post-1990 ODCs on January 1, 1991.* The floor stocks tax imposed on post-1990 ODCs (as defined in § 52.4681-1(c)(9)) on January 1, 1991, is equal to the tentative tax amount.

(iv) *Other floor stocks taxes*—(A) *In general.* The following rules apply for floor stocks taxes imposed on post-1989 ODCs after January 1, 1990, and on post-1990 ODCs after January 1, 1991:

(*1*) The tentative tax amount is determined, except as provided in paragraph (d) (2) or (3) of this section, by reference to the rate of tax prescribed in section 4681(b)(1)(B) and the ozone-depletion factors prescribed in section 4682(b).

(*2*) The amount of the floor stocks tax on an ODC is equal to the amount by which the tentative tax amount exceeds the amount of taxes previously imposed on the ODC.

(B) *Example.* The application of this paragraph (d)(1)(iv) may be illustrated by the following example:

Example. The floor stocks tax imposed on one pound of CFC–12 held for sale on January 1, 1992, is $0.30 (the amount by which $1.67, the tentative tax, exceeds $1.37, the tax previously imposed on CFC–12).

(2) *ODCs used in the manufacture of rigid foam insulation; 1990, 1991, 1992, and 1993*—(i) *In general.* In the case of an ODC that was sold in a qualifying sale for purposes of § 52.4682–1(d) (relating to use in the manufacture of rigid foam insulation) the tentative tax amount is determined under section 4682(g) for purposes of computing the floor stocks tax imposed on the ODC on January 1, 1990, 1991, 1992 or 1993. For purposes of computing the floor stocks tax imposed on the ODC on January 1, 1990, the tentative tax amount is zero. The floor stocks tax is not imposed on ODCs for use in the manufacture of rigid foam insulation in 1992 and 1993.

(ii) *Post-1989 ODCs sold before January 1, 1990; post-1990 ODCs sold before January 1, 1991.* A post-1989 ODC that was sold by its manufacturer or importer before January 1, 1990, or a post-1990 ODC that was sold by its manufacturer or importer before January 1, 1991, shall be treated, for purposes of paragraphs (d)(2) and (e) of this section, as an ODC that was sold in a qualifying sale for purposes of § 52.4682–1(d) if the ODC will be used in the manufacture of rigid foam insulation (within the meaning of §§ 52.4682–1(d) (3) and (4)).

(3) *Halons; 1990, 1991, 1992, and 1993.* In the case of Halon-1211, Halon-1301, or Halon-2402 (Halons), the tentative tax amount is determined under section 4682(g) for purposes of computing the floor stocks tax imposed on Halons on January 1, 1990, 1991, 1992, or 1993. For purposes of computing the floor stocks tax imposed on Halons on January 1, 1990, the tentative tax amount is zero. The floor stocks tax is not imposed on Halons in 1992 and 1993.

(e) *De minimis exception*—(1) *1990 and 1992.* In the case of the floor stocks tax imposed on January 1, 1990 or 1992, a person is liable for the tax only if, on the date the tax is imposed, the person holds at least 400 pounds of post-1989 ODCs that are not described in paragraph (d) (2) or (3) of this section and are otherwise subject to tax.

(2) *1991.* In the case of the floor stocks tax imposed on January 1, 1991, a person is liable for the tax only if, on such date, the person holds at least 400 pounds of ODCs subject to the 1991 floor stocks tax. For this purpose, ODCs subject to the 1991 floor stocks tax are—

(i) Post-1990 ODCs that are subject to tax; and

(ii) Post-1989 ODCs that are described in paragraph (d) (2) or (3) of this section and are otherwise subject to tax.

(3) *1993.* In the case of the floor stocks tax imposed on January 1, 1993, a person is liable for the tax only if, on such date, the person holds at least 400 pounds of ODCs that are not described in paragraph (d) (2) or (3) of this section and are otherwise subject to tax.

(4) *1994.* In the case of the floor stocks tax imposed on January 1, 1994, a person is liable for the tax only if, on such date, the person holds—

(i) At least 400 pounds of post-1990 ODCs that are not described in paragraph (d)(2) of this section and are otherwise subject to tax;

(ii) At least 200 pounds of ODCs that are described in paragraph (d)(2) of this section and are otherwise subject to tax; or

(iii) At least 20 pounds of ODCs that are described in paragraph (d)(3) of this section and are otherwise subject to tax.

(5) *Examples.* The rules of this paragraph (e) may be illustrated by the following examples:

Example 1. On January 1, 1990, A holds for sale 300 pounds of CFC–12 (a post-1989 ODC not described in paragraph (d)(2) or (d)(3) of this section)) and 500 pounds of R–500 (a mixture). A does not hold at least 400 pounds of ODCs that are taken into account under paragraph (e)(1) of this section and, under paragraph (b)(2)(i) of this section, mixtures are not subject to the floor stocks tax. Thus, A is not liable for the floor stocks tax imposed on January 1, 1990.

Example 2. On January 1, 1990, B holds for sale 250 pounds of CFC–12 and 250 pounds of CFC–113 (post-1989 ODCs not described in paragraph (d) (2) or (3) of this section). B holds 500 pounds of ODCs that are taken into account under paragraph (e)(1) of this section. Thus, B is liable for the floor stocks tax imposed on January 1, 1990, because B holds at least 400 pounds of ODCs for sale.

Example 3. On January 1, 1990, C holds 200 pounds of post-1990 ODCs and 500 pounds of post-1989 ODCs for use in further manufacture. C will use 300 pounds of the post-1989 ODCs in the manufacture of rigid foam insulation (as defined in § 52.4682–1(d) (3) and (4)). The remainder of the ODCs are not described in paragraph (d) (2) or (3) of this section. Under paragraph (e)(1) of this section, post-1990 ODCs and ODCs that will be used in the manufacture of rigid foam insulation are disregarded in determining whether the *de minimis* exception is applicable in 1990. Thus, C holds only 200 pounds of ODCs that are taken into account under paragraph (e)(1) of this section and is not liable for the floor stocks tax imposed on January 1, 1990.

Example 4. (a) The facts are the same as in *Example 3*, except that the ODCs are held on January 1, 1991. Under paragraph (e)(2) of this section, the 200 pounds of post-1990 ODCs and the 300 pounds of post-1989 ODCs that will be used in the manufacture of rigid foam insulation are taken into account in determining whether the *de minimis* exception is applicable in 1991. Under paragraph (b)(2) of this section, the remaining 200 pounds of post-1989 ODCs are not taken into account because the base tax amount applicable to post-1989 ODCs does not increase in 1991. Thus, C holds 500 pounds of ODCs that are taken into account under paragraph (e)(2) of this section and is liable for the floor stocks tax imposed on January 1, 1991.

(b) The amount of the floor stocks tax imposed on the 200 pounds of post-1990 ODCs and the 300 pounds of post-1989 ODCs that will be used in the manufacture of rigid foam insulation is equal to the tentative tax amount because those ODCs were not previously subject to tax.

Example 5. (a) On January 1, 1994, D holds for sale 300 pounds of CFC–113 (a post-1989 ODC not described in paragraph (d)(2) or (d)(3) of this section), 200 pounds of methyl chloroform (a post-1990 ODC not described in paragraph (d)(2) of this section), and 25 pounds of Halon-1301 (an ODC described in paragraph (d)(3) of this section). D is liable for the floor stocks tax imposed on January 1, 1994, because 25 pounds of Halon-1301 exceeds the *de minimis* amount specified in paragraph (e)(4)(iii) of this section. The 200 pounds of methyl chloroform is less than the amount specified in paragraph (e)(4)(i) of this section. Nevertheless, tax is imposed on both the 25 pounds of Halon-1301 and the 200 pounds of methyl chloroform. Under paragraph (b)(2) of this section, the 300 pounds of CFC–113 are not subject to floor stocks tax in 1994 because the base tax amount applicable to post-1989 ODCs does not increase in 1994.

(b) The amount of the floor stocks tax is determined separately for the 200 pounds of methyl chloroform and the 25 pounds of Halon-1301 and is equal to the difference between the tentative tax amount and the amount of tax previously imposed on those ODCs. For Halon-1301, for example, the tax is determined as follows. The tentative tax amount is $662.50 ($2.65 (the base tax amount in 1994×10 (the ozone-depletion factor for Halon-1301)×25 (the number of pounds held)). The tax previously imposed on the Halon-1301 is $6.63 ($2.65 (the base tax amount in 1993)×10 (the ozone-depletion factor for Halon-1301)×one percent (the applicable percentage determined under section 4682(g)(2)(A))×25 (the number of pounds sold)). Thus, the floor stocks tax imposed on the 25 pounds of Halon-1301 in 1994 is $658.87, the difference between $662.50 (the tentative tax amount) and $6.63 (the tax previously imposed).

(f) *Inventory*—(1) *In general.* If, on the date on which the floor stocks tax is imposed, a person holds ODCs for sale or for use in further manufacture and the ODCs were not manufactured or imported by such person, the following rules apply:

(i) The person shall prepare an inventory of all such ODCs that the

person holds on the date on which the tax is imposed.

(ii) The inventory shall be taken as of the first moment of the date on which the tax is imposed, but work-back or work-forward inventories will be acceptable if supported by adequate commercial records of receipt, use, and disposition of ODCs held for sale or for use in further manufacture.

(iii) The person must maintain records of the inventory and make such records available for inspection and copying by internal revenue agents and officers. Records of the inventory are not to be filed with the Internal Revenue Service.

(2) *Circumstances in which an inventory is not required.* The inventory requirement of paragraph (f)(1) of this section does not apply to any person holding, on a date on which floor stocks tax is imposed, only ODCs that are not subject to tax by reason of a statutory exemption (*e.g.*, use as a feedstock) or regulatory exclusion other than the *de minimis* exception provided by paragraph (e) of this section (*e.g.*, mixtures). In addition, any person that holds ODCs subject to the floor stocks tax and also holds ODCs that are nontaxable under the provisions of paragraph (b)(2) of this section, is not required to inventory the nontaxable ODCs. However, any person that holds any ODCs that either are subject to the floor stocks tax or would be subject to the floor stocks tax but for the *de minimis* exception must inventory those ODCs.

(3) *Examples.* The rules of this paragraph (f) may be illustrated by the following examples:

Example 1. On January 1, 1990, A holds for sale 300 pounds of CFC-12 (a post-1989 ODC not described in paragraph (d)(2) or (d)(3) of this section) and 500 pounds of R-500 (a mixture). As required by paragraph (f)(1) of this section, A must prepare an inventory of the CFC-12 A holds for sale on that date even though, under paragraph (e)(1) of this section, the 300 pounds of CFC-12 is not taken into account because it is *de minimis*. However, as provided in paragraph (f)(2) of this section, A is not required to inventory the R-500 because, under paragraph (b)(2) of this section, mixtures are not subject to the floor stocks tax.

Example 2. On January 1, 1991, B holds for sale 1,000 pounds of CFC-12 (a post-1989 ODC not described in paragraph (d)(2) or (d)(3) of this section). As provided under paragraph (f)(2) of this section, B is not required to prepare an inventory because CFC-12 is not subject to the floor stocks tax in 1991.

(g) *Time for paying tax.* The floor stocks tax imposed under section 4682(h) shall be paid without assessment or notice. In the case of the floor stocks tax imposed on January 1, 1990, the tax shall be paid by April 1, 1990. In the case of floor stocks taxes imposed after January 1, 1990, the tax shall be paid by June 30 of the year in which the tax is imposed.

Par. 3. The authority for part 602 continues to read as follows:

Authority: (26 U.S.C. 7805)

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by removing the "T" from the following entries "52.4682-1T(b)(2)(iii) * * * 1545-1153", "52.4682-2T(b) * * * 1545-1153", "52.4682-2T(d) * * * 1545-1153", "52.4682-3T(c)(2) * * * 1545-1153", "52.4682-3T(g) * * * 1545-1153", and "52.4682-4T(f) * * * 1545-1153".

Dated: August 28, 1991.

Michael J. Murphy,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91-26465 Filed 11-1-91; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL-4027-6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; States of Kansas, Nebraska, Missouri, and Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Section 111(d) of the Clean Air Act, as amended, requires states to submit to EPA plans to control emissions of certain pollutants at designated facilities. When there are no existing sources of the pollutant located in the state, the state may submit a negative declaration, i.e., a certification to that effect, in lieu of submission of a plan revision for the control of the pollutant.

On February 11, 1991, EPA promulgated section 111(d) emission guidelines for municipal waste combustors (MWC) with the capacity to combust greater than 250 tons per day of municipal solid waste (MSW). See 56 FR 5514 for a complete discussion of the MWC emission guidelines and designated pollutants. EPA has received negative declarations from the states of Kansas, Nebraska, Iowa, and Missouri regarding these designated facilities. Today, EPA is taking action to approve these declarations.

DATES: This action will be effective January 3, 1992, unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the state submittal for this action are available for public inspection during normal business hours at: The Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Kansas Department of Health and Environment, Building 740, Forbes Field, Topeka, Kansas 66620; Iowa Department of Natural Resources, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319; Missouri Department of Natural Resources, 205 Jefferson Street, Jefferson City, Missouri 65101; and Nebraska Department of Environmental Control, 301 South Centennial Mall, Lincoln, Nebraska 68509-8922.

FOR FURTHER INFORMATION CONTACT: Joshua A. Tapp at (913) 551-7606 (FTS 276-7606).

SUPPLEMENTARY INFORMATION: Section 111(d) of the Clean Air Act requires states to submit plans to control emissions of certain pollutants (designated pollutants) at existing sources (designated facilities) whenever standards of performance have been established under section 111(b) for those pollutants at new sources of the same type. Designated pollutants do not include those pollutants that are already listed under section 109(a), 108(a), National Ambient Air Quality Standards, or emitted from a source category under section 112, Hazardous Air Pollutants. The February 11, 1991, MWC emission guidelines regulate the following designated pollutants: MWC organics, MWC metals, and MWC gases.

Subpart B of 40 CFR part 60 established procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Part 62 of the Code of Federal Regulations provides the procedural framework for the submission of these plans. When designated facilities are located in a state, the state must develop and submit a plan for the control of the designated pollutant. However, 40 CFR 62.06 provides that if there are no existing sources of the designated pollutant located in the state, a letter of certification to that effect (negative

declaration) is all that is required from the state. The negative declaration will be in lieu of a plan.

EPA Action

EPA approves the negative declarations submitted by Kansas, Nebraska, Iowa, and Missouri.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective January 3, 1992, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective January 3, 1992.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). The Office of Management and Budget waived Tables 2 and 3 actions (54 FR 2222) from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), EPA certifies that these negative declarations will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Air pollution control, Municipal waste incinerators, Nitrogen dioxide, Particulate matter, and Sulfur oxides.

Dated: October 18, 1991.

Morris Kay,

Regional Administrator.

For the reasons set out in the preamble, title 40, chapter I part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7413 and 7601.

Subpart Q—Iowa

2. Subpart Q is amended by adding an undesignated center heading and § 62.3911 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.3911 Identification of Plan—Negative Declaration.

Letter from the Administrator of the Environmental Protection Division of the Department of Natural Resources submitted June 4, 1991, certifying that there are no existing municipal waste combustors in the state of Iowa subject to this 111(d) requirement.

Subpart R—Kansas

3. Subpart R is amended by adding an undesignated center heading and § 62.4176 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.4176 Identification of Plan—Negative Declaration.

Letter from the Director of the Bureau of Air and Waste Management of the Department of Health and Environment submitted July 3, 1991, certifying that there are no existing municipal waste combustors in the state of Kansas subject to this 111(d) requirement.

Subpart AA—Missouri

4. Subpart AA is amended by adding an undesignated center heading and § 62.6355 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.6355. Identification of Plan—Negative Declaration.

Letter from the Director of the Air Pollution Control Program of the Department of Natural Resources submitted May 23, 1991, certifying that there are no existing municipal waste combustors in the state of Missouri subject to this 111(d) requirement.

Subpart CC—Nebraska

5. Subpart CC is amended by adding an undesignated center heading and § 62.6911 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.6911 Identification of Plan—Negative Declaration.

Letter from the Chief of the Air Quality Division of the Department of Environmental Control submitted April 1, 1991, certifying that there are no existing municipal waste combustors in the state of Nebraska subject to this 111(d) requirement.

[FR Doc. 91–26527 Filed 11–1–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6901

[ID-943-4214-10; IDI-27678]

Partial Revocation of Public Land Order No. 4249 and the Bureau of Land Management Order Dated January 28, 1952; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order and a Bureau of Land Management order insofar as they affect 3,291.83 acres of public lands withdrawn for the Bureau of Reclamation's Snake River and Mountain Home Reclamation Projects. The lands are no longer needed for reclamation purposes, and revocation is needed to permit disposal of the lands through land exchange under Section 206 of the Federal Land Policy and Management Act of 1976 and the Recreation and Public Purposes Act. This action will open the lands to surface entry and mining, except where closed by overlapping withdrawals. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: December 4, 1991.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 4249 and the Bureau of Land Management Order dated January 28, 1952, which withdrew public lands for the Bureau of Reclamation's Mountain Home and Snake River Reclamation Projects, are hereby revoked insofar as they affect the following described lands:

Boise Meridian

(Bureau of Land Management Order of 1/28/1952)
T. 1 S., R. 1 W.,
sec. 25, S½.
T. 2 N., R. 1 W.,
sec. 34, SE¼SE¼;
sec. 35, S½S½.
T. 2 N., R. 1 E.,
sec. 13, SE¼NE¼, W½NW¼, and S½;
sec. 24, SW¼ and S½SE¼;
sec. 25.
T. 2 N., R. 2 E.,
sec. 2, SE¼;
sec. 11, W½NE¼;
sec. 12, N½SW¼;
sec. 14, E½NE¼ and NW¼NW¼;
sec. 18, lot 4;
sec. 19, lots 1 and 2, SW¼NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
sec. 20, S½SW¼.
T. 4 S., R. 6 E.,
sec. 24, NW¼SW¼;
sec. 26, E½SE¼;
sec. 35, W½NE¼.
(Public Land Order No. 4249)
T. 1 S., R. 1 W.,
sec. 25, N½.
The areas described aggregate 3,291.83 acres in Ada and Elmore Counties.

2. The following described land is within an overlapping withdrawal (Public Land Order No. 5777) and thus remains withdrawn from the operation of the agricultural land laws, state selection, and the mining laws:

Boise Meridian

T. 1 S., R. 1 W.,
sec. 25.
The area described contains 640 acres in Ada County.

3. At 9 a.m. on December 4, 1991, the land described in paragraph 1, except for that described in paragraph 2, will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on December 4, 1991, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on December 4, 1991, the lands described in paragraph 1, except for that described in paragraph 2, will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), 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.

Dated: October 22, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-26490 Filed 11-1-91; 8:45 am]

BILLING CODE 4310-GG-M

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43 CFR Public Land Order 6902

[ID-943-01-4214-10; IDI-27805, IDI-2508]

Modification of Public Land Order No. 4747, dated November 17, 1969; Transfer of Jurisdiction and Change of Use; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies Public Land Order No. 4747 by changing the use from an administrative site for the Intermountain Forest Range and Experiment Station for the Forest Service, Department of Agriculture, to an administrative site for the Boise District Office, Bureau of Land Management, Department of the Interior. Jurisdiction of the land will be transferred from the Forest Service to the Bureau of Land Management and the withdrawal will be continued for a period of 20 years. The land will remain closed to surface entry and mining, but has been and will remain open to mineral leasing.

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, (208) 384-3162.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 4747, which withdrew lands for use by the Forest Service, Department of Agriculture, for a Forest Range and Experiment Station, is hereby modified to change the use of the land to a district office complex for the Bureau of Land Management, Department of the Interior, and to transfer jurisdiction of the land to the Bureau of Land Management and to continue the withdrawal for 20 years. The land is described as follows:

Boise Meridian

T. 3 N., R. 2 E.,
sec. 27, SE¼NW¼NE¼SW¼.
The area described contains 2.50 acres in Ada County.

2. The land described above continues to be withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws, but not the mineral leasing laws. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: October 22, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-26491 Filed 11-4-91; 8:45 am]

BILLING CODE 4310-GG-M

FEDERAL MARITIME COMMISSION

46 CFR Part 583

[Docket No. 91-1]

Bonding of Non-Vessel-Operating Common Carriers; Correction

AGENCY: Federal Maritime Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Maritime Commission is correcting an error in its Final Rule in Docket No. 91-1, Bonding of Non-Vessel-Operating Common Carriers, which appeared in the **Federal Register** on October 17, 1991 (56 FR 51987). This Rule implemented the Non-Vessel-Operating Common Carrier Amendments of 1990 (section 710 of Pub. L. No. 101-595).

EFFECTIVE DATE: November 18, 1991.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., suite 12225, Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: On October 8, 1991, the Commission adopted a Final Rule to implement the Non-Vessel-Operating Common Carrier Amendments of 1990. Through an oversight, the Final Rule did not contain

certain language relating to the transportation of used household goods and personal effects for the Department of Defense. It was the Commission's intention to indicate that although such shipments are not subject to the requirements of 46 CFR part 583, they might nonetheless be subject to other requirements imposed by the Department of Defense, such as alternative surety bonds. Accordingly, the Final Rule should be corrected as follows:

On page 51994, in column two, in § 583.3, paragraph (c) is corrected to read as follows:

§ 583.3 Proof of financial responsibility, when required.

* * * * *

(c) Any person which exclusively transports used household goods and personal effects for the account of the Department of Defense is not subject to the requirements of this part, but may be subject to other requirements, such as alternative surety bonding, imposed by the Department of Defense.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-26406 Filed 11-1-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 72]

RIN 2127-AE26

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to petitions for reconsideration; Final rule.

SUMMARY: NHTSA recently published a final rule to express more accurately the static testing requirements for safety belts that do not apply to automatic belts or to manual belts that are crash tested. In response to petitions for reconsideration of that final rule, this rule clarifies the scope of the labeling requirement for crash tested manual belts and modifies that labeling requirement to make it identical to the labeling requirement for safety belts with load limiters. These amendments will improve the clarity of the labeling requirements and avoid needless burdens on manufacturers.

DATES: Effective Date: These amendments take effect September 1, 1992. Safety belts and vehicles manufactured before September 1, 1992 may comply with the post-September 1, 1992 requirements for belt labeling.

Petitions for reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA not later than December 4, 1991.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number shown above for this rule, and be submitted to: Administrator, NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, Chief, Frontal Crash Protection Division, NRM-12, room 5320, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. (202) 366-4911.

SUPPLEMENTARY INFORMATION:

Background

Standard No. 209, Seat Belt Assemblies (49 CFR § 571.209), sets forth a series of static tests for strength and other qualities of the webbing and hardware used in a seat belt assembly, along with some additional tests of the seat belt assembly as a whole. Absent a dynamic test, these tests individually evaluate each of the aspects of a belt system that NHTSA believes are necessary to ensure that the belt system will provide adequate occupant protection in a crash. For instance, the strength requirements in Standard No. 209 are intended to ensure that the safety belt is strong enough to withstand the loads imposed by a person using the belt in a crash; the webbing elongation requirements help ensure that the belt will not stretch so much that it provides a lesser level of protection; and so forth. NHTSA believes that any belt system that achieves the required level of performance in all of these tests will offer adequate occupant protection when the belt system is installed in any vehicle at any seating position.

However, NHTSA has long believed it more appropriate to evaluate the occupant protection afforded by vehicles by conducting dynamic testing, which consists of a crash test of the vehicle using test dummies as surrogates for human occupants. This belief is based on the fact that the protection provided by safety belts depends on more than the performance of the safety belts themselves or of belt components tested individually. Occupant protection depends on not only the performance of the safety belts themselves but the structural characteristics and interior design of the vehicle. A dynamic test of the vehicle allows NHTSA to evaluate all of the factors that affect occupant crash protection. Further, a dynamic test allows the agency to evaluate the synergistic effects of all these factors working together, instead of evaluating each factor individually. Finally, a dynamic test assesses the vehicle's capabilities for minimizing the risk of injury as measured by test dummies and human-based injury criteria, as opposed to individual belt component tests that are only indirectly related to human injury risk.

For dynamic testing under Standard No. 208, Occupant Crash Protection (49 CFR 571.208), test dummies are placed in the vehicle and the vehicle is subjected to a frontal crash into a rigid barrier at a speed of 30 miles per hour (mph). In evaluating the occupant crash protection capabilities of a vehicle, this dynamic test also assesses safety belt performance. A requirement for safety belts to conform to both the dynamic testing requirements of Standard No. 208 and certain laboratory testing requirements of Standard No. 209 is thus unnecessary, because Standard No. 208 dynamic testing would evaluate the critical aspects of belt and assembly performance that would be evaluated under Standard No. 209. To avoid such redundancies, automatic safety belts subject to the dynamic testing requirements of Standard No. 208 were excluded from Standard No. 209's laboratory testing requirements for webbing, attachment hardware, and assembly performance shortly after NHTSA established the first dynamic testing requirements in Standard No. 208. *See* 36 FR 23725; December 14, 1971.

April 1991 Final Rule

On April 16, 1991, NHTSA published a final rule amending Standards No. 208 and 209 to avoid unnecessary regulatory restrictions on safety belts that have been dynamically tested (56 FR 15295). That final rule amended the agency's regulations to express more accurately the scope of the exemption from the static testing requirements for safety belts that are dynamically tested. Specially, that rule:

1. Excluded all safety belts that are subject to the dynamic testing requirements, regardless of the type of vehicle in which those belts are installed, from some of the static testing requirements for safety belts (e.g., webbing width, strength, and elongation);

2. Permitting the use of load limiters on all safety belts installed at seating positions subject to the dynamic testing

requirements, regardless of whether the subject belts are automatic or manual safety belts; and

3. Identified all of the static testing requirements from which automatic safety belts and manual safety belts subject to the dynamic testing requirements are excluded in the safety standards, instead of listing some of those requirements in the safety standards and adding others in the agency's interpretations and preambles to rules.

The final rule also more clearly identified the safety belts to which the agency is referring when it describes safety belts as "dynamically tested."

Petitions for Reconsideration

In response to the final rule, NHTSA received petitions for reconsideration from Ford and Volkswagen of America (Volkswagen). This notice responds to the issues raised in those petitions.

1. Whether the April 16 Rule Also Applies to Standard No. 210

In its petition for reconsideration, Ford was concerned that the final rule's clarification of the term "dynamically tested belts" for the purposes of Standards No. 208 and 209 might be interpreted to apply to Standard No. 210 as well. Ford was particularly concerned that a manual belt provided at a seating position also equipped with an air bag might no longer be excluded from the anchorage location requirements set forth in S4.3 of Standard No. 210. Ford asked NHTSA to verify that the interpretation of which manual belts are considered "dynamically tested" manual belts for the purposes of Standards No. 208 and 209 is limited to those standards, and did not affect the differing interpretation the agency had previously made for the purposes of Standard No. 210.

The final rule did not purport to address Standard No. 210. Throughout this rulemaking, there have been no references to Standard No. 210 nor did this rule ever propose to amend Standard No. 210. Thus, NHTSA confirms Ford's understanding that nothing in this rulemaking changed or modified anything with respect to the existing requirements and interpretations of Standard No. 210.

2. Whether Manual Belts are Subject to the Labeling Requirements (i.e., are Considered Dynamically Tested) When They are Installed at Seating Positions Also Equipped With Air Bags That are Not Certified as Providing Automatic Crash Protection.

In the preamble to the final rule, NHTSA stated that "any manual belts installed at seating positions also equipped with either automatic safety belts or air bags are *not* what NHTSA is referring to when it uses the term 'dynamically tested manual belts' in preambles or letters of interpretation" concerning Standards No. 208 and 209. 56 FR 15297; April 16, 1991.

In its petition for reconsideration, Ford asked about the final rule's applicability to manual safety belts supplied with air bags that are not certified as providing automatic crash protection. Such air bags are sometimes referred to as "face bags." Ford explained that it plans to install this sort of driver air bag on some of its 1992 model year light trucks and vans. Since this type of air bag is not certified as complying with the automatic restraint requirements of S4.1.2.1 of Standard No. 208, Ford stated its understanding that a manual belt installed at a seating position also equipped with a "face bag" would be considered a "dynamically tested" manual belt for the purposes of Standards No. 208 and 209.

Again, NHTSA confirms that Ford's understand is correct. The new regulatory language adopted in the final rule exempts from certain static testing requirements manual belts that are subject to crash testing by virtue of any provision of Standard No. 208 other than S4.1.2.1(c)(2). S4.1.2.1(c)(2) applies only to seating positions with air bags that are certified as providing automatic crash protection. Thus, if a vehicle is equipped with an air bag at a front outboard seating position that is not certified as providing automatic crash protection, and the vehicle is subject to the crash testing requirements in S5.1 of Standard No. 208, then the manual belt required to be installed at such seating position would be considered "dynamically tested" for the purposes of Standards No. 208 and 209.

3. Clarification of the Scope of the Labeling Requirement for Dynamically Tested Manual Belts

Section S4.6(b) of Standard No. 209 requires a "seat belt assembly that meets the requirements of S4.6 of Standard No. 208" to be marked or labeled with the following statement:

> This dynamically-tested seat belt assembly is for use only in (insert specific seating positions(s), e.g., 'front right') in (insert specific vehicle make(s) and model(s).

The April 1991 final rule did not amend this provision in Standard No. 209. It did, however, amend S4.6 of Standard No. 208. First, it deleted the old provision in S4.6.2 of Standard No. 208 referring to dynamic testing of manual belts in passenger cars if the requirement for automatic crash protection were rescinded. Second, it added new sections S4.6 and S4.6.3 to more clearly specify which manual belts will be considered "dynamically tested" for the purposes of Standards No. 208 and 209. In addition, the preamble stated that the final rule was making no change to the existing labeling requirements for dynamically tested manual belts. This decision meant that the pre-existing requirement to label dynamically tested manual belts installed in light trucks would remain in place and in effect, while the proposal for a new requirement to label dynamically tested manual belts installed in passenger cars was not adopted.

Ford and Volkswagen petitioned to the agency to reconsider these provisions on identical grounds. These manufacturers argued that S4.6(b) of Standard No. 209 appears to require labeling of all dynamically tested manual belt assemblies regardless of the type of vehicle in which those belts are installed. This result is directly contrary to the statement in the preamble that dynamically tested manual belts installed in passenger cars were not subject to the labeling requirements. This is because S4.6(b) of Standard No. 209 requires labeling of "a seat belt assembly that meets the requirements of S4.6 of Standard No. 208." Although S4.6.1 of Standard No. 208 provides that it applies only to dynamically tested manual belts installed in light trucks, S4.6.2. and S4.6.3 by their terms apply to all dynamically tested manual belts, irrespective of the vehicle type in which those dynamically tested belts are installed. To clarify the agency's intentions, the petitioners asked that S4.6(b) of Standard No. 209 be changed to refer to S4.6.1, instead of all of S4.6, of Standard No. 208. The agency agrees that this requested change makes the standard more precise, and amends Standard No. 209 accordingly.

4. Inconsistency of Required Labeling for Dynamically Tested Manual Belts With Load Limiters

In the preamble to the final rule, NHTSA stated that it did not believe that extending the labeling requirements for automatic belts with load limiters (which have been in place since 1981) to dynamically tested manual belts with load limiters would result in any undue burdens for manufacturers or consumers. *See* 56 FR 15297. Notwithstanding this stated belief, Volkswagen argued in its petition that the regulatory language in S4.5 and S4.6 of Standard No. 209 imposed inconsistent labeling requirements for

dynamically tested manual safety belts equipped with load limiters. Volkswagen correctly stated that S4.5(c) of Standard No. 209 requires all safety belts with load limiters to be labeled with the following statement: "This seat belt assembly is for use only in (insert specific seating position(s), e.g., 'front right') in (insert specific vehicles make(s) and model(s))." However, S4.6(b) of Standard No. 209 requires a dynamically tested manual belt, including dynamically tested manual belts that incorporate a load limiter, to be labeled with the following statement: "This *dynamically-tested* seat belt assembly is for use only in (insert specific seating positions(s), e.g., 'front right') in (insert specific vehicles make(s) and model(s))." (Emphasis added) Volkswagen suggested that the regulatory language in the final rule appears to require dynamically tested manual belts with load limiters to include two different labels, one consistent with S4.5(c) and one consistent with S4.6(b).

To avoid such repetitive and unnecessary labeling, Volkswagen asked in its petition that the label specified in S4.6(b) should be revised to be identical with the label required in S4.5(c). NHTSA agrees. Accordingly, this rule deletes the phrase "dynamically tested" from the labeling required by S4.6(b) of Standard No. 209.

5. Effective Date

This notice makes two minor changes to the April 16, 1991 final rule in response to the petitions for reconsideration. The changes are a clarification of the scope of the labeling requirements and a slight modification of the information that must be labeled on dynamically tested manual belts pursuant to S4.6(b) of Standard No. 209. NHTSA recognizes that manufacturers may need some leadtime to modify the labels on their dynamically tested manual belts installed in light trucks and vans. Therefore, manufacturers may comply with either the label specified in the April 16, 1991 final rule version of S4.6(b) (including the words "dynamically tested") or the label specified in this amendment to S4.6(b) (deleting the words "dynamically tested"), until September 1, 1992, the effective date for this rule. After September 1, 1992, the safety belts subject to S4.6(b) of Standard No. 209 must be labeled in accordance with the amended S4.6(b) set forth in this notice.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action and determined that it is neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation's regulatory policies and procedures. The amendments made in this rule will more accurately reflect the agency's intent not to require labeling of dynamically tested manual belts in passenger cars and make the labeling requirements identical for dynamically tested manual belts installed in trucks and for belts that use a load limiter, so as to avoid unnecessary and duplicative labeling requirements. In doing so, this rule will potentially avert some insignificant, but unnecessary, regulatory burdens on manufacturers of vehicles and safety belts. Accordingly, NHTSA has not prepared a full regulatory evaluation of this rule.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rule under the Regulatory Flexibility Act. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small businesses. Few, if any, of the vehicle manufacturers qualify as small businesses. To the extent that any affected parties would qualify as small businesses, the economic impacts associated with this rule will be minimal, as explained above. Small organizations and small governmental units will not be significantly affected by the rule as purchasers of new cars, because it will not affect the price of new cars.

National Environmental Policy Act

NHTSA has also analyzed this action for the purposes of the National Environmental Policy Act, and determined that it will not have a significant impact on the quality of the human environment.

Executive Order 12612 (Federalism)

This rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 209 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authrity: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.209 [Amended]

2. In § 571.209 S4.6(b) of Standard No. 209 is revised to read as follows, effective on and after September 1, 1992 and may be used at the manufacturer's option before that date:

S4.6 *Manual belts subject to crash protection requirements of Standard No. 208.*

* * * * *

(b) A seat belt assembly certified as complying with S4.6.1 of Standard No. 208 (49 CFR 571.208) shall be permanently and legibly marked or labeled with the following statement:

This seat belt assembly is for use only in [insert specific seating position(s), e.g., 'front right'] in [insert specific vehicles make(s) and model(s)].

* * * * *

Issued on October 30, 1991.

Jerry Ralph Curry,

Administrator

[FR Doc. 91-26535 Filed 11-1-91; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB62

Endangered and Threatened Wildlife and Plants; Determination of Experimental Population Status for an Introduced Population of Red Wolves in North Carolina and Tennessee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines that it will introduce mated pairs of red wolves (*Canis rufus*) into the Great Smoky Mountains National Park (Park), Haywood and Swain Counties in North Carolina; and Blount, Cocke, and Sevier Counties in Tennessee; and that this population will be a nonessential experimental population according to section 10(j) of the Endangered Species Act of 1973 (Act), as amended. There is presently one other nonessential experimental population that was

introduced in 1987 on the Alligator River National Wildlife Refuge in North Carolina. This introduction is part of a continuing effort by the Service to reestablish the red wolf within its historic range so that it may continue to function as a part of the natural environment. Experimental population status is designated because section 10(j) provides greater discretion in devising an active management program for an experimental population than for a regularly listed species, a critical factor in insuring that other agencies and the public will accept the reintroduction. No conflicts are envisioned between the red wolf reintroduction in the Park and any existing or anticipated Federal agency actions or traditional public uses of the Park or adjacent U.S. Forest Service lands.

In relation to the existing experimental population on Alligator River National Wildlife Refuge, the Service revises the associated special rule to (1) modify the project review date deadline and (2) add Beaufort County, North Carolina, to the list of nearby counties where the experimental population designation will apply.

EFFECTIVE DATE: November 4, 1991.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806.

FOR FURTHER INFORMATION CONTACT: Mr. V. Gary Henry, Red Wolf Coordinator, at the above address (telephone 704/665-1195).

SUPPLEMENTARY INFORMATION:

Effective Date

For this rule the Service waives for good cause the usual 30-day delay between the publication of a final rule and its effective date, as provided by 50 CFR 424.18(b)(1) and by the Administrative Procedure Act (5 U.S.C. 553(d)(3)). The reintroduction of the currently available wolf family group must be accomplished as soon as possible while the young are still somewhat dependent on the adults in order to assure success and avoid postponement of the project and, therefore, the species' progress towards recovery for another year. Therefore, good cause exists for this rule to be effective immediately upon publication.

Background

Among the significant changes made by the Endangered Species Act Amendments of 1982, Public Law 97-304, was the creation of a new section 10(j) that provides for the designation of specific introduced populations of listed species as "experimental populations." Under previous authorities in the Act, the Service was permitted to reintroduce populations into unoccupied portions of a listed species' historic range when it would foster the conservation and recovery of the species. Local opposition to reintroduction efforts, however, stemming from concerns about the restrictions and prohibitions on private and Federal activities contained in sections 7 and 9 of the Act, severely handicapped the effectiveness of this as a management tool.

Under section 10(j), past and future reintroduced populations established outside the current range, but within the species' historic range, may be designated, at the discretion of the Service, as "experimental." Such designations increase the Service's flexibility to manage these reintroduced populations, because such experimental populations may be treated as threatened species for purposes of section 9 of the Act. The Service has much more discretion in devising management programs for threatened species than for endangered species, especially on matters regarding incidental or regulated takings. Moreover, experimental populations found to be "nonessential" to the continued survival of the species in question are treated as if they were only proposed for listing for purposes of section 7 of the Act, except as noted below.

A "nonessential" experimental population is not subject to the formal consultation requirement of section 7(a)(2) of the Act, but if the experimental population is found on a National Wildlife Refuge or National Park, the full protection of section 7 applies to such animals. (The provision in section 7(a)(1) applies to all experimental populations.) The individual organisms comprising the designated experimental population can be removed from an existing source or donor population only after it has been determined that their removal itself is not likely to jeopardize the continued existence of the species. The removal must then be done under a permit issued in accordance with the requirements in 50 CFR 17.22.

The red wolf (*Canis rufus*) is an endangered species that is currently found in the wild only as an experimental population on the Service's Alligator River National Wildlife Refuge in Dare and Tyrrell Counties, North Carolina, and as an endangered species in three small island propagation projects located on Bulls Island, South Carolina; Horn Island, Mississippi; and St. Vincent Island, Florida. These four carefully managed wild populations contain a total of at least 28 animals, including 10 pups. The remaining red wolves are located in 23 captive-breeding facilities in the United States. The captive population presently numbers 135 animals, including 40 pups. This captive population includes the six animals in acclimation pens in the Park, but the Park is not included as one of the 23 facilities.

The red wolf was originally native to the Southeastern United States from the Atlantic Coast westward to central Texas and Oklahoma, and from the Gulf of Mexico to central Missouri and southern Illinois. The historic relationship of the red wolf to other wild canids is poorly understood, but it is thought that the red wolf coexisted with the coyote (*Canis latrans*) along its western range generally along the line where deciduous cover gave way to open prairie in Texas and Oklahoma. The gray wolf (*Canis lupus*) is believed to have frequented the range north and west of the red wolf but also occurred among the higher elevations of the Appalachian Mountains as far south as Georgia and Alabama. Fossil records indicate both species inhabiting these higher elevations at one time or another. Historical evidence, however, seems to characterize the red wolf as most common in the once vast pristine bottomland riverine habitats of the Southeast and especially numerous in and adjacent to the extensive "canebrakes" that occurred in these habitats. The canebrakes harbored large populations of swamp and marsh rabbits, considered likely to be the primary prey of the red wolf under natural conditions.

The demise of the red wolf was directly related to man's activities, especially land changes, such as the drainage of vast wetland areas for agricultural purposes; the construction of dam projects that inundated prime bottomland habitat; and predator control efforts at the private, State, and Federal levels. At that time the natural history of the red wolf was poorly understood, and like most other large predators, it was considered a nuisance species.

Today, the red wolf's role as a potentially important part of a natural ecosystem, if it can be restored to portions of its historic range, is certainly better appreciated. Furthermore, it is now clear that traditional controls would not be needed in any case; the red wolf poses no threat to livestock in situations where its natural prey, especially such mammal species as

groundhogs, rabbits, raccoons, and deer, is abundant. National Park Service (Park Service) surveys and studies in the Park have documented that there is an adequate prey base, especially in the Cades Cove quadrant in Tennessee.

Man-caused pressures eventually forced the red wolf into the lower Mississippi River drainage and lastly into the prairie marshes of southeast Texas and southwest Louisiana. This was where the only surviving population remained in the mid-1970s when the Service decided to trap as many surviving animals as possible and place them in a captive-breeding program. This decision was based on the obviously low number of red wolves left in the wild, poor physical condition of these animals due to internal and external parasites and disease, and the threat posed by an expanding coyote population and consequent interbreeding problems.

A Red Wolf Captive Breeding Program was established by contract with the Point Defiance Zoological Park and Aquarium in Tacoma, Washington. Soon thereafter 40 wild-caught adult red wolves were provided to the breeding program, and the first litter of pups was born in May 1977. Since then, the wolves have continued to prosper at this and 22 other captive facilities throughout the United States. Without this extreme action it is certain that the red wolf would now be extinct. Throughout this time, however, the goal of the Service's red wolf recovery program has continued to be the eventual release of at least some of the captive animals into the wild to establish populations within the species' historic range.

To demonstrate the feasibility of reintroducing red wolves, the Service conducted carefully planned one-year experiments in 1976 and 1978. These experiments involved the release of mated pairs of wild-caught red wolves onto Bulls Island, a 5,000-acre component of the Cape Romain National Wildlife Refuge near Charleston, South Carolina. The results of these carefully planned releases indicated that it is feasible to reestablish adult wild-caught red wolves in selected habitats in the wild. The experiments were eventually terminated, and the wolves recaptured and returned to captivity. Bulls Island was not large enough to support a population of red wolves indefinitely, and it was never intended to be a permanent reintroduction site. Observations and conclusions derived from these experiments, plus knowledge gained with wild-caught but captive-reared pups in Texas, also indicated the potential probability of being able to successfully establish captive-reared populations in the wild.

A great deal of investigative effort by Service personnel during the mid-1980s revealed that good habitat for the red wolf existed on lands in northeastern North Carolina that eventually became the Alligator River National Wildlife Refuge. These properties in Dare and Tyrrell Counties comprise nearly 120,000 acres of the finest wetland ecosystems remaining in the Mid-Atlantic region of the United States. Adjacent to the refuge is a 47,000-acre U.S. Air Force weapons range with similar habitats. Intensive studies revealed a good prey base within these Federal properties, a low human population within the general area, and virtually no livestock. The small agricultural base in the area was row crop farming for corn and soybeans. After briefing the North Carolina Congressional delegation, the North Carolina Wildlife Resources Commission, the Commissioner of Agriculture, and the Governor's staff, an intensive effort to inform the local public of the red wolf and its plight resulted in local acceptance of a reintroduction project. This acceptance was voiced by local residents during four public meetings held in the project area. In addition to public information and education, the use of new technology was highlighted. This was the use of the "capture collar," an electronic device that permitted project personnel to track released red wolves and also tranquilize an animal if needed.

On November 12, 1986, four pairs of adult red wolves were shipped to the Alligator River National Wildlife Refuge to begin a 6-month acclimation process. Because of unexpected delays in development of the capture collar, wolves were not released until September 1987. Despite anticipated mortalities during the first 6 months of release, the reintroduction effort has proven that captive-reared red wolves can be successfully released and survive in the wild. Reproduction occurred the first year the animals were released, and at the moment there are 24 red wolves alive in the wild on lands comprising the Alligator River National Wildlife Refuge and the adjacent Air Force Weapons Range in Dare County.

A strategy to propagate wild red wolf offspring was initiated on November 19, 1987, when a pair of adult wolves was shipped from the captive-breeding project in Washington State to Bulls Island. Two other island projects have subsequently been initiated, one on Horn Island, Mississippi, and the other on St. Vincent Island, Florida. The island propagation strategy has proven to be very successful. These island projects are now providing wild young red wolves to the project, as well as serving as ideal training sites for captive-born adult wolves to learn their skills in a wild but controlled situation. At the present time there are four red wolves on the three island projects. The three island projects are not reintroduction sites, but simply temporary efforts to rear young wild animals for later use in mainland reintroduction efforts.

The Fish and Wildlife Service Red Wolf Captive Breeding Program in Washington State has 46 animals, including 11 pups. There are 83 other red wolves, including 27 pups, in the remaining 22 public and private zoos and captive facilities in the United States. The Service has full responsibility for all red wolves in captivity. It is from these captive-breeding projects and the island propagation projects that wolves selected for reintroduction in the Park will come.

For the past year Service and Park Service personnel have been developing a reintroduction strategy for the red wolf in the Park. Considerable effort has been expended in assessing local interests and concerns with such a project. North Carolina and Tennessee congressional representatives, respective State wildlife agencies, State agricultural agencies, Farm Bureaus, local agricultural interests, and a variety of local organizations have been apprised of the project. The project is designed to address significant questions that have to be clarified before additional red wolf reintroductions can be contemplated. The most pressing need is to ascertain the interactions of red wolves and coyotes under wild conditions. The successes at Alligator River National Wildlife Refuge have been achieved in an area that is free of coyotes. Since approximately 90 percent of historic red wolf habitat now has resident coyotes, it is essential that this biological issue be addressed. It is generally thought that a hierarchy exists among the various wild canids. Studies have demonstrated that red fox populations gradually decline as coyote numbers increase, and coyotes decline in number where their range overlaps with gray wolf range. It appears that the decline of the red wolf in the coastal marshes of Louisiana and Texas was complicated by a parallel expansion of coyote range with subsequent instances of interbreeding. It is thought that this was an exceptional biological phenomenon brought on by man's intervention. Very little is actually

known of red wolf-coyote interactions in the wild. The first phase of the Park project is oriented at addressing this question and not to the breeding of the wolves in the Park.

A coyote tracking investigation was initiated in the Park during the spring of 1990. That study is currently assessing the population density of resident coyotes.

A phased reintroduction into the Park has initially required the removal of two adult pairs of red wolves from the captive-breeding and island propagation projects. Animals were selected and flown to Knoxville, Tennessee, in January 1991 and were transported by truck to the Park. Each pair is being held in a 2,500-square-foot acclimation pen for a period of approximately 9 months. Acclimation pens are isolated and provided maximum security. During their acclimation the pairs were allowed to breed. Only one pair successfully bred, producing five pups. This pair and two of the pups will be released. The decision to release only two pups is based on the need to reduce the number of animals released and stress on the adult animals. It will be easier to monitor animals, gather detailed data, and respond to conflicts with fewer individuals. Fewer animals also reduces the stress on the adults to provide for offspring while establishing a territory and defending it from other canids.

About 1 month prior to release, all four wolves will receive a small, surgically implanted radio transmitter, and the adult animals will be fitted with new capture-tracking collars. The animals will be released and closely monitored via telemetry tracking for the first 10 to 12 weeks, after which the frequency of monitoring would be gradually reduced after the family unit establishes predictable patterns of movement. Most of the telemetry tracking would be done from fixed wing aircraft. Special emphasis would be given to determining interactions of released red wolves and resident coyotes, as well as adaptability of the animals to the Park environment.

The acclimation pens function as additional captive propagation facilities, and the captive population figures in this rule include these animals. Although used to acclimate the wolves to the Park environment, this acclimation does not commit the wolves to release or affect the wolves' utility for captive breeding. The acclimated wolves not released can be transferred to permanent captive-breeding facilities elsewhere at any time and be maintained as part of the captive population. However, the nonreproducing pair of red wolves will initially continue to be maintained in the acclimation pens in the Park for possible future releases.

If this initial release is successful, the project would move to a second stage of effort. This stage would entail the acclimation and release of six to eight pairs of adult red wolves and their offspring in various sectors of the Park. Monitoring processes would follow the same protocols as in the first stage. Monitoring would continue to be a primary objective for 2 to 3 years. If the project proceeds to stage two, it is anticipated that the Park and adjacent U.S. Forest Service lands in North Carolina and Tennessee could eventually sustain a red wolf population of about 50 to 70 animals.

Status of Reintroduced Populations

This reintroduced population of red wolves is designated as a nonessential experimental population according to the provisions of section 10(j) of the Act. The experimental population status means that the reintroduced population will be treated as a threatened species, rather than an endangered species, for the purposes of sections 4(d) and 9 of the Act, which regulate taking, and other actions. This enables the Service to adopt a special rule that can be less restrictive than the mandatory prohibitions covering endangered species.

The special rule provides that there will be no violation of the Act for taking by the public incidental to otherwise lawful hunting, trapping, or other recreational activities or defense of human life, provided such takings are immediately reported to the Park Superintendent or his staff. Service, Park Service, and State employees and agents are additionally authorized to take animals that need special care or that are posing a threat to livestock or property. Livestock owners may also take red wolves that are actually engaged in the pursuit or killing of livestock on private properties. Such take, however, is only permitted after due notification to the Superintendent and if efforts to capture offending red wolves prove unsuccessful. Such take must be immediately reported to the Park Superintendent.

These flexible rules are considered a key to public acceptance of the reintroduced population. The States of North Carolina and Tennessee have entered into cooperative agreements with the Service as provided by section 6 of the Act. These cooperative agreements are reviewed annually by the Service to ensure that the States have regulatory authority to conserve listed species, including the red wolf.

Hunting and trapping are regulated outside the Park; in the event that wolves disperse from the Park, they would be immediately captured and returned to the Park. Therefore, risks of incidental taking outside the Park are virtually nonexistent. The Service finds that these rules are necessary and advisable for the conservation of the red wolf. No additional Federal regulations are needed.

The nonessential status is appropriate for the following reasons: Although once extirpated from its historic range, the red wolf has recently been reintroduced successfully to a small portion of that range; it exists in low numbers on three widely separated island projects; and the population is secured in 23 captive-breeding facilities and zoos in the United States. In addition, recent efforts to safeguard red wolf genetic material through cryogenic storage have proven successful. The existing captive population numbers 135 animals, and 28 animals are being managed in the wild. Given the health checks and careful monitoring that these animals receive, it is highly unlikely that disease or other natural phenomenon will threaten the survival of the species. Furthermore, the species breeds readily in captivity. Therefore, the taking of 18 to 20 adult animals from this assemblage (assuming a second stage release is realized) will pose no threat to the survival of the species even if all of these animals, once placed in the wild, were to succumb to natural or man-caused factors.

The management advantage derived from the nonessential status comes from the fact that it changes the application of section 7 of the Act (interagency consultation) to the reintroduced population. Outside the Park (i.e., on U.S. Forest Service lands, on Cherokee Indian tribal lands, or on private lands), the nonessential experimental population is treated as if it were a species proposed for listing, rather than a listed species. This means that only two provisions of section 7 apply on these non-Service lands: Section 7(a)(1), which authorizes all Federal agencies to establish conservation programs; and section 7(a)(4), which requires Federal agencies to confer informally with the Service on actions that are likely to jeopardize the continued existence of the species. The results of a conference are only advisory in nature; agencies are not required to refrain from commitment of resources to projects as a result of a conference. There are, in reality, no conflicts envisioned with any current or anticipated management actions of the U.S. Forest Service or other Federal agencies in the area Forest Service

properties are a benefit to the project since they form a buffer to private properties in many areas, and management activities on National Forests are typically conducive to production of numerous prey animals. There are no threats to the success of the reintroduction project or the overall continued existence of the red wolf from these less restrictive section 7 requirements.

In the Park, on the other hand, the experimental population continues to receive the full range of protection from section 7. The Park Service or any other Federal agency is prohibited from authorizing, funding, or carrying out an action within the Park that is likely to jeopardize the continued existence of the red wolf. Service regulations at 50 CFR 17.83(b) specify that section 7 provisions shall apply collectively to all experimental and nonexperimental populations of a listed species. The Service has reviewed all ongoing and proposed uses of the Park and found none that are likely to jeopardize the continued existence of the red wolf, nor will they adversely affect the success of the reintroduction effort. Uses that could adversely affect success are hunting, trapping, and high-speed vehicular traffic. Hunting and trapping are prohibited in the Park, and vehicular traffic speed limits are reduced to levels not likely to result in vehicle/wolf impacts. Speed limits are 30–35 miles per hour on most roads in the Park and 20 miles per hour in the immediate area of the release. The highest speed limits are 45 miles per hour on a few sections of U.S. Route 441 in North Carolina, approximately 30 miles from the release site.

Location of Reintroduced Population

Since the red wolf is recognized as extinct in the wild, except for four small, carefully managed sites within its historic range, this Park reintroduction site will fulfill the requirement of section 10(j) that an experimental population be geographically isolated and/or easily discernible from existing populations. As previously described, the release site will be the Great Smoky Mountains National Park in Haywood and Swain Counties in North Carolina, and Blount, Cocke, and Sevier Counties in Tennessee. The area is located in the extreme western portion of North Carolina and the extreme eastern portion of Tennessee.

Management

This reintroduction project is undertaken by the Service; additional work and assistance are undertaken by Park Service personnel operating under an interagency agreement funded by the Service. Phase one plans called for the acclimation of two pairs of wolves for 6 months in captive pens within the Park. One of these pairs has bred and produced five pups during acclimation. During the fall there will be a careful evaluation of when the pair and two pups will be released. Released red wolves will be closely monitored via telemetry. It is hoped that the long acclimation period and presence of pups will prove to be effective in keeping the wolves within the boundaries of the Park. Private landowners adjacent to the Park will be requested to immediately report any observation of a red wolf off Park lands to the Park Superintendent. The Service, with Park Service assistance, will take appropriate actions to recapture and return the animal to the Park. After an as yet unspecified period of assessment (probably 10 to 12 months in duration), the released animals will probably be recaptured and data gathered about their movements and interactions with native prey species, resident coyotes, human interactions, and other parameters will be assessed.

Take of red wolves by the public will be discouraged by an extensive information and education program and by the assurance that all animals will be radio-collared or implanted and therefore easy to locate if they leave the Park. The public will be encouraged to cooperate with the Service and the Park Service in the attempt to maintain the animals on the release site.

In addition, the special rule provides that there will be no penalty for incidental take in the course of otherwise lawful hunting, trapping, or other recreational activity, or in defense of human life, provided that the taking is immediately reported to the Park Superintendent. Service, Park Service, and State employees and agents would be additionally authorized to take animals that need special care, pose a threat to livestock or property, or need to be moved for genetic purposes. Take procedures in such instances would involve live capture and removal to a remote area, or, if the animal is clearly unfit to remain in the wild, return to the captive-breeding facility. Killing of animals will be a last resort and will be authorized only if live capture attempts fail or there is some clear danger to human life.

Private livestock owners will be permitted to harass red wolves actually engaged in the pursuit or killing of livestock on private lands, using methods that are not lethal or physically injurious to the red wolf. Based on experience gained in managing wild and captive red wolves, approach and harassment by humans using loud noises, striking the wolf with hand-held or thrown nonlethal and noninjurious projectiles, or launching projectiles over the head of or near the wolf will usually result in the wolf leaving the area. Such conflicts must be reported to the Park Superintendent. Service or State officials will respond to these conflicts by live capturing the offending animals. If an early response by the Service or State officials fails to capture offending animals, the livestock owner will be permitted to take the offending animal. In the unlikely event that red wolves are proven to be successfully preying on livestock on private properties, the owner of such livestock may seek reimbursement from a non-Federal fund established by a private conservation organization for this purpose. These flexible rules are considered a key to public acceptance of the reintroduced population.

Utilizing information gained from the initial phase of the project, an overall assessment of the success of the family unit to adjust to the Park environment would be made. It is thought that this initial phase will be terminated after 10 to 12 months. In consultation with the North Carolina Wildlife Resources Commission, the Tennessee Wildlife Resources Agency, and the Park Service, the Service will determine the feasibility of the permanent reintroduction of the red wolf into the Park. Public response to the wolves will also be a factor in the determination. Information and experience gained with the red wolf reintroduction at Alligator River National Wildlife Refuge has provided the confidence needed to consider a project of this magnitude. This reintroduction attempt is consistent with the recovery goals identified for this species.

This reintroduction is not expected to conflict with existing or proposed human activities or hinder the public utilization of the Park. Additionally, the presence of these animals is not expected to impact the ongoing activities designated for this National Park. Utilization of the Park for the establishment of a red wolf population is consistent with the legal responsibility of the Park Service to enhance the native wildlife resources of the United States.

As described above, two pairs of red wolves were taken from captive-breeding and/or island propagation projects for the initial phase of the project. If a second reintroduction phase is attained, animals will generally be taken from these same sources.

Additional red wolves will also be available from the stock of wild animals at Alligator River National Wildlife Refuge. If this reintroduction proves successful, it will represent only the second, and by far the largest, viable wild population of red wolves. More importantly, this project will significantly enhance the long-term recovery potential for this critically endangered species. There are no existing or anticipated Federal and/or State actions identified for this release site that are expected to affect this experimental population. For all these reasons, the Service finds that the release of an experimental population into the Park will further the conservation of this species in accordance with section 10(j)(2)(A) of the Endangered Species Act.

Special Rule Changes for Alligator River Population

In the period since codification of the special rule for the experimental population introduced on Alligator River National Wildlife Refuge (50 CFR 17.81(b)), it has become apparent that two changes are needed in the rule for this population. Originally it was indicated that the Service would conduct a review of the project within 5 years of the effective date of the regulation. However, since the actual date for reintroducing wolves on the Refuge did not occur until approximately 11 months after the rule's effective date, the Service revises the deadline for reevaluating the project to indicate that reevaluation will be accomplished by October 1, 1992, instead of November 19, 1991. Additionally, based on experience gained to date, it now appears that there is some possibility that introduced wolves may wander into Beaufort County, which is in close proximity to the project area. In order to assure that in such an eventuality the wolves will be legally covered under the experimental population designation, the Service adds Beaufort County, North Carolina, to the area covered by the special rule.

Summary of Comments and Recommendations

In the August 7, 1991, proposed rule (56 FR 37513) comments or recommendations concerning any aspect of the proposal that might contribute to the development of a final decision on the proposed rule were solicited. Appropriate county, State, and Federal agencies; scientific, environmental, and land use organizations; and other interested parties were notified and requested to submit questions or comments on the proposed rule. A 30-day comment period was provided. A total of 56 comments were received, including 44 from individuals (representing 48 individuals), 6 from State agencies and organizations, 2 from county agencies and organizations, 2 from regional organizations, and 2 from businesses. Although 19 Federal agency offices were notified of the proposed reintroduction, no comments were received from Federal agencies. The Tennessee Farm Bureau Federation and the Blount County Livestock Association Board of Directors did not comment on the proposed rule during the 30-day comment period. However, they did comment prior to publication of the proposed rule in the **Federal Register.** Their concerns were the same concerns expressed by the North Carolina Farm Bureau Federation and the Sevier County Farm Bureau during the 30-day comment period and are addressed herein. Specific issues addressed by those commenting and the Service's responses are presented below.

1. General Comments of Support

Forty-seven comments supported the reintroduction. This included 38 letters from individuals (42 people); 2 letters from businesses; and letters from 1 regional, 1 county, and 4 State agencies and organizations. Many reasons for supporting the reintroduction were given, including the following: The wolf fulfills a predator vacancy needed for a complete or balanced ecosystem; the wolf poses no danger or significant impact to humans, livestock, wildlife, or economics; the opportunity to possibly see the wolf or knowing that it exists in the area is important; the reintroduction will help to educate the public about wolves; the protective environment, adequate prey base, and large size make the Park an ideal location; wolves have a right to exist in their historical range; humans have a responsibility to restore, preserve, and provide for population growth of animals reduced or extirpated because of human activities; a need exists to attempt reintroduction in an area containing coyotes to determine future recovery direction; the Service has demonstrated its ability to control and/or remove wolves when necessary; a need exists to reintroduce wolves as quickly as possible to reduce negative aspects of captive adaptation; the wolf is a part of our history and heritage and provided many place names in the reintroduction area; the Service and the Park Service have a responsibility to reintroduce endangered species; and wolves will help to control exotic species, such as the hog, as well as overpopulations of native species, such as deer. One letter offered private land for use in the project, another requested information on making donations to the project, and a third indicated that the writer had written to news media and legislators in support of the project.

Service Response: The Service agrees with all of these reasons and addresses them in this final rule and the final environmental assessment. The efforts of individuals in support of the project are appreciated, and, where appropriate, requests will be fulfilled and offers of help will be answered.

2. General Comments of Opposition

Eight comments opposed the reintroduction. This included six letters from individuals and one letter each from a State organization and a regional organization. The six letters from individuals included the following reasons for opposing the project: Wolves are a danger to humans, particularly children; wolves will kill domestic animals; wolves will reduce populations of wild prey, especially small animals and young deer, to undesirable levels; wolves will multiply to expand their range to the point that they will be uncontrollable; and tax money should not be spent on this project.

Service Response: Most of these comments represent fears carried over from past generations, and a failure of present educational efforts to reach these individuals or to assure them that their fears are unfounded. Known cases of attacks by red wolves are questionable and extremely rare. There are records of researchers crawling into dens of wild wolves; current researchers repeatedly crawl into dens in captive-breeding facilities to capture adults and young for various purposes without fear of attack. Red wolves are very shy and afraid of humans and will normally leave the scene when humans are encountered. However, as with any wild animal (even nonpredators), they can be dangerous if cornered where they have no escape or if they are defending themselves from perceived danger or injury.

Red wolves do prey on small mammals up to the size of deer and may occasionally take domestic animals. However, it is generally accepted that they provide a needed balance in wild ecosystems by reducing overpopulations, removing sick and injured animals, and, thus, making prey populations healthier. Indeed, if they eliminated their prey, they in turn would succumb. Red wolves have rarely taken domestic animals, but this reintroduction will evaluate the interaction with livestock. Provisions

are included to allow for the protection of livestock.

If results during the first year are successful and it is decided to proceed, wolves will hopefully multiply and expand their range to achieve a viable population. However, concerns that populations would be uncontrollable are unfounded. The Service has demonstrated at other reintroduction sites that wolf populations can be controlled at the population levels contemplated. Even with high populations, individual problem animals can be captured. History also demonstrates that wolves are very controllable. The red wolf is an endangered species largely due to past control programs.

The comment regarding the unwise use of funds for restoring endangered species represents certain individual preferences but does not coincide with the recovery mandate of the Endangered Species Act. Congress has provided funding for endangered species recovery, including the red wolf. Indeed, the overwhelming support for this reintroduction, based on 85 percent of the comments received being favorable, shows strong public support.

3. Comments Regarding Changes in the Original Proposal

The Sevier County Farm Bureau is concerned that, in the early stages of the proposal, the first release was to have been two pairs of red wolves, which would not be reproducing in the wild during the first phase; this has now changed.

Service Response: The changes to a first release of a family group of an adult pair and two pups, instead of two pairs, was made because of concerns from livestock owners. The total number of animals to be released is still four, but two are pups; therefore, food needs will be less than for four adults. Movements of a family unit are generally shorter than that of paired adults without pups. This decreases the likelihood of movement outside the Park onto private lands where livestock may be encountered. Shorter movements also lessen the burden of monitoring the animals so that more time can be devoted to any potential problems that could occur, such as depredation.

4. Comments Concerning the Experimental Nonessential Classification and the Incidental Taking Provisions

Letters were received from the North Carolina Farm Bureau Federation (Federation), the Burnet Park Zoo, the North Carolina Chapter of the Sierra Club, the Southeast Region of the Wilderness Society, and Alpha Wildlife Awareness Through Research and Education supporting the experimental nonessential classification. In addition, the Tennessee Citizens for Wilderness Planning also supported this designation if it would increase public acceptance of the reintroduction. Two letters from individuals expressed concerns that the wolf should be provided protection inside and outside the Park. Another individual letter requested that the wolves be protected from man and that the public be made aware of the extreme penalties for killing a wolf. A fourth individual expressed concern about poachers taking red wolves.

Service Response: The two individuals concerned with providing protection both inside and outside the Park and the individual concerned about poaching may have misinterpreted the proposed rule. Protection from taking, except as incidental taking defined in this rule, applies inside and outside the Park. Section 7 requirements are less restrictive outside the Park, but, in reality, there are no envisioned conflicts with anticipated management actions of other Federal agencies. Indeed, anticipated actions of the U.S. Forest Service, which is the other major Federal agency with lands in the area, are believed to be beneficial in providing prey populations. The penalties for taking an endangered species; i.e., taking not in accordance with this rule, are addressed in section 11 of the Endangered Species Act. Maximum penalties are $50,000 or imprisonment for 1 year.

The Federation felt that livestock owners should be allowed to take wolves engaged in livestock depredation. The Sevier County Farm Bureau went on record as having serious reservations about the reintroduction but did not support or oppose it; one concern was that livestock owners be provided more protection. The Tennessee Citizens for Wilderness Planning supported the provisions concerning livestock owners, provided that the provisions make it clear that taking of red wolves is only permitted after all of these conditions (wolves actually engaged in the pursuit or killing of livestock, Superintendent notified, and efforts to capture offending wolves are unsuccessful) are met.

Service Response: The Service has revised the rule to allow livestock owners to harass wolves actually pursuing or killing livestock, using nonlethal and noninjurious methods. Based on Service experience, wolves approached by and/or harassed by humans will leave the area. Therefore, this should provide the opportunity for livestock owners to protect their livestock as much as possible. Livestock owners must notify the Superintendent of such occurrences and allow the Service an opportunity to capture the offending animal. If such attempts are unsuccessful, the livestock owner can then take the animal himself if depredations continue.

The Federation also expressed concerns that (1) hybrids from the reintroduced red wolves interbreeding with dogs or coyotes would be given the same protection as the reintroduced red wolves and (2) wolves may migrate into other counties near the release site but not specifically designated in the rule and thus would receive full protection under "endangered" status.

Service Response: Hybrids from interbreeding between reintroduced red wolves and dogs or coyotes would not be protected under this rule but would be under the jurisdiction of the State wildlife agency and their regulations regarding resident species. As recognized by the Federation, the Service has extended the nonessential experimental population status into adjacent counties beyond the original reintroduction site. The Service believes this provides an ample area to cover possible population movements or expansion. If reintroduced animals range into other counties, the Service would expand the nonessential experimental status to adjacent counties surrounding the reintroduction site; such animals would continue to be treated as part of the nonessential experimental population.

The Tennessee Citizens for Wilderness Planning opposes the provisions to "allow taking by the public incidental to * * * hunting, trapping, or other recreational activities." "Other recreational activities" is considered by this organization as a very broad definition, inviting all sorts of abuse. This organization also notes that hunting is widespread in counties surrounding the Park, with gun owners constituting a high percentage of the population, and that segments of this population may actively seek to bag a red wolf and pass it off as "incidental taking."

Service Response: Taking by the public must be incidental to otherwise lawful recreational activities. Any taking of red wolves will be thoroughly investigated; taking that is not incidental or is a result of an unlawful activity is not covered by this rule and would be subject to the penalties provided in the Endangered Species Act for taking an endangered species. Experience at the Alligator River National Wildlife Refuge

over the last 4 years shows that such takings are not very probable.

5. Comments Concerning the Depredation Fund

The Federation interpreted the wording regarding the depredation fund; i.e., "In the unlikely event * * *," to insinuate that livestock owners would never be able to prove depredation or that the fund is unlikely to pay for losses because the Service has a preconceived notion that depredation will not occur. The Sevier County Farm Bureau stated that landowners should be compensated for livestock losses and that there should be a binding agreement clearly spelling this out.

Service Response: The wording was not intended to imply that owners would not be able to prove depredation losses or that losses would be unlikely to be paid. The statement simply recognizes the biological facts that, with ample wild prey, with the animals' being monitored by radio and returned to the Park if they move off, and with the primary livestock within the Park being cattle (which, except for unattended calves, are believed too large for the wolves to take), the reintroduced wolves are not likely to take livestock. The depredation fund has been established through the National Fish and Wildlife Foundation and the Great Smoky Mountains Natural History Association (Association). The Association has agreed to make payments from the depredation account to property owners upon certification by the Superintendent of the Park and the Red Wolf Coordinator that livestock losses have occurred from red wolf depredation.

6. Comments Concerning Hybridization and Delisting

The Southern States Sheep Council (Council) requested that the comment period be extended 120 days and that all reintroduction programs be stopped. This request was made on the basis of a petition filed to remove the red wolf from Endangered Species Act protection. The petition was based on recent DNA studies that concluded that the red wolf is a "hybrid." The 120-day extension request was made in reference to the 90-day response time for the Service to address the sufficiency of the information in the petition.

Service Response: The petition process related to listing and delisting species is a separate issue from this rule and will be addressed appropriately under the provisions of section 4(b) of the Act and 50 CFR 424.14. The request to stop reintroduction and extend the comment period was referenced to the petition and therefore is denied with regard to this rule. The Council provided no comments on the reintroduction in the Park. Personnel of the Service have maintained contact with the Council throughout the development of the proposed reintroduction and have offered, on several occasions, to meet with them and discuss any problems they may have with the reintroduction. Therefore, the Council has had ample opportunity (in excess of 120 days) to provide any comments or concerns but has not done so. The 90-day response time to address the petition is within the timeframe established for phase one of this project. The wolves released in phase one will be recaptured at the end of the evaluation period for this phase. Indeed, radio transmitters and capture collars will be placed on the wolves, and they can be recaptured if, at any time, a decision is made to remove the red wolf from the endangered species list. Meanwhile, the Service must continue to implement the provisions of the recovery plan for this species.

Three individuals provided comments regarding hybridization. All three supported the reintroduction and urged caution regarding interpretations based on recent genetic research. One letter stated the following:

> The status of the red wolf was debated when the recovery plan was first written. Too often the assured results and theories put forth one day turn out to be less assured and maybe dead wrong another. If we still have the animal and have restored it to its former place in parts of its historic range, we will have at least erred on the side of caution. If we give up on recovery and the views of these geneticists prove later to be wrong or based on inadequate evidence, we can't go back and recreate a lost opportunity with animals that may no longer exist or exist in insufficient numbers to ensure recovery.

Another letter made the following statement:

> I do not believe that the recent controversial genetic research suggesting that the red wolf may be a hybrid and not a separate subspecies is accepted as totally valid. There is ample fossil evidence that the red wolf actually pre-dates the gray wolf in this area, and was here long before the recent eastern appearance of the coyote.

A third letter stated

> * * * if you checked the purity of some northern breeds of dogs you'd find some wolf DNA. That doesn't make an Alaskan Malamute a gray wolf nor does it make a red wolf a coyote.

Service Response: The Service agrees with these comments. The work referenced was entitled "Mitochondrial DNA Analysis Implying Hybridization of the Endangered Red Wolf (*Canis rufus*)." It was authored by R.K. Wayne and S.M. Jenks and was published in Nature in June 1991.

The application of specialized genetics techniques by Drs. Wayne and Jenks was funded by the red wolf recovery program and is the latest attempt to shed light on the red wolf's taxonomic status. Wayne and Jenks report that no identifiably unique red wolf mitochondrial DNA (mtDNA) was found in either the present populations or in historical specimens. The results suggest that present red wolves have a mitochondrial genotype derived from coyotes, and historical populations from 1905 to 1930 had mitochondrial genotypes closely related or identical to coyotes or gray wolves. These data equally support several theories: (1) The red wolf actually has (had) unique mtDNA, but it no longer is detectable or was missed; (2) the red wolf is a hybrid form resulting from numerous coyote/gray wolf interbreedings and never had unique mtDNA; or (3) the red wolf was a distinct subspecies of gray wolf without unique mtDNA. While mtDNA shows evidence of interbreeding, it does not provide any data on the extent of this interbreeding, and mitochondria have no effect on the functioning of the animal or how it looks or behaves.

R.M. Nowak addressed the possibility of hybrid origin for the red wolf in his 1979 monograph entitled "North American Quaternary *Canis*" and found that existing morphological and fossil evidence did not support this view. The available data were consistent with recognition of the red wolf as a separate species of wolf. Fossil and historical museum specimens of North American *Canis* prior to 1930 can be sorted into three distinct groups corresponding to the three currently recognized species, with no gradation between the groups that would be expected if the red wolf was a relatively recent hybrid form. Mechanisms that would have produced hybrids throughout the red wolf's historical range are not supported by any published accounts reinterpreting either the fossil evidence or the historical distributions of either the coyote or gray wolf. The locations and dates of collection for all wild canids examined by Wayne and Jenks could only indicate widespread pockets of hybridization among the three *Canis* species earlier (by about 20 years) than indicated by the widespread appearance of intermediate specimens. Evidence also exists regarding brain morphology, nuclear DNA, behavior, and breeding consistency that supports the status of the red wolf as a separate species.

The debate over the origin and taxonomic status of the red wolf is not likely to be resolved any time soon, if ever, even with additional work using

mtDNA or other genetic analyses. One major obstacle is a scarcity of specimens from east of the Mississippi River prior to recent coyote expansion eastward. However, the red wolves of today are truly representative of the same canid that roamed the Southeast during historic and modern times in basically unmodified form, and they are morphologically and behaviorally distinct from both coyotes and gray wolves. For this reason, there will be no change in the emphasis and commitment within the Service for recovering the red wolf as a top predator, thus refilling an important ecological and evolutionary role that has been missing in many areas for much of this century. The Service will continue support for additional work, including genetics, in attempts to sort out the pieces of this puzzle.

7. Comments Concerning Education Program

Two individuals expressed the need for public educational programs showing the life history of the red wolf and allaying fears and anxieties the public might have.

Service Response: Representatives of the Park and the Service have been carrying out an aggressive information campaign to inform the public about the red wolf and their plans for managing it. We have met with a broad spectrum of elected officials, wildlife management agencies, and groups of conservationists, sportsmen, livestock owners, civic organizations, and others who might be affected by wolf releases. Details of the proposal have been presented in formal presentations to approximately 25 civic groups and organizations in the communities that surround the Park. Articles concerning the proposal have appeared in local as well as regional newspapers in North Carolina and Tennessee and in adjacent States. Local radio and television stations have featured the red wolf proposal at various times. The Park Service and the Service have cooperatively developed and distributed educational materials concerning the proposal.

In addition, a red wolf public education package is being produced by WBIR-TV, Channel 10, in Knoxville, Tennessee. This is a cooperative project involving the Southern Appalachian Man and Biosphere Cooperative, the Park Service, the Service, and WBIR. Included in the public education package is a 30-minute video to be run twice by WBIR, an NBC affiliate, as part of their "Heartland" series, which focuses on natural and recreational resources in the general area. Copies of the video, posters, and teacher packets will be produced and distributed free of charge to 400 schools in the general area.

National Environmental Policy Act

An Environmental Assessment prepared under authority of the National Environmental Policy Act of 1969 is available to the public at the Service's Asheville, North Carolina, Office (see **ADDRESSES** section) or the Division of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. It has been determined that this action is not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (implemented at 40 CFR parts 1500–1508).

Required Determinations

The Service has determined that this is not a major rule as defined by Executive Order 12291, and that the rule will not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The reintroduction of a nonessential experimental population of red wolves into the Park and the use by these animals of the Park and adjacent Federal lands is compatible with current utilization of the Park and adjacent Federal properties, and is expected to have no adverse impact on public use days. It is reasonable to expect some increase, although probably too small to be measured, in visitor use of the Park after the release of the wolves. The Service has also determined that this action will not involve any taking of constitutionally protected property rights that would require preparation of a takings implication assessment under Executive Order 12630. The rule does not require a federalism assessment under Executive Order 12612 since it will not have any significant federalism effects as described in the order. The rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Author

The principal author of this rule is V. Gary Henry (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is hereby amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by revising the existing entry for "Wolf, red" under MAMMALS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

SPECIES		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS:							
*	*	*	*	*	*		
Wolf, red	*Canis rufus*	U.S.A. (SE U.S.A., west to central TX).	Entire, except where listed as Experimental Populations below	E	1,248,449	NA	NA
Do	do	do	U.S.A. (portions of NC and TN—see § 17.84(c)(9))	XN	248,449	NA	17 84(c)
*		*	*	*	*		

3. Section 17.84 is amended by revising paragraphs (c)(1), (c)(4), (c)(5)(iii), (c)(6), (c)(9), (c)(10), and (c)(11) and adding paragraph (c)(5)(iv) as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(c) * * *

(1) The red wolf populations identified in paragraphs (c)(9)(i) and (c)(9)(ii) of this section are nonessential experimental populations.

* * * * *

(4)(i) Any person may take red wolves found in the area defined in paragraph (c)(9)(i) of this section in defense of that person's own life or the lives of others, *Provided* That such taking shall be immediately reported to the refuge manager, as noted in paragraph (c)(6) of this section.

(ii) Any person may take red wolves found in the area defined in paragraph (c)(9)(ii) of this section, *Provided* That such taking is incidental to lawful recreational activities or in defense of that person's own life or the lives of others, and that such taking is reported immediately to the Park Superintendent.

(iii) Any livestock owner may harass red wolves found in the area defined in paragraph (c)(9)(ii) of this section actually pursuing or killing livestock on private properties, *Provided* That all such harassment is by methods that are not lethal or physically injurious to the red wolf and is reported immediately to the Park Superintendent.

(iv) Any livestock owner may take red wolves found in the area defined in paragraph (c)(9)(ii) of this section to protect livestock actually pursued or being killed on private properties after efforts to capture depredating red wolves by project personnel have proven unsuccessful, *Provided* That all such taking shall be immediately reported to the Park Superintendent.

(5) * * *

(iii) Take an animal that constitutes a demonstrable but non-immediate threat to human safety or that is responsible for depredations to lawfully present domestic animals or other personal property, if it has not been possible to otherwise eliminate such depredation or loss of personal property, *Provided* That such taking must be done in a humane manner, and may involve killing or injuring the animal only if it has not been possible to eliminate such threat by live capturing and releasing the specimen unharmed on the refuge or Park;

(iv) Move an animal for genetic purposes.

(6) Any taking pursuant to paragraphs (c) (3) through (5) of this section must be immediately reported to either the Refuge Manager, Alligator River National Wildlife Refuge, Manteo, North Carolina, telephone 919/473-1131, or the Superintendent, Great Smoky Mountains National Park, Gatlinburg, Tennessee, telephone 615/436-1294. Either of these persons will determine disposition of any live or dead specimens.

* * * * *

(9)(i) The Alligator River National Wildlife Refuge reintroduction site is within the historic range of the species in North Carolina, in Dare and Tyrrell Counties; because of their proximity, Beaufort, Hyde, and Washington Counties are also included in the experimental population designation.

(ii) The red wolf also historically occurred on lands that now comprise the Great Smoky Mountains National Park. The Park encompasses properties within Haywood and Swain Counties in North Carolina, and Blount, Cocke, and Sevier Counties in Tennessee. Graham, Jackson, and Madison Counties in North Carolina, and Monroe County in Tennessee, are also included in the experimental designation because of the close proximity of these counties to the Park boundary.

(iii) Except for the three island propagation projects and these small reintroduced populations, the red wolf is extirpated from the wild. Therefore, there are no other extant populations with which the refuge or Park experimental populations could come into contact.

(10) The reintroduced populations will be monitored closely for the duration of the project, generally by use of radio telemetry as appropriate. All animals will be vaccinated against diseases prevalent in canids prior to release. Any animal that is determined to be sick, injured, or otherwise in need of special care, or that moves off Federal lands, will be immediately recaptured by Service and/or Park Service and/or designated State wildlife agency personnel and given appropriate care. Such animals will be released back to the wild on the refuge or Park as soon as possible, unless physical or behavioral problems make it necessary to return the animals to a captive-breeding facility.

(11) The status of the Alligator River National Wildlife Refuge project will be reevaluated by October 1, 1992, to determine future management status and needs. This review will take into account the reproductive success of the mated pairs, movement patterns of individual animals, food habits, and overall health of the population. The duration of the first phase of the Park project is estimated to be 10 to 12 months. After that period, an assessment of the reintroduction potential of the Park for red wolves will be made. If a second phase of reintroduction is attempted, the duration of that phase will be better defined during the assessment. However, it is presently thought that a second phase would last for 3 years, after which time the red wolf would be treated as a resident species within the Park. Throughout these periods, the experimental and nonessential designation of the animals will remain in effect.

* * * * *

(Final: Red wolf—Nonessential experimental population designation in the Great Smoky Mountains National Park)

Dated: October 15, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-26582 Filed 11-1-91; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 56, No. 213
Monday, November 4, 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

Commodity Credit Corporation

7 CFR Part 1413

1992 Extra Long Staple Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations at 7 CFR part 1413 to set forth the acreage reduction percentage for the 1992 crop of extra long staple cotton. This action is required by section 103(h)(1) of the Agricultural Act of 1949, as amended (the 1949 Act).

DATES: Comments must be received on or before November 15 in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Director, Commodity Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O. Box 2415, room 3741-S, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Group Leader, Fibers Group, Commodity Analysis Division, USDA-ASCS, room 3758-S, P.O. Box 2415, Washington, DC 20013 or call (202) 720-7954.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1512-1 and Executive Order 12291 and has been classified as "not major." It has been determined that an annual effect on the economy of $100 million or more will not result from implementation of the provisions of this proposed rule.

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The title and number of the Federal Assistance Program to which this rule applies is: Cotton Production Stabilization—10.052 as found in the catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

There are no new paperwork requirements imposed by this proposed rule. Information collection requirements of 7 CFR part 1413 have been previously approved by the Office of Management and Budget and assigned OMB No. 0560-0004 and 0560-0092. Public reporting burden for these collections is estimated to vary from 15 minutes to 45 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Background

In accordance with section 103(h)(5) of the 1949 Act, an acreage reduction program (ARP) may be established for the 1992 crop of ELS cotton if it is determined that the total supply of ELS cotton, in the absence of an ARP, will be excessive, taking into account the need for an adequate carry-over to maintain reasonable and stable prices and to meet a national emergency.

Land diversion payments also may be made to producers of ELS cotton, whether or not an ARP for ELS cotton is in effect, if needed to assist in adjusting the total national acreage of ELS cotton to desirable goals. A paid land diversion has not been considered because, given the existing supply/use situation, it is not needed.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction (including a zero percentage reduction) to the acreage base for each ELS cotton-producing farm. Producers who knowingly produce ELS cotton in excess of the permitted acreage for the farm are ineligible for ELS cotton loans and payments with respect to that farm.

Based on 1992 supply/use estimates as of October 1991, three options will be considered. However, because of changes in the 1992 supply/use situation that may develop between now and the ARP announcement date, the actual ARP level may be different from the options discussed in this notice.

The 1992 ARP options considered are:

Option 1. 0 percent ARP.
Option 2. 5 percent ARP.
Option 3. 10 percent ARP.

The estimated impacts of the ARP options are shown in Table 1.

TABLE 1.—EXTRA LONG STAPLE COTTON SUPPLY/DEMAND ESTIMATES

Item	Option 1	Option 2	Option 3
ARP (%)	0	5	10
Participation (%)	40	30	25
Planted Acres (thousand)	257	255	253
Production (thousand bales)	485	481	478
Domestic Use (thousand bales)	75	75	75
Exports (thousand bales)	400	400	400
Ending Stocks (thousand bales)	114	110	107
Deficiency Payments ($ million)	1.691	1.403	1.115

Accordingly, comments are requested as to the 1992 acreage reduction percentage for ELS cotton. The final determination of this percentage will be set forth at 7 CFR part 1413.

List of Subjects in 7 CFR Part 1413

Cotton, Feed grains, Price support programs, Rice, Wheat.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended by adding paragraph (a)(5), by redesignating paragraph (e) as paragraph (f), and by adding new paragraph (e) to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(5)(i) 1991 ELS cotton, 5 percent; and

(ii) 1992 ELS cotton shall be within a range of 0 percent and 10 percent, as determined and announced by CCC.

* * * * *

(e) Paid land diversion shall not be made available to producers of the 1992 crops of wheat, feed grains, upland cotton and ELS cotton.

* * * * *

Signed at Washington, DC on October 29, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–26488 Filed 11–1–91; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 17

[Docket No. R-91-1565; FR-2861-P-01]

RIN 2501-AA97

Administrative Claims

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: HUD proposes to revise its regulations for procedures related to claims by the Government in 24 CFR part 17, to provide an additional remedy for securing the payment of disallowed costs determined by Departmental audits. The proposed rule would make the repayment of disallowed costs or of outstanding monetary obligations to HUD, or in appropriate cases suitable arrangements for such repayment, a threshold requirement to be met in all of HUD's discretionary assistance programs.

DATES: Comments Due: January 3, 1992.

ADDRESSES: Interested persons are invited to submit comments on the proposed rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Each comment should include the commenter's name and address and should refer to the docket number and title indicated in the heading of this document. A copy of each comment will be available for public inspection between the hours of 7:30 am. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708–4337. Only public comments of six or fewer total pages will be accepted via F transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708–2084). (This is not a toll-free number.)

FOR FURTHER INFORMATION CONTACT: Robert S. Kenison, Associate General Counsel, Office of Assisted Housing and Community Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone (202) 708–0212. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–1112. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Departmental regulations at 24 CFR part 17, subpart C, establish procedures for the collection of claims by the Government. These provisions include specific mechanisms for the use of administrative offsets, salary offsets, and IRS tax refund offsets (§§ 17.100–17.161). These provisions are important tools in the Department's efforts to collect administrative claims by the Government.

However, a fully responsive effort by HUD requires further steps. The cited provisions are in furtherance of the Federal Claims Collections Act of 1966, as amended by the Debt Collection Act of 1982, which does not permit collection by administrative offset of administrative claims from State governments or units of general local government. Yet HUD annually undertakes comprehensive audits of public grantees and disallows costs in the millions of dollars. Where voluntary repayment does not occur, HUD needs other approaches to make whole the taxpayer and the federally funded program.

Moreover, administrative offset against entities other than States and local governments is not generally available where offset would substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated. Program purposes would be defeated under this principle in the case of most advance funding systems, such as the public housing Performance Funding System (PFS) of operating subsidies under 24 CFR part 990 and Indian Housing operating subsidies under 24 CFR part 905, subpart J. Since the purpose of advance funded programs is to meet future program or project needs, offset of those funds would frustrate the purposes of the program.

(An exception is the section 8 administrative fee provided to public housing authorities to administer the section 8 Existing and Moderate Rehabilitation Programs. To the extent that unused fee amounts in a given year are carried over to the Operating Reserve account and are not needed for future years' program administration, offset of excess administrative fees in the Operating Reserve would not interfere with the purpose of the program or its fee administration.)

On the other hand, no other HUD assistance program affording continuing, annualized amounts of assistance is administered on a reimbursable basis, against which an offset could be made.

Similarly, existing procedures cannot be used to offset discretionary assistance. Such an action would necessarily mean one of two things. Offsetting an approved assistance amount would imply that the total assistance can withstand reduction and therefore was more than should have been approved originally. The alternative interpretation would be that the assistance, as approved and reduced, is inadequate to accomplish the objectives of the assistance; under such a rationale HUD would deliberately be underfunding at economic and legal risk to the integrity of the program. Further, if HUD were to provide an amount lower than the assistance but for a reduced scope, doubt could arise as to whether the application would have qualified or ranked sufficiently in its reduced scope so as to merit funding under the competitive arrangement in which all applications were first reviewed and approved or rejected.

This rule proposes to add to the Department's ability to recover

disallowed costs in a manner compatible with the foregoing objectives. This rule would condition the eligibility of any applicant under any HUD discretionary assistance program to apply for funding so long as an outstanding disallowed cost or outstanding monetary obligation exists.

The Department notes that such an approach has proved to be very successful in the small cities program of CDBG assistance which the Department administered in all States prior to the distribution of such grant assistance by State governments in 1982, and which HUD still administers in two State jurisdictions. That approach precludes acceptance of an application from an applicant that has an outstanding audit finding for any HUD program or has an outstanding monetary obligation to HUD. See 24 CFR 570.420(j). Regional offices are permitted to provide exceptions to the prohibition but only when funds due HUD are the subject of a satisfactory arrangement for repayment.

HUD now proposes to apply this approach Departmentwide across all discretionary assistance programs. Covered discretionary assistance programs would include all grant, loan, loan guarantee, housing assistance payment, and cooperative agreement assistance available from the Department, as listed at proposed § 17.176.

The rule would be applicable to all program applicants, including individual persons, profit or nonprofit corporations, associations, trusts, estates, special purpose governments (such as public housing authorities (PHAs)), general purpose local governments, and State governments. No individual applicant would be held responsible for repayment of the disallowed costs of other entities in the same jurisdiction. For example, if the Department had disallowed a cost against a PHA, the unit of general local government in the same jurisdiction would not be precluded from applying for discretionary assistance because of the PHA's disallowed costs in the same jurisdiction. Similarly, PHAs would still be eligible to apply for discretionary programs where there is a separate disallowed cost against the city or the State for activities undertaken in the jurisdiction of the PHA. (In some jurisdictions, PHAs are part of the city government pursuant to State Housing Authorities laws. In such cases, the PHA and the city would be treated as a single entity.)

It is emphasized that this new threshold requirement would only be triggered upon a HUD final determination of disallowed cost. This means that the entire sequence of management decisions leading to the final disallowance of the cost would first have to be satisfied. This sequence runs from the filing of an initial audit report to the HUD action official through a series of steps (including opportunity for comments by the auditee) until management agrees that the costs questioned under the audit should not be charged to the program and are formally disallowed.

Should the incentives for repayment under this proposed rule not be productive, the Department retains any other available remedies under this Subpart for administrative claims.

The Department welcomes any public comments or suggestions for other ways to maximize the repayment of outstanding disallowed costs, in addition to those proposed in this rule.

Findings and Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations, issued on February 17, 1981. Analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with section 605(b) of the Regulatory Flexibility Act, the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule amends existing procedures for the repayment of amounts owed HUD, but would make no change in the economic impact of these procedures on small entities.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the policies contained in this rule do not have a potential significant impact on family formation, maintenance, and general well-being and, thus, are not subject to review under the Order.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this rule do not have Federalism implications and, therefore, are not subject to review under that Order. This rule would not substantially alter the established roles of HUD and the States and local governments, including PHAs, and other applicants, in administering the affected programs.

This rule was listed as item number 1216 in the Department's Semiannual Agenda of Regulations, published on April 22, 1991 (56 FR 17360) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

There are no Catalog of Federal Domestic Assistance numbers affected by this rule.

List of Subjects in 24 CFR Part 17

Administrative practice and procedure, claims, Government employees, income taxes, wages.

Accordingly, 24 CFR part 17 is proposed to be amended as follows:

1. The authority citation for 24 CFR part 17 would be removed.

PART 17—ADMINISTRATIVE CLAIMS

2. Subpart D would be added to 24 CFR part 17 to read as follows:

Subpart D—Restrictions on Discretionary Assistance

Sec.
17.200 Scope; definitions.
17.201 Discretionary assistance programs.
17.202 Procedures for repayment.

Subpart D—Restrictions on Discretionary Assistance

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 17.200 Scope; definitions.

(a) The provisions set forth in §§ 17.200 through 17.202 are the Department's procedures for administering its discretionary assistance programs in a manner to promote the repayment of disallowed costs as determined in Departmental audits and of outstanding monetary obligations.

(b) These regulations apply to all questioned costs which have been

determined by HUD to be disallowed, pursuant to agreement by the HUD auditor and the HUD action official and to all outstanding monetary obligations.

(c) For purposes of this subpart:

Action official means the HUD official to whom an audit report is addressed and who is responsible for taking action or assuring that action is taken on the findings or recommendations in an audit report.

Applicant means any individual person or persons, profit or nonprofit corporation, partnership, association, trust, estate, special purpose government, unit of general local government, or State government, that applies for any discretionary assistance program.

Departmental audit means any audit performed by HUD's Office of Inspector General, an Independent Public Accountant, or a designated cognizant agency under the Single Audit requirements of OMB Circulars A-128 and A-133.

Disallowed cost means a questioned cost that HUD management, in a management decision, has sustained or agreed should not be charged to the Government under HUD programs. Such a management decision typically originates with the filing of an initial audit report to the HUD action official through a series of steps (including opportunity for comments by the auditee) until management agrees that the costs questioned under the audit should not be charged to the program and are formally disallowed.

Discretionary assistance program means any Departmental program which makes assistance available under grants (excluding formula grants), loans, loan guarantees, or cooperative agreements. See § 17.201.

Outstanding monetary obligation means an amount owed to the United States and past due, from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from assigned mortgages or deeds of trust, direct loans, advances, repurchase, demands, fees, leases, rents, royalties, services, sale of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

§ 17.201 Discretionary assistance programs.

(a) The following discretionary assistance programs are subject to these regulations:

(1) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under Subpart B and Capital Improvement Loans under Subpart C.

(2) Section 312 Rehabilitation Loans under 24 CFR part 510.

(3) Rental Rehabilitation Grants under 24 CFR parts 511 (only HUD-administered grants under subpart F and technical assistance under subpart A).

(4) The following programs under title I of the Housing and Community Development Act of 1974:

(i) Community Development Block Grants under 24 CFR part 570 (only the HUD-administered Small Cities Program under Subpart F),

(ii) Special Purpose Grants (only technical assistance, Insular Areas, Historically Black Colleges, and the Work Study Program) under section 107 of the Housing and Community Development Act of 1974, and

(iii) Community Development Block Grants to Indian Tribes under 24 CFR part 571.

(5) Emergency Shelter Grants under 24 CFR part 576 (only HUD reallocations under §§ 576.63 through 576.67).

(6) Transitional Housing under 24 CFR part 577.

(7) Permanent Housing for Handicapped Homeless Persons under 24 CFR part 578.

(8) Section 8 Housing Assistance Payments—Existing Housing and Moderate Rehabilitation under 24 CFR part 882 (including project-based housing under the Existing Housing Program under subpart G and the Moderate Rehabilitation Program for Single-Room Occupancy Dwellings for the Homeless under subpart H).

(9) Section 8 Housing Assistance Payments for Housing for the Elderly or Handicapped under 24 CFR Part 885.

(10) Supportive Housing for the Elderly under section 202 of the Housing Act of 1959 as amended, (including Seed Money Loans under section 106(b) of the Housing and Urban Development Act of 1968).

(11) Supportive Housing for Persons with Disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act.

(12) Section 8 Housing Assistance Payments—Loan Management Set-Aside under 24 CFR part 886, Subpart A.

(13) Housing Vouchers under 24 CFR part 887.

(14) HOPE for Elderly Independence under section 803 of the Cranston-Gonzalez National Affordable Housing Act.

(15) HOPE for Public and Indian Housing Homeownership under title III of the United States Housing Act of 1937.

(16) HOPE for Homeownership of Multifamily Units under title IV, subtitle B of the Cranston-Gonzalez National Affordable Housing Act.

(17) HOPE for Homeownership of Single Family Homes under title IV, subtitle C of the Cranston-Gonzalez National Affordable Housing Act.

(18) Shelter Plus Care under section 837 of the Cranston-Gonzalez National Affordable Housing Act.

(19) Low-Rent Housing Opportunities under 24 CFR part 904.

(20) Indian Housing under 24 CFR part 905.

(21) Public Housing Development under 24 CFR part 941.

(22) Comprehensive Improvement Assistance under 24 CFR part 968.

(23) Resident Management under 24 CFR part 964, subpart C.

(24) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(25) Research and Technology Grants under title V of the Housing and Urban Development Act of 1970.

(26) Congregate Services under the Congregate Housing Services Act of 1978.

(27) Counseling under section 106 of the Housing and Urban Development Act of 1968.

(28) Fair Housing Initiatives under 24 CFR part 125.

(29) Public Housing Drug Elimination Grants under 24 CFR part 961.

(30) Community Housing Resource Boards under 24 CFR part 120.

(31) Public Housing Child Care under section 117 of the Housing and Community Development Act of 1987.

(32) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

(b) [Reserved]

§ 17.202 Procedures for repayment.

HUD will not accept an application for assistance under any discretionary assistance program from an applicant that has an outstanding disallowed cost for any HUD program or has an outstanding monetary obligation to HUD. The Regional Administrator, or (in cases where a Headquarters office awards the assistance) the program Assistant Secretary, may grant exceptions to this prohibition, but in no instance shall an exception be provided when funds are due HUD unless an

agreement has been executed between the applicant and HUD which includes the terms and conditions for repayment of the debt and actions that the applicant will take to address any deficient performance which may have been reflected in the Departmental audit. The Department will also not accept any application for assistance under any discretionary assistance program from an applicant who fails to comply in a timely manner with terms and conditions of the repayment agreement.

Dated: October 25, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91-26344 Filed 11-1-91; 8:45 am]

BILLING CODE 4210-32-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket Nos. 91-169, 85-38; DA 91-1341]

Cable Television Technical and Operational Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission has adopted an Order extending the time to file reply comments in the captioned proceeding, to allow interested parties to comment on the negotiated agreement submitted by cable industry and municipal representatives. the extension is intended to aid in fashioning effective technical standards.

DATES: Reply comments must be submitted on or before November 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barrett L. Brick, Cable Television Branch, Mass Media Bureau, (202) 632-7480 [legal issues], or John Wong, Cable Television Branch, Mass Media Bureau, (202) 254-3420 [technical issues].

SUPPLEMENTARY INFORMATION: Adopted: October 25, 1991; Released: October 25, 1991.

By the Chief, Mass Media Bureau:

1. On June 27, 1991, the Commission released a Notice of Proposed Rule Making, 6 FCC Rcd 3673, 56 FR 30726 (July 5, 1991), seeking comments on proposed cable television technical regulations. The Notice stated that interested parties could file comments on or before September 17, 1991, and reply comments on or before October 17, 1991. Several interested parties have filed comments and reply comments on or before the specified dates. among the reply comments filed is a negotiated agreement on technical standards by the National League of Cities, the United States Conference of Mayors, the National Association of Counties, the National Association of Telecommunications Officers and Advisors, the National Cable Television Association, and the Community Antenna Television Association ["the parties"].

2. In adopting the Notice, the Commission reiterated its belief that the completion of negotiation among the parties would contribute greatly to fashioning effective cable technical standards. See Notice at 3674, n.6. We note subsequently, too, that should the parties conclude and submit an agreement within the time contemplated for receipt of reply comments, we could extend the reply comment period to allow all interested persons an opportunity to comment on such an agreement. See Order in MM Docket Nos. 91-169 and 85-38, DA 91-1167 (released September 17, 1991). We believe that granting a limited extension of time to file further reply comments on the parties' agreement would serve the public interest and our goals of fashioning effective cable technical standards and avoiding inordinate delay toward this end. Parties are particularly invited to comment on those aspects of the agreement that were not specifically focused on in the Notice, e.g. phased in compliance schedule, closed captioning carriage, audio signal levels, and direct pickup interference, and on whether these matters should be within the scope of this proceeding.

3. Accordingly, *it is ordered,* That, pursuant to authority delegated by [0.283 of the Commission's Rules, the time for filing comments in response to the subject agreement is extended to November 15, 1991.

4. For further information concerning this proceeding, contact Barrett L. Brick, Cable Television Branch, Mass Media Bureau , (202) 632-7480 [legal issues], or John Wong, Cable Television Branch, Mass Media Bureau, (202) 254-3420 [technical issues].

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 91-26551 Filed 11-1-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. T84-01; Notice 27]

Passenger Motor Vehicle Theft Data for 1990 Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice seeks public comment regarding data on passenger motor vehicle thefts that occurred in 1990. These data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation (FBI). These 1990 theft data indicate that new (model year 1990) vehicle thefts in 1990 decreased about 2 percent from the 1989 level. However, of the 162 car lines sold in the United States during 1990, 99 of the lines (61 percent) had theft rates that exceeded the median theft rate for 1983/1984.

DATES: All comments on this notice must be received by NHTSA not later than December 19, 1991.

ADDRESSES: Comments must refer to the docket and notice numbers set forth at the beginning of this notice and be submitted to: Docket Section, NHTSA, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday. It is requested, but not required, that 10 copies of the comments be submitted.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366-1740.

SUPPLEMENTARY INFORMATION: Title VI of the Motor Vehicle Information and Cost Savings Act (the Cost Savings Act) (15 U.S.C. 2021 *et seq.*), directs NHTSA to promulgate a motor vehicle theft prevention standard applicable to high theft car lines. Section 603(a)(1) of the Cost Savings Act (15 U.S.C. 2023(a)(1)) specifies that three types of car lines are high theft lines within the meaning of Title VI:

(1) Existing lines that had a theft rate exceeding the median theft rate in 1983 and 1984;

(2) New lines that are likely to have a theft rate exceeding the 1983-1984 median theft rate; and

(3) Lines with theft rates below the 1983-84 median theft rate, but which

have a majority of major parts interchangeable with lines whose theft rates exceeded or are likely to exceed the median theft rate.

Section 603(b) of the Cost Savings Act explains how the agency is to determine whether existing lines had a theft rate that exceeded the 1983–1984 median theft rate. Section 603(b)(3) directs NHTSA to:

> obtain from the most reliable source or sources accurate and timely theft and recovery data and publish such data for review and comment. To the greatest extent possible, (NHTSA) shall utilize the theft data to determine the median theft rate under this subsection.

In accordance with this statutory directive, NHTSA published a final notice on November 12, 1985, setting forth the 1983–1984 theft data (50 FR 46666). Based on those data, NHTSA calculated the median theft rate for purposes of Title VI as 3.2712 thefts per 1000 vehicles produced.

Although the Cost Savings Act provides that the calculation of the median theft rate is a one-time event, subsection 603(b)(3) directs the agency to continue to collect and publish theft data on a periodic basis. The publication of national data should serve to inform the public, particularly law enforcement groups, automobile manufacturers, and Congress, of the extent of the vehicle theft problem and the impact, if any, on vehicle thefts as a result of the Federal motor vehicle theft prevention standard. To carry out this purpose, this notice sets forth the theft rates for the 162 lines of passenger motor vehicles sold in the United States for the 1990 model year, based on information provided by the National Crime Information Center (NCIC).

These 1990 data show a decrease in vehicle thefts from the levels experienced in 1989, but are above the levels in 1983/1984. As earlier noted, for 1983/1984, the median theft rate was 3.2712 thefts per 1000 vehicles produced. For model years 1985 through 1988, the median increased to 3.4539, 3.6023, 4.1476, and 4.4158, respectively. The corresponding percentage of car lines per year that exceeded the 1983/1984 median theft rate also increased—to 55 percent, 58.6 percent, 67.2 percent, and 70.2 percent, respectively. In 1989, however, this trend was reversed, and only 107 of the 164 lines, or 65.2 percent, exceeded 3.2712 thefts per 1000 vehicles produced. The median theft rate in 1989 declined, to 4.1959.

The 1990 data also show a decrease in vehicle thefts. In 1990, the median theft rate was 4.1240, with only 99 of 162 lines, or 61 percent, exceeding the 3.2712 threshold. For MY 1990, the fourth year the theft prevention standard was in effect, the 4.1240 median theft rate represents a 26 percent increase in the median theft rate since model years 1983/1984, but a 2 percent decrease from model year 1989. The MY 1990 theft data also represents a decrease in actual vehicle thefts of 4 percent from model year 1989.

In calculating the 1990 theft data, the agency followed the same approach it used in calculating the 1983–1984 median theft rate, in that it has sought to eliminate multiple countings of the same theft by excluding all duplicate vehicle identification numbers (VINs) of stolen vehicles reported within seven calendar days of each other. This approach takes into account the possibility that a vehicle might actually be stolen more than once during a particular calendar year, but that it is highly unlikely to be stolen more than once in a week.

Interested persons are invited to submit comments on these data. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. (49 CFR part 512).

All comments received before the close of business of the comment closing date indicated above for the data will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered before publication of the final 1990 theft data. Comments on this notice will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 15 U.S.C. 2023; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: October 30, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

MODEL YEAR 1990 THEFT RATES FOR CARLINES PRODUCED IN CALENDAR YEAR 1990

Manufacturer	Make model (line)	Thefts 1990	Production (mfgr's) 1990	Theft rate (1990 thefts per 1,000 cars produced)
1. Mazda	626/MX-6	543	28,827	18.8365
2. Mazda	RX-7	79	4,469	17.6773
3. Ford Motor Co.	Ford Mustang	1,622	115,821	14,0044
4. Volkswagen	Cabriolet	117	8,671	13,4933
5. Nissan	300ZX	484	38,844	12.4601
6. Toyota	Supra	72	6,200	11.6129
7. General Motors	Cadillac Seville	319	32,346	9.8621
8. Porsche	928	4	414	9.6618
9. General Motors	Cadillac Brougham	302	32,052	9.4222
10. General Motors	Geo Metro	259	28,029	9.2404
11. General Motors	Chevrolet Camaro	300	33,200	9.0361
12. Mercedes-Benz	560SEC	13	1,446	8.9903

MODEL YEAR 1990 THEFT RATES FOR CARLINES PRODUCED IN CALENDAR YEAR 1990—Continued

Manufacturer	Make model (line)	Thefts 1990	Production (mfgr's) 1990	Theft rate (1990 thefts per 1,000 cars produced)
13. General Motors	Pontiac Grand AM	1,640	189,150	8.6704
14. General Motors	Pontiac Firebird	164	19,157	8.5608
15. Mitsubishi	Galant/Sigma	319	37,490	8.5089
16. BMW	3	149	17,517	8.5060
17. Mercedes-Benz	300CE	18	2,181	8.2531
18. General Motors	Chevrolet Corvette	181	22,034	8.2146
19. General Motors	Pontiac Sunbird	847	106,960	7.9188
20. Chrysler Corp.	Dodge Shadow	563	72,776	7.7361
21. Mitsubishi	Mirage	461	60,040	7.6782
22. Chrysler Corp.	Lebaron	648	86,571	7.4852
23. Audi	Coupe Quattro	10	1,349	7.4129
24. Volvo	780	7	945	7.4074
25. Porsche	911	34	4,609	7.3769
26. Chrysler Corp.	Plymouth Sundance	451	61,366	7.3493
27. Volkswagen	Jetta	344	48,085	7.1540
28. Ford Motor Co.	Ford Probe	776	110,201	7.0417
29. General Motors	Buick Reatta	58	8,431	6.8794
30. General Motors	Chevrolet Caprice	373	55,152	6.7631
31. General Motors	Pontiac Bonneville	506	75,655	6.6883
32. Honda	Prelude	384	60,000	6.4000
33. Chrysler Corp.	Chrysler's TC	12	1,894	6.3358
34. General Motors	Buick Skylark	523	83,666	6.2510
35. General Motors	Geo Prizm	1,058	170,253	6.2143
36. Nissan	Sentra	907	146,812	6.1780
37. Ford Motor Co.	Lincoln Mark VII	129	21,658	5.9562
38. BMW	5	132	22,479	5.8721
39. Ford Motor Co.	Ford Thunderbird	609	104,847	5.8085
40. General Motors	Chevrolet Cavalier	1,524	263,199	5.7903
41. General Motors	Oldsmobile Cutlass Calais	507	88,229	5.7464
42. General Motors	Pontiac 6000	300	52,352	5.7304
43. Chrysler Corp.	Plymouth Acclaim	550	96,371	5.7071
44. Ford Motor Co.	Ford Escort	1,061	188,146	5.6392
45. General Motors	Oldsmobile 98/Touring	323	58,444	5.5267
46. Volkswagen	Golf/GTI	77	13,952	5.5189
47. Chrysler Corp.	Dodge Dynasty	524	96,448	5.4330
48. Mitsubishi	Precis	17	3,210	5.2960
49. Chrysler Corp.	Dodge Spirit	433	82,567	5.2442
50. Mitsubishi	Eclipse	392	74,820	5.2392
51. Nissan	240SX	310	60,465	5.1269
52. General Motors	Geo Storm	378	74,501	5.0738
53. Toyota	Corolla/Corolla Sport	1,104	218,200	5.0596
54. General Motors	Buick Electra/Lesabre Estate Wagon	38	7,524	5.0505
55. General Motors	Oldsmobile Custom Cruiser Wagon	18	3,573	5.0378
56. Sterling	Sterling 827	6	1,201	4.9958
57. Chrysler Corp.	Chrysler Laser	259	52,239	4.9480
58. Honda	Accord	1,896	382,800	4.9530
59. Chrysler Corp.	Dodge Daytona	191	38,752	4.9288
60. Toyota	Tercel	416	86,200	4.8260
61. Chrysler Corp.	Eagle Premier	60	12,563	4.7759
62. General Motors	Oldsmobile Cutlass Ciera	597	126,321	4.7261
63. Ford Motor Co.	Ford Tempo	1,025	218,975	4.6809
64. Chrysler Corp.	Eagle Talon	119	25,554	4.6568
65. Mercedes-Benz	190E	43	9,250	4.6486
66. Honda/Acura	Legend	345	75,400	4.5756
67. Hyundai	Excel	418	91,995	4.5314
68. Volkswagen	Corrado	50	11,034	4.5314
69. Ford Motor Co.	Mercury Cougar	343	76,580	4.4790
70. Chrysler Corp.	Dodge Omni	74	16,523	4.4786
71. Mazda	MX-5 Miata	160	36,168	4.4238
72. Ford Motor Co.	Lincoln Town Car	631	142,648	4.4235
73. General Motors	Chevrolet Beretta	397	90,981	4.3635
74. General Motors	Oldsmobile Delta 88 Royale	455	105,508	4.3125
75. Mercedes-Benz	300SL	11	2,552	4.3103
76. BMW	7	47	10,917	4.3052
77. Chrysler Corp.	Chrysler New York Fifth Ave./Imperial	234	54,971	4.2568
78. General Motors	Buick Electra Park Avenue	197	46,360	4.2494
79. General Motors	Pontiac Lemans	154	36,626	4.2047
80. Mazda	323	305	73,257	4.1634
81. Nissan	Maxima	546	132,395	4.1240
82. Chrysler Corp.	Eagle Summit	40	9,733	4.1097
83. General Motors	Buick Century	504	123,893	4.0680
84. Chrysler Corp.	Plymouth Horizon	63	15,920	3.9573
85. General Motors	Buick Lesabre	601	152,967	3.9290
86. General Motors	Cadillac Allante	12	3,055	3.9280
87. Toyota	Camry	1,081	275,600	3.9224
88. Ford Motor Co.	Mercury Topaz	285	73,208	3.8930

MODEL YEAR 1990 THEFT RATES FOR CARLINES PRODUCED IN CALENDAR YEAR 1990—Continued

Manufacturer	Make model (line)	Thefts 1990	Production (mfgr's) 1990	Theft rate (1990 thefts per 1,000 cars produced)
89. Toyota	Celica	320	83,800	3.8186
90. General Motors	Cadillac Fleetwood/Deville	650	170,517	3.8119
91. Mercedes-Benz	300SEL	13	3,430	3.7901
92. General Motors	Chevrolet Corsica	629	168,855	3.7251
93. Honda/Acura	Integra	492	132,780	3.7054
94. General Motors	Oldsmobile Cutlass Supreme	389	106,705	3.6456
95. Chrysler Corp.	Dodge Monaco	24	6,718	3.5725
96. Subaru	Loyale	50	14,097	3.5469
97. Hyundai	Sonata	76	21,822	3.4827
98. General Motors	Pontiac Grand Prix	384	110,549	3.4736
99. Ferrari	Testarossa	1	300	3.3333
100. Mercedes-Benz	500SL	8	2,456	3.2573
101. Nissan	Stanza	318	97,985	3.2454
102. Mercedes-Benz	300D/E	57	18,048	3.1582
103. Ford Motor Co.	Mercury Sable	282	93,126	3.0282
104. Ford Motor Co.	Ford Festiva	142	47,449	2.9927
105. Mercedes-Benz	560SEL	12	4,104	2.9240
106. Toyota	Cressida	36	12,500	2.8800
107 Mercedes-Benz	300TE	5	1,738	2.8769
108. General Motors	Buick Regal	154	53,571	2.8747
109. Audi	80/90	26	9,171	2.8350
110. Mercedes-Benz	420SEL	16	5,650	2.8319
111 General Motors	Chevrolet Celebrity	81	29,271	2.7672
112. Nissan	Infiniti M30	20	7,266	2.7525
113. Volvo	740	151	55,178	2.7366
114. Ford Motor Co.	Ford Crown Victoria	156	57,680	2.7046
115. General Motors	Chevrolet Lumina	790	296,720	2.6624
116. Honda	Civic	756	287,000	2.6341
117. General Motors	Oldsmobile Toronado/Trofeo	38	14,480	2.6243
118. Suzuki	Swift	20	7,671	2.6072
119. Jaguar	XJ-S	14	5,407	2.5892
120. Volkswagen	Passat	44	17,427	2.5248
121 Nissan	Axxess	45	17,987	2.5018
122. General Motors	Cadillac Eldorado	54	21,764	2.4812
123. Ford Motor Co.	Ford Taurus	745	309,211	2.4094
124. Ford Motor Co.	Mercury Grand Marquis	169	70,633	2.3926
125. Volkswagen	Fox	60	25,745	2.3305
126. SAAB	900	33	14,517	2.2732
127. SAAB	9000	13	5,732	2.2680
128. Ford Motor Co.	Lincoln Continental	139	62,657	2.2184
129. Volvo	240	80	36,357	2.2004
130. Subaru	Legacy	89	40,686	2.1875
131 Alfa Romeo	Spider Veloce 2000	2	915	2.1858
132. Daihatsu	Charade	26	12,430	2.0917
133. Porsche	944	6	2,886	2.0790
134. Chrysler Corp.	Plymouth Colt/Colt Vista	25	12,183	2.0520
135. Mazda	929	37	18,034	2.0517
136. Toyota	Lexus LS400	82	40,600	2.0197
137. Volvo	760	18	9,554	1.8840
138. Toyota	Lexus ES250	35	19,600	1.7857
139. Nissan	Infiniti Q45	20	11,610	1.7227
140. Jaguar	XJ-6	26	15,316	1.6976
141. Chrysler Corp.	Dodge Colt/Colt Visa	23	13,744	1.6735
142. Mercedes-Benz	300SE	8	5,545	1.4427
143. General Motors	Buick Riviera	29	21,982	1.3193
144. Audi	100/200	16	13,777	1.1614
145. Subaru	Justy	6	5,482	1.0945
146. General Motors	Chevrolet Sprint	1	1,171	0.8540
147 Rolls-Royce/Bentley	Corniche/Continental/Mulsanne	0	141	0.0000
148. General Motors	Oldsmobile Cutlass Cruiser	0	8,891	0.0000
149. Lotus	Esprit	0	400	0.0000
150. Peugeot	505	0	2	0.0000
151 Rolls-Royce/Bentley	Bentley Turbo R	0	200	0.0000
152. Rolls-Royce/bentley	Silver Spirit/Silver Spur	0	180	0.0000
153. Isuzu	Impulse	0	4,772	0.0000
154. Maserati	430/228	0	18	0.0000
155. Ferrari	348	0	600	0.0000
156. Peugeot	405	0	686	0.0000
157. Ferrari	Mondial	0	200	0.0000
158. Rolls-Royce/Bentley	Bentley Eight	0	24	0.0000
159. Nissan	Pulsar	0	1,168	0.0000
160. Maserati	Spyder	0	26	0.0000
161. General Motors	Buick Skyhawk	0	4	0.0000
162. Yugo	GV/GVX/GVL/GVS	0	1,323	0.0000

[FR Doc. 91-26537 Filed 11-1-91; 8:45 am]

49 CFR Part 552

School Bus Pedestrian Safety Devices

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice responds to a letter from the California Highway Patrol requesting that the final rule establishing Federal Motor Vehicle Safety Standard No. 131, *School Bus Pedestrian Safety Devices*, be reconsidered with respect to two issues. Since the request was filed late, it has been treated as a petition for rulemaking instead of a petition for reconsideration, pursuant to agency procedural regulations. The petitioner requested that the standard be amended to eliminate the option to install either reflectorization or flashing lights to ensure the stop signal arm's conspicuity and instead require either that all stop arms be reflectorized or that all have flashing lights. The petitioner also requested that the standard be amended to specify whether one or two stop signal arms must be installed on buses and where the devices must be located. After reviewing the petition, the agency has decided to deny it because it presents no new arguments or information beyond what the agency considered in issuing the final rule. Accordingly, there is no reasonable possibility that the requested amendment would be issued at the conclusion of a rulemaking proceeding.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gauthier, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4799.

SUPPLEMENTARY INFORMATION: On May 3, 1991, NHTSA issued a final rule establishing Federal Motor Vehicle Safety Standard (FMVSS) No. 131, *School Bus Pedestrian Safety Devices*. (56 FR 20363.) The rule establishes a new safety standard requiring new school buses to be equipped with a stop signal arm. The standard requires that the stop signal arm be octagonal, meet minimum specified dimensions, and have the word "STOP" in white letters on a background which is red with a white border. To increase the arm's conspicuity, the new standard also requires the arm be either reflectorized or have two flashing lamps. The standard requires that the device be located on the left side of the bus. The standard also contains provisions about the device's automatic deployment and a manual override. The rule is intended to reduce the risk to pedestrians from vehicles which illegally pass stopped school buses.

The final rule noted that any petition for reconsideration be received by the agency not later than June 3, 1991. This time limit was specified pursuant to 49 CFR 553.35, which requires petitions for reconsideration to be received not later than 30 days after the final rule's publication in the **Federal Register**. The requirements further provide that petitions filed after that time will be considered as petitions for rulemaking filed under part 552 of the agency's regulations.

In a letter dated July 11, 1991, the Department of California Highway Patrol (CHP) petitioned the agency to reconsider the rulemaking establishing Standard No. 131 by standardizing additional aspects of stop arms. Specifically, CHP requested that the standard be amended to eliminate the option to install either reflectorization or flashing lights and instead require either that all stop arms be reflectorized or that all have flashing lights. The petitioner prefers reflectorization. The petitioner also requested that the standard be amended to specify whether one or two stop signal arms must be installed on buses and where the devices must be located. The petitioner stated that if two arms are to be installed on some buses, such installation should be based on bus length. The petitioner also repeated its belief that if two arms are installed, the rear side of the front arm and the front side of the rear arm should be blank.

Since CHP's July 11, 1991 letter was submitted after the 30-day deadline in the agency's regulations for petitions for reconsideration, the agency must consider the letter as a petition for rulemaking. As explained below, after reviewing the rulemaking petition to determine whether there is a reasonable possibility that the requested order would be issued at the conclusion of the agency's review, the agency has determined that no such order would be issued. The agency notes that the petition presented no new arguments or information beyond what was considered by the agency in developing and issuing the final rule establishing the standard. All of the issues and comments made by CHP were considered by the agency and are discussed in the preamble to the final rule.

With respect to increased conspicuity of stop signal arms during poor ambient lighting conditions, the final rule noted that both flashing lights and reflectorization are effective. However, it noted further that "neither the comments nor independent studies conclusively indicated that one approach is superior to the other." In addition, the Federal Highway Administration's Manual on Uniform Traffic Control Devices, which requires the standardization of most attributes of highway signs, specifies that the means for enhancing the conspicuity of signs used for school traffic control may be either reflectorization or illumination. Accordingly, without information that indicates that one means is better than the other, the agency decided not to establish an exclusive requirement for either flashing lights or reflectorization.

With respect to the location and number of stop signal arms, the agency decided to require the stop arm on the left side of the bus and allowed an optional second sign. As for the location requirements, the final rule specifies that school buses must be equipped with one stop signal arm installed on the left side of the bus so that when extended it is: (1) Perpendicular to the side of the bus, plus or minus five degrees; (2) has the top edge of the octagon parallel to and within 6 inches of a horizontal plane passing through the lower edge of the driver's window frame; and (3) has the vertical centerline of the stop sign at least 9 inches away from the bus body when the sign is fully extended. Noting that commenters expressed divergent opinions about the stop arm's location relative to the length of the school bus, the agency concluded that these requirements provide uniform location specifications while providing users flexibility to install the stop signal arms consistent with their experiences with these devices.

For similar reasons, the agency believed it was worthwhile to permit installation of a second stop signal arm. The decision to permit a second stop arm was made in response to commenters, including CHP, who recognized that dual stop signal arms may be desirable on some school buses. In such situations, the agency agreed with CHP that the front side of the second (rear) stop signal arm must be blank so as not to send confusing messages to motorists about where to stop relative to the bus. However, the agency determined that the rear side of both stop arms must bear a stop sign, thereby reinforcing the message that following motorists must stop and not pass a stopped school bus.

The agency continues to believe that Standard No. 131 standardizes the most important aspects of a stop signal arm—its size, shape, color, wording, and most important, its presence on all new school buses. The agency believes also

that there is no need to standardize the attributes identified by the petitioner (i.e., the means for providing conspicuity, the stop signal arm's location, and the number of stop signal arms). In fact, as explained above and in the preamble of the final rule, the agency believes it is worthwhile to provide some flexibility about these attributes.

In accordance with 49 CFR part 552, the agency has completed its technical review of the petition. Since the petition offered no new arguments or information on the subject that were not already considered in formulating the final rule, the agency believes that there is no reasonable possibility that the requested amendment would be issued at the conclusion of a rulemaking proceeding. Accordingly, the petition is denied.

Authority: 15 U.S.C. 1410a; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 30, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-26536 Filed 11-1-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB 56

Endangered and Threatened Wildlife and Plants; Proposed Rule to List the Mexican Spotted Owl as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the Mexican spotted own (*Strix occidentalis lucida*) as a threatened species under the authority contained in the Endangered Species Act of 1973 (Act), as amended. Critical habitat is not being proposed. This medium-sized bird is found from parts of central Colorado and Utah south through Arizona, New Mexico, and western Texas, then south through northwestern Mexico to the State of Michoacan. It commonly inhabits mountains and canyons containing dense, uneven-aged forests with a closed canopy. The Mexican spotted owl is threatened by habitat loss caused by logging and fires, increased predation associated with habitat fragmentation, and lack of adequate protective regulations.

DATES: Comments from all interested parties must be received by March 3, 1992.

The Act requires the Service to promptly hold one public hearing on the proposed listing regulation should a person file a request for such a hearing by December 19, 1991 (section 4(b)(5)(E); 16 U.S.C. 1533(b)(5)(E)). Because of anticipated widespread public interest, the Service has decided to hold six public hearings. See **"SUPPLEMENTARY INFORMATION"**.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 3530 Pan American Highway, NE, Suite D, Albuquerque, New Mexico 87107. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, (see ADDRESSES) (505/883-7877 or FTS 474-7877). See **"SUPPLEMENTARY INFORMATION"** for location of hearings.

SUPPLEMENTARY INFORMATION:

Hearing Information

Public hearings will be held between January 15, 1992, and February 28, 1992, in the following sites: Arizona—Flagstaff, Tucson; New Mexico—Alamogordo, Santa Fe, Silver City; Utah—Cedar City. Specific dates and localities will be announced in a subsequent Federal Register notice.

A public hearing will be conducted in each of these cities from 6 p.m. to 9 p.m. Oral statements may be limited to 3, 5, or 10 minutes if the number of parties desiring to give such statements necessitates limitation. There are no limits to the length of any written statement presented at a hearing or mailed to the Service. Oral comments presented at the public hearings are given the same weight and consideration as comments presented in written form. Should the public hearings scheduled be insufficient to provide all individuals with an opportunity to speak, anyone not accommodated will be requested to submit their comments in writing.

Background

The Mexican spotted owl is one of three spotted owl subspecies recognized by the American Ornithologists' Union (AOU) (AOU 1983). It was described from a specimen collected at Mount Tancitaro, Michoacan, Mexico, and named *Syrnium occidentale lucidum* (Nelson 1903). The spotted owl was later assigned to the genus *Strix* (Ridgway 1914). Specific and subspecific names were changed to conform to taxonomic standards and became *Strix occidentalis lucida*. Monson and Phillips (1981) regard spotted owls in Arizona as *Strix occidentalis hauchucae*, noting they are paler than *S. o. lucida* from Mexico; however their treatment is not followed by the AOU (1983).

The Mexican spotted owl (*S. o. lucida*) is distinguished from the California (*S. o. occidentalis*) and northern (*S. o. caurina*) subspecies chiefly by geographic distribution and plumage. Generally, the background coloration of the Mexican spotted owl is a darker brown than the California and northern subspecies. The plumage spots are larger, more numerous and whiter in *S. o. lucida*, giving it a lighter appearance overall.

Using starch-gel electrophoresis to examine genetic variability among the three spotted owl subspecies, Barrowclough and Gutierrez (1990) found *S. o. lucida* to be distinguishable from the two other subspecies by a significant difference in allelic frequency at one locus. They conclude this genetic variation, and the prolonged geographic isolation of the Mexican subspecies it suggests, indicate the Mexican spotted owl may represent a species distinct from the California and northern spotted owls.

The Mexican spotted owl is the widest ranging of the three spotted owl subspecies. Its range extends from the southern Rocky Mountains in Colorado and the Colorado Plateau in southern Utah, southward through Arizona and New Mexico and, discontinuously, through the Sierra Madre Occidental and Oriental to the mountains at the southern end of the Mexican Plateau. There are no estimates of the owl's historic population size. Its historic range and present distribution are thought to be similar.

Utah—The earliest spotted owl record in Utah was from Zion National Park (ZNP) in June, 1928 (Hayward *et al.* 1976). The most northerly owl occurrence in the Southwest was recorded September 6, 1958, in the Book Cliffs of northeastern Utah (Behle 1960). The most significant population of spotted owls in Utah occurs in ZNP. Surveys between 1987 and 1990 have recorded six pairs and six single birds (Gutierrez and Rinkevich 1990).

Spotted owls appear largely absent from higher elevations in Utah. The only occurrences have been a 1958 sighting in an aspen grove (Behle 1960), and a 1990 calling response at 10,000 feet elevation on the Manti-LaSal National Forest

(United States Forest Service (USFS), *in litt.*, 1990).

Current spotted owl records (*i.e.*, those recorded since 1988) for Utah total 8 pairs and 11 single birds (McDonald *et al.* 1991).

Colorado—There are 20 historic records of spotted owls for Colorado (Reynolds 1989), of which 13 have been accepted as valid by the Colorado Rare Birds Committee. These records come from the San Juan Mountains in southwestern Colorado and along the Front Range northward to the vicinity of Denver.

Current spotted owl records for Colorado total two pairs and 10 single birds (McDonald *et al.* 1991).

Arizona—There are few early spotted owl records for Arizona. The earliest record is of a pair nesting in a cottonwood northeast of Tucson in 1872. A pair was found in the foothills of the Huachuca Mountains in 1890 (Bendire 1892).

The historic and current distribution of spotted owls in Arizona coincide, with the possible exception of the current absence of owls from lower elevation riparian forests. Bendire (1892) found a pair of spotted owls nesting in cottonwoods northwest of Tucson in 1872, and Willit found them in lowland riparian areas in the vicinity of Roosevelt Lake (Salt River) in the 1910's (Phillips *et al.* 1964). These records suggest spotted owls may have formerly occurred in low elevation riparian habitats.

Spotted owls are known from the Colorado Plateau in northern Arizona, the basin and range mountains of the southeast, and the rugged transition zone between these provinces in central and east central Arizona. The largest concentration of spotted owls occurs in central and east central Arizona along the Mogollon Rim, in the White Mountains, and on the volcanic peaks near Flagstaff. This region takes in all or part of five national forests and two Indian reservations. The number of currently known owls reported by various agencies for this region totals 124 pairs and 77 single birds.

Current spotted owl records for Arizona total 153 pairs and 108 single birds (McDonald *et al.* 1991).

New Mexico—There are numerous early spotted owl records for New Mexico. Spotted owls were known prior to 1928 from most of New Mexico's major mountain ranges including the Sangre de Cristo, Jemez, Manzano, Sacramento, Mogollon, Tularosa, San Fransicso, San Mateo, and Black Range. Many records from southwest New Mexico were the result of the work of J.S. Ligon who collected throughout New Mexico from about 1910 through 1930. Ligon observed spotted owls over an extensive range in New Mexico and Arizona, but found them most commonly in south central and southwest New Mexico and at similar latitudes in Arizona (Ligon 1926). Recent historic records document spotted owls from most other mountain ranges in New Mexico (Ligon 1961, Hubbard 1978).

Current spotted owl records for New Mexico total 129 pairs and 85 single birds (McDonald *et al.* 1991).

Texas—All Texas spotted owl records come from the Guadalupe Mountains near the New Mexico border. An owl was first reported in 1901 (Bailey 1928). A pair of owls was observed in the Guadalupe Mountains in 1988 (NPS, *in litt.*, 1990).

Current spotted owl records for Texas total 1 pair of birds.

Mexico—Information on spotted owl occurrence in Mexico is somewhat limited. Nevertheless, specimen and sight records obtained over the past 120 years provide a fair understanding of the owl's general distribution and at least an indirect assessment of relative abundance.

A survey of major museum collections found spotted owl specimens from Mexico collected from about 1870 through 1961, which represent 14 locations in 7 states, as follows: Sonora, 4 specimens from 4 sites; Chihuahua, 13 from 5 sites; Jalisco, 2 from 1 site; Michoacan, 1 from 1 site; Guanajuato, 1 from 1 site, San Luis Potosi, 2 from 1 site; and Nuevo Leon, 1 from 1 site. There are sight records from an additional four localities in Sonora and three localities in Chihuahua, plus individual sight records from Durango and Coahuila, two states for which no specimens are available. There are a total of 23 Mexican localities (McDonald *et al.* 1991). The great majority of specimens and sight records are concentrated near the U.S. border in northeastern Sonora and northwestern Chihuahua, with large gaps in the known distribution and very few records south and east of there. Although precise numbers of spotted owls in Mexico are unknown, available evidence suggests the species has always been uncommon in that country.

Current spotted owl records for Mexico total one pair (J.A. Olivo-Martinez, *in litt.*, 1990), but no organized owl surveys have been conducted in that country.

Current (*i.e.* since 1988) spotted owl records for the southwestern United States and Mexico total 294 pairs and 214 singles (802 birds) (McDonald *et al.* 1991).

An estimate of the total spotted owl population in the southwestern United States was derived primarily from data supplied by the USFS (Fletcher 1990) and data available in other USFS documents. Data considered in the calculations included total estimated timberland within national forests in Arizona and New Mexico, total estimated timberland outside national forests in Arizona and New Mexico, estimated suitable spotted owl habitat on national forests in Arizona and New Mexico, spotted owl sightings on national forests in Arizona and New Mexico, acres searched for spotted owls on national forests in Arizona and New Mexico, sight pair occupancy rates reported from formal monitoring on three national forests in Arizona and New Mexico, and records of owl occurrences in Utah and Colorado. These data provide a Service estimate of Mexican spotted owls in the southern United States in 1990 of 806 pairs and 548 singles for a total estimated population of 2,160 owls (McDonald *et al.* 1991). Data are insufficient to make an estimate of the total Mexican spotted owl population in Mexico.

The Mexican spotted owl occupies varied vegetative habits but these usually contain certain common characteristics (Ganey *et al.* 1988, Ganey and Balda 1989b, Fletcher 1990). These characteristics include high canopy closure, high standard density, and a multilayered canopy resulting from an uneven-aged stand. Other characteristics include downed logs, snags, and mistletoe infection which are indicative of an old grove and absence of active management. Much of the owl habitat is characterized by steep slopes and canyons with rocky cliffs.

The vegetative communities occupied by the Mexico spotted owl consist primarily of warm-temperature and cold-temperate forests, and to a lesser extent woodlands and riparian deciduous forest. The mixed-conifer community appears to be most frequently used.

Mixed-conifer forests contain several species of overstory trees, mostly white fir (*Abies concolor*), Douglas fir (*Pseudotsuga menziesii*), and ponderosa pine (*Pinus ponderosa*) with lesser amounts of southwestern white pine (*P. strobiformis*), limber pine (*P. flexilis*), aspen (*Populus tremuloides*), and corkbark fir. (*Abies lasiocarpa* var. *arizonica*).

The understory of mixed-conifer is important because Mexican spotted owls usually roost in these trees. The understory usually contains the same conifer species found in the overstory

plus Gambel oak (*Quercus gambelii*), maples (*Acer grandidentatum* and *A. glabrum*), and New Mexico locust (*Robinia neomexicana*). Montane riparian canyon bottoms used by owls in the mixed-conifer zone may contain boxelder (*Acer negundo*), narrowleaf cottonwood (*Populus angustifolia*), maples (*Acer* spp.), and alders (*Alnus* spp.).

The vegetative communities used by the owl vary across its range. In southeastern Arizona, habitat use is approximately equally split between mixed-conifer (36.9 percent) and Madrean Evergreen Forest and Woodland (33.3 percent) (Ganey and Balda 1989b), which occurs below the mixed-conifer zone. There are two series of Madrean Evergreen Woodland, the upper oak-pine at 5,500 to 7,200 feet, and the lower evergreen oak (encinal) at 5,000 to 6,500 feet. Dominant trees in the Madrean oak-pine zone are Apache pine (*Pinus englemannii*), Chihuahua pine (*P. leiophylla*), and Arizona pine (*P. ponderosa* var. *arizonica*) with silverleaf oak (*Quercus hypoleucoides*) and netleak oak (*Q. rugosa*). Common oak species in the evergreen oak zone are Emory oak (*Q. emoryi*), Arizona white oak (*Q. arizonica*), Mexican blue oak (*Q. oblongifolia*), and Gray oak (*Q. grisea*). Within these vegetative zones, Mexican spotted owls are usually found in steep, forested canyons with rocky cliffs, especially at the lower elevations.

In northeastern Arizona, southwestern Colorado, and Utah, at the northern edge of their range, Mexican spotted owls may occur year around at 4,400 to 6,800 feet within the piñon-juniper zone (*Pinus edulis* and *Juniperus osteosperma*) below the mixed-conifer forests. These habitats are characterized by narrow, shady, cool canyons in sandstone slickrock (Gutierrez and Rinkevich 1990; NPS, *in litt.*, 1990). Although no studies have been done, it is believed most of the owl's activity is within the canyons. The owls actually roost in canyon bottom riparian vegetation with cottonwoods (*Populus fremontii*) and boxelder or on ledges or cavities in the slickrock canyon walls within the piñon-juniper zone (Willey, *in litt.*, 1990).

The habitat characteristics of high canopy closure, high stand density, a multilayered canopy, uneven-aged stands, numerous snags, and downed woody matter are best expressed in old-growth mixed-conifer forests (200+ years old). These characteristics may also develop in younger stands that are unmanaged or minimally managed, especially when the stands contain remnant large trees or patches of large trees from earlier stands. For three paids of radio-monitored owls in northern Arizona, Ganey and Balda (1988) found an average of 995 acres of old-growth forest within the 2092 acre average home range. Fletcher (1990) reported an average of 154 acres of old-growth forest within the management territories (MT's) of 359 spotted owls or owl pairs in Arizona and New Mexico. MT's averaged 2,055 acres and were established around owl roost or nest sites based on biologists' best judgement of suitable habitat.

The range of habitats for nesting owls appears more restricted than that for foraging or roosting owls. Areas with high canopy closure and at least a few old-growth trees are usually selected. Fletcher (1990) analyzed the characteristics of 22 nest sites in Arizona and New Mexico. Nesting occurred most frequently in the mixed-conifer community type (16) followed by the pine-oak community type (3). The remaining three nest sites occurred in riparian (2) and white fir (1) communities. The mixed-conifer and pine-oak community types were used significantly more than expected based on availability. No nests were found in the ponderosa pine community type in this study even though it makes up 40 percent of USFS estimated suitable habitat in Arizona and New Mexico. Witches'-broom and tree stick platforms were the most frequently used nesting substrates (12); tree cavities, mostly in gambel oak, were also used frequently (8), and two nests were on cliff ledges. Tree species used were Douglas fir (9), gambel oak (6), white fir (3), and ponderosa pine (1). Except for ponderosa pine, the trees were of moderate to large diameter and height for their species. Most trees were on moderate to steep slopes at elevations ranging from 6,000 to 8,000 feet. Most nest trees occurred on northern or eastern facing slopes indicating a preference for the cooler portion of the overall habitat.

Limited information is available on the reproductive biology of the Mexican spotted owl. Owls most commonly lay eggs in April (Ligon 1926, Johnson and Johnson 1985, Skaggs 1988) but eggs have been found as early as March 2 (Skaggs 1988). Clutch size varies from 1 to 3 eggs (rarely four) with most broods containing 1 or 2 owlets (Bendire 1892, Ganey and Balad 1988). However, broods of 3 occurred occasionally in southern New Mexico where Skaggs (1988) reported 2 of 13 broods contained 3 owlets.

The incubation period is approximately 30 days and most eggs hatch by the end of May. Incubation is carried out solely by the female. Males provide food for the female and young until the owlets are about two weeks old. The female then assists in capturing food for the young (Johnson and Johnson 1985).

The female roosts at the nest until 3 to 6 days before the young fledge. Most owlets fledge in June, 34–36 days after hatching (Ganey and Balda 1988). Owlets are unable to fly when they first leave the nest. Owlets become increasingly proficient at flight throughout the summer and are "semi-independent" by late August or early September although juvenile begging calls have been heard as late as September 30 (Ganey and Balda 1988). Young are fully independent by early October, although they have not begun to disperse.

There can be a wide range or reproductive rates between years. Reproductive success on the Coconino, Lincoln, and Santa Fe National forests was determined in 1989 and 1990 (Fletcher 1990). In 1989, 39 monitored sites had an average reproductive rate of 0.67 female young per pair. In 1990, 18 monitored sites had an average reproductive rate of 0.06 female young per pair. The low reproductive rate in 1990 was likely attributable to drought conditions affecting prey availability. Ganey (1988), in a non-systematic study of nesting success in Arizona from 1984 through 1987 found a reproductive rate of 0.32 female young per pair. Skaggs and Raitt (1988) found a reproductive rate of 0.20 female young per pair during one nesting season on the Lincoln National forest. No data are available on dispersal and age specific survival of the Mexican spotted owl, or are there data on the demographic structure of populations.

Most of the information on Mexican spotted owl home range characteristics, size, and use is based on a telemetry study conducted in northern Arizona on eight radio-tagged spotted owls (Ganey and Balda 1989a). Home range size for single owls varied 702 to 2,386 acres, with an average size of 1,601 acres. The combined home ranges occupied by pairs averaged 2,092 acres. An Average of 66 percent of a pair's home range was used by both owls. The areas of overlap were the nest area, the primary roost, and the foraging areas. Within the home range, owls appear to have core areas that are heavily and repeatedly used. Individual core areas (*i.e.*, where 60 percent of radio responses occurred) averaged 336 acres and core areas for pairs averaged 398 acres. High use areas tended to correspond to steep slopes

(Ganey and Balda 1988). Although seasonal movements vary between owls, most remain within their summer home ranges throughout the year.

The diet of the Mexican spotted owl includes a variety of mammals, birds, reptiles, and insects with mammals making up the bulk of the diet throughout the owl's range. Woodrats (*Neotoma* spp.) are the most frequent prey, especially in rock canyon country (Johnson and Johnson 1985, Ganey and Balada 1988).

Ganey and Balada (1988) observed Mexican spotted owls feeding mainly by moving from tree to tree, spending from a few seconds to several hours, watching and listening for prey. Because spotted owls launch their attack at relatively short distances from their prey, a multistoried forest, with its many potential perches, is advantageous to owls seeking food.

Spotted owls have plumage like boreal-zone owls, apparently as an adaptation for periods of winter stress. They are inefficient at dissipating body heat. Apparently to compensate for this inefficiency, they roost and nest in areas of mature forest with a dense multilayered canopy, often on a north slope, near water, or in a canyon that receives cold air drainage. Such sites are 1 to 6 degrees Celsius cooler than other nearby habitat (Barrows and Barrows 1978, Barrows 1981).

Hawks and great horned owls prey on Mexican spotted owls. Great horned owls were the suspected predator of three radio-tagged Mexican spotted owls (Ganey and Balda 1988, Skaggs 1990). There is some habitat overlap between the two species, but great horned owls occur most often in areas of low relief in selectively logged forest or along meadow edges while spotted owls occur mainly on steep slopes containing dense forest. Johnson and Johnson (1985, 1990) and Phillips *et al.* (1964) report circumstantial evidence that Mexican spotted owls abandon habitat invaded by great horned owls.

Young *Strix* owls suffer from avian predation (Southern 1970, Gutierrez *et al.* 1985). Young northern spotted owls are especially vulnerable during development, following fledging, and during early dispersal (Forsman *et al.* 1984, Gutierrez *et al.* 1985, Miller and Meslow 1985). Skaggs (1988) saw a red-tailed hawk (*Buteo jamaicensis*) almost succeed in capturing a Mexican spotted owl and a red-tailed hawks was the suspected predator of a Mexican spotted owl in one radio-monitoring study (Skaggs 1990).

Federal, State, Indian, and private lands provide habitat for the Mexican spotted owl. The USFS, BIA, NPS, and Bureau of Land Management (BLM) are the Federal land managing agencies. Efforts to estimate suitable habitat and survey for owls have varied between agencies with by far the most intensive work being done by the USFS.

The USFS estimates it manages 4,698,807 acres of suitable owl habitat (Fletcher 1990; USFS, *in litt.*, 1990; USFS, *in litt.*, 1990), which occurs on 18 national forests. Along with presently suitable habitat, the USFS estimates another 1,040,000 acres of Arizona and New Mexico national forest lands are capable of becoming suitable in the next 10 to 100 years (Fletcher 1990). These lands were suitable in the past but became unsuitable due to timber harvest or natural causes. Timber harvest accounted for the loss of 816,000 acres and natural causes accounted for the loss of 221,000 acres. The USFS estimates 79 percent of these lands will require 50+ years to return to suitable owl habitat.

The USFS began Mexican spotted owl inventories in New Mexico and Arizona in 1988. Inventories in Colorado and Utah began in 1990. To date, just over 2,000,000 acres have been inventories (Fletcher 1990; USFS, *in litt.*, 1990 USFS, *in litt.*, 1990). Approximately 70 percent of the surveys have been on lands available for timber harvest.

USFS inventories have resulted in establishing 517 Mexican Spotted Owl MT's in Arizona and New Mexico with each MT representing the occurrence of either a single owl or pair of owls. Approximately half the MT's were established from confirmed nest or roost localities; the other half were established only from night calling responses. On lands unavailable for timber harvest, only 30 percent of the MT's were established from confirmed nest or roost localities. There are 318 MT's (61 percent) on lands available for timber harvest and 199 MT's (39 percent) on lands not available for timber harvest. Among the MT's on lands not available for timber harvest, 102 are on lands unsuitable for timber harvest, 39 are on lands withdrawn from timber harvest, and 58 are on reserved lands such as wilderness areas (Fletcher 1990).

There are potentially up to 878,000 acres of spotted owl habitat on Indian reservations. However, the actual amount of habitat is likely much lower because estimates supplied by the BIA Forestry Division were developed mostly from timber-type maps containing little information about understory conditions or slope. Also, habitat estimates for the Mescalero Apache, Jicarilla Apache, Southern Ute, and Zuni reservations represent the total commercial forest land for those reservations because no potential habitat estimates were supplied.

Formal owl surveys were conducted on 71,200 acres on four Indian reservations in 1990 and 15 owls were located. Owls presently known from Indian reservations total 5 pairs and 22 single owls (BIA, *in litt.*, 1990; BIA, *in litt.*, 1990; BIA, *in litt.*, 1990).

Potential owl habitat on BLM lands in Colorado, Utah, and New Mexico totals 711,000 acres (BLM, *in litt.*, 1990; BLM, *in litt.*, 1990; BLM, *in litt.*, 1990). No estimates of owl habitat were provided by BLM for its lands in Arizona.

Owls presently known from BLM lands in Colorado, Utah, and New Mexico total 1 pair and 5 single birds. There are 1 pair and 2 singles in Utah, 3 singles in Colorado, and no birds in New Mexico. BLM provided no information about owl records on its lands in Arizona.

Most owl habitat on national parks and monuments consists of steep shaded canyons in the northern part of the owl's range. It is difficult to estimate acreages for this type of habitat. The NPS estimates between 238,100 and 437,600 acres of spotted owl habitat for 23 parks and monuments in the Southwest (NPS, *in litt.*, 1990; NPS, *in litt.*, 1990; Johnny Ray, NPS, Grand Canyon National Park, pers. comm., 1990).

Owls presently known from NPS lands total 8 pairs and 16 single birds on 7 parks (NPS, *in litt.*, 1990; NPS *in litt.*, 1990; Ray, NPS, pers. comm., 1990).

New Mexico State lands totalling between 177,400 and 202,400 acres contain forests and canyons that could be suitable owl habitat but no owl surveys have been conducted (New Mexico Department of Game and Fish (NMDGF), *in litt.*, 1990). In Arizona, no suitable owl habitat is known to occur on State lands controlled by the Arizona Game and Fish Department (AGFD). No present or historic owl localities are known from State lands in New Mexico or Arizona. No information has been obtained on suitable owl habitat on State lands in Utah and Colorado.

Ganey and Balda (1988) surveyed throughout Arizona for spotted owls from 1984 through 1987. They reported 3 of 146 owl sites were on private lands, but gave no locations or habitat information. Skaggs (1988) reported seven owl records from southern New Mexico during the period 1900 to 1987 were from private lands. These records from Hidalgo County in southwest New Mexico represent sightings in the Animas Mountains. Spotted owls are reported currently present in the Animas

Mountains (Ault, USFWS, pers. comm., 1990).

Suitable spotted owl habitat reported by Federal and State agencies totals about 6,815,557 acres. The USFS reported 4,698,807 acres (69 percent), BIA 878,000 acres (13 percent), BLM 711,000 acres (10 percent), NPS between 238,100 and 437,600 acres (about 5 percent), and the State of New Mexico between 177,400 and 202,400 (3 percent). An estimate of 5,000 acres of suitable owl habitat on private lands is much less than 1 percent of the total.

The proportion of total habitat for each agency is probably fairly accurate. However, the total acreage of suitable habitat is likely overestimated. The error is a consequence of inadequate information on land status and a possible misinterpretation of the types of communities that provide suitable habitat. Several agencies expressed uncertainty about the accuracy of their habitat estimates.

From the data provided by various agencies, it is impossible to develop an accurate estimate of total suitable owl habitat. The Service's best estimate excludes the ponderosa pine community type for New Mexico and Arizona national forests because this community type was found to be used insignificantly by nesting and roosting owls. Although the ponderosa pine community type might also be excluded for Colorado national forests and Indian reservations, this was not done because figures from those sources did not report habitat by community type. The Service estimate of total suitable Mexican spotted owl habitat in the U.S. is 5,389,734 to 5,614,734 acres.

Ninety-one percent of Mexican spotted owls presently known occur on national forests, 4 percent occur on Indian reservations, 4 percent occur on national parks, and 1 percent occur on BLM lands. Despite only limited surveys by some agencies, estimates of suitable habitat indicate these percentages will not change significantly in the future.

Management direction for lands with owl habitat varies by agency. The management emphasis is timber production on much USFS and BIA managed land. Much BLM owl habitat is managed primarily for wildlife and recreation but is still available for natural resources extraction, including oil, gas, minerals, and timber. NPS lands are managed for recreation and preservation of natural values. State lands in blocks large enough to support owl populations are usually game management areas. Management of private lands providing owl habitat is unknown.

Most commercial timber in the Southwest is managed as even-aged stands using a system called shelterwood management. The shelterwood management system begins in a timber stand 100 to 140 years old with a commercial harvest called a regeneration cut. This cut removes most of the timber but leaves some trees to provide shade and a seed source for the newly developing stand. After a new stand of young trees is established in 10 to 40 years, a commercial harvest called a removal cut removes the sheltering overstory trees. Young stands receive precommercial thinning to maintain tree spacing for maximum growth. Once trees reach commercial size, stands are periodically thinned with commercial harvests called intermediate cuts. There are usually one to three intermediate cuts prior to the next regeneration cut.

About 95 percent of the USFS commercial timber in the Southwest is managed with the shelterwood system. Commercial forests on the Navajo Indian Reservation are being converted to shelterwood management (James Carter, BIA, pers. comm., 1990). Other commercial forests on Indian lands in the Southwest are managed as uneven-aged stands by use of selective logging.

On December 22, 1989, the Service received a petition submitted by Dr. Robin D. Silver requesting the listing of the Mexican spotted owl as an endangered or threatened species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). On February 27, 1990, the Service accepted the petition as presenting substantial information indicating that listing might be warranted and initiated a status review.

Section 4(b)(3) of the Act requires the Secretary of the Interior to reach a final decision on any petition accepted for review within 12 months of its receipt. In conducting its review, the Service published a notice in the **Federal Register** (55 FR 11413) on March 28, 1990, requesting public comments and biological data on the status of the Mexican spotted owl. In addition, a status review team of five Service biologists and one biologist each from the Arizona Game and Fish Department (AGFD) and the New Mexico Department of Game and Fish (NMDGF) was established. This team organized all comments and information received in response to the March 28 notice as well as other information gathered or in the Service's files. A draft status review report was prepared by the team.

On December 6, 1990, the status review team completed the draft status review report on the Mexican spotted owl. On February 20, 1991, the Service made a finding, based on the report, that listing the Mexican spotted owl pursuant to section 4(b)(3)(B)(i) of the Act was warranted. Notice of this finding was published in the **Federal Register** on April 11, 1991. This proposed rule constitutes the final 1-year finding for the petitioned action.

The entire spotted owl species (*Strix occidentalis*) is listed on the Service's Animal Notice of Review as a category 2 species. A category 2 species is one for which listing may be appropriate but additional biological information is needed. The information gathered in the status review for the Mexican spotted owl contributed to the information needed for a decision to propose this subspecies for listing.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Mexican spotted owl (*Styrix occidentalis lucida*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Current surveys have shown Mexican spotted owls occur overwhelmingly in forests with distinct "mature forest" characteristics. Owls are associated with forested mountains and canyons containing dense uneven-aged stands with a closed canopy, as is typically seen in the mixed-conifer community type. While these characteristics are mostly found in mixed-conifer forests, ponderosa pine/Gambel oak forests are also used if old enough to exhibit a high incidence of large cavity trees, broken tops, numerous snags, and a heavy accumulation of downed woody material.

Significant portions of Mexican spotted owl habitat have been lost or modified. These impacts have taken several forms, and represent continually increasing pressures from local and regional human populations. Cumulatively, they have reduced spotted owl habitat significantly throughout its range.

Fletcher (1990) provided an estimate of spotted owl habitat loss on USFS lands in Arizona and New Mexico, expressing it as habitat "made capable."

He defines "capable habitat" as habitat ". . . suitable at some time in the past and became unsuitable due to natural or man-caused events . . . and it is capable of becoming suitable Mexican spotted owl habitat at some time in the future." An estimated 1,037,000 acres of owl habitat have been coverted from suitable to capable. Of this, 816,000 acres (78.7 percent) were due to human activities (mostly timber harvest) and 221,000 acres (21.3 percent) were due to natural causes (mostly fire).

Fletcher (1990) also provided a breakdown of acreages by the length of time required for capable habitat to return to suitable. However, recovery periods for the habitat "made capable" due to timber harvest (78.7 percent) are irrelevant because any acreage placed under the evenaged shelterwood management system used on most USFS timberlands in the Southwest must be considered indefinitely unsuitable as spotted owl habitat. For example, a regenerating, middle-aged stand of "capable" habitat might be within 50 years of recovering to suitable status. Under the shelterwood system, the stand will receive intermediate cuts before then, removing it again to a distance of many years from being suitable. Ultimately, the stand will be re-entered with another regeneration cut where all but a few trees are removed. Thus, after the critical attributes of owl habitat have been lost, shelterwood acres are held perpetually as "capable habitat" unless silvicultural management is altered. Suitably as owl habitat is never recovered or, at best, is recovered only briefly before the forest is re-entered and returned to "capable" status. Therefore, all past and projected acres of owl habitat placed under shelterwood management should be considered lost indefinitely as owl habitat. About 95 percent of the USFS commercial timberland in the Southwest is managed using the shelterwood system. Commercial timberland on the Navajo Indian Reservation is being converted to shelterwood management. Commercial timberland on other Indian reservations in the Southwest is managed predominately through selective logging to produce uneven-aged stands.

Fletcher (1990) reported 3,365,000 acres of currently suitable habitat in New Mexico and Arizona national forests. Conversion of 1,037,000 acres from suitable to capable represents a 23.5 percent loss of suitable habitat over an unspecified, but recent number of years. Forty percent of the loss occurred since 1980 (Fletcher 1990), which represents a habitat loss rate of approximately 10 percent in the last decade on Arizona and New Mexico national forests.

Data on owl habitat loss from lands other than Arizona and New Mexico national forests are not available. National forests in Arizona and New Mexico manage approximately 90 percent of known owl locations.

There are some indications that the spotted owl historically ranged into middle and low elevations in well developed riparian woodland communities. Bendire's (1892) location for nesting owls northwest of Tucson would have been in the extensive historical riparian gallery forests of the Santa Cruz River and its major tributaries. His sighting near the confluence of the Santa Cruz River, Rillito Creek, and Cãnada del Oro was also at the base of the Santa Catalina Mountains near typical conifer forest habitat currently occupied by owls.

Riparian woodlands in the Southwest prior to the twentieth century may have satisfied many of the structural and thermal requirements of owl nest and roost sites. Dense cottonwood canopies and willow/mesquite understories could have provided a multistoried structure and cool microclimate. The historical presence of surface water below these gallery forests no doubt also ameliorated the surrounding desert thermal regime. The high diversity and abundance of potential prey items may have made these middle and low elevation riparian habitats suitable breeding locations. Arizona has lost more than 90 percent of its low elevation riparian habitat since the mid-1800's (State of Arizona 1990) and losses in New Mexico may be comparable. If this community type was used extensively by spotted owls, the loss of habitat has been considerable.

Duncan (1990) documented a recent breeding season owl location in a mid-elevation riparian area, also in southeastern Arizona. Single owls have been observed in winter in mid-elevation riparian areas in central Arizona (J. Ganey, Northern Arizona University, pers. comm., 1989; T. Lister, AGFD, pers. comm., 1989). Winter locations at low elevations have also been recorded in New Mexico (Skaggs, New Mexico State University, pers. comm., 1989). These contemporary records suggest riparian habitats could indeed have provided suitable owl habitat in the past.

Mexican spotted owl habitat faces destruction and modification at a rate equal or exceeding that of recent decades. These impacts take several forms and generally represent increasing pressures from growing local and national human populations. Cumulatively, they present a significant threat to the continued existence of the owl throughout its range.

Southwestern national forests primarily use the shelterwood harvest technique, which manages for even-aged stands. Thus, the uneven-aged, multistoried stands comprising primary owl roost and nest sites will be converted to unsuitable even-aged stands with reduced structural diversity.

Forest Plans for 5 of the 11 New Mexico and Arizona national forests now contain provisions to allow cable or skyline logging on slopes greater than 40 percent. The Gila National Forest Plan (USFS 1986a) suggest total timber harvest for that forest could be maintained at the present 30 million board feet (MMBF) per year allowable sale quantity (ASQ) by entering steep slopes, with as much as 50 percent of the forest's total timber volume coming from this habitat in five decades. The Lincoln National Forest Plan (USFS 1986b) specifies 4,850 acres of steep-slope logging during the 10 years covered by the plan, and the Santa Fe National Forest Plan (USFS 1987) calls for harvest of 1.5 million board feet annually by skyline logging.

These steep slopes have not been harvested to any degree in the Southwest in the past. Steep slopes typically provide superior spotted owl habitat by virtue of the owls' preference for the topography, rock outcrops and/or cliffs, and the generally cooler microclimates often supporting multilayered mixed-conifer forest. Steep slopes may be particularly important in maintaining owl populations where they occur at the lower elevational limits of the owl's range. Steep slopes and deep canyons often provide pockets of mixed-conifer within wider areas dominated by vegetation inferior as spotted owl habitat (e.g., ponderosa pine or piñon-juniper). Thus, harvest of steep slopes could impact habitat that is very limited and critical to maintaining spotted owls in an area.

By virtue of entering steeper slopes, a greater proportion of timber harvested will be mixed-conifer, the primary owl habitat. Historically, much timber harvest in the Southwest was concentrated in the high value, easily accessed ponderosa pine forests on relatively flat or rolling terrain on plateaus of mesa tops. With continued timber demands and decreased availability of that resource, harvest is now moving increasingly into mixed-conifer and steep terrain. Because of diminishing yields of ponderosa pine, it

appears more mixed-conifer will have to be harvested to maintain timber output at present levels.

According to current Forest Plans, in the 10-year planning period from 1987 through 1996, Arizona and New Mexico national forests will enter 7.48 percent of harvest-suitable land with regeneration cuts (this is the cut in the shelterwood management system that removes the largest volume of wood per acre and initiates regeneration of a new stand from tree seedlings). At this harvest rate, in 100 years 74.8 percent of harvest-suitable acres will be placed under the even-aged shelterwood system and many of these acres will receive subsequent intermediate cuts to thin the stands for maintenance of minimum timber productivity. Of the estimated suitable owl habitat on Arizona and New Mexico national forests, 59 percent (1,987,000 acres) is available for harvest (Fletcher 1990). Seventy-four percent of this figure represents a 44 percent loss of total suitable owl habitat (1,486,267 of 3,365,000 acres) on national forest lands in Arizona and New Mexico. Based on Information in forest plans, the USFS predicts forest timber demand will increases 30 percent in 50 years and that national forest outputs will be adequate to meet the demand. If this increase is realized, future acres of harvest entry and corresponding owl habitat loss will be considerably greater than these figures indicate.

Overall, timber harvest rates remain controversial in southwestern forests. The AGFD has repeatedly expressed concern that current ASQ's are not scientifically derived, biologically realistic figures; in short, whether biological diversity, sustained yield, and even timber flow are in fact being provided as required by the National Forest Management Act. While the USFS (Fletcher 1990) reports yearly decreases in total numbers of acres entered from 1980 through 1990 in New Mexico and Arizona national forests, average board feet harvested per acre has increased each year from approximately 2,750 board feet per acre to almost 4,000 board feet per acre. Forest Plans are now being reviewed by the USFS on five national forests in Arizona and New Mexico because of concern the ASQ could not be maintained while meeting other Forest Plan standards and guidelines. The Coconino, Apache-Sitgreaves, and kaibab national forests have reduced the volume of timber that will be offered for sale by about 15 percent while doing these reviews (Jolly, USFS, *in litt.*, 1990). It is unknown how forest management recommendations from these reviews will affect rates of spotted owl habitat loss.

Forest Plans indicate recreational use of most national forests will increase significantly in future decades. This will increase various activities that often overlap with owl habitat. The severity of impact will vary with the type of activity (e.g. road and trail building, camping, picnicking, shooting, hiking, hunting, skiing, and ORV-riding). Cumulatively, these activities may affect local owl populations and their habitat near pubic access areas.

Specific data on habitat loss in Mexico are not available. The few owl records are, as in the United States, closely associated with relatively undisturbed, forested mountains and canyons. The protection once afforded the species in Mexico by the remote, rugged habitat has now largely disappeared before a rapidly growing human population, expanding road system, increased mechanization, and forestry practices.

Under present conditions in Mexico, there are no incentives to practice responsible forestry. Mexican forestry programs receive little or no state or Federal funding; instead, they depend for their budgets on what they can collect from timber harvest activity. To compound the problem, the government owns the land, but the people own the resources such as the trees. As a consequence, there is no incentive to practice sustained yield forestry or to undertake reforestation. Instead, a premium is placed on maximizing immediate profits from the land.

The future outlook is for accelerated deforestation throughout the range of the spotted owl in Mexico. A proposal financed by the World Bank and aimed at the Copper Canyon region of western Chihuahua would extract more than four billion board feet of lumber from nearly 20 million acres over 6.5 years.

An estimated 2,191,000 acres of habitat, or 39 percent of the total currently suitable Mexican spotted owl habitat in the United States is not available for timber harvest. However, these lands are often scattered small units incapable by themselves of supporting a viable spotted owl population. Within Forest Service lands in Arizona and New Mexico, Fletcher (1900) reported 1,378,000 acres of suitable owl habitat is not available for logging with 53 percent of this land being on two forests (Gila National Forest, 453,000 acres; Santa Fe National Forest, 288,000 acres). There are about 550,000 acres of spotted owl habitat in national forest wilderness areas in New Mexico and Arizona. There are no figures for acres of owl habitat in wilderness areas in Utah and Colorado.

Except for Forest Service wilderness areas, NPS lands are the only other contiguous units of habitat excluded from logging. The NPS reports administering an estimated 238,000 to 438,000 acres of spotted owl habitat managed to preserve natural values. The wide range in the estimate reflects NPS uncertainty about which habitats are actually suitable for owls. This is partly due to NPS habitat being mostly comprised of the less typical canyonland habitat, and often at the northern limits of the Mexican spotted owl's range where owl occurrence is more difficult to predict.

Bureau of Land Management lands have been logged minimally, if at all, in the past. Pressure to harvest timber on BLM lands could increase if available timber in national forests decreases. The quality of owl habitat on BLM lands is probably lower than for other public lands because it generally is not contiguous and not associated with suitable owl habitat managed by other agencies.

Habitat fragmentation is the conversion of forest habitat from large, contiguous tracts into parcels that are individually small, collectively a fraction of the original area, and isolated from one another. Most USFS timber harvest in the Southwest is done in relatively small cutting units using even-aged management under the shelterwood system (Fletcher 1990). The spotted owl is an interior forest bird largely dependent on uneven-aged forests. By modifying and fragmenting uneven-aged forests, timber harvest as currently practiced in the Southwest will likely decrease habitat suitability for supporting self-sustaining and well distributed populations of the spotted owl (Green 1988, Harris 1984, Harris *et al.* 1982, Meslow *et al.* 1981, Spies and Franklin 1988, Thomas *et al.* 1988).

On the large scale, fragmentation will isolate larger contiguous populations into increasingly smaller and more isolated clusters of breeding pairs, by reducing the overall quality of available suitable nesting, roosting, and foraging habitat. In addition to a reduction in total owl numbers, this isolation may create dispersal and genetic problems for the population. Currently, a portion of the overall spotted owl population already exists in relatively isolated clusters of birds in the Colorado Plateau canyonlands of the north and the basin-and-range mountains of the south. These sections of the owl's range fall outside the relatively contiguous and more

densely populated habitat of central Arizona and New Mexico. Habitat fragmentation of this core population in central Arizona and New Mexico could have serious implications for this stability of the spotted owl population as a whole.

Small-scale fragmentation will erode the quality of home range habitat for individual owls. Fragmentation on a cutting-unit level can degrade habitat for spotted owls by affecting prey availability, interfering with primary hunting technique, and destroying the crucial microclimate attributes of the next/roost sites. Simultaneously, this level of fragmentation likely enhances habitat quality for spotted owl competitors and predators like great horned owls and red-tailed hawks. Increased predation and competition may combine with decreased nesting success (due to habitat degradation and reduced prey availability, especially in the first weeks after owlets have hatched) to severely impact the Mexican spotted owl.

B. *Overutilization for commercial recreational, scientific, or educational purposes.* The main potential for overutilization of the Mexican spotted owl is through scientific activities that will likely increase with increasing interest and funds available for owl studies. In one instance, the NMDGF (*in litt.*, 1990) withdrew a permit to capture and radio-tag several owls because simultaneous Forest Service owl surveys documented their scarcity. The permit was revoked after it became apparent that the owl population was too small to support the research activities. This circumstance may become common for the spotted owl, which sometimes exists in small populations on isolated mountain ranges.

Recreational (bird watching), educational (classroom field trips), and public relations (agency "show me" trips for public and press) activities are also likely to increase this owl becomes better known. The owl's gentle nature makes it relatively easy to observe from close distances.Numerous authors have noted the bird's affinity for secluded owl-growth habitat infrequently visited by man. Except for a few individual owls, which may represent atypical behavior, the owls' tolerance of frequent human disturbance is unknown (Johnson and Johnson 1990).

C. *Disease of predation.* Great horned owls are a suspected major cause of mortality in Mexican spotted owls (Ganey and Balda 1988, Skaggs 1990). The two species have always had overlapping ranges, but habitat use has historically separated them ecologically. However, present forest management is changing traditional spotted owl habitat to resemble the "open" forest typically used by the great horned owl. Such management is usually done in patches distributed throughout the forest (fragmentation), which creates edge (ecotone) suitable to the great horned owl and increases the likelihood of contact between the two species. Spotted owls appear to avoid ares used by great horned owls (Hamer 1988, Johnson and Johnson 1985, 1990).

The more than 2 percent average annual increase in the number of great horned owls noted on the U.S. Fish and Wildlife Service annual Breeding Bird Survey in New Mexico and Arizona over the last 22 years is evidence of the "opening up" of forests in the Southwest. A similar increase (over 2 percent a year) has been recorded for the red-tailed hawk in Arizona and New Mexico. Red-tailed hawks are known to prey on spotted owls (Skaggs 1988, 1990) and also prefer the more open habitat created by forest fragmentation.

D. *The inadequacy of existing regulatory mechanisms.* The Migratory Bird Treaty Act provides the only Federal protection for the Mexican spotted owl. Under the provisions of the MBTA it is unlawful to pursue, hunt, take, capture, or kill in any manner any migratory bird. Although the Mexican spotted owl remains in its summer range throughout the year, it is included on the list of birds protected under the MBTA.

An interagency agreement with the purpose of ensuring population viability of the spotted owl (*Strix occidentalis*), including the Mexican spotted owl, was signed by the Service, BLM, NPS, and USFS on August 12, 1988 (U.S. Department of the Interior 1988). Under this agreement, each agency agrees to manage its lands to provide owl habitat, to carry out habitat and population inventories sufficient to indicate long term trends, and to carry out research activities sufficient to provide empirical information on the validity of planning assumptions. The degree to which this agreement has been implemented has varied among agencies. Coordination between agencies attributable primarily to the agreement has been minimal.

No state or Indian nation other than the State of Arizona protects the Mexican spotted owl under its endangered or sensitive species law. Arizona currently lists the Mexican spotten owl as threatened on its "List of Threatened Native Wildlife in Arizona" (AGFD 1988). Capture, handling, transportation, and take of the owl are regulated by game laws and special licenses for live wildlife. Thus, Arizona only regulates hunting, recreation, and scientific investigation.

Most Federal agencies have policies to protect state threatened or endangered species and some agencies also protect species that are candidates for Federal listing, such as the Mexican spotted owl. The National Park Service Organic Act protects all wildlife on national parks and monuments. The problem with these general policies is a lack of standards or guidelines that can be used to measure policy success. Until agencies develop specific protection guidelines, evaluate them for adequacy, and test them through implementation, it is uncertain whether any general agency policies will adquately protect the Mexican spotted owl.

Specific management policies for the spotted owl have been developed by BLM in Colorado and New Mexico. The policy in Colorado states, ". . . In areas with a confirmed nest or roost site, surface management activities will be limited and will be determined on a case by case basis to allow as much flexibility as possible outside of the core area." Management policy in New Mexico states that habitat core areas and territories of appropriate size will be established and preserved wherever owls are found. These policies are too general to ensure the spotted owl will be adequately protected on BLM lands.

Spotted owl protection guidelines have been developed by only one Indian nation. These guidelines for the Mescalero Apache Reservation establish a 72 acre buffer zone around owl roost or nest sites. No management activities can occur within the buffer zone during the reproductive season. After the reproductive season, the buffer is reduced to a 150 foot radius (5.1 acres) around significant roost areas and a 200 foot radius (9 acres) around nests. It is doubtful these guidelines provide any meaningful protection for spotted owl pairs, which have an average home range of 2,092 acres.

Detailed guidelines for spotted owl management have been developed by the USFS Southwest Region. These guidelines were first issued as Interim Directive No. 1) (ID No. 1) in June, 1989, and reissued as Interim Directive No. 2 (ID No. 2) in June, 1990. The current guidelines expire December 26, 1991. The ID's apply only to national forests in New Mexico and Arizona. No spotted owl management guidelines have been developed for Colorado or Utah national forests. The ID's require establishment of a Mexican Spotted Owl Management Territory (MT) around each spotted owl nest or roost site. Each MT (except those on the Gila and Lincoln national forests) has a core area of 450 acres and an overall size of 2,000 acres. Activities

within the core area are limited to road construction. Within the overall MT, activities are limited to a maximum of 775 acres, which will usually be timber harvest. The intent of the guidelines is to retain at least 1,000 acres of suitable habitat within the MT after proposed management activities are identified and located. USFS estimates indicate suitable habitat within MT's currently averages 1,150 acres.

MT size and entry limitations were based on average values found by Ganey (1988) for radio-monitored birds. Ganey's work is the only study of its type for the Mexican spotted owl. The USFS uses average rather than maximum values for MT size, thereby establishing MT's that meet size and habitat requirements for only about 50 percent of spotted owls.

Application of the ID's has not been uniform for all forests. Guidelines on two forests were modified. ID No. 1 reduced the core area size to 300 acres for the Lincoln National Forest. ID No. 2 established a core area size of 450 acres for all forests but reduced the overall territory size to 1,500 acres for the Lincoln and Gila national forests. Both forests have significant owl populations and severe conflicts with planned timber harvest volumes.

The ID's provide no protection for unoccupied suitable owl habitat. For instance, the Southwest Region forests report 35 historic owl sites where no MT's will be established. These sites were suitable habitat in the past and are likely still suitable if not modified by harvest activities.

E. *Other natural or manmade factors affecting its continued existence.* Forest fires have destroyed approximately 221,000 acres of suitable spotted owl habitat in New Mexico and Arizona national forests in recent years (Fletcher 1990). This acreage represents a loss of approximately 5 percent of the 4,402,000 acres Fletcher (1990) considered spotted owl habitat, and approximately 21 percent of the owl habitat recently made unsuitable. Fletcher estimated that 79 percent of the lost acres would require more than 50 years to return to suitable habitat. The future incidence of fire can be expected to remain fairly constant.

Malicious and accidental harm to spotted owls is rarely documented. Several road-killed owls have been found in Arizona and New Mexico, probably reflecting increasing human activities in owl habitat. No reports of accidental shooting are known. Malicious harm to owls have not been documented. However, as conflicts over spotted owls and forest management increase, and the methods for locating owls become widely known, the potential for malicious harm will increase.

The barred owl has undergone rapid range expansion over the past 20 years into the range of the northern spotted owl (Hamer 1988) and has replaced the northern spotted owl in some areas (Forsman *et al.* 1984). The barred owl has taken advantage of habitat modifications, such as those resulting from present forest management (fragmentation), to expand its range into areas where it may compete with the spotted owl. There are no records of barred owls in the U.S. range of the Mexican spotted owl, but the range and numerical expansion of the great horned owl and red-tailed hawk in the Southwest suggest that the barred owl could do the same. The Mexican subspecies of the barred owl (*Strix varia sartorii*) is known from much of the Mexican spotted owl's historic range in central Mexico (AOU 1983); the ecological relationship between the two there is unknown. The potential for interbreeding between Mexican spotted owls and barred owls merits concern and monitoring. Such interbreeding is reported with the northern spotted owl (Fletcher, USFS, pers. comm., 1990).

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Mexican spotted owl as threatened throughout its range. Suitable habitat for this subspecies has been reduced by logging and fires. Habitat fragmentation is a consequence of forest management techniques that increases the threat of predation and inhibits dispersal. Only an estimated 2,160 Mexican spotted owls exist. Endangered status would not be appropriate because the available data do not indicate that extinction throughout all or a significant portion of the range is an imminent possibility.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is proposed to be endangered or threatened. For the Mexican spotted owl, the Service has concluded that designation of critical habitat is not prudent at this time. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent if the species is threatened by taking or other human activity, an identification of critical habitat can be expected to increase the degree of such threat to the species, or if such designation of critical habitat would not be beneficial to the species.

The Mexican spotted owl typically habitats mountains and canyons containing dense, uneven-aged forests with closed canopies. These structural characteristics are most often found in older mixed conifer or ponderosa pine/Gambel oak forests that also exhibit a heavy accumulation of downed logs, numerous snags, and a high incidence of trees with large cavities or broken tops.

Mexican spotted owl habitat in the southwestern U.S. is managed nearly exclusively by Federal and state agencies. The agencies are the U.S. Forest Service (69 percent), Bureau of Indian Affairs (13 percent), Bureau of Land Management (10 percent), National Park Service (5 percent), and states (2 percent). Private lands that are suitable habitat are mostly inholdings within national forests and are usually in small parcels, incapable individually of supporting even a single owl much less a viable own population.

Timber production is the primary land use within spotted owl habitat. Approximately 65 percent of owl habitat in Arizona and New Mexico is managed for timber production. About 95 percent of USFS commercial timber in the Southwest is managed in even-aged stands (McDonald *et al.* 1991, Table 9, pg. 42). This management practice destroys the multi-storied, multi-aged conditions that are most desirable for owl habitat.

The predominate timber management conducted on USFS lands in the southwest uses a system called "shelterwood management." The even-aged tree stands that are regenerated after harvesting with this system are equivalent to those regenerated after clearcutting, except that with shelterwood management, timber removal is done in increments rather than all at once. Any acreage laced under the shelterwood harvest system must be considered indefinitely unsuitable as spotted owl habitat. To illustrate this point, a regenerating stand under the shelterwood system might be within 50 years of reaching suitable condition as owl habitat. However, the stand will receive intermediate cuts before then, distancing it again by many years from being suitable. Ultimately, the stand will be re-entered with a regeneration cut where all but a few trees are removed. Thus, after the essential attributes of owl habitat have been lost, shelterwood-managed acres are kept perpetually in an unsuitable habitat condition. Suitability as owl habitat is never recovered or, at best, is

recovered only briefly before the forest is re-entered and returned to unsuitable condition.

The USFS estimates 4.4 million acres of owl habitat on national forests in Arizona and New Mexico. Of this, 3.36 million acres (76 percent) are currently suitable and 1.04 million acres (24 percent) are currently unsuitable due to management activities (mostly logging) or natural causes (mostly fire) (Fletcher 1990, pgs. 3–12). Of the 1.04 million acres, USFS estimates that 31 percent will require 50 to 100 years to return to suitable condition and 47 percent will require more than 100 years to return to suitable condition. Habitat lost in the past regains its characteristics as owl habitat very slowly. And, as already discussed, if the land is placed under shelterwood management, it may never again regain its characteristics as owl habitat.

The USFS estimates 40 percent of the habitat loss occurred since 1980 (Fletcher 1990, pg. 36). This represents a habitat loss rate of 0.94 percent per year over the last decade. The Service estimate of habitat loss in the next decade based on Forest Plan harvest schedules is 0.4 percent per year (McDonald *et al.* 1991, pg. 60). This rate of owl habitat loss would not appear to be very great unless weighed against the extremely long time (100 years or longer) it takes for a forest to regain its characteristics as suitable owl habitat and the fact that impacted acreage also diminishes the functional value of an unknown number of acres of adjacent habitat.

Additional information in Forest Plans predicts demand for forest products will increase by 30 percent in the next 5 decades (McDonald *et al.* 1990, pg. 60). If this increase is realized, the rate of owl habitat loss will increase greatly over the predicted rate for the next decades. Provisions to log steep slopes are contained in 5 of the 11 Forest Plans for National Forests in Arizona and New Mexico (McDonald *et al.* 1991 pg. 42). Steep slopes have been logged minimally, if at all, in the past and contain some of the best remaining spotted owl habitat in the Southwest.

Habitat Fragmentation—Even though only a fraction of one percent of all habitat classed as suitable for owls may be cut in any one-year period, the effect of those cuts on adjacent habitat is cumulative and the proposed cuts are likely to be widely dispersed over nearly the entire range of the owl. Most such cuts will take 100 years or more to return to a condition suitable to support the Mexican spotted owl. The total number of acres of forest lands identified as suitable habitat for Mexican spotted owls overstate the amount of suitable habitat because of adjacent cuts. While the vegetation present may meet the criteria for being classified as suitable, adjacent past and future timber harvests both directly and indirectly diminish the value of the remaining habitat for spotted owl survival and recovery.

Removing some or all timber from one parcel affects the uncut habitat on all sides of it. By creating an opening in the forest canopy, the microclimate becomes warmer and drier both within the cut and around its margins. The influence of the wind increases. These changes modify the ecosystem upon which the owl and the prey species of the owl depend, contributing to imbalance between predator and prey. Removal of trees that serve as nest sites, roost sites or hunting perches directly reduces the likelihood that individual owls will endure degraded habitat conditions sufficiently to successfully reproduce or even survive under stressful environmental conditions. The open conditions make the area more suitable to predators and competitors of the owl. Cut parcels are no longer suitable for occupancy by dispersing owls and the adjacent uncut habitat is diminished in value to the local population of owls.

An uncut island of habitat remaining after surrounding habitat has been cut is diminished in value to an even greater extent. The entire margin is subject to the same ecological changes described in the preceding paragraph. The range of any remaining owls is sharply limited; the island is less suitable for individuals dispersing to it from elsewhere or may even be totally isolated to pioneering individuals. Because the island is diminished in size, future chance environmental events such as wildlife, windstorms, and insect tree damage can totally eliminate the habitat of small isolated populations (USFS 1988).

Many previously cut tracts within or adjacent to otherwise unbroken habitat are important for recovery of the owl and must be spared re-entry for further cuts if their value for recovery of the species is to be realized. Similarly, tracts undisturbed by cutting are directly important for survival. Consequently, it is essential that both currently suitable and currently regenerating tracts be considered together as whole units whenever consultation, in accordance with Section 7 of the Act, is undertaken on the effects of proposed Federal actions on the survival and recovery of the Mexican spotted owl.

The amount of habitat suitable for supporting the Mexican spotted owl is declining. The outlook is for that downward trend, if left unabated, to accelerate. Because the time required for its habitat to regenerate is on the order of 100 years, any action that will contribute significantly to the continuation of that trend will reduce appreciably the likelihood of both the survival and recovery of the Mexican spotted owl.

From the foregoing analysis, it is apparent that the Federal land management agencies are not taking the habitat needs of the Mexican spotted owl into account to an extent sufficient to ensure its survival and recovery. Listing of this subspecies will put the Section 7 consultation requirements in place, so that insufficiency will be alleviated. Thus avoiding an action that would appreciably diminish the value of habitat for both the survival and recovery of the owl would provide no additional protection beyond that of avoiding an action that would reduce appreciably the likelihood of both the survival and recovery of the owl by reducing its reproduction, numbers, or distribution. Ultimately, survival and recovery of the Mexican spotted owl depends on realizing that even small increments of habitat loss, if allowed to continue, will jeopardize the species. Therefore, any significant habitat alteration that will affect the ability of the habitat to provide the primary constituent elements necessary to ensure survival and recovery of the Mexican spotted owl must be avoided. To assure the availability of adequate habitat in the future, this protection strategy will have to be applied equally to occupied suitable habitat, unoccupied suitable habitat and presently unsuitable habitat that is capable of becoming suitable in the future. Because the formal designation of critical habitat would provide no additional benefit to the Mexican spotted owl through the Section 7 consultation process beyond that provided by listing per se, it is not prudent to make such a designation.

Conclusion—The particular circumstances of the Mexican spotted owl, as explained above, lead the Service to conclude that listing will provide the same level of protection that would occur with formally designated critical habitat. The designation of critical habitat would not be of additional conservation benefit to the Mexican spotted owl, so it would not be prudent to do so at this time. The finding of "not prudent" procedurally terminates the designation of critical habitat in this listing action, unless new information leads the Service to a different conclusion prior to the time the

listing is final. The Act provides, however, that critical habitat may be designated other than in direct conjunction with the listing of a species, and proposing to do so is not limited in time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the act, as amended required Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Forest Service and some Indian nations have active timber sales programs in the Southwest. The BLM also participate in timber sale programs to a lesser degree. Because habitat loss and modification resulting from timber harvesting activities represent the primary threats to the Mexican spotted owl, any timber sales administered by a Federal agency would be subject to section 7 consultation. Other actions that may affect the Mexican spotted own such as road building, trail building, pipeline construction, powerline construction, mining, or construction of recreation facilities would also be subject to section 7 consultation between the Service and the appropriate Federal agency.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

On June 28, 1979, the order strigiformes, which includes all owls was included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The effect of this listing is that export permits are generally required before international shipment may occur. Such shipment is strictly regulated by CITES party nations to prevent effects that may be detrimental to the species' survival. Generally, the export cannot be allowed if it is primarily for commercial purposes.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of this Act;

(3) The proposal that designation of critical habitat would not be prudent;

(4) Additional information concerning the range, distribution, and population size of this species; and

(5) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Albuquerque Ecological Services Field Office, (see **"ADDRESSES"** above).

Authors

The primary authors of this proposed rule are Charles McDonald, and Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, (505) 766-3972 or FTS 474-3972.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "Birds", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common Name	Scientific Name						
*	*	*	*	*	*	*	
BIRDS							
*	*	*	*	*	*	*	
Owl, Mexican spotted	*Strix occidentalis lucida*	U.S.A. (AZ, CO, NM, TX, UT), Mexico.	Entire	T		NA	NA
*	*	*	*	*	*	*	

Dated: October 20, 1991.

Richard N. Smith

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–26510 Filed 11–1–91; 8:45 am]

BILLING CODE 4310-SS-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

Groundfish of the Gulf of Alaska and the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of availability of amendments to Fishery Management Plans and request for comments.

SUMMARY: NMFS issues this notice that the North Pacific Fishery Management Council has submitted Amendment 17 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea/Aleutian Islands Area and Amendment 22 to the FMP for Groundfish of the Gulf of Alaska for review by the Secretary of Commerce and is requesting comments from the public. Copies of the amendments may be obtained from the address below.

DATES: Comments on the FMP amendments should be submitted on or before December 27, 1991.

ADDRESSES: Comments on the FMP amendments should be submitted to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Copies of the amendments with the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analyses are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (National Marine Fisheries Service, Alaska Region), 907–586–7230.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon reviewing the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment.

NMFS will propose regulations that would implement Amendment 22 to the FMP for Groundfish of the Gulf of Alaska (GOA) and Amendment 17 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI). These regulations will be proposed to implement the following amendment measures: (1) A new management subarea in the BSAI would be established; (2) area closures would be established around walrus haulouts in the BSAI; (3) statistical area 68 in the GOA would be rescinded; and (4) the Regional Director, Alaska Region, NMFS would be authorized to issue experimental fishing permits in the GOA and/or BSAI. In addition, certain amendments to existing implementing regulations will be proposed.

Proposed regulations to implement these amendments are scheduled to be published within 15 days of the receipt date of the amendments.

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

Dated: October 29, 1991.

David S. Crestin,

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

[FR Doc. 91–26505 Filed 11–1–91; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 213
Monday, November 4, 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.

ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

Fees and Costs

AGENCY: Administrative Office of the United States Courts.

ACTION: Notice of change in method of assessing the courts' registry fee.

SUMMARY: The registry fee assessment provisions published in the **Federal Register**, October 24, 1990 (55 FR 42867), are hereby revised and converted from a charge equal to 10 percent of the income earned while funds are held in the courts' registry, to a variable rate depending on (1) the size of the deposit and (2) the length of time held in the courts' registry.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Assistant Accounting Officer, Accounting Division Office of Finance, Budget and Program Analysis, Administrative Office of the United States Courts, 1120 Vermont Avenue, NW., Washington, DC 20544 (202) 633-6276.

SUPPLEMENTARY INFORMATION: Under its authority at 28 U.S.C. 1913, 1914(b), and 1930(b) to establish miscellaneous fees to be charged and collected by the clerks of court, the Judicial Conference of the United States in September 1988, authorized the Director of the Administrative Office to impose a fee not exceeding three percent of the principal for the handling of registry funds held in the courts and invested in interest-bearing accounts. The fee is to be assessed from and may not exceed interest earnings. The Director was also instructed to review implementation of the fee and make adjustments from time to time.

As a result of a continuing review of and consultation on the imposition of the fee, the Director has decided that the fee will be revised from a 10-percent rate on all income earned on the accounts to a variable rate based on the amounts deposited with the court and, in certain cases, the length of time funds are held in the courts' registry.

The revised fee will be a fee of 10 percent of the total income received during each income period from investments of less than $100,000,000 of registry funds in income-bearing accounts. On investments exceeding $100,000,000, the 10 percent fee shall be reduced by one percent for each increment of $50,000,000 over the initial $100,000,000. For those deposits where funds are placed in the registry by court order for a time certain, for example, by the terms of an adjudicated trust, the fee will be further reduced. This further reduction will amount to 2.5 percent for each five-year interval or part thereof. The total minimum fee to be charged will be no less than two percent of the income on investments.

The following table sets out the fee schedule promulgated by this notice:

REGISTRY—SCHEDULE OF FEES

[% of income earned]

Amount of deposit *	0-5 yrs.	>5-10 yrs.	>10-15 yrs.	>15
less than 100M	10	7.5	5.0	2.5
100M-<150M	9	6.5	4.0	2.0
150M-<200M	8	5.5	3.0	2.0
200M-<250M	7	4.5	2.0	2.0
250M-<300M	6	3.5	2.0	2.0
300M-<350M	5	2.5	2.0	2.0
350M-<400M	4	2.0	2.0	2.0
400M-<450M	3	2.0	2.0	2.0
over 450M	2	2.0	2.0	2.0

* Except where otherwise authorized by the Director, each deposit into any account is treated separately in determining the fee.

This new method of assessment recognizes the decreasing cost of administering investment holdings over time and also takes into account reduced administrative costs associated with large investment holdings.

The new fee applies to all earnings applied to investments on and after the effective date of this change, except for earnings on investments in cases being administered under the provisions of the May 11, 1989 notice (54 FR 20407), i.e., to which the fee equal to the first 45 days' income is applicable. The fee will be deducted periodically, either at the time income is credited to the account or prior to any other distribution. Investments having a maturity date greater than one year will be assessed the fee at the time the investment instrument matures.

The fee, as modified herein, will continue to apply to any case where the court has authorized the investment of funds placed in its custody or held by it in trust in its registry regardless of the nature of the underlying action.

As with other miscellaneous fees authorized under 28 U.S.C. 1913, 1914, and 1930, this fee may be taxed as cost by the court pursuant to 28 U.S.C. 1920. In cases where the United States Government is a party to the action underlying the registry investment, the funds initially withheld in payment of the fee may be restored to the United States upon application filed with the court by the United States Attorney or other government counsel.

The fee does not apply in the District Court of Guam, the Northern Mariana Islands, the Virgin Islands, the United States Claims Court, or any other Federal court whose fees are not set under the statutes cited above.

Dated: October 28, 1991.

L. Ralph Mecham,

Director, Administrative Office of the United States Courts.

[FR Doc. 91-26415 Filed 11-1-91; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

Rabbit and Sisters Timber Sales, Colville National Forest, Ferry County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on a proposal to harvest and regenerate timber, to construct and reconstruct roads, to enhance wildlife habitat, to enhance recreational opportunities, and to analyze emerging forest health problems in the area. The proposed projects will be in compliance with the Colville National Forest Land and Resource Management Plan, which provides the overall guidance for management of this area for the next 10 years. The projects are proposed within portions of the South Fork Boulder Creek drainage, including all of the U.S.

Creek, Mick Creek, Trio Creek and Indian Creek drainages, and the portion of South Fork Boulder Creek drainage east of the confluence with Trio Creek, on the Kettle Falls Ranger District in fiscal year 1995. The Colville National Forest invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision-making process that will occur on the proposal to provide interested and affected people awareness as to how they may participate and contribute in the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by December 16, 1991.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Edward L. Schultz, Forest Supervisor, 695 South Main, Colville, WA 99114 or Bruce E. Bernhardt, District Ranger, 225 W. 11th Street, Kettle Falls, WA 99141.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project work and EIS should be directed to Ralph Egan, Planning Forester, 225 W. 11th St., Kettle Falls, WA 99141, telephone: (509) 738-6111.

SUPPLEMENTARY INFORMATION: The proposal includes harvesting timber and constructing roads on two timber sales. This analysis will evaluate a range of alternative addressing the Forest Service proposal to harvest 4 million board feet (MMBF) of timber from approximately 400 acres while constructing 9 miles of roads in the Rabbit Timber Sale and to harvest 3 MMBF of timber from approximately 300 acres, while constructing 6 miles of road in the Sisters Timber Sale. The area being analyzed is 24,653 acres. The Forest Service is the lead agency. Edward L. Schultz, Forest Supervisor, Colville National Forest, is the responsible official.

The Draft EIS will be tiered to the Final EIS for the Colville National Forest Land and Resource Management Plan (December 1988). The Land and Resource Management Plan's management area direction for this analysis area is approximately 2% recreation 35% scenic/timber, 23% wood/forage, 6% semi-primitive, motorized recreation, and 34% semi-primitive, non-motorized recreation. The proposed projects include portions of the Profanity and Twin Sisters Roadless Areas, which were considered but not selected for Wilderness designation. The analysis area contains and is adjacent to a large area designated semi-primitive, non-motorized recreation by the Land and Resources Management Plan.

Preliminary issues identified are unroaded areas, recreation trails, sensitive animals, sedimentation, timber production, and stagnant, submerchantable timber stands.

Initial scoping began in September 1991. Scoping will include identifying issues; determining alternative driving issues; and identifying the objectives for the alternatives. Your comments are appreciated throughout the analysis process. The draft EIS is expected to be completed about November 1, 1992 and will consider a range of alternatives, including the No Action Alternative. The final EIS is scheduled for completion by April 1, 1993.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an 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 be raised at the draft EIS 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 45-day comment period 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 EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

The final EIS is scheduled for completion by April 1, 1993. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. The responsible official will decide which, if any, of the proposed project alternatives will be implemented. The responsible official will document the decision and the rational for the decision in the Record of Decision. That decision will be subject to appeal pursuant to 36 CFR part 217.

Dated: October 22, 1991.

Edward L. Schultz,

Forest Supervisor.

[FR Doc. 91-26485 Filed 11-1-91; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Four County Electric Membership Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact related to the construction of a general headquarters and district office in Burgaw, Pender County, North Carolina.

SUMMARY: Notice is hereby given that the Rural Electrification Administration has prepared an Environmental Assessment and made a Finding of No Significant Impact with respect to the construction and operation of a proposed general headquarters and district office in Burgaw, North Carolina. The finding is made pursuant to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR parts 1500-1508) and the Rural Electrification Administration Environmental Policies and Procedures, 7 CFR part 1794. Four County Electric Membership Corporation has requested project approval from the Rural Electrification Administration to construct the project.

FOR FURTHER INFORMATION CONTACT: Robert M. Quigel, Environmental Protection Specialist, Environmental Services Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720-0468.

SUPPLEMENTARY INFORMATION: The facilities to be constructed consist of the following:

- A general headquarters with approximately 20,000–22,000 square feet of office space for administration, engineering and operations,
- A new warehouse of approximately 10,000–12,000 square feet,
- Parking spaces for approximately 110 cars and 30 trucks,
- A microwave tower approximately 200 feet in height, and
- A stormwater retention pond.

The proposed structures will be one story brick on block, tilt-up concrete and/or metal buildings. The proposed site for the facilities is a 30-acre tract of land which is situated on the north side of North Carolina Route 53 approximately 0.5 mile west of the City of Burgaw, in Pender County, North Carolina. Of the 30-acre site, approximately 10 to 12 acres will be cleared and graded as necessary to accommodate the new facilities.

Alternatives considered to constructing the project as proposed were no action, remodeling and expanding the existing facilities, and retaining the existing facilities and expanding elsewhere.

REA has determined that the proposed project is needed to alleviate the overcrowded conditions and provide adequate space for future system growth.

Copies of the Environmental Assessment and Finding of No Significant Impact are available for review at, or can be obtained from, the Rural Electrification Administration at the address provided herein or from Mr. James L. F. Smith, Four County Electric Membership Corporation, P.O. Box 667, Burgaw, North Carolina 28425.

Dated: October 25, 1991.

George E. Pratt,

Deputy Administrator—Program Operations, Rural Electrification Administration.

[FR Doc. 91-26538 Filed 11-1-91; 8:45 am]

BILLING CODE 3410-15-M

CIVIL RIGHTS COMMISSION

Agenda and Notice of Public Meeting of the Georgia State Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 4 p.m. on Monday, November 25, 1991, at the Candler Building, 127 Peachtree Street, Atlanta, Georgia 30303. The purpose of the meeting is: (1) To orientate the SAC; (2) to discuss the status of the Commission; (3) hear a report on civil rights progress and/or problems in the State; (4) to discuss the adopted project for Fiscal Year 1992.

Persons desiring additional information, or planning a presentation to the Committee should contact Georgia Committee Chairperson Dale M. Schwartz (404/658–8097) or Bobby D. Doctor, Regional Director, Southern Regional Office of the U.S. Commission on Civil Rights at (404/730–2476, TDD 404/730–2481). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 29, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-26506 Filed 11-1-91; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provision of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 7 p.m. and adjourn at 9 p.m., on November 21, 1991, at the Holiday Inn Crowne Plaza, 333 Poydras Street, New Orleans, Louisiana 70130. The purpose of the meeting is to discuss and plan the Committee's project on Environmental Equity.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426–5253, (TDD 816/426–5009). Hearing impaired persons who will attend the meeting and require the services of sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 29, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-26507 Filed 11-1-91; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the New York State Advisory Committee

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New York State Advisory Committee to the Commission will be convened at 1:30 p.m. on Wednesday, December 4, 1991, in Conference Room 1400 of the Jacob K. Javits Federal Building, 26 Federal Plaza, Manhattan, and adjourn at 4:30 p.m. The purpose of the meeting is to discuss the status of the agency, recent interviews with HUD officials, and details for a proposed conference, and to hear from Federal and State health and social services officials regarding the Committee's project on minority access to nursing homes and longterm care.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Setsuko M. Nishi (718/780–5314, 914/359–0813) or John I. Binkley, Director of the Eastern Regional Division, at (202/523–5264; TDD 202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, DC, October 25, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-26467 Filed 11-1-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Exemption of Foreign Air Carriers From Customs Duties and Taxes on Bonded Fuel and Lubricants; Request for Finding of Reciprocity (Argentina)

Notice is hereby given that the Department of Commerce is undertaking to determine whether, pursuant to sections 309 and 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), the Government of Argentina allows for supplies of fuels and lubricants substantially reciprocal customs duties and tax exemptions to aircraft of U.S. registry in connection with international commercial operations to those exemptions granted

in the United States to aircraft of foreign registry under the aforementioned statute. The basis of this undertaking is the request of Aerolineas Argentinas for a finding of such reciprocity with respect to fuels and lubricants effective retroactively to August 13, 1991.

The above-cited statute provides exemptions for aircraft of foreign registry from payment of import duties and certain internal revenue taxes on the import or purchase of supplies in the United States for such aircraft in connection with their international commercial operations. "Supplies" as used in this context indicates a wide range of articles used by aircraft in international operations, including fuel and lubricants, spare parts, consumable supplies, and ground handling and support equipment. These exemptions apply upon a finding by the Secretary of Commerce, or his designee, and communicated to the Department of the Treasury, that such country allows, or will allow, "substantially reciprocal privileges" to aircraft of U.S. registry with respect to imports or purchases of such supplies in that country.

On September 1, 1959, in Treasury Decision 54925, the Secretary of the Treasury stated that he had been advised by the Secretary of Commerce that Argentina allows privileges to aircraft registered in the United States and engaged in foreign trade substantially reciprocal to the privileges provided for in sections 309 and 317 of the Tariff Act of 1930, as amended, insofar as they are applicable to airline equipment, spare parts, and supplies other than fuel and lubricants. corresponding privileges were therefore extended to aircraft registered in Argentina engaged in foreign trade.

Interested parties are invited to submit their views and comments in writing concerning this matter to Ms. Linda F. Powers, Deputy Assistant Secretary for Services, Room 1128, U.S. Department of Commerce, Washington, DC 20230. All submissions should be made in five copies and should be received no later than thirty (30) days following the publication of this notice.

Copies of all written comments received will be available for public inspection between the hours of 8:30 am. and 5 p.m. Monday through Friday in the Freedom of Information Records Inspection Facility, International Trade Administration, room 4102, U.S. Department of Commerce, Washington, DC.

FOR FURTHER INFORMATION CONTACT: C. Willam Johnson, Transportation, Tourism and Marketing Industries Division, Office of Service Industries, International Trade Administration, Room 1120, U.S. Department of Commerce, Washington DC 20230, or telephone (202) 377-5071.

Dated: October 29, 1991.

Linda F. Powers,

Deputy Assistant Secretary for Services.

[FR Doc. 91-26534 Filed 11-1-91; 8:45 am]

BILLING CODE 3510-DR-M

[A-423-801]

Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From Belgium

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: John Gloninger, Office of Antidumping Investigations, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2778.

FINAL DETERMINATION:

Background

Since the publication of our affirmative preliminary determination on June 13, 1991 (56 FR 27231), the following events have occurred.

On June 20, 1991, the petitioner in this investigation, the Committee of the American Paper Institute to Safeguard the U.S. Coated Groundwood Paper Industry, requested a public hearing.

On June 24, 1991, the respondent, KNP Belgie, N.V. (KNP), requested a public hearing. On June 26 through June 28, 1991, the Department conducted verification in Belgium of the questionnaire response submitted by KNP.

On July 1, 1991, the respondent requested that the Department postpone the final determination in this investigation for 60 days, pursuant to 19 CFR 353.20(b). On July 2, 1991, petitioner submitted a letter opposing the postponement request.

On July 8, 1991, the Department published a notice of Preliminary Negative Determinations of Critical Circumstances from Belgium (56 FR 30898). On July 17, 1991, the Department published a notice in the **Federal Register** (56 FR 32548) postponing the final determination in this investigation until not later than October 28, 1991. On August 9, 1991, respondent submitted a revised computer tape with changes required as a result of the verification process.

Petitioner and respondent filed case briefs on September 26, 1991, and rebuttal briefs on October 1, 1991. A public hearing was held on October 4, 1991.

Scope of Investigation

The product covered by this investigation is coated groundwood paper. For purposes of this investigation, coated groundwood paper is paper coated on both sides with kaolin (China clay) or other inorganic substances (*e.g.*, calcium carbonate), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of 1) basis weight (*e.g.*, pounds per ream or grams per one square meter sheet); 2) GE brightness; or 3) the form in which it is sold (*e.g.*, reels, sheets, or other forms). "Paperboard" is specifically excluded from the scope of this investigation. For purposes of this investigation, paperboard is defined to be coated groundwood paper 12 points (0.012 inch) or more in thickness.

This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 4810.21.00.00, 4810.29.00.00, and 4823.59.40.40. Although the HTS item numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1990, through December 31, 1990.

Such or Similar Comparisons

We have determined for purposes of the final determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of coated groundwood paper from Belgium to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of coated groundwood paper to sales of identical or similar coated groundwood paper in Belgium.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, where U.S. sales were made to an unrelated party prior to importation into the United States. Exporter's sales price (ESP) methodology is not appropriate because the subject merchandise was

not introduced into the inventory of KNP's related U.S. selling agent, this was the customary commercial channel for sales of this merchandise between the parties involved, and KNP's related U.S. selling agent acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. customer. (See "Comment 2" of the "Interested Party Comments" section of this notice for further discussion).

We calculated purchase price based on packed, f.o.b. port and delivered prices. We made miscellaneous adjustments to KNP's reported U.S. sales data based on information discovered at verification. We made deductions, where appropriate, for containerization expenses, foreign inland freight, ocean freight, foreign inland and marine insurance, U.S. duty, U.S. and foreign brokerage, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the Belgian value-added tax that would have been collected if the merchandise had not been exported.

Foreign Market Value

In order to determine whether there were sufficient sales of CGP in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of CGP to the volume of third country sales of CGP. The volume of home market sales was greater than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales constituted a viable basis for calculating FMV, in accordance with 19 CFR 353.48.

We calculated FMV based on delivered prices to related and unrelated customers in the home market. We made miscellaneous adjustments to KNP's reported home market sales data based on information discovered at verification. We included sales to a related customer, pursuant to 19 CFR 353.45, because we determined that the prices paid by this related customer were comparable to the prices paid by unrelated customers. We made deductions, where appropriate, for containerization expenses, foreign inland freight and insurance, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, warranty expenses, and direct advertising expenses. We allowed an adjustment for direct advertising expenses only for home market sales of CGP in sheet form because this was the only advertising that was directed at second-level customers (*i.e.*, printers) rather than at the original purchaser (*i.e.*, merchants). In the case of sales of CGP in roll form, the merchant acts only as a sales agent, and the first customer is the printer. Therefore, we have reclassified direct advertising expenses related to these sales as indirect expenses. (See "Comment 5" of the "Interested Party Comments" section of this notice for further discussion). We also made a circumstance of sale adjustment for differences in the amount of value-added tax.

We recalculated KNP's imputed credit expenses incurred on home market and U.S. sales net of discounts. We recalculated credit expenses for those U.S. sales which had not been shipped prior to verification, using the average credit period reported for all sales for which payment had been received. For the U.S. imputed credit expenses, we used KNP's home market interest rate because KNP does not borrow funds in the U.S. market. (For further discussion, see Comment 3 of the "Interested Party Comments" section of this notice.) We also recalculated KNP's direct and indirect advertising expenses by allocating the total expenses over total value as opposed to total weight of sales during the POI, in keeping with the Department's long-standing practice.

We made adjustments, where appropriate, for differences in commissions when incurred in both markets, in accordance with 19 CFR 353.56(a)(2). We determined that the related party commissions paid on U.S. and home market sales are at arm's-length because the commission rates were comparable to that which KNP paid to other unrelated selling agents on sales of CGP in the respective markets. Where commissions were paid in one market and not the other, we allowed an adjustment for indirect selling expenses in the second market of offset commissions paid in the first market, in accordance with 19 CFR 353.56(b).

We recalculated KNP's home market and U.S. indirect selling expenses by allocating these expenses over the total value as opposed to total weight of sales during the POI. We also recalculated KNP's home market and U.S. inventory carrying costs by backing out all charges and adjustments from the gross unit price.

Lastly, we made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57.

Currency Conversion

Prior to the preliminary determination in this investigation, respondent requested that the Department apply the provisions of 19 CFR 353.60(b) to account for the effect of what respondent characterized as temporary fluctuations in the exchange rate between the Belgian franc and Dutch guilder, and the U.S. dollar during the POI.

We were unable to consider KNP's request in our preliminary determination due to the late date on which the claim was made. We now determine that the special rule for currency conversion as outlined in 19 CFR 353.60(b), does not apply in this investigation. Accordingly, we have made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. We have explained our position regarding KNP's request for currency conversion in "Comment 1" in the "Interested Party Comments" section of this notice.

Critical Circumstances

On July 8, 1991, we published in the **Federal Register** (56 FR 30898) preliminary negative determinations of critical circumstances for coated groundwood paper from Belgium, Finland, and France. In that notice we articulated the Department's methodology for determining whether critical circumstances exist. Also in that notice, we indicated that we used U.S. Department of Commerce IM-146 import statistics for four months from the month after the petition was filed (the comparison period) and compared that four-month period to the four-month period including and immediately prior to the filing of the petition (the base period). Our analysis of the imports of coated groundwood paper from Belgium showed that the volume of imports from the base period to the comparison period did not increase by 15 percent or more, and thus, we found that there have not been massive imports of the subject merchandise since the filing of the petition.

Since the publication of the preliminary negative determination of critical circumstances for Belgium, we verified the company-specific shipment data submitted by KNP. We examined data for five months from the month after the petition was filed and compared that five-month period to the five-month period including and immediately prior to the filing of the

petition. Our analysis showed that the volume of imports from the base period to the comparison period did not increase by 15 percent or more, and thus, we found that there have not been massive imports of the subject merchandise since the filing of the petition. Accordingly, we finally determine that critical circumstances do not exist with respect to imports of coated groundwood paper from Belgium.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent by using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Analysis of Comments Received

We invited interested parties to comment on the preliminary determination of this investigation. We received cases and rebuttal briefs from the petitioner and the respondent.

Comment 1

Respondent maintains that the Department should invoke the special rule for currency conversion provided for in section 353.60(b) of the Department's regulations because of temporary exchange rate fluctuations between the Belgian franc (franc) and U.S. dollar and the Dutch guilder (guilder) and the U.S. dollar. Respondent has further requested that the Department use the average exchange rates in effect during the two quarters immediately proceeding the POI. In support of its contention that there have been temporary exchange rate fluctuations, respondent provided charts showing that the U.S. dollar had declined noticeably against the franc and guilder during the POI and that the dollar began to appreciate again at the end of January 1991 (the month after the end of the POI). Respondent asserts that this decline of the dollar was primarily attributable to the Iraqi invasion of Kuwait, and that once the crisis was resolved the dollar recovered its pre-POI level. Respondent further claims that during the POI, the dollar dropped not as a result of long-term macroeconomic forces, but because of a significant temporary exogenous shock—the Persian Gulf crisis. Given that the dollar's decline resulted from the uncertainty in the Persian Gulf, the drop in the franc/dollar and guilder/dollar exchange rates during the crisis was a temporary fluctuation rather than a sustained change in the prevailing rates. Under these circumstances, respondent maintains that it was not obliged to adjust its U.S. prices to account for the temporary fluctuations.

Petitioners contend that the Department should use the quarterly exchange rates in effect during the POI because the franc/dollar and guilder/dollar exchange rates experienced a sustained change during the POI which had already been in existence during the proceeding year. Petitioner further claims that the franc and guilder did not fluctuate during the POI, but rather declined steadily. Even if fluctuations in the exchange rates during the POI could be viewed as temporary, according to Petitioner the special rule still does not apply because the differences between U.S. price and foreign market value would not result solely from temporary exchange rate fluctuations. Petitioner also states that a 180-day lag period is unprecedented and excessive.

DOC Position

The special rule for investigations outlined in 19 CFR 353.60(b) provides:

> For purposes of investigations, producers, resellers, and importers will be expected to act within a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates. When the price of the merchandise is affected by temporary exchange rate fluctuations, the Secretary will not take into account in fair value comparisons any difference between United States price and foreign market value resulting solely from such exchange rate fluctuation.

We interpret 19 CFR 353.60(b) to mean that if there has been a sustained change in the exchange rate, and respondents can demonstrate that they revised their prices within a reasonable period of time to reflect that change, then we will use an appropriate lag period to convert foreign currency. (See, Final Determination of Sales at Less Than Fair Value; Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855)). If temporary exchange rate fluctuations occur during the POI (*i.e.*, the daily rate varies from the quarterly average rate by more than five percent), we will, following present policy, also use the quarterly exchange rate for those days in our LTFV analysis, but *only if* this results in a reduction of the weighted-average dumping margin for that company to *de minimis* or zero. (See, Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Federal Republic of Germany (52 FR 822, January 9, 1987) and Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855, April 27, 1987). Accordingly, we do not interpret the special rule outlined in 19 CFR 353.60(b) as envisioning the treatment of an entire POI as a temporary fluctuation.

Regarding the nature of the exchange rate fluctuation in this case, we agree with petitioner that the movement of exchange rates during the POI can be characterized as a non-volatile continuation of a sustained depreciation of the U.S. dollar against the franc that, while not entirely steady, (*i.e.*, on occasion the daily rate varied from the quarterly rate by more than five percent), began up to two years before the POI. Since respondent did not make price adjustments in response to this sustained change in exchange rates, no special treatment under the provision of the regulations dealing with sustained changes is warranted here.

Regarding respondent's comparison of fluctuations during the POI to periods before and after in support of its claim that the entire POI was a temporary aberration from a relatively stable exchange rate over the past several years or a time of great uncertainty in currency markets, we do not believe that 19 CFR 353.60(b) contemplated the use of *post hoc* analysis to determine whether currency fluctuations were temporary. We interpret the special rule to be prospective in outlook. That is, were currency fluctuations so volatile and temporary that a business could not reasonably be expected to predict what future currency fluctuations would be? Or, were exchange rate movements such that a business could discern a future general trend in their movement and make an appropriate adjustment? The evidence in this instance indicates the latter situation.

To the extent the POI exhibited some temporary currency fluctuations where on some days the dollar/franc exchange rate exceeded by five percent the quarterly rate, we have determined not to apply the lag period procedure used in *Melamine Chemicals* 732 F.2d 924 (Fed. Cir. 1984) (*Melamine*) to compensate for any such temporary currency fluctuations. We have reconsidered our actions in *Melamine* and find that the Department's actions in *Melamine* were a response to a very unusual situation and should not be followed.

Even assuming, *arguendo*, that the POI exhibited some temporary currency fluctuations, respondent would not be entitled to any remedy under the special rule. Under the special rule set out in 19 CFR 353.60(b), we will not consider any

differences between U.S. price and foreign market value due solely to exchange rate fluctuations. We have interpreted this rule to mean temporary exchange rate fluctuations alone must be responsible for a firm's overall weighted-average dumping margin. See, e.g., Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Federal Republic of Germany (52 FR 822, January 9, 1987) and Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855, April 27, 1987).

To determine whether temporary exchange rate fluctuations are solely responsible for a firm's margin, we use the quarterly exchange rate for those days where the daily exchange rate differs from the quarterly rate by more than five percent. In this instance, we find that, in using the quarterly exchange rate, respondent's margin does not fall to *de minimis* or zero. Accordingly, respondent would not be entitled to any relief under the special rule even assuming, *arguendo*, that we were to determine that exchange rate movements were characterized by temporary fluctuations.

Finally, the Department does not believe that changes in currency exchange rates are, or can be, an appropriate basis for adjustments on circumstances of sale except in extraordinary cases, such as in hyperinflationary economies.

Comment 2

Petitioner contends that the Department should consider sales made through respondent's related sales agent in the United States on the basis of ESP, not purchase price. Petitioner maintains that KNP's related selling agent plays the leading role with respect to CGP pricing and sales, functioning as more than a processor of sales-related documentation and a communications link. Petitioner also claims that KNP does not enter into the negotiation of price and quantity with customer, but is limited to issuing an order confirmation, producing the merchandise, and issuing an invoice. Furthermore, KNP does not always ship the merchandise to the customer. Since KNP has not reported indirect expenses, the Department should determine indirect selling expenses on the basis of BIA.

Respondent contents that all of KNP's U.S. sales are purchase price transactions because they meet the four criteria enumerated by the Department in numerous recent cases. First, the sale is made prior to importation. Second, the related selling agent only facilitated the transaction as a processor of sales-related documentation and as a communication link with the unrelated U.S. buyer. Third, with one exception during the POI, direct shipments from KNP to the printer was the customary channel of distribution. And forth, shipments did not enter the related party's physical inventory.

DOC Position

Pursuant to section 772 of the Act and 19 CFR 353.41, the terms of sale for purchase price sales must be set prior to the date of importation; the terms of sale for ESP sales, however, may be set either before or after importation. The Department's practice on this issue, however, is to examine several additional criteria when making a decision as to whether a sale should be considered as purchase price or ESP. These additional criteria, cited in our preliminary determination, include the following:

(1) The merchandise in question is shipped directly from the manfacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;

(2) this arrangement is the customary commercial channel for sales of this merchandise between the parties involved; and

(3) the related selling agent located in the United States acts only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

If the above criteria are met, we classify the sales in question as purchase price.

Analysis of the responses submitted by KNP indicates that the related party does not introduce the merchandise into its inventory. Nor does the related party sell through more than one commercial channel. Regarding the third criterion (*i.e.*, whether the related agent is merely a processor of sales-related docmentation and a communication link with the unrelated purchaser), we disagree with petitioners that the related party plays the leading role with respect to pricing and sales of the subject merchandise. The related party merely quotes prices to printers on KNP's behalf and receives a commission for these sales. Therefore, we conclude that the related party only acts as a processor of sales-related documents and as a communication link with the unrelated customer. Thus, we will continue to consider the U.S. sales made by the related party as purchase price sales.

Comment 3

Respondent claims that the Department should use the U.S. prime rate to calculate KNP's U.S. credit expenses. KNP claims that it is a "AAA" rated company in Belgium and borrows in the home market at the Belgian equivalent of the U.S. prime rate. Therefore, if it were to finance its U.S. receivable in the United States, it would borrow at the U.S. prime rate. Respondent also claims that the court in *LMI-Metalli Industriale* v. *United States*, 912 F.2d 455 (Fed. Cir. 1990), required that the Department impute the expense in a manner that is commercially consistent and reasonable, *i.e.*, that it is not reasonably for the Department to impute a charge must greater than that which could actually have been obtained. Respondent further states that a company need not borrow in U.S. dollars in the U.S. market before the Department will use a U.S. interest rate to calculate an imputed U.S. credit expense.

Petitioner maintains that KNP's credit rating in Belgium has no bearing on imputed credit expenses for U.S. sales. Accordingly, because KNP borrowed funds in the home market during the POI and did not borrow U.S. dollars in the U.S. market, the Department should apply KNP's actual home market interest rate to impute credit expenses for its U.S. sales. Petitioner further claims that the court's decision in *LMI* does not apply in this instance because the respondent in that case, unlike the respondent here, was able to provide evidence that it had obtained several short-term U.S. dollar-denominated loans.

DOC Position

We agree with petitioner that KNP's credit rating in Belgium has no bearing on imputed credit expenses on U.S. sales. We interpret *LMI* to mean that a respondent must show that it had actual borrowings in the United States before we will consider imputing credit expenses based upon U.S. rates. In this instance, KNP did not have U.S. borrowings. Accordingly, in order for us to determine what interest rates would be available to it would not only require us to determine the company's access to U.S. banks, but would also require us to make an independent judgment on the company's creditworthiness. We do not accept that this type of speculation is appropriate in the context of an AD investigation. Furthermore, even if it were, we do not have information available that would allow us to make such a determination. Accordingly, we have used KNP's home market interest rate to calculate imputed U.S. credit expenses. In the recent final

determination of Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea (FR 56 16305), the Department used a U.S. dollar denominated borrowing rate to calculate credit expenses on U.S. sales because we confirmed that the U.S. subsidiary had actual U.S. dollar-denominated borrowings. However, unlike respondents in PET Film, KNP did not borrow any funds in the U.S. market, and therefore we cannot assume that it could have borrowed U.S. dollars in the U.S. market.

Comment 4

Respondent claims that critical circumstances do not exist because there was no massive increase in imports. In fact, KNP's shipments decreased by almost 32 percent over the five month comparison period, and therefore, do not meet the Department's requirement of a 15 percent increase.

DOC Position

We agree with respondent that critical circumstances do not exist because imports decreased during the five-month comparison period.

Comment 5

Respondent claims that the Department should allow home market direct advertising expenses for both rolls and sheets. Since CGP is not a consumer product with many levels in the sales chain between producer and consumer, all advertising is directed at the ultimate user, *i.e.*, the printer. KNP's advertisements for both CGP rolls and sheets are directed at the end-users, and therefore, should be treated as direct selling expenses. Respondent also maintains that the Department should include all verified home market advertising expenses in the final determination.

Petitioner contends that the Department should reject KNP's claim that its advertising for CGP in rolls is directed at the only level in the sales chain and is thus a direct selling expense. The Department only allows a circumstance of sale adjustment for the seller's expense incurred on advertising and sales promotion when it is directed at the customer's customer. It does not allow the adjustment when the target is the party purchasing from the manufacturer.

DOC Position

We agree with petitioner and have reclassified all advertising expenses for rolls as indirect advertising expenses. In this case, the advertising for rolls is not directed at the customer's customer, but rather at the customer, *i.e.*, the printer, which is also the ultimate user in this instance. Therefore, we have treated KNP's advertisement expenses on sales of rolls as indirect selling expenses.

Comment 6

Petitioner maintains that the Department should use actual dates of payment for certain installment sales. KNP was paid in several installments, but it reported the date of the first payment as the date of payment for all four installments. If the Department does not have the dates of actual payment for each installment, then the Department should use October 23, 1990 as best information available because it is the date of last payment for the sale.

DOC Position

We disagree with petitioner and have used the average number of days between the date of the first payment and the date of the last payment as the payment date for this sale. Since we do not know how much was paid on each installment date, we cannot accurately impute a credit expense for each payment period in one installment sale. Accordingly, we have used an average number of days to approximate the amount of credit incurred on the installment sale.

Continuation of Suspension of Liquidation

In accordance with section 735(d)(1) of the Act, for KNP and all other producers/manufacturers/exporters, we are directing the Customs Service to continue to suspend liquidation of all entries of coated groundwood paper from Belgium that are entered, or withdrawn from warehouse, for consumption on or after June 13, 1991, which is the date of publication of our preliminary determination in the **Federal Register**.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States prices as shown in the table below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage (percent)
KNP Belgie, N.V	33.61
All Others	33.61

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)), and 19 CFR 353.20.

Dated: October 28, 1991.

Marjorie A. Chlorlins,

Acting Assistant Secretary for Import Administration.

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[A-405-801]

Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From Finland

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Office of Antidumping Investigations, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1776.

FINAL DETERMINATION:

Background

Since the publication of our affirmative preliminary determination on June 13, 1991 (54 FR 27233), the following events have occurred.

We conducted verification of the questionnaire responses between June 17 and June 27, 1991, in Finland for all of the respondents in this investigation (Kymmene Corporation, Metsa-Serla Oy, United Paper Mills, Ltd./Repola Oy, and Veitsiluoto Oy). We conducted verification of the third country sales section of the questionnaire response of Metsa-Serla on June 28, 1991, in the United Kingdom.

On June 20, 1991, the petitioners in this investigation, the Committee of the American Paper Institute to Safeguard the U.S. Coated Groundwood Paper Industry and its nine individual members requested a public hearing. On June 21, 1991, Metsa-Serla, United/Repola, and Veitsiluoto also requested a public hearing. Kymmene concurred in the requests for a hearing on July 2, 1990.

On July 1, 1991, respondents requested that the Department postpone the final determination in this investigation for 60 days, pursuant to 19 CFR 353.20. On July 1, 1991, petitioners submitted a letter opposing the postponement request.

On July 8, 1991, the Department published a notice in the **Federal Register** (56 FR 30898) preliminarily determining that critical circumstances do not exist with respect to imports of coated groundwood paper from Finland.

On July 17, 1991, the Department published a notice in the **Federal Register** (56 FR 32548) postponing the final determination in this investigation until not later than October 28, 1991.

On July 22, 1991, respondents submitted aggregated statistics on Finnish exports of subject merchandise for purposes of the critical circumstances investigation. On July 31, 1991, each respondent submitted data on its individual exports of subject merchandise.

The Department conducted verification of the questionnaire responses of all the respondents between August 5 and August 9, 1991, in New York. On August 23, 1991, Metsa-Serla, United/Repola, and Veitsiluoto submitted revised computer tapes of their sales listings correcting errors in their data found at verification. On August 26, 1991, the tapes were returned to these respondents because they contained information not requested or verified by the Department. On September 6, 1991, Metsa-Serla, United/Repola and Veitsiluoto submitted proposed changes to their computer tapes. On September 23, 1991, we advised respondents that we would only accept new computer tapes which reflected changes to data already on the record found as a result of verification. On September 27, 1991, Metsa-Serla, United/Repola, and Veitsiluoto submitted a new set of revised computer tapes correcting errors found during verification. On September 30, 1991, Kymmene also submitted a revised computer tape correcting errors found during verification.

Petitioners and respondents filed case briefs on September 26, 1991, and rebuttal briefs on October 1, 1991. A public hearing was held on October 7, 1991.

Scope of Investigation

The product covered by this investigation is coated groundwood paper. For purposes of this investigation, coated groundwood paper is paper coated on both sides with kaolin (China clay) or other inorganic substances (*e.g.*, calcium carbonate), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of (1) basis weight (*e.g.*, pounds per ream or grams per one square meter sheet); (2) GE brightness; or (3) the form in which it is sold (*e.g.*, reels, sheets, or other forms). "Paperboard" is specifically excluded from the scope of this investigation. For purposes of this investigation, paperboard is defined to be coated groundwood paper 12 points (0.012 inch) or more in thickness.

Coated groundwood paper is currently classifiable under items 4810.21.00.00, 4810.29.00.00, and 4823.59.40.40 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1990, through December 31, 1990.

Such or Similar Comparisons

We have determined for purposes of the final determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Critical Circumstances

On July 8, 1991, we published in the **Federal Register** (56 FR 30898) preliminary negative determinations of critical circumstances for coated groundwood paper from Belgium, Finland, and France. In that notice we articulated the Department's methodology for determining whether critical circumstances exist. Also in that notice, we indicated that we used U.S. Department of Commerce IM-146 import statistics for four months from the month after the petition was filed and compared that four-month period to the four-month period including and immediately prior to the filing of the petition. Our analysis of the imports of coated groundwood paper from Finland showed that the volume of imports from the basis period to the comparison period did not increase by 15 percent or more, and thus, we found that there had not been massive imports of the subject merchandise since the filing of the petition.

Since the publication of the preliminary negative determination of critical circumstances for Finland, we verified the company-specific shipment data submitted by each of the four respondents in this investigation. We examined data for five months from the month after the petition was filed and compared that five months of data to the five-month period including and immediately prior to the filing of the petition. Export data for a sixth month (June 1990) were submitted by one respondent (United/Repola) during the U.S. verification of another respondent in this investigation (Veitsiluoto). However, because these data (1) were submitted after the deadline specified by the Department, and (2) contained data on exports made after the date on which suspension of liquidation began, we have not used these data in our analysis. (For further discussion, see United/Repola "Comment 1" in the Interested Party Comments section of this notice.)

Based on our analysis of the exports of coated groundwood paper submitted by Kymmene, Metsa-Serla, United/Repola, and Veitsiluoto, we find that exports of coated groundwood paper by Kymmene, Metsa-Serla, and Veitiluoto have not increased by at least 15 percent. Therefore, we find that exports by these companies have not been massive over a relatively short period of time. However, we find that exports of coated groundwood paper by United/Repola have increased by at least 15 percent from the base period to the comparison period. We examined United/Repola's export data to ensure that the increase in exports did not simply reflect seasonal trends. There is no indication that the increases in shipments were occasioned by seasonal trends. Therefore, in accordance with 19 CFR 353.16(f)(2), we find that exports by United/Repola have been massive over a relatively short period of time.

Because the dumping margin for United/Repola is sufficient to impute knowledge of dumping, and because imports have been massive, in accordance with section 735(a) of the Act, we find that critical circumstances exist with respect to imports of coated groundwood paper produced and sold by United/Repola.

Based on our analysis of the cumulative export data for coated groundwood paper submitted by all four respondents, we find that cumulative exports of coated groundwood paper have not increased. Therefore, in accordance with 19 CFR 353.16(f)(2), we find that exports by all producers/manufacturers/exporters other than United/Repola have not been massive over a relatively short period of time. As a result, we find that critical circumstances do not exist with respect to exports of coated groundwood paper by producers/manufacturers/exporters other than United/Repola.

Such or Similar Comparisons

We have determined for purposes of the final determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of coated groundwood paper from Finland to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of coated groundwood paper to sales of identical or similar coated groundwood paper in Finland (for Kymmene, United/Repola, and Veitsiluoto) and to sales of identical or similar coated groundwood paper in the United Kingdom (for Metsa-Serla).

United States Price

We based USP on purchase price for all companies, in accordance with section 772(d) of the Act, because all U.S. sales were made to an unrelated party prior to importation into the United States. Exporter's sales price (ESP) methodology is not appropriate since the subject merchandise was not introduced into the inventory of respondents' related U.S. selling agent(s), this was the customary commercial channel for sales of this merchandise between the parties involved and respondents' related sales agent(s) acted mainly as processors of sales-related documentation and communication links with the unrelated U.S. customer. (For further discussion, see General "Comment 7" in the "Interested Party Comments" section of this notice.)

A. Kymmene

We excluded from our analysis certain sales, which respondent claimed were sales of defective merchandise which could not be sold in normal commerce, because these sales were made in small quantities. We also excluded trial sales from our analysis because these sales were made in small quantities. (For further discussion of trail sales, see General "Comment 5" in the "Interested Party Comments" section of this notice.) Finally, we excluded resales from our analysis because the original sales occurred outside the POI.

We calculated purchase price based on packed, delivered prices. We adjusted purchase price for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage, foreign handling, foreign port charges, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. brokerage, and U.S.inland freight charges, in accordance with section 772(d)(2) of the Act In addition, we made deductions, where appropriate, for discounts and rebates. Kymmene did not estimate cash discounts for any transaction for which payment had not been received from its customer. Therefore, we used best information available (BIA) to impute a cash discount for sales where a cash discount would still have been possible as of the date of verification. (For further discussion, see Kymmene "Comment 1" in the Interested Party Comments" section of this notice.) Regarding rebates, for two customers, Kymmene's narrative response did not correspond to the amounts reported on the computer tape. Accordingly, we calculated rebate amounts for these customers based on Kymmene's narrative response. In accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of the Finnish value-added tax that would have been collected had the merchandise not been exported.

B. Metsa-Serla

We excluded trial sales from our analysis because these sales were made in small quantities. (For further discussion of trial sales, see General "Comment 5" in the Interested Party Comments" section of this notice.) We also excluded from our analysis resales of damaged or "obsolete" merchandise because the original sale occurred outside the POI.

We calculated purchase price based on packed, delivered prices. We adjusted purchase price for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, foreign port charges, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. brokerage and handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we deducted a fee charged for freight-forwarding services by Metsa-Serla's related ocean freight company. Because Metsa-Serla's did not report this fee, we used BIA to calculate this amount. (For further discussion, see General "Comment 7" in the "Interested Party Comments" section of this notice.) In addition, we made deductions, where appropriate for discounts and rebates. Metsa-Serla did not estimate certain discounts for any transaction for which payment had not been received from its customer. Therefore, we used BIA to impute this discount for sales where a discount would still have been possible as of the date of verification. (For further discussion, see General "Comment 16" in the "Interested Party Comments" section of this notice.)

C. United/Repola

We excluded trial sales from our analysis because these sales were made in small quantities. (For further discussion of trial sales, see General "Comment 5" in the "Interested Party Comments" section of this notice.) We also excluded from our analysis one resale because the original sale occurred outside the POI.

We calculated purchase price based on packed, delivered prices. We adjusted purchase price for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, foreign port charges, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. brokerage and handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. We used BIA to calculate foreign inland freight, foreign brokerage, and ocean freight for certain of United/Repola's sales to the United States. (For further discussion of the BIA used for foreign inland freight and foreign brokerage expenses, see United/Repola "Comments 1 and 2," respectively, in the "Interested Party Comments" section of this notice. For further discussion of the BIA used for ocean freight, see General "Comment 12" in the "Interested Party Comments" section of this notice.) In addition, we deducted a fee charged for freight-forwarding services by United/Repola's related ocean freight company. Because United/Repola did not report this fee, we used BIA to calculate this amount. (For further discussion, see General "Comment 7" in the "Interested Party Comments" section of this notice.) We also made deductions, where appropriate, for discounts and rebates. United/Repola did not estimate certain discounts for any transaction for which payment had not been received from its customer. Therefore, we used BIA to impute this discount for sales where a discount would still have been impossible as of the date of verification. (For further discussion, see General "Comment 16" in the "Interested Party Comments" section of this notice.) In accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of Finnish value-added tax that would have been collected if the merchandise had not been exported.

D. Veitsiluoto

We excluded trial sales from our analysis because these sales were made in small quantities. We also excluded from our analysis certain sales of inferior "Grade-B" merchandise because

these sales were made in small quantities. (For further discussion of trial sales and "Grade-B" sales, see General "Comment 5", in the "Interested Party Comments" section of this notice.) We excluded resales of damaged or obsolete merchandise from our analysis because the original sales occurred outside the POI.

We calculated purchase price based on packed, delivered prices. We adjusted purchase price for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, foreign port charges, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. brokerage and handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we deducted a fee charged for freight-forwarding services by Veitsiluoto's related ocean freight company. Because Veitsiluoto did not report this fee, we used BIA to calculate this amount. (For further discussion, see General "Comment 7" in the "Interested Party Comments" section of this notice.) We also made deductions, where appropriate, for discounts and rebates. Veitsiluoto did not estimate certain discounts for any transaction for which payment had not been received from its customer. Therefore, we used BIA to impute this discount for sales where a discount would still have been possible as of the date of verification. (For further discussion, see General "Comment 16" in the "Interested Party Comments" section of this notice.) In accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of Finnish value-added tax that would have been collected if the merchandise had not been exported.

Foreign Market Value

In order to determine whether there were sufficient sales of coated groundwood paper in the home market to serve as a viable basis for calculating FMV in accordance with section 733(a)(1) of the Act, we compared the volume of home market sales of coated groundwood paper to the volume of third country sales of coated groundwood paper. For Kymmene and United/Repola, the volume of home market sales was greater than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales constituted a viable basis for calculating FMV for these companies, in accordance with 19 CFR 353.48. Veitsiluoto also reported that the volume of its home market sales was greater than five percent of the aggregate volume of its third country sales. We were unable to verify to our satisfaction Veitsiluoto's reported third country volume and value information. Therefore, we have resorted to BIA on the question of Veitsiluoto's viability. Since we have no information on third country sales, and since, from all the information available to us, we cannot conclude that the home market is not viable, we have determined to use Veitsiluoto's home market information as the BIA for this purpose. (For further discussion, see Veitsiluoto "Comment 5" in the "Interested Party Comments" section of this notice.)

For Metsä-Serla, the volume of home market sales was less than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales did not constitute a viable basis for calculating FMV for Metsä-Serla, in accordance with 19 CFR 353.48. In selecting the third country market for computing FMV, we considered the criteria set forth in 19 CFR 353.49(b). Because similarity of merchandise was not an issue for Metsä-Serla, we selected the United Kingdom as Metsä-Serla's third country market because this was the third country market having the largest sales volume. The volume of sales to the third country we selected was "adequate" within the meaning of 19 CFR 353.49(b)(1).

A. Kymmene

We excluded trial sales and certain sales of damaged merchandise from our analysis because these sales were made in small quantities.

We calculated FMV based on delivered prices to unrelated customers in the home market. We made adjustments to the reported prices for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, post-sale warehousing expenses, and warranty expenses. Regarding home market credit expenses, we found at verification that Kymmene reported as dates of payment the dates on which payment was recorded in the accounting records of its related selling agents, not the dates on which payment was deposited in the agents' bank accounts. Therefore, we adjusted the credit period to account for the average time between deposit of the funds in the agents' bank accounts and the recording of these deposits in the agents' books, based on our observations at verification. We then recalculated home market credit expenses using the revised payment dates. Regarding U.S. credit expenses, although Kymmene borrowed in both markets, the U.S. interest rate was the lower of the rates in both markets. Therefore, we used the U.S. interest rate to calculate credit expenses for purchase price sales consistent with the Court of Appeals' remand in *LMI-La Metalli Industriale, S.p.A.* v. *United States*, 912 F.2d 455 (Fed. Cir. 1990), of Brass Sheet and Strip from Italy (*LMI*). We found at verification that the calculation of Kymmene's reported U.S. interest rate contained clerical errors. We recalculated credit expenses using the reported interest rate revised to correct for these errors. In addition, for sales in either market which either had not been shipped by Kymmene and/or had not been paid for by the customer as of the time of verification, we recalculated credit expenses using the weighted-average credit period for all sales for which payments had been made. In addition, we updated warehousing expenses for those shipments remaining in the U.S. warehouse as of the date of the U.S. verification, as well as for shipments invoiced after the submission of Kymmene's deficiency response. We also made a circumstance of sale adjustment for technical services based on BIA. (For further discussion, see Veitsiluoto "Comment 1" in the "Interested Party Comments" section of this notice.) Further, we made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

Where appropriate, we made adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

B. Metsa-Serla

We excluded trial sales and certain sales of damaged merchandise from our analysis because these sales were made in small quantities. In addition, we excluded from our analysis all sales of one product (control number 09) because we found at verification that the date of sale for the only order reported for this product was outside the POI. Finally, we excluded from our analysis sales made to one of Metsa-Serla's related customers because these sales could not be verified by the Department. (For further discussion, see Metsa-Serla "Comment 2" in the "Interested Party Comments" section of this notice.) We determined at verification that the prices paid by other related customers

were comparable to the prices paid by unrelated customers.

We calculated FMV based on delivered prices to related and unrelated customers in the United Kingdom. We made adjustments to the reported prices for billing errors, where appropriate. We also made deductions, where appropriate, for discounts, rebates, foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.K. brokerage and handling, and U.K. inland freight charges. We used BIA to recalculate Metsa-Serla's reported U.K. marine insurance charges based on differences found at verification between the reported charges and the actual charges. (For further discussion, see Metsa-Serla "Comment 5" in the "Interested Party Comments" section of this notice.) We deducted U.K. packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, post-sale warehousing expenses, and warranty expenses. Regarding U.S. credit expenses, although Metsa-Serla borrowed in both markets, the U.S. interest rate was the lower of the rates in both markets. Therefore, we used the U.S. interest rate to calculate credit expenses for purchase price sales consistent with the Court of Appeals' remand in *LMI*. For sales which had not been paid for by the customer in either market as of the date of verification, we recalculated credit expenses using the weighted-average credit period for all sales for which payments had been made. Further, we made a circumstance of sale adjustment for technical services based on BIA. (For further discussion, see Veitsiluoto "Comment 1" in the "Interested Party Comments" section of this notice.)

Where appropriate, we made adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57. Because we have not used U.K. sales of control number 09 in our analysis, we rematched all U.S. sales of products formerly matched with control number 09. For one match, we were unable to calculate the exact amount of the difference in merchandise adjustment. Therefore, we used BIA to calculate the difference in merchandise adjustment for this match. As BIA, because Metsa-Serla failed to provide the information to calculate the correct adjustment, we have used the largest difference in merchandise adjustment calculated for any other product match.

C. United/Repola

We excluded trial sales from our analysis because these were made in small quantities.

We calculated FMV based on delivered prices to related and unrelated customers in the home market. For purposes of the final determination, we included sales to related customers, pursuant to 19 CFR 353.45, since we determined that the prices paid by those customers were comparable to the prices paid by unrelated customers.

We made adjustments to the reported prices for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, post-sale warehousing expenses, and warranty expenses. Regarding home market credit expenses we found at verification that United/Repola reported as dates of payment the dates on which payment was recorded in the accounting records of its related selling agent, not the dates on which payment was deposited in the agent's bank account. Therefore, we adjusted the credit period to account for the average time between deposit of the funds in the agent's bank accounts and the recording of these deposits in the agent's books, based on our observations at verification. We then recalculated home market credit expenses using the revised payment dates. For sales in either market which had not been paid for by the customer as of the time of verification, we recalculated credit expenses using the weighted-average credit period for all sales for which payments had been made. Regarding U.S. credit expenses, although United/Repola borrowed in both markets, the U.S. interest rate was the lower of the rates in both markets. Therefore, we used the U.S. interest rate to calculate credit expenses for purchase price sales consistent with the Court of Appeals' remand in *LMI*. We also made a circumstance of sale adjustment for technical services based on BIA. (For further discussion, see Veitsiluoto "Comment 1" in the "Interested Party Comments" section of this notice.)

We made adjustments, where appropriate, for commissions paid to unrelated parties in the United States in accordance with 19 CFR 353.56(b). We offset these commissions by the amount of indirect selling expenses incurred by United/Repola's related selling agent in the home market. (For further discussion, see General "Comment 10" in the "Interested Party Comments" section of this notice.) We also made a circumstance of sale adjustment for differences in the amount of value-added taxes.

Where appropriate, we made adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

D. Veitsiluoto

We excluded from our analysis certain sales of damaged merchandise because these sales were made in small quantities.

We calculated FMV based on delivered prices to unrelated customers in the home market. We made adjustments to the reported prices for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act. For those U.S. sales where no packing costs were reported, we deducted the same charge as reported for sales of identical merchandise.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, post-sale warehousing expenses, and warranty expenses. Regarding home market credit expenses, we found at verification that Veitsiluoto reported as dates of payment the dates on which payment was recorded in the accounting records of its related selling agent, not the dates on which payment was deposited in the agent's bank account. Therefore, we adjusted the credit period to account for the average time between deposit of the funds in the agent's bank accounts and the recording of these deposits in the agent's books, based on our observations at verification. We then recalculated home market credit expenses using the revised payment dates. For sales in either market which had not been paid for by the customer as of the time of verification, we recalculated credit expense using the weighted-average credit period for all sales for which payments had been made. Regarding U.S. credit expenses, although Veitsiluoto borrowed in both markets, the U.S. interest rate was the lower of the rates in both markets. Therefore, we used the U.S. interest rate to calculate credit expenses for purchase price sales

consistent with the Court of Appeals' remand in *LMI*. We disallowed home market warranty expenses because we discovered at verification that Veitsiluoto incorrectly calculated these expenses. (For further discussion, see Veitsiluoto "Comment 2" in the "Interested Party Comments" section of this notice.) We also made a circumstance of sale adjustment for U.S technical services based on BIA. (For further discussion, see Veitsiluoto "Comment 1" in the "Interested Party Comments" section of this notice.)

We made adjustments, where appropriate, for commissions paid to unrelated parties in the United States in accordance with 19 CFR 353.56(b). We offset these commissions by the amount of indirect selling expenses incurred by Veitsiluoto's related selling agent in the home market. (For further discussion, see General "Comment 10" in the "Interested Party Comments section of this notice.) We also made a circumstance of sale adjustment for differences in the amount of value-added taxes.

Where appropriate, we made adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

Currency Conversion

Prior to the preliminary determination in this investigation all four respondents requested that the Department apply the provisions of 19 CFR 353.60(b) to account for the effect of temporary fluctuations in the exchange rates between the Finnish markka and the U.S. dollar and between the British pound and the U.S. dollar during the POI. We were unable to consider respondents' requests in our preliminary determination due to the late date on which the claims were made. We now determine that the special rule for currency conversion as outlined in section 353.60(b) does not apply in this investigation. Accordingly, we have made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. (For further discussion of this topic, see General "Comment 3" in the "Interested Party Comments" section of this notice.)

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent by using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Interested Party Comments

General

Conment 1

Respondents argue that coated ground wood paper in sheet form and all types of machine-finished paper (MFC) should not be included in the scope of this investigation. Citing Flat Panel Displays from Japan (56 FR 32380), respondents claim that the Department should determine that these products are not "like products" to those produced in the United States. Based on this assertion, respondents contend that the Department should determine that petitioners are not interested parties within the meaning of 19 USC 1677(a)(2) because they are not producers of the newly defined like products. Therefore, they maintain, petitioners have no standing to file for relief with respect to these products.

Petitioners maintain that the scope of the investigation includes all coated groundwood paper, including sheets and MFC. Petitioners contend that because the Department's definition of the class or kind and the ITC's definition of like product encompass all forms of coated groundwood paper, regardless of form, petitioners are necessarily interested parties. Additionally, petitioners maintain that there is no basis for excluding sheet and MFC from the scope of this investigation since respondents fail to demonstrate any meaningful differences between the various types of coated groundwood paper that rise to the level of different classes or kinds of merchandise or different like products. Finally, petitioners state that respondents' challenge is untimely because it comes well after the regulatory deadline of ten days prior to the preliminary determination.

DOC Position

We disagree with respondents. According to 19 CFR 353.31(c)(2), challenges to a petitioner's standing must be raised not later than ten days prior to the Department's preliminary determination. In this case, the latest date that a challenge to standing could have been raised was May 28, 1991. Respondents first raised this issue on September 26, 1991, 32 days before the deadline for our final determination, and, thus, were untimely under our regulations. This regulation exists precisely to allow the Department sufficient time to make a complete and accurate analysis of issues such as these, which almost invariably are complex and technical. We, therefore, reject the standing challenge raised by respondents because it was untimely and denied the Department the time to collect and analyze the information necessary to make an informed judgment on it. Accordingly, we do not need to address respondents' arguments regarding the Flat Panels Displays from Japan decision.

Comment 2

Metsa-Serla and United/Repola argue that the Department erred in its preliminary determination that they were sufficiently related to warrant the calculation of a single margin for both companies. These respondents argue that the calculation of a single margin is inappropriate because both Metsa-Serla and United/Repola are separately controlled and managed. Therefore, they contend, it is neither within their ability, nor in their interest, to undertake joint pricing or production decisions to avoid dumping duties. Respondents maintain that the "minor ties" between Metsa-Serla and United/Repola were due to a failed hostile takeover attempt of United Paper Mills (which was, at the time of the attempt, an independent company rather than part of United/Repola) by Metsa-Serla. Finally, respondents argue that factors, such as similarity of production processes and joint sales channels, cited by petitioners to support the alleged threat of concerted action are, in fact, shared by many wholly unrelated paper mills in Finland.

Petitioners maintain that the degree of company cross-ownership, the sharing of company directors, the fungibility of the product, the companies' joint investment in a pulp mill, and their cooperation in basic research and development (R&D) indicate that the Department acted correctly in consolidating these respondents. Specifically, petitioners contend that Metsa-Serla and United/Repola have the same principal shareholder and that there is significant cross-ownership of stock as a result of the April 1990 takeover attempt. Further, petitioners cite Metsa-Serla's 1990 annual report which refers to the joint mill investment. Petitioners also point out that the focus of the Department's inquiry should be on the question of the future ability to make joint production decisions, rather than the question of whether respondents have taken advantage of this capacity in the past.

DOC Position

The Department has a long-standing practice of calculating a separate dumping margin for each manufacturer or exporter investigated. Past Department determinations of whether to "collapse" firms for purposes of margin calculations have focused on whether the firms in question operate as separate and distinct entities. (See, e.g., Certain Residential Doorlocks and Parts Thereof from Taiwan (54 FR 53153, December 27, 1989).) Central to a Department decision on whether to collapse companies for purposes of applying a single margin is the degree to which each firm in question operates in conjunction with the other relevant firm. Among the criteria used to make such a determination, the Department examines the degree of common ownership, the degree of cooperation between the parties in the marketplace, and the ability of management in either company to share in the day-to-day decision making processes of the other.

Since the preliminary determination where we collapsed Metsa-Serla and United/Repola, we have reevaluated our determination. We examined this issue at length at verification and found that, although there is some cross-ownership between these companies, the degree of ownership is not such that either company can compel the other to take actions. Specifically, we found at verification that United/Repola is currently controlled by two groups of companies, neither of which owns a significant interest in either Metsa-Serla or Metsa-Serla's largest shareholder. We also found that, although Metsa-Serla's ownership percentage in the former United Paper Mills made it the principal shareholder, this percentage was not enough to stop the merger of United Paper Mills and another paper company into the present United/Repola, a move which considerably diluted Metsa-Serla's interest.

Regarding cooperation between the two companies, we determine that the level of the cooperation is not such that the two companies are acting in concert in the marketplace. Specifically, we found that the cooperation between Metsa-Serla and United/Repola is limited to shared investment in a mill which manufacturers chemical pulp (an input used in coated groundwood paper) and some joint R&D. As to the joint production of chemical pulp, we do not believe that, given the other considerations in this case, production of an input is dispositive. With respect to shared R&D, we note that this R&D is basic R&D (*i.e.*, on wood technology in general) and is not directly related to the products marketed by either company.

Regarding executives of either Metsa-Serla or its largest shareholder sitting on United/Repola's Board of Directors, we found at verification that this board does not share in the day-to-day management activities of United/Repola. Rather, control of United/Repola is held by United/Repola's Executive Board, which is composed of representatives of United/Repola's industrial groups. None of these representatives are members of Metsa-Serla's Board of Directors.

Given these considerations, we determine that Metsa-Serla and United/Repola currently constitute two separate manufacturers or exporters under the antidumping law. Therefore, we have calculated a separate margin for the purposes of the final determination for each of these companies. We will, however, reexamine the nature and extent of the relationship between these two companies in any future administrative reviews if an antidumping duty order is issued.

Comment 3

Respondents argue that the Department should use the provisions of 19 CFR 353.60(b) and disregard the U.S. dollar/Finnish markka and U.S. dollar/British pound exchange rates in existence during the POI in making fair value comparisons. Respondents maintain that during the POI temporary, volatile exchange rate fluctuations occurred, due to the crisis in the Persian Gulf, and that once the crisis was resolved the dollar's value began to recover. Further, respondents claim that they were not able to revise their U.S. prices to reflect the rate changes, given the temporary nature of the exchange rate fluctuations and the industry's inexperience with short-term price swings. Finally, respondents maintain that a large portion of the apparent difference between home market and U.S. prices is a result of the exchange rate disparity.

As evidence the temporary fluctuations occurred during the POI, respondents maintain that the Finnish markka/U.S. dollar exchange rate varied by five percent or more from the quarterly rate on 28 separate days and that the pound sterling/U.S. dollar exchange rate varied by five percent or more from the quarterly rate on 51 days. In addition to identifying specific days which constitute periods of temporary fluctuations, respondents maintain that the dollar's rapid depreciation during the POI made the POI itself a temporary period which should be compared to the period just after the POI, as this would illustrate the kind of pattern for which the temporary fluctuation provision in the special rule was adapted.

In order to correct for the exchange rate fluctuations, respondents argue that the Department should use the exchange rates prevailing during the first and second quarters of 1990 instead of those in effect during the POI (*i.e.*, the Department should lag exchange rates during the POI by 180 days). Respondents maintain that a lag period of less than 180 days would be inadequate because a lesser time period would capture rates that were themselves subject to temporary fluctuations.

Respondents maintain that the special rule as it applies to temporary fluctuations is applicable in cases in which the remedy for temporary fluctuations reduces that does not entirely eliminate dumping margins that would be present if current exchange rates were used to calculate the FMV of the imported merchandise. In support of this contention, they point to Truck-Trailer Axle and Brake Assemblies from the Hungarian People's Republic, 46 FR 46152 (1981). They argue that the special rule literally refers to the Department's disregarding "any difference" between U.S. price and FMV "resulting solely" from temporary fluctuations. They contend that if this were not so, 19 CFR 363.60(b) would refer to disregarding a "dumping margin" that "resulted solely" from the exchange rate fluctuations.

Petitioners argue that the Department should use its standard practice of applying the quarterly rates in effect during the POI. Petitioners contend that it is invalid to determine whether an exchange rate movement is "temporary" by reference to a period after the POI. Therefore, petitioners maintain that the Department should look to the period during and preceding the POI and conclude that, contrary to experiencing temporary and volatile fluctuations, the exchange rates (in Finnish markka and pound sterling per dollar) exhibited a sustained appreciation over the year and a half prior to and including the POI. According to petitioners, since the steady rise in exchange rates was not a temporary fluctuation, respondents should have adjusted their prices to eliminate the dumping margins resulting from continuing to sell at prices established in reference to a previously existing exchange rate.

Petitioners also argue that, even if fluctuations in the exchange rates during the POI could, *arguendo*, be viewed as "temporary," the Department should not apply the "special rule" because the differences between U.S. price and

foreign market value would not result solely from these fluctuations. Petitioners cite *Melamine Chemicals Inc.* versus *United States* (732 F.2d 924, 933 (Fed. Cir. 1984)) in which the Court of International Trade held that the dumping margin must be due solely to exchange rate fluctuations.

Petitioners contend that the language of the Truck-Trailer Axle and Brake Assemblies from the Hungarian People's Republic should have no bearing on the Department's decision because it was merely a preliminary determination whose reasoning has been subsequently rejected by the Court of International Trade (CIT). *See, e.g., NTN Bearing Corporation of American* versus *United States* (747 F. Supp. 726 (CIT 1990)), and *Melamine supra.*

Finally, petitioners argue that, if the Department decides to use exchange rates from a prior quarter, the lag period should be no more than the average number of days in which respondents expect payment to be made. Petitioners state that this is the amount of time that a rational business organization would take into account when looking at exchange rates for purposes of setting prices.

DOC Position

The special rule for investigations outlined in 19 CFR 353.60(b) provides:

> For purposes of investigations, producers, resellers, and importers will be expected to act within a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates. When the price of the merchandise is affected by temporary exchange rate fluctuations, the Secretary will not take into account in fair value comparisons any difference between United States price and foreign market value resulting solely from such exchange rate fluctuation.

We interpret 19 CFR 353.60(b) to mean that if there has been a sustained change in the exchange rate, and respondents can demonstrate that they revised their prices within a reasonable period of time to reflect that change, then we will use an appropriate lag period to convert foreign currency. (See, Final Determination of Sales at Less Than Fair Value; Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855)). If temporary exchange rate fluctuations occur during the POI (*i.e.*, the daily rate varies from the quarterly average rate by more than five percent), we will, following present policy, also use the quarterly exchange rate for those days in our LTFV analysis, but *only if* this results in a reduction of the weighted-average dumping margin for that company to *de minimis* or zero. (See, Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Federal Republic of Germany (52 FR 822, January 9, 1987) and Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855, April 27, 1987). Accordingly, we do not interpret the special rule outlined in 19 CFR 353.60(b) as envisioning the treatment of an entire POI as a temporary fluctuation.

Regarding the nature of the exchange rate fluctuation in this case, we agree with petitioner that the movement of exchange rates during the POI can be characterized as a non-volatile continuation of a sustained depreciation of the U.S. dollar against the markka and the pound sterling that, while not entirely steady (*i.e.*, on occasion the daily rate varied from the quarterly rate by more than five percent), began up to two years before the POI. Since respondent did not make price adjustments in response to this sustained change in exchange rates, no special treatment under the provision of the regulations dealing with sustained changes is warranted here.

Regarding respondent's comparison of fluctuations during the POI to periods before and after in support of its claim that the entire POI was a temporary aberration from a relatively stable exchange rate over the past several years or a time of great uncertainty in currency markets, we do not believe that 19 CFR 353.60(b) contemplated the use of *post hoc* analysis to determine whether currency fluctuations were temporary. We interpret the special rule to be prospective in outlook. That is, were currency fluctuations so volatile and temporary that a business could not reasonably be expected to predict what future currency fluctuations would be? Or, were exchange rate movements such that a business could discern a future general trend in their movement and make an appropriate adjustment? The evidence in this instance indicates the latter situation.

To the extent the POI exhibited some temporary currency fluctuations where on some days the dollar/markka exchange rate exceeded by five percent the quarterly rate, we have determined not to apply the lag period procedure used in Melamine to compensate for any such temporary currency fluctuations. We have reconsidered our actions in Melamine and find that the Department's actions in Melamine were a response to a very unusual situation and should not be followed.

Even assuming, *arguendo*, that the POI exhibited some temporary currency fluctuations, respondent would not be entitled to any remedy under the special rule. Under the special rule set out in 19 CFR 353.60(b), we will not consider any differences between U.S. price and foreign market value due solely to exchange rate fluctuations. We have interpreted this rule to mean that temporary exchange rate fluctuations alone must be responsible for a firm's overall weighted-average dumping margin. See, e.g., Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Federal Republic of Germany (52 FR 822, January 9, 1987) and Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855, April 27, 1987).

To determine whether temporary exchange rate fluctuations are solely responsible for a firm's margin, we use the quarterly exchange rate for those days where the daily exchange rate differs from the quarterly rate by more than five percent. In this instance, we find that, in using the quarterly exchange rate, respondents' margins do not fall to *de minimis* or zero. Accordingly, respondents would not be entitled to any relief under the special rule even assuming, *arguendo*, that we were to determine that exchange rate movements were characterized by temporary fluctuations.

Finally, the Department does not believe that changes in currency exchange rates are, or can be, an appropriate basis for circumstances of sale adjustments except in extraordinary cases, such as in hyperinflationary economies.

Comment 4

Petitioners contend that the Department should classify all Finnish sales to the United States made through the Madden Corporation (respondents' related selling agent) as ESP sales. Petitioners argue that the role of Madden is substantially more than that of a processor of sales-related documentation and a communication link between the company and the unrelated purchaser. Specifically, petitioners state that Madden conducts substantial marketing and promotional activities in the United States in furtherance of its sales of Finnish coated groundwood paper. Petitioners also note that Madden identifies new customers for the mills, markets the mills' products in trade shows, and keeps the mills up to date on the U.S. paper industry. Finally, petitioners argue that Madden's role in the negotiation of contracts with U.S. customers indicates that Madden is involved in the setting of U.S. prices.

Respondents contend that the Department correctly classified their

U.S. sales as purchase price transactions. Kymmene argues that in practice the Department generally finds that sales are classified as purchase price transactions if the terms of sale are set prior to importation because (1) the selling agent accepts no risk that the merchandise will not be sold and therefore is more a processor of sales-related documentation than an active participant in the sales process, (2) the merchandise, by definition, cannot enter the selling agent's inventory, and (3) if the majority of a company's sales are made prior to importation, then that is the customary commercial channel for those sales. Finally, Kymmene states that Madden did not sign the contract referenced by petitioners. According to Kymmene, this proves that Madden is not important enough in the sales process to sign the contract on its own.

Metsa-Serla, United/Repola and Veitsiluoto maintain that Madden is not a reseller, but a facilitator in the sales process. These respondents note that Madden does not introduce the merchandise into its inventory. Finally, they state that Madden does not set prices for the Finnish mills; rather, prices are set by the individual mills themselves.

DOC Position

Pursuant to section 772 of the Act and 19 CFR 353.41, the terms of sale for purchase price sales must be set prior to the date of importation; the terms of sale for ESP sales, however, may be set either before or after importation. Therefore, where the terms of sale are set prior to the date of importation, the Department must examine several additional criteria when making a decision as to whether a sale should be considered as purchase price or ESP. These additional criteria, cited in our preliminary determination, include the following:

(1) The merchandise in question is shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;

(2) This arrangement is the customary commercial channel for sales of this merchandise between the parties involved; and

(3) The related selling agent located in the United States acts only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

If the aforementioned criteria are met, we classify the sales in question as purchase price.

Petitioners have not addressed the first two criteria. Analysis of the responses submitted by the Finnish respondents indicates that the first two criteria are met in that Madden did not introduce the merchandise into its inventory, nor does it customarily do so. Regarding the third criterion, we established at verification that Madden merely functions as a communication link between the mills and their customers with regard to the setting of prices. Moreover, we found that while Madden does undertake additional activities such as providing some technical services, participating in trade shows on behalf of the mills, and identifying and maintaining contact with customers for the mills, we conclude that the extent of these additional sales-related activities is not enough in this instance for the Department to reclassify these sales as ESP sales. If, however, we determine in any future administrative reviews of any antidumping duty order issued in this proceeding that Madden does undertake significant additional activities, we will reconsider this issue.

Comment 5

Petitioners maintain that the Department should include certain sales in its analysis of USP. Specifically, petitioners contend that the Department should include (1) trial sales made by Metsä-Serla, United/Repola and Veitsiluoto, and (2) sales of defective merchandise made by Kymmene and Veitsiluoto. According to petitioners, section 772 of the Act does not provide for the exclusion of U.S. sales made outside of the "ordinary course of trade." Moreover, petitioners state that it is the usual practice of the Department to include these types of sales in its analysis.

Metsä-Serla, United/Repola and Veitsiluoto contend that case law permits the Department to exclude sales, which are outside the ordinary course of business, from both the U.S. and home markets. Respondents cite Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan, 55 FR 34585 (1990), as one example where the Department excluded such sales from its analysis of USP. Respondents contend that the Department was correct in its preliminary determination that the insignificant volume of these sales was sufficient grounds to exclude them from the analysis. However, respondents maintain that if the Department were to include U.S. trial sales in its calculations, it should compare these to trial sales in the home market.

Kymmene also maintains that its trial sales should be excluded from the fair value analysis because this merchandise was normally provided free of charge or at reduced prices. In addition, it maintains that its sales of defective paper should not be included in the analysis of USP. Kymmene states that the Department has excluded sales of defective merchandise in other cases where these sales were made in small quantities. (See, e.g., Generic Cephalexin Capsules from Canada, 54 FR 26,820.) Furthermore, Kymmene notes that these sales would be excluded in any case because they were resales of defective goods sold at distress prices with initial dates of sale outside the POI.

Veitsiluoto maintains that its sales of defective merchandise were examined at verification and were found to be both outside the ordinary course of trade and made in small quantities.

DOC Position

We agree with respondents. In its less-than-fair-value investigations, the Department is not required to review every sale and frequently excludes certain sales from its analysis. (See, e.g., Sweaters Wholly or in Chief Weight of Man-made Fiber from Taiwan, 55 FR 34585 (1990), Sweaters Wholly or in Chief Weight of Man-Made Fiber from the Republic of Korea, 55 FR 32661 (1990.)) Because these sales represent only a small portion of the total volume of U.S. sales made by each respondent and would have an insignificant effect on our calculations, we have excluded them from our analysis.

Comment 6

Petitioners contend that, in the event that the Department uses purchase price methodology for USP, it should deduct commissions paid by respondents to their related sales agents. Petitioners maintain that these commissions are directly related to the sales at issue and were paid at arm's-length. Petitioners argue that the direct relationship is borne out by the fact that such commissions are calculated as percentages of actual sales values. Petitioners maintain that the need to reduce the commission arrangements to writing indicates that such arrangements are by nature at arm's-length.

Petitioners also argue that the Department should adjust the commission amounts reported for two portions of a special commission's surcharge discovered during verification. The first portion of this surcharge applies to a lag in commission payments from the mills after Madden switched computer systems. The second portion was related to Madden's cost structure. Petitioners argue that the evidence provided at verification does not prove that either the first or second

portion of the special commissions surcharge applied to stock sold prior to the POI. Petitioners therefore maintain that the Department should include the full amount of the special charges in deducting commissions to calculate USP.

Kymmene contends that commissions paid to Madden were improperly deducted because they were paid to a related party and are more accurately characterized as related party transfers. Kymmene further maintains that it is the Department's practice not to make adjustments for commissions paid to related parties. Kymmene states that the commissions paid to Madden were not at arm's length because these commissions exactly covered Madden's expenses and, consequently, each of the mills had an interest in minimizing Madden's costs.

Metsä-Serla, United/Repola and Veitsiluoto respond that a circumstance of sale adjustment should not be made for payments to related parties. These respondents also argue that the relationship between the commission's structure and Madden's costs is such that commissions cannot be considered at arm's-length.

Regarding the special commission surcharge, Metsä-Serla, United/Repola and Veitsiluoto argue that this surcharge was due to the change in computer systems and a resulting lag in commission payments prior to the POI. These respondents maintain that their calculation of the "effective" commission rate correctly adjusted for this portion of the special payment and was in fact verified by the Department.

DOC Position

The Court of Appeals' remand in *LMI* instructed the Department to adjust for commissions paid to a related party in the home market when the commissions were determined to be (1) at arm's-length and (2) directly related to the sales in question. Subsequent to this, the Department has developed the following guidelines to determine whether commissions paid to related parties either in the United States or in the foreign market are at arm's-length:

(1) We will compare the commission paid to the related selling agent to those paid by respondent to any unrelated selling agents in the same market (home or U.S.) or in any third country market.

(2) In cases where there is not an unrelated sales agent, we will compare the commission earned by the related selling agent on sales of merchandise produced by the respondent to commissions earned by the related selling agent on sales of merchandise produced by other unrelated sellers or manufacturers.

In appropriate circumstances we will also examine the nature of the agreements or contracts between the manufacturer(s) and selling agent(s) which establish the framework for payment of commissions and for services rendered in return for payment, in order to ensure that both related and unrelated agents perform approximately the same services for the commissions. If, based on the above analysis, the Department is satisfied that the commissions are at arm's-length as well as directly related to the sale, we will make an adjustment for these commissions.

In this investigation, none of the respondents used unrelated commissionaires to sell subject merchandise in the United States. Nor did Madden act as a commissionaire for unrelated producers. The fact that these arrangements are in writing is not in itself an appropriate standard against which to measure the arm's-length nature of the transaction. Therefore, because we have no appropriate benchmark against which to test the arm's-length nature of the commission arrangement between respondents and Madden, we are not satisfied that these payments are at arm's-length. Accordingly, we have not adjusted for them.

Regarding the question of the additional commissions surcharge, this issue is moot as we are not deducting commissions paid to Madden.

Comment 7

Petitioners contend that the Department should deduct the administrative fee charged for freight fowarding services rendered by Finnpap's shipping subsidiary, Transfennica. According to petitioners, it is the Department's practice to consider such expenses directly related to the export of merchandise to the United States. They cite CPTs from Japan, 55 FR 37915, in which the Department deducted fees charged to cover administrative expenses incurred by a related freight company.

Metsa-Serla, United/Repola, and Veitsiluoto maintain that the Transfennica charge should not be deducted from USP because it is not a direct selling expense; rather, they maintain that this fee is an intracorporate transfer of funds. They further maintain that this portion of Transfennica's fees has not been established as being paid at arm's-length.

DOC Position

We agree with petitioners. During the POI, Transfennica charged its members a fee for its freight-forwarding services. We find that this fee is payment for a legitimate expense that would have to be borne either by an unrelated freight company or respondents' related agency, Transfennica. Therefore, we are deducting the expense in calculating USP as it is our standard practice to back out all movement charges from USP, including freight forwarding expenses.

However, because these respondents did not report the amount of this fee, we have used BIA. As BIA, we used the highest amount for freight forwarding reported by Kymmene in a public version of its response.

Comment 8

Petitioners maintain that the Department should disallow any rebate or discount paid to related parties. According to petitioners, it is the Department's practice to consider such payments intracompany transfers of funds, rather than expenses directly related to sales.

DOC Position

We disagree with petitioners. It is not the Department's practice automatically to disallow discounts or rebates paid to related parties. Because we determined that respondent's sales to related parties were at arm's-length by reference to the price of these sales, net of selling expenses (including discounts and rebates paid to the related parties) and movement charges, we have allowed these discounts and rebates as deductions from FMV.

Comment 9

Metsa-Serla, United/Repola, and Veitsiluoto contend that it was proper to include interest savings in their calculation of their short-term U.S. interest rate. Respondents state that these savings reduced the cost of borrowing for the Madden Corporation, their common U.S. sales agent. They note that their U.S. sales agent considered these savings when calculating its effective cost of borrowing because the savings were reflected on an interest rate worksheet prepared by this agent in the normal course of business.

Petitioners contend that these respondents failed to take into account the time value of money in reporting Madden's borrowing rate. Petitioners state that, because respondents only reported the gain associated with the interest savings, it is inappropriate to

include these savings in the interest rate calculation. Therefore, petitioners state that the Department should exclude these savings from the interest rate reported by these respondents.

DOC Position

We agree with respondents. Because the rate reported is the rate used in Madden's ordinary course of business to assess its costs of borrowing and the fact that the savings at issue are actual as opposed to imputed savings, we conclude that use of this rate will produce an accurate reflection of the costs associated with having receivables outstanding. Therefore, we have used this rate in our calculations.

Comment 10

United/Repola, and Veitsiluoto maintain that the commissions paid to Phoenix National, an unrelated party, were made at arm's length and therefore warrant a circumstance of sale adjustment. These respondents maintain that the amount of the commissions paid in the home market accordingly should be an adjustment to the home market price with respect to the fair value of sales matched with Phoenix National sales in the U.S. market.

Petitioners maintain that the commission paid to Phoenix National should only be offset to the extent of respondents' indirect selling expenses up to the amount of the Phoenix National commission.

DOC Position

We agree with respondents. We have not made an adjustment for the Suomen Paperi fees as commissions, since we determined that these were not made at arm's length. (See General "Comment 6" in the Interested Party Comments section of this notice.) At verification, we found that the amount of indirect selling expenses incurred by Suomen Paperi, United/Repola's and Veitsilouto's related home market sales agent, was equivalent to the amount of fees charged to these respondents. Therefore, we have allowed these fees as indirect selling expenses in the home market, and have used these amounts as offsets to the arm's-length commissions paid to Phoenix National, up to the amount of the Phoenix National commissions.

Comment 11

Metsa-Serla, United/Repola and Veitsiluoto maintain that they provided the Department with detailed correction lists of errors found while preparing for verification and that the Department verified these lists. They maintain that they subsequently submitted aggregated lists of such corrections to the Department and proposed that they be allowed to make all of these changes on their computer tapes. They further maintain that the Department erroneously instructed them to exclude marine insurance calculations, ocean freight corrections, VAT updates, and port charges corrections from the new tapes. Respondents maintain that the Department should accept these changes.

Petitioners maintain that the Department appropriately did not accept the information submitted by respondents because it was new and unverified information. They maintain that the Department should continue to reject this information. Petitioners also maintain that because Kymmene served them with a new computer printout without explaining what changes were made to its listings, the printout and its accompanying tape should be rejected and removed from the record.

DOC Position

We agree in part with petitioners. Of the changes proposed to the computer tapes by respondents, we accepted only those items which were clearly not new and unverified data. Regarding Kymmene's revised computer tape, we have accepted this tape because it was timely submitted. We also note that Kymmene explained the changes made to its revised computer tape in the record of this investigation.

Comment 12

Petitioners maintain that United/Repola and Veitsiluoto incorrectly reported the 1990 ocean freight charge for shipments made in 1991. In addition, petitioners maintain that United/Repola, incorrectly reported ocean freight expenses for containerized shipments. As BIA for United/Repola, petitioners state that the Department should apply the weighted average expense for ocean freight for non-containerized shipments to the containerized shipments. As BIA for Veitsiluoto, petitioners maintain that the Department should deduct the actual 1991 ocean freight rate in determining USP for 1991 shipments.

DOC Position

At verification we found that both United/Repola and Veitsiluoto incorrectly reported ocean freight expenses for certain shipments. Specifically, we found that United/Repola and Veitsiluoto applied the 1990 rates to 1991 shipments, despite the fact that the rates increased. In addition, we found that United/Repola did not report the correct ocean freight for containerized shipments. As regards the incorrectly reported expenses for uncontainerized shipments made in 1991, we are using the rate found at verification for all uncontainerized 1991 shipments. As regards the expenses for the containerized shipments incorrectly reported by United/Repola, since the average uncontainerized expense reported is lower than the expense for a containerized mill order examined at verification we are not using petitioners' suggested BIA methodology. Instead, we are using the expense found for the one containerized shipment examined at verification for all containerized shipments made by United/Repola.

Comment 13

Petitioners maintain that because certain Kymmene and United Paper sales were made through Madden's fine paper department, and since such sales engender a higher commission, the Department should deduct the higher commission on any sale made through that channel. Petitioners further contend that if the Department is unable to determine which sales were made through the fine paper department, it should apply, as BIA, the fine paper commission on all sales made by these companies through Madden.

United/Repola maintains that the effective commissions rate for book paper sales made through Madden's fine paper department is lower than that noted in the verification report. United/Repola contends that it has identified which sales were made through the fine paper department and that this department's commission rate should apply only to such sales in the event that a circumstance of sale adjustment is made for commissions.

DOC Position

Because we determined that the commissions paid to Madden were not paid at arm's-length, we did not deduct these commissions from USP. Therefore, the amount of commissions paid on sales through the fine paper department is moot. (For further discussion, see General "Comment 6" in the Interested Party Comments section of this notice.)

Comment 14

Petitioners contend that the Department should disallow certain rebates paid to home market or third country customers. Specifically, petitioners argue that neither Metsa-Serla nor United/Repola provided the Department with key information regarding these rebates. Petitioners contend that these respondents did not adequately describe the circumstances under which such rebates were made.

Petitioners further contend that the verification of one type of rebate offered by Metsa-Serla indicated that such rebates were unusual because of the type of paper for which these rebates were originally created. Moreover, petitioners maintain that these rebates were likely to have been determined after the date of sale and even after the initiation of this investigation. Regarding one home market rebate offered by United/Repola, petitioners question the fact that this rebate was offered to only one customer. Therefore, petitioners maintain that the Department should not deduct these rebates in calculating FMV.

Metsa-Serla contends that there is no evidence to support petitioners' allegations that it paid such rebates for any purpose other than for its ordinary business practice.

United/Repola maintains that the fact that only one customer qualified for this special rebate does not make it improper, and that its explanation of this rebate was fully verified by the Department.

DOC Position

We agree with respondents. At verification, we fully examined the circumstances surrounding these rebates, as well as rebate payments to the customers. Because we found no problems with these rebates at verification, we are allowing them as deductions to FMV.

Comment 15

Metsa-Serla and United/Repola maintain that the Department should not impute warehousing charges for those sales where no warehousing expenses were reported. These respondents state that they did not report warehousing expenses for certain containerized shipments because containerized shipments often go directly to the customer and therefore are not warehoused.

DOC Position

We agree with respondents. We found at verification that no warehousing expenses were incurred on certain containerized shipments. Therefore, we have not imputed warehousing expenses for those shipments.

Comment 16

Petitioners maintain that wherever United/Repola failed to report the estimation of a certain discount when it was likely that it would be granted, the Department should deduct the weighted average of such discounts paid during the POI as BIA. United/Repola claims that this is an outdated argument since any discrepancies were corrected by means of the newly submitted computer tape.

DOC Position

We agree with petitioners. However, we are applying BIA only to those sales for which it was possible, as of the date of verification, for the customer to receive the discount. As BIA, we are applying the weighted-average of the reported discounts for all those transactions for which terms allowed the discount. While petitioners did not raise this issue with respect to Metsa-Serla and Veitsiluoto, we note that this issue applies to them as well. Therefore, we have also used BIA to calculate these discounts for these respondents.

Kymmene

Comment 1

Petitioners maintain that the Department should use BIA to calculate cash discounts on certain U.S. sales made by Kymmene. Specifically, petitioners state that the Department should calculate cash discounts on sales for which payment had not been received by the date of the U.S. verification because Kymmene failed to estimate a discount for those sales. As BIA, petitioners state that the Department should deduct the weighted average of cash discounts paid during the POI.

Kymmene contends that it is speculative for the Department to estimate cash discounts for sales which have not been invoiced because the company does not know if the discount will be taken. However, ti states that, if the Department does estimate discounts for these sales, ti should base this estimate on the weighted-average discount paid on sales for which the U.S. customer's payment terms allowed for cash discounts.

DOC Position

We agree with petitioners that it is appropriate to adjust for cash discounts on sales not yet invoiced. It is highly likely that discounts will be taken on some of these sales when payment is finally made. However, we agree with Kymmene that it is not appropriate to estimate discounts on sales for which the discount period has already elapsed. Therefore, we have not imputed discounts for these sales. For the remaining sales, we calculated a cash discount based on the weighted-average discount paid on other sales in the purchase price database having payment terms which would allow a cash discount. Because Kymmene aggregated other discounts with its reported cash discounts, we capped the weighted-average discount at the highest discount allowed in any of its payment terms.

Comment 2

Petitioners state that the Department should ensure that storage expenses reported for the OSI warehouses include the first month's storage costs. If they are not, petitioners maintain that the Department should impute an additional month's fee for those sales as BIA. Kymmene maintains that the Department examined the documents used to calculate its OSI storage expenses and found that it had provided all of the information requested by the Department.

DOC Position

We verified that Kymmene correctly reported the first month's warehousing expense for the OSI warehouse.

Comment 3

Petitioners maintain that rebate payments to one of Kymmene's home market customers should be disallowed because Kymmene has provided no clear information regarding eligibility for this rebate or the circumstances under which it was granted. Petitioners also argue that manner in which this deduction was obtained seem irregular.

Kymmene contends that petitioners misidentified the customer in question. Kymmene also maintains that the Department verified that this rebate was negotiated before the sales were made. Therefore, Kymmene states that the Department should allow this rebate.

DOC Position

We agree with Kymmene. At verification, Kymmene explained the circumstances in which it granted this rebate. In addition, Kymmene demonstrated at verification that the rebate was negotiated prior to the sale and actually paid to the customer. Therefore, we have allowed this rebate as a deduction to FMV.

Comment 4

Petitioners argue that Kymmene's cash discounts paid on home market sales should be disallowed because (1) Kymmene has not stated whether the cash discount was agreed upon in advance of the sale, (2) Kymmene has not provided any information concerning the class of customers to which the discount is available, and (3) Kymmene granted discounts to customers who failed to comply with terms of the discount program.

Kymmene argues that the Department correctly adjusted for each discounts in the home market. Kymmene contends that it is normal business practice to allow customers in substantial compliance with payment terms to take cash discounts and that it has reported the discount actually taken by the customer.

DOC Position

We agree with Kymmene. At verification, we examined the cash discounts granted in the home market and found that the discounts reported had actually been taken by the customer. Because these discounts were actually taken, we have allowed them as adjustments to FMV.

Comment 5

Petitioners state that the fee paid by Kymmene to a related freight company for arranging for inland transportation should be disallowed. Petitioners state that Kymmene has failed to provide any documentation that this fee is an arm's-length fee.

Kymmene states that it is the Department's practice to market prices. Kymmene maintains that it has demonstrated that the fees paid to its freight company are equivalent to market prices because the financial statement of this company shows that the company made a small profit in 1990 (and therefore it charged an adequate fee for its services). Finally, Kymmene states that it pays these fees on both home market and U.S. sales. Therefore, it would be unfair to make an adjustment for the fee only for U.S. sales.

DOC Position

We agree with Kymmene. The fee charged by its related freight company is equivalent to a freight forwarding fee. It is the Department's standard practice to make adjustments for these types of fees. However, because we are unable to compare these fees to fees paid to unrelated parties in order to determine whether these fees are at arm's-length, we are using them as BIA. Because Kymmene pays this fee on services provided for both home market and U.S. sales, we have made an adjustment for these fees in both markets.

Comment 6

Kymmene argues that is not valid to use "stop" orders to determine the date of sale for its merchandise because these orders merely serve to reserve a place in the company's production schedule.

DOC Position

We agree. We established at verification that a binding commitment on the terms of sale was not made at the time that a "stop" order was placed by a customer. Therefore, it would be inappropriate to use the date of the "stop" order as the date of sale.

Comment 7

Kymmene argues that U.S. customs duties and customs fees are properly calculated on the price shown on the customers invoice because this is the price on which the U.S. Customs Service assesses duties.

DOC Position

We agree. We verified that Kymmene correctly reported the amount of duties and customs fees actually paid on each sale.

Comment 8

Petitioners maintain that Kymmene has provided insufficient information concerning home market warranty expenses. Specifically, petitioners state the Kymmene has not described its warranty policy, quality control, and rejection rate by customers, nor has it provided information about the circumstances under which warranty expenses were incurred. Therefore, petitioners maintain that these expenses should be disallowed.

Kymmene maintains that its warranty expenses should be allowed. It contends that it has provided all the information requested by the Department and that the accuracy of its response has been verified by the Department.

DOC Position

We agree with Kymmene. Although we did not specifically examine warranty expenses at verification, we did verify the accuracy of Kymmene's response in general. Therefore, we have not disallowed Kymmene's reported warranty expenses.

Comment 9

Kymmene contends that the Department improperly disallowed its home market indirect selling expenses and inventory carrying costs as offsets to Kymmene's U.S. selling commission. Kymmene states that these expenses should be used to offset the U.S. commission in addition to the home market commission offset allowed by the Department. Petitioners state that this claim should be rejected out of hand because this methodology would result in the double-counting of home market expenses.

DOC Position

We agree with petitioners. However, we are no longer making an adjustment for either U.S. or home market commissions because we have determined that these are not arm's-length transactions. Therefore, this issue is moot. (For further discussion, see General "Comment 6" in the Interested Party Comments section of this notice.)

Metsä-Serla

Comment 1

Petitioners maintain that the Department should use BIA to calculate U.S. inland freight charges where no charge was reported by Metsä-Serla because no other Finnish company claimed that it did not incur U.S. inland freight charges on containerized shipments. As BIA, they suggest the Department deduct the weighted-average charge for all other shipments.

DOC Position

We disagree with petitioners. At verification in Finland we found that U.S. inland freight expenses are sometimes included in the amounts reported by Metsä-Serla for ocean freight to Metsä-Serla's sales to Alliance. We verified the accuracy of these expenses. Therefore, we are accepting Metsä-Serla's reported inland freight expenses. Because each respondent reported its charges and adjustments differently, it is inappropriate to generalize using another respondent's data.

Comment 2

Petitioners maintain that Metsä-Serla's sales to its related third-country customer, Alliance Paper Group, Ltd., should be disregarded in accordance with 19 CFR 353.45(a). Petitioners argue that Metsä-Serla has not provided any documentation concerning its sales to Alliance, and the Department should therefore disregard these sales. However, petitioners contend that if the Department does accept Metsä-Serla's sales to Alliance, it should reject the commissions paid to Alliance on these sales because these were intracompany transfers of funds rather than expenses directly tied to these sales.

Metsä-Serla maintains that contrary to petitioners' assertion, the Department has verified that Metsä-Serla's sales to Alliance were made at arm's-length prices. It maintains that the prices reported were those which Alliance charged to the first unrelated customer. Metsä-Serla claims that it demonstrated at verification that the prices charged to

Alliance were comparable to the prices charged by Alliance to its customers.

DOC Position

We agree with petitioners. At verification in the United Kingdom, company officials provided us with incomplete documentation for the sale preselected by the Department. Although we allowed Metsä-Serla to complete the documentation for the preselected transaction during its U.S. verification, the documents produced by Metsä-Serla, while complete, were for sales *other* than the one specified by the Department. Because Metsä-Serla did not produce the documents which we requested at verification, we were unable to verify Metsä-Serla's sales to Alliance. Consequently, we are not using the Alliances sales reported for the purposes of the final determination. The question of Alliance commissions is therefore moot.

Comment 3

Petitioners contend that Metsä-Serla incorrectly reported certain U.K. discounts when they should not have been reported. Therefore, petitioners maintain that the Department should not deduct these in calculating FMV.

Metsä-Serla contends that circumstances in which it allowed these discounts do not provide a basis for disallowing verified discounts.

DOC Position

We agree with respondents. We verified that Metsä-Serla actually paid the discounts in question. Therefore, we deducted them in calculating FMV.

Comment 4

Petitioners maintain that the Department should disallow marine insurance expenses reported for Metsä-Serla's third country sales because (1) Metsä-Serla was unable to show the Department how it had derived these charges, and (2) the amounts reported did not correspond to the invoices produced during verification. Metsä-Serla claims that the policy for its world-wide marine insurance was reviewed at the Finnish verification and that the method of calculating the charge was explained. Metsä-Serla maintains that the Department incorrectly rejected its recalculation of its marine insurance expenses based on CIF prices.

DOC Position

We disagree with Metsä-Serla. At verification in Finland, Metsä-Serla explained that marine insurance charges reported for both the U.S. and U.K. markets were calculated on an incorrect base price. However, because Metsä-Serla was unable to provide the correct base price, we were unable to provide the correct base price, we were unable to establish whether Metsä-Serla had correctly identified the problem. Therefore, we are using BIA to calculate U.S. and U.K. marine insurance expenses. As BIA, we have adjusted the amounts reported by Metsä-Serla for the difference observed at verification between the reported charges and the amounts actually paid to the marine insurance company. Regarding U.S. expenses, we are using the amounts reported by Metsä-Serla as BIA because the charges examined at verification were all lower than the reported amounts.

Comment 5

Petitioners maintain that the Department should not deduct the "margin" added by Metsä-Serla's U.K. freight company to the handling and inland freight charges incurred in the United Kingdom for services rendered by an unrelated vendor. Rather, petitioners argue that the Department should deduct only the handling and inland freight expense as charged by the unrelated vendors as only these are made at arm's-length. These charges, and the margin added, were paid through Lamco, Metsä-Serla's related U.K. selling agent.

Metsä-Serla contends that the Department verified that these charges were at arm's-length, since the charges to Lamco were shown to be comparable to those charged to unrelated customers.

DOC Position

We agree with Metsä-Serla. At verification, the Department verified that the "margin" which was charged to Lamco was similar to that charged to several other large unrelated customers in 1990. Therefore, we have determined that this amount was charged at arm's length and, accordingly, we have deducted it from FMV.

Comment 7

Petitioners maintain that Metsä-Serla improperly reported the amount of the value added tax (VAT) agreed to by the parties, not the amount of the VAT actually due to the U.K. government. More specifically, petitioners question the validity of the VAT amount reported to the Department when the customer and the seller agreed not to adjust VAT through the issuance of a credit note. Petitioners contend that this results in a higher reported amount than the amount actually paid to the U.K. government. Petitioners contend that the VAT should therefore be decreased by the amount of VAT refunded due to the contingent discount.

Metsä-Serla contends that the Department verified that it was not required to refund VAT when it paid a rebate to a customer, but that it is an option under the tax code of the United Kingdom. Respondent also argues that it was not established that its selling agent, Lamco, never refunded VAT on rebates.

DOC Position

Because it is not necessary to make a circumstance of sale adjustment for VAT paid in third country markets, we have reconsidered our treatment of VAT in this case. Accordingly, we have not made a circumstance of sale adjustment for Metsä-Serla's U.K. VAT for purposes of the final determination.

Comment 8

Petitioners maintain that the documentation provided by Metsä-Serla at verification indicate that Metsä-Serla may have reported foreign port charges twice, first in its reported brokerage expense and then as a separate charge. Petitioners maintain that the Department should ensure that it does not double-count port charges when calculating FMV.

Metsä-Serla maintains that there has been no double-counting of port charges.

DOC Position

We agree with Metsä-Serla. We have adjusted FMV only once for foreign port charges.

Comment 9

Petitioners contend that the cost differential for a paper production process noted in the Department's verification report between two different brands of coated groundwood paper produced by Metsä-Serla should be disregarded because the two products were not matched as comparable products.

DOC Position

We agree with petitioners. We have disregarded this differential because the two products were not matched.

Comment 10

Petitioners maintain that Metsä-Serla's response concerning warehousing expenses incurred through one warehousing company contains substantial errors and omissions and should be disregarded in favor of BIA. Petitioners state that when the Department attempted to duplicate the reported charges using the documentation for a preselected sale,

the computation yielded an amount very different from that reported.

Respondent maintains that the problem in duplicating the reported charges from the documentation at hand arose because the invoices contained clerical errors involving the weight of the product, and that other documents, such as the mill order and customs invoice, support their contention that the correct unit of weight for the written figure is short tons. Respondent also maintains that the Department's recalculation incorrectly included the first month's storage expense. Respondent claims that when these discrepancies are taken into account, the calculation of the charge is very close to that reported to the Department.

DOC Position

We agree with respondent. The documentation provided was unclear and contained clerical errors. However, the explanations given by respondent for the resulting discrepancies are satisfactory.

United/Repola—Comment 1

United/Repola contends that critical circumstances do not exist with respect to its exports. According to United/Repola, critical circumstances determinations should be made on a country-wide basis. United/Repola argues that, if the Department were to examine the level of exports of coated groundwood paper from Finland made by all Finnish exporters, it would find that total exports declined in the aggregate during the five-month period prior to the Department's preliminary determination when compared to the previous five-month period.

However, United/Repola states that, if the Department bases its determination on company-specific data, the Department still should not find that critical circumstances exist for its exports. United/Repola contends that its exports declined if comparisons are made using either four-month or six-month comparison periods. United/Repola argues that the increase shown using the five-month period from January to May 1991 is due to its acquisition of a customer who formerly purchased coated groundwood paper from another Finnish mill. Therefore, this increase is compensated by a decrease in exports by another Finnish producer.

Petitioners contend that critical circumstances exist with respect to exports of subject merchandise by United/Repola. Petitioners contend that the Department should reject United/Repola's claim that an analysis of critical circumstances should be based on imports from all Finish mills. Quoting from Antifriction Bearings from the Federal Republic of Germany, 54 FR 18992, they maintain that "company specific determinations better fulfill the objective of the critical circumstances provision in deterring specific companies that may try to increase imports massively prior to the suspension of liquidation."

Petitioners claim that United/Repola has attempted to manipulate the data by using a six-month analysis. Petitioners note that data for the sixth month, June 1991, is unverified. They also contend that since the six-month period includes all of June 1991 and since the Department suspended liquidation on June 13, 1991, use of the June data would distort the analysis. Petitioners maintain that a five-month comparison is a more accurate reflection of United/Repola's exports. Finally, petitioners argue that respondents' claim that the surge in imports was due to a shift in production is both unverified and irrelevant.

DOC Position

We agree with petitioners. Where possible, it is the Department's practice to make critical circumstances determinations on a company-specific basis, especially when the determination is based, in part, upon whether the importer knew or had reason to know that the imports in question were dumped. This practice is supported by the language in section 735(a)(3) of the Act, which provides for determinations of importer knowledge of dumping by reference to the exporter selling the merchandise which is the subject of the investigation at less than its fair value. Therefore, we have not considered whether imports from Finland declined as a whole. (For a full discussion of the Department's criteria, see the preliminary negative determinations of critical circumstances for coated groundwood paper from Belgium, Finland and France cited in the Critical Circumstances section of this notice.) Regarding the use of United/Repola's June data, we concur with petitioners that it is inappropriate to use data on exports made after the suspension of liquidation began because we are only concerned with the amount of exports prior to suspension of liquidation. In this case, it is especially inappropriate to use these data because our preliminary determination was published on June 13, 1991. Regarding the use of four-month comparison periods, there is no reason to use a shorter comparison period if it is possible to use an additional month of data. Therefore, we have not based our comparison on four-month periods.

Comment 2

Petitioners maintain that foreign inland freight expenses incurred by United/Repola for two of its three mills (Rauma and Kaipola) should be based on BIA because United/Repola reported estimated costs for these mills. Petitioners note that United/Repola claimed that it had reported actual costs for these mills and that it was unable to provide any documentation at verification supporting its estimated freight expenses or the derivation of its average costs. As BIA, petitioners state that the Department should use the weighted-average freight charge reported for United/Repola's third mill (Jamsankoski).

United/Repola maintains that Kaipola was unable to use actual foreign inland freight charges because such expenses were not maintained in its computer system. United/Repola claims that these charges represent a reliable approximation of the actual charges incurred and should be used by the Deprtment.

DOC Position

We agree with petitioners. At verification, United/Repola was unable to provide any documentation of its estimated freight charges incurred by the Rauma mill. In addition, although it was able to provide a worksheet for its Kaipola freight estimates at verification, it was unable to substantiate the numbers on this worksheet nor was it able to explain how it derived these data. Therefore, because we could not verify the freight expenses reported for sales from the two mills in question, we are using BIA to calculate these expenses. Because petitioners' suggested methodology is reasonable, we are basing BIA on this methodology.

Comment 3

Petitioners maintain that brokerage charges incurred for shipments from United/Repola's Kaipola mill should be based on BIA because the Department discovered at verification that United/Repola reported average costs for this mill, although United/Repola had stated in its questionnaire response that it reported actual brokerage and handling charges. Petitioners note that at verification United/Repola could not show the derivation, nor the validity, of the average costs which were reported. As BIA, petitioners state that the Department should use the average cost plus the largest percentage difference in cost between average and actual costs, as verified by the Department.

United/Repola argues that it is a matter of course that randomly selected

brokerage charges will differ from the average of all such charges, and that the unreliability of the average is not proven by showing differences when the average is compared to a small set of randomly selected actual expenses. United/Repola maintains that if any deviation from the average were to be used as BIA, it should be the average deviation, not the highest.

DOC Position

We agree with petitioners. At verification, we found that, contrary to its assertion, United/Repola had based its brokerage expenses for the Kaipola mill on average costs. In addition, we found that United/Repola was not able to show how it derived these average expenses. Therefore, we determined that these expenses did not verify and have used BIA. As BIA, we have used the average cost reported by United/Repola plus the largest percentage difference in cost between average and actual costs found at verification.

Comment 4

Petitioners maintain that the Department should use BIA to calculate port charges for all of United/Repola's shipments to the United States. Petitioners note that United/Repola failed to report these charges for exports made from its Rauma and Jamsankoski mills. In addition, petitioners maintain that the Department was unable to verify the average charges reported for the Kaipola mill. As BIA, petitioners state that the Department should use information supplied in the petition.

United/Repola states that the port charges for the Rauma and Jamsankoski mills were discussed at verification in Finland. United/Repola further states that the Department should accept the charges provided at verification because these charges do not constitute new information.

DOC Position

We agree in part with respondents. At verification, company officials provided us with port charges for each sale for which no charge had been reported. Because this is the most accurate information on the record and because we verified the accuracy of this information, we are using these charges. Regarding the port charges reported for the Kaipola mill, we verified that these charges were accurately reported.

Comment 5

United/Repola contends that its direct Finnish sales provided at verification should be included in the margin calculation. It states that the Department was provided with a complete list of these sales at the beginning of verification. Respondent claims that these sales were omitted from the sales listing by mistake. Respondent further claims that the Department would be in plain error to exclude these sales from its calculations, since this is information that has passed verification scrutiny. Respondent claims that our instructions not to include these sales on the post-verification computer tape submitted by United/Repola was incorrect, and that the Department's rejection of the sales as new information is merely a procedural nicety.

Petitioners state that the Department should continue to reject pricing information concerning United/Repola's direct sales. They note that the verification report states that the values on the invoices did not appear to match for one-half the values reported on the worksheet provided at verification. According to petitioners, this information failed verification.

DOC Position

We disagree with respondent. The sales in question were not a minor addition to, nor a simple clarification of, information already on the record. These sales constitute a significant portion of United/Repola's home market sales and were not submitted to the Department in a timely manner as required by 19 CFR 353.31(a)(1)(i) of the Department's regulations. They therefore constitute new information. As such, we informed United/Repola at verification that we would not accept this information. Moreover, although United/Repola provided information on charges and adjustments at verification for a portion of the sales in question, we did not examine these charges and adjustments precisely because they related to new sales not previously reported to the Department. Finally, we agree with petitioners that a portion of the information provided at verification failed because the information provided by United/Repola to verify the data on one of its two worksheets did not support the values shown.

Comment 6

United/Repola maintains that the brightness of Jamsa Smooth, one of its MFC grades of paper produced by the Jämsänkoski mill, can reasonably be classified as either grade 04 or 05. Further, respondent argues that it does not make sense to differentiate in brightness among different MFC products, as the differences which exist are insignificant.

DOC Position

During verification, we discovered that the brightness for Jamsa Smooth was classified as brightness grade 05, even though its brightness on the ISO scale qualified it as grade 04. Examining the verification exhibit closely, we found that another product produced by the Jämsänkoski mill, Jamsa Bulky, was also classified as brightness 05 while actually being brightness 04 and that United/Repola had combined both of these products with additional products in the same control number used purportedly to identify unique products. These discrepancies affect product matching for all products produced by the Jämsänkoski mill. We have examined the information on the record and have concluded that re-matching these products is not possible without making several assumptions for which there is no basis. Therefore, because this problem was discovered so late in the proceeding, we have decided to use the reported data as BIA because there is no other available data to match against the product group sold in the United States.

Veitsiluoto—Comment 1

Petitioners argue that the Department should reject Veitsiluoto's claim that travel and salary expenses related to technical services are only indirectly related to U.S. sales, because the Department was unable to verify the nature of these expenses. Petitioners maintain that because such expenses are variable and may be tied to specific sales, the Department should deduct them in determining U.S. price.

Veitsiluoto contends that the expenses to which petitioners refer cover all products handled by Madden for all the Finnish paper mills and relate to basic research on paper quality and characteristics, promotion of goodwill, and potential for future sales, in addition to the investigation of specific complaints. Moreover, Veitsiluoto maintains that these general services cannot be segregated from investigations of specific complaints, which may take place on the same trip. Veitsiluoto also notes that it volunteered to respond to questions regarding technical services the week following verification since the person in charge of that department at Madden was on vacation during verification there, but that no questions from the Department were forthcoming. Finally, while the respondent does not support the Department's preliminary methodology with respect to commissions, it maintains that such a methodology

applied in this final determination would moot petitioners' argument, as the commissions cover all of Madden's operating costs.

DOC Position

We agree with petitioners in part. Because Veitsiluoto was unable to show that these expenses are indirectly related to U.S. sales at verification, we have treated as direct selling expenses the entire amount incurred for travel during the POI as BIA. Since Madden incurs these expenses on behalf of each of the respondents, we have allocated this total amount among all sales made by each respondent through Madden. We have not included salaries as direct selling expenses because these are typically considered to be indirect selling expenses. As for Veitsiluoto's offer to respond to questions the week following verification, it is not the Department's standard practice to allow respondents to submit new information subsequent to verification.

Comment 2

Petitioners contend that Veitsiluoto reported its warranty expenses in an inconsistent manner for its U.S. and home market sales because it reported warranty expenses for its U.S. sales net of the revenue earned on the sale of damaged merchandise (*i.e.*, its salvage sales), but reported home market warranty expenses without offsetting salvage value. Arguing that such an inconsistency distorts the adjustment to home market value, petitioners contend that, lacking an ability to deduct salvage value from home market warranty expenses, the Department should calculate FMV by adjusting for only the full amount of warranty expenses incurred on U.S. sales.

Veitsiluoto maintains that the reporting of such expenses cannot be made consistent between markets when the actual experience with warranty expenses differs between markets, as a result of the ordinary course of business. Veitsiluoto contends that it could report only actual expenses incurred in each market. Veitsiluoto also asserts that since customers paid VAT originally, and since Veitsiluoto remits the VAT on warranty payments or credits, it is reasonable to include VAT as a warranty expense.

DOC Position

We agree with petitioners. Veitsiluoto should have ensured that reported home market warranty expenses were net of salvage value to be consistent with reported U.S. warranty expenses. We disagree with respondent that VAT is properly included as a home market warranty expense. Veitsiluoto does not remit VAT to the Finnish government on a cancelled sale as well as to the customer that received the warranty. Because we have no information on home market salvage value, and because home market sales were reported inclusive of VAT, we have no information on actual net home market warranty expenses and therefore must disallow home market warranty expenses in this final determination.

Comment 3

Veitsiluoto asserts that it properly reported U.S. warranty expenses by reporting four years' historical experience in both the home and U.S. markets. Veitsiluoto maintains that the Courts and the Department have recognized that a claim of warranty expenses based on historical experience is reasonable and proper because actual warranty expenses for the POI would not be known until long after the POI. Moreover, Veitsiluoto notes that the Department never advised Veitsiluoto that its reported U.S. warranty expenses were in any way deficient. Veitsiluoto contends that the Department may not penalize parties without first giving them notice of its concerns.

DOC Position

We have accepted Veitsiluoto's reported U.S. warranty expenses for the final determination.

Comment 4

Petitioner contends that Veitsiluoto failed, to substantiate the direct materials cost for its home market product 65 gram web offset paper, and that the Department should therefore disregard the difference in merchandise adjustment claimed by Veitsiluoto.

Veitsiluoto maintains that a careful reading of the verification report and the pertinent exhibit reveal that it correctly reported the direct materials costs in question.

DOC Position

We agree with respondent and have used its reported costs for the final determination.

Comment 5

Veitsiluoto contends that the Department successfully verified the accuracy of the data reported regarding total volume and value of sales for Finland, the United States, and third countries. Veitsiluoto notes that the integrity of the Finnpap and Madden data bases were checked by four import compliance specialists over approximately 17 days. Regarding third country volume and value, Veitsiluoto asserts that Veitsiluoto's sales ledgers adequately demonstrated the validity of Finnpap data.

DOC Position

We disagree with Veitsiluoto that the Department successfully verified the accuracy of the data submitted regarding total volume and value of third country sales. We were unable to verify these data because Veitsiluoto was unable to produce the source data from which the information in its questionnaire response was derived. Rather, Veitsiluoto provided its sales ledger to demonstrate the reasonableness of the information reported. Also, Veitsiluoto never indicated to the Department that it reported third country volume and value on the basis of invoice date, instead of on the basis of order date (date of sale) used in determining total home market and U.S. volume and value.

Thus, since we have concluded that the third country volume and value information has not been verified to our satisfaction, we must resort to BIA for this information. However, since we have no information on third country sales, and since, from all the information available to us, we cannot conclude that the home market is not viable, we have determined to use Veitsiluoto's third country volume and value figures as BIA for determining home market viability. Accordingly, we will use home market sales to calculate FMW.

Continuation of Suspension of Liquidation

In accordance with section 735(d)(1) of the Act, for Kymmene, Metsa-Serla, Veitsiluoto, and all other producers/manufacturers/exporters, we are directing the Customs Service to continue to suspend liquidation of all entries of coated groundwood paper from Finland, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after June 13, 1991, which is the date of publication of our preliminary determination of the **Federal Register**.

In accordance with section 735(c)(4)(B) of the Act, we also are directing the Customs Service to suspend liquidation of entries of coated groundwood paper exported from Finland by United/Repola, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption, on or after March 15, 1991, which is 90 days prior to the date of publication of the preliminary determination of the **Federal Register**.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States prices as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Weighted-average margin percentage	Critical circumstances
Kymmene Corporation	28.20	No.
Metsa-Serla Oy	35.20	No.
United Paper Mills, Ltd./Repola Oy	31.27	Yes.
Veitsiluoto Oy	32.96	No.
All others	30.84	No.

ITC Notification

In accordance with section 733(d) of the Act, we have notified the ITC of our determination.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)), and 19 CFR 353.20.

Dated: October 28, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

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[A-427-803]

Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From France

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Steve Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3773.

FINAL DETERMINATION:

Background

Since the publication of our affirmative preliminary determination on June 13, 1991, (56 FR 27237) the following events have occurred.

On June 20, 1991, the petitioner in this investigation, the Committee of the American Paper Institute to Safeguard the U.S. Coated Groundwood Paper Industry, requested a public hearing. On June 22, 1991, the respondent, Feldmuehle Beghin, S.A. (Feldmuehle), request a public hearing.

On June 21 through 25, 1991, the Department conducted verification in France of the questionnaire response submitted by Feldmuehle. On June 28, 1991, Feldmuehle requested that the Department postpone the final determination in this investigation for 60 days, pursuant to 19 CFR 353.20(5)(b). On July 2, 1991, petitioner submitted a letter opposing the postponement request.

On July 8, 1991, the Department published in the **Federal Register** (56 FR 70898) its preliminary negative determination of critical circumstances with respect to imports from France. On July 17, 1991, the Department published a notice in the **Federal Register** (56 FR 32548) postponing the final determination in this investigation until not later than October 28, 1991.

On August 8, 1991, the Department conducted verification of Feldmuehle's questionnaire response at the offices of the company's U.S. sales agent, Feldmuehle North America (FNA), located in New York, New York.

Petitioner and respondent filed case briefs on September 26, 1991, and rebuttal briefs on October 1, 1991. A public hearing was held on October 7, 1991. On October 10, 1991, Feldmuehle submitted a revised computer tape reflecting changes to U.S. movement charges.

Scope of Investigation

The product covered by this investigation is coated groundwood paper. For purposes of this investigation, coated groundwood paper is paper coated on both sides with kaolin (China clay) or other inorganic substances (*e.g.*, calcium carbonate), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of 1) basis weight (*e.g.*, pounds per ream or grams per one square meter sheet); 2) GE brightness; or 3) the form in which it is sold (*e.g.*, reels, sheets, or other forms). "Paperboard" is specifically excluded from the scope of this investigation. For purposes of this investigation, paperboard is defined to be coated groundwood paper 12 points (0.012 inch) or more in thickness.

This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 4810.21.00.00, 4810.29.00.00, and 4823.59.40.40. Although the HTS item numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1990, through December 31, 1990.

Such or Similar Comparisons

We have determined that the produce covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of coated groundwood paper (CGP) from France to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of CGP to sales of identical CGP in France.

United States Price

We based United States price on purchase price, in accordance with section 772(b) of the Act, because all U.S. sales were made to an unrelated party prior to importation into the United States. Exporter's sales price methodology is not appropriate since the subject merchandise was not introduced into the inventory of Feldmuehle's related U.S. selling agent, this was the customary commercial channel for sales of this merchandise between the parties involved, and Feldmuehle's related U.S. selling agent acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. customer. (*See*, "Comment 5" in the Interested Party Comments section of this notice.)

We made miscellaneous adjustments to Feldmuehle's reported data based on information acquired at verification. We

disregarded trial and sample sales made during the POI because these accounted for a very small percentage of U.S. sales by volume. (*See*, "Comment 6" in the Interested Party Comments section of this notice.)

We calculated purchase price based on packed, delivered prices. We made deductions, where appropriate, for loading, foreign inland freight, freight forwarding, movement insurance, ocean freight, U.S. duty, U.S. brokerage, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts and rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the French value-added and parafiscal sales taxes that would have been collected had the French government taxed the exports.

Foreign Market Value

In order to determine whether there were sufficient sales of CGP in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of CGP to the volume of third country sales of CGP, in accordance with section 773(a)(1) of the Act. Feldmuehle had a viable home market with respect to sales of CGP during the POI.

We calculated FMV based on f.o.b. Factory and delivered prices to unrelated customers in the home market. We made miscellaneous adjustments of Feldmuehle's reported data based on information discovered at verification. We disregarded sales made through a related party in the home market because these accounted for a very small percentage by volume of home market sales. We also disregarded sales of CGP to French customers but delivered to printers outside France, because we did not consider these to be home market sales. We made deductions, where appropriate, for loading, foreign inland freight, discounts, and rebates. We deducted home market packing costs and added U.S. Packing costs, in accordance with section 773(a)(1)(B) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance of sales adjustments, where appropriate, for differences in credit expenses, post-sale warehousing, and warranty expenses. We recalculated Feldmuehle's imputed credit expenses incurred on home market sales based on a price net of VAT and discounts. We recalculated Feldmuehle's imputed credit expenses incurred on U.S. Sales by using the home market interest rate. Although Feldmuehle borrowed in both markets, the French interest rate was the lower of the rates in both markets. This use of the lower of the interest rates in both markets is consistent with the Court of Appeals' remand in *LMI-La Metalli Industriale, S.p.A.* v. *United States (LMI)*, 9122 F.2d 455 (Fed. Cir. 1990), of *Brass Sheet and Strip from Italy*. We also made circumstance of sale adjustments, where appropriate, for differences in the amounts of value-added and sales taxes.

We made adjustments, where appropriate, for differences in commissions when incurred in both markets, in accordance with 19 CFR 353.46(a)(2). We determined that the related party commission paid on U.S. Sales is at arm's-length, and, therefore, recalculated commission amounts incurred on all U.S. Sales. (*See*, "Comment 1" in the *Interested Party Comments* section of this notice.) Where commissions were paid only in the United States, we allowed an adjustment for indirect selling expenses incurred in France to offset commissions paid in the United States, in accordance with 19 CFR 353.56(b). We did not make an adjustment for the commission paid to the related party in France, because we were not satisfied that this commission was at arm's-length. (*See*, "Comment 1" in the *Interested Party Comments* section of this notice.)

We recalculated Feldmuehle's inventory carrying costs incurred on its home market sales by backing out all charges and adjustments from gross unit price.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. Sales as certified by the Federal Reserve Bank.

On May 13, 1991, Feldmuehle requested that the Department adjust for fluctuations in the exchange rate between the U.S. Dollar and the French franc under 19 CFR 353.60(b). We were unable to consider Feldmuehle's request in our preliminary determination due to the late date on which the claim was made. We now determine that the special rule for currency conversion as outlined in section 353.60(b), does not apply in this investigation. We have explained our position regarding Feldmuehle's request for currency conversion in "Comment 4" in the *Interested Party Comments* section of this notice.

Verification

As provided in section 776(b) of the Act, we verified the information that we used in making our final determination by using standard verification procedures, including on-site inspection of sellers' facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (B-099) of the Main Commerce Building.

Critical Circumstances

On July 8, 1991, we published in the **Federal Register** (56 FR 30898) preliminary negative determinations of critical circumstances for CGP from Belgium, Finland, and France. In that notice we articulated the Department's methodology in determining whether critical circumstances exist. Also in that notice, we indicated that we compared company-specific shipment data for the five month period beginning with the month after the filing of the petition (comparison period) to the five month period including and immediately prior to the filing of the petition (base period). Our analysis of the imports of coated groundwood paper from France showed that the volume of imports from the base period to the comparison period decreased, and thus, we found that there have not been massive imports of the subject merchandise since the filing of the petition.

Since the publication of the preliminary negative determination of critical circumstances for France, we verified the company-specific shipment data submitted by Feldmuehle. Accordingly, we now determine that critical circumstances do not exist with respect to imports of CGP from France.

Interested Party Comments

Comment 1

Respondent argues that the mark-up paid to FNA by Feldmuehle should not be treated as a commission because FNA performs a number of additional selling and administrative functions not undertaken by commission agents, including ensuring that production, shipping, and deliveries meet printers' scheduling requirements, taking title to the merchandise, performing sales accounting and collection functions, arranging for the provision of technical services, and participating in trade shows and other events. Respondent claims that a buyer of a product cannot receive a commission per section for its own purchases. Respondent also states that if the Department proceeds to adjust for related commissions, only that portion of the U.S. commission paid to employees who act as typical sales

agents should be adjusted for, as opposed to that portion of the commission paid to others to perform accounting and traffic functions, in short, overhead. Additionally, respondent maintains that if the Department treats the FNA mark-up as a commission, it should similarly treat the payment from Feldmuehle to its related agent in the home market, BFL, as an arm's-length transaction.

Petitioner argues that the commission paid to FNA by Feldmuehle is directly related to the sales at issue because the commissions are paid as a percentage of sales. Petitioner asserts that these sales reflect arm's-length transactions because FNA pays all of its sales-related expenses and because the magnitude of the commissions is consistent with industry practice among U.S. Companies. Petitioner also states that there is no support in law for respondent's argument that only the portion of the commission paid to employees for sales should be included in any adjustment for commissions the Department may decide to make. Lastly, petitioner contends that the Department is not required to treat related commissions in the home market and U.S. Consistently, especially because respondent has never claimed that home market commissions are at arm's-length.

DOC Position

The Court of Appeals' remand in *LMI*, 912 F.2d 455 (Fed. Cir. 1990), of Brass Sheet and Strip from Italy instructed the Department to adjust for commissions paid to a related party in the home market when the commissions were determined to be (1) at arm's-length and (2) directly related to the sales in question. Subsequent to this, the Department has developed the following guidelines to determine whether commissions paid to related parties either in the United States or in the foreign market are at arm's-length:

(1) We will compare the commission paid to the related selling agent to those paid by respondent to any unrelated selling agents in the same market (home or U.S.) or in any third country market.

(2) In cases where there is not an unrelated sales agent, we will compare the commission earned by the related selling agent on sales of merchandise produced by the respondent to commissions earned by the related selling agent on sales of merchandise produced by other unrelated sellers or manufacturers.

In appropriate circumstances we will also examine the nature of the agreements or contracts between the manufacturer(s) and selling agent(s) which establish the framework for payment of commissions and for services rendered in return for payment, in order to ensure that both related and unrelated agents perform approximately the same services for the commission. If, based on the above analysis, the Department is satisfied that the commissions are at arm's-length as well as directly related to the sale, we will make an adjustment for these commissions.

In this investigation, we find that the related party commissions paid in both the United States (to FNA) and France (BFL) were directly related to the sales at issue because both commissions were paid as a percentage of sales. However, while we are satisfied that commissions paid by Feldmuehle to FNA are at arm's-length, we are not satisfied that the related party commission paid by Feldmuehle to BFL is at arm's-length since we do not have a valid benchmark to which we can compare these commissions. The commissions paid to unrelated merchants on home market sales cannot be used as a valid benchmark to which we can compare the commission paid to BFL because Feldmuehle pays those commissions downstream (*i.e.*, on the same sale on which Feldmuehle also pays its commission to BFL).

We find that the related party commission paid by Feldmuehle to FNA is at arm's-length for the following reason. Depending on the customer, Feldmuehle's commission to FNA is split between unrelated agents, FNA, and FNA employees. On some sales, all of the commission is paid to FNA. However, since, on other sales, almost all of the commission is paid on unrelated agent, we determine that an appropriate benchmark exists. Because the commission percentage paid to unrelated agents is identical to the commission paid to FNA in these situations, we determine that the FNA commission is at arm's-length.

Comment 2

Respondent maintains that the freight forwarding services provided by a related company, Nord-Ostsee, should not be deducted from U.S. price because these are simply intra-firm mark-ups. However, respondent states that if the Department were to deduct such a mark-up, Nord-Ostsee's charge to Feldmuehle is at arm's-length despite the fact that Nord-Ostsee's profit margin on related company business is slightly higher than its profit margin on unrelated company business. Respondent argues that the difference in profit is the result of economies of scale since over three-fourths of Nord-Ostsee's business is with its affiliates.

Petitioner argues that these expenses should be deducted, and that the charges reported are not at arm's-length because the terms of the transaction are more favorable for related parties than unrelated parties (*i.e.*, the rate of Nord-Ostsee profit on related company transactions is less than the rate of profit on unrelated company transactions). Therefore, petitioner recommends that the Department rely on best information available for determining the gross profit rate charged by Nord-Ostsee as the verified rate charged to unrelated customers, and that the Department adjust Feldmuehle's freight forwarding services to reflect the difference in gross profit rate from Nord-Ostsee services to Feldmuehle vis-a-vis unrelated customers.

DOC Position

We agree with petitioner that these charges should be deducted as they are directly related to U.S. sales. We agree with respondent, however, that the difference in Nord-Ostsee's profit margins between Feldmuehle family business and non-Feldmuehle family business is not only insignificant, but explainable in terms of economies of scale. In any event, the amount of Nord-Ostsee' charge to Feldmuehle clearly exceeds the cost of the services provided. Therefore, we determine that it is appropriate to deduct these charges from U.S. price.

Comment 3

Petitioner holds that the Department should exclude Feldmuehle's sales of non-standard width CGP from stock in determining FMV because these sales are outside the ordinary course of trade. Petitioner claims that the Department evaluates the quantity and prices of sales in relation to other home market sales to determine whether the sales were made according to the company's typical business practice, and, hence, in the ordinary course of trade. Petitioner points out that there are few such sales in the home market sales listing, and that the verification report notes that the prices of these sales were not consistent with other home market sales. Petitioner argues that the fact that non-standard width CGP is made of the same material as standard width CGP is irrelevant.

Respondent argues that non-standard width CGP sold from stock is of identical quality and technical specifications to wider width prime material, and that the definition of CGP adopted by the Department excludes width as an element to be considered. Therefore, respondent holds that the Department cannot determine that this

is off-specification paper because the Department never established a criterion for determining how wide paper must be before it is treated as non-standard. Respondent also states that these sales should not be excluded simply because they were at lower prices. Respondent, moreover, maintains that the sales in question were on a regular repeat basis to one customer, and that the quantities sold were well within the range of typical sales. Lastly, respondent states that different trade terms to a single customer with a different end use does not make sales excludable, nor do low volume sales through a different distribution channel make for unusual reasons or unusual circumstances.

DOC Position

We agree with respondent. Petitioner specifically recommended excluding width from consideration in determining the characteristics of CGP earlier in this investigation. Therefore, the width of the CGP in question is simply not an applicable criterion for matching products. Moreover, because the quantities of these sales were within the typical range, and because there is no reason to believe that this was not the normal commercial practice for these sales prior to the POI, we do not believe that these sales fall outside the ordinary course of trade. We, therefore, have included these sales in the Department's calculation of FMV.

Comment 4

Respondent argues that, pursuant to 19 CFR 353.60(b), the Department should lag the U.S. date of sale 180 days in converting foreign currency to U.S. dollars because of alleged temporary fluctuations in the franc/dollar exchange rate that occurred during the POI. Specifically, respondent contends that the unanticipated, exogenous shock to the currency markets caused by the Persian Gulf conflict resulted in a period (corresponding to the POI) during which exchange rates temporarily varied from prevailing exchange rates. Respondent maintains that these fluctuations are precisely the type contemplated by the special rule (19 CFR 353.60(b)) that is intended to prevent the application of artificial dumping margins resulting from temporary periods of currency fluctuation. Respondent notes that the dollar fell to its lowest point against the franc since 1987 during the POI, and that the dollar recovered swiftly once it appeared that the United States would achieve its foreign policy goals. In addition, respondent assets that exchange rates became impossible to predict during this period based on prior currency exchange rates, and therefore, no rational pricing adjustments could be made. Respondent cites *Melamine Chemicals* 732 F.2d 925 (Fed. Cir. 1984) (*Melamine*) in which the court upheld the Department's application of a lag (the previous quarter's exchange rate) in situations involving temporary currency fluctuation. Lastly, respondent asserts that the special rule should be applied even if currency fluctuations do not account for the entire weighted-average margin for Feldmuehle because it would be irrational for the Department to calculate the amount of the dumping margin attributable to currency fluctuation, but then to ignore the result in setting the margin. In addition, respondent notes that the margin calculated by the Department plays an important role in the analysis of possible injury to the U.S. industry by the ITC.

Petitioner contends that the Department should follow its standard practice of applying the quarterly rates in effect during the POI in the conversion of foreign currency. Because the appreciation of the franc against the dollar followed a steady, non-volatile trend for virtually the entire POI, a trend which already had been in existence for a fully years prior to the POI, petitioner maintains that the steady rise in the value of the franc against the dollar was not a temporary fluctuation, but a sustained change. Petitioner contrasts the volatility of the West German mark in *Melamine*, where it jumped six percent in value against the dollar during the first quarter of 1979 and then dropped 3.4 percent during the second quarter, to the sustained appreciation of the franc in this investigation. Since the franc's steady rise was not a temporary fluctuation, according to petitioner Feldmuehle should have adjusted its prices, but failed to do so. Petitioner also contends that even if fluctuations in the exchange rates during the POI could, *arguendo*, be viewed as "temporary," the Department should not apply the special rule because the differences between the U.S. price and FMV would not result solely from the exchange rate fluctuations, as required under the special rule. Additionally, petitioner states that if the Department still decides to apply the special rule in this case, a 180-day lag period is unprecedented and excessive, because the Department has never used a lag period of more than 90 days. Finally, petitioner argues that a circumstance of sale adjustment to account for exchange rate fluctuations is likewise unprecedented because the Department has only made such an adjustment where hyperinflation was a problem, and then only to constructed value. No such situation is present here.

DOC Position

The special rule for investigations outlined in 19 CFR 353.60(b) provides:

> For purposes of investigations, producers, resellers, and importers will be expected to act within a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates. When the price of the merchandise is affected by temporary exchange rate fluctuations, the Secretary will not take into account in fair value comparisons any difference between United States price and foreign market value resulting solely from such exchange rate fluctuation.

We interpret 19 CFR 353.60(b) to mean that if there has been a sustained change in the exchange rate, and respondents can demonstrate that they revised their prices within a reasonable period of time to reflect that change, then we will use an appropriate lag period to convert foreign currency. (See, Final Determination of Sales at Less Than Fair Value; Malleable Cast Iron Pipe Fitting From Japan (52 FR 13855)). If temporary exchange rate fluctuations occur during the POI (*i.e.*, the daily rate varies from the quarterly average rate by more than five percent), we will following present policy, also use the quarterly exchange rate for those days in our LTFV analysis, but *only if* this results in a reduction of the weighted-average dumping margin for that company to *de minimis* or zero. (See, Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Federal Republic of Germany (52 FR 822, January 9, 1987) and Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855, April 27, 1987). Accordingly, we do not interpret the special rule outlined in 19 CFR 353.60(b) as envisioning the treatment of an entire POI as a temporary fluctuation.

Regarding the nature of the exchange rate fluctuation in this case, we agree with petitioner that the movement of exchange rates during the POI can be characterized as a non-volatile continuation of a sustained depreciation of the U.S. dollar against the franc that, while not entirely steady, (*i.e.*, on occasion the daily rate varied from the quarterly rate by more than five percent), began up to two years before the POI. Since respondent did not make price adjustments in response to this sustained change in exchange rates, no special treatment under the provision of

the regulations dealing with sustained changes is warranted here.

Regarding respondent's comparison of fluctuations during the POI to periods before and after in support of its claim that the entire POI was a temporary aberration from a relatively stable exchange rate over the past several years or a time of great uncertainty in currency markets, we do not believe that 19 CFR 353.60(b) contemplated the use of *post hoc* analysis to determine whether currency fluctuations were temporary. We interpret the special rule to be prospective in outlook. That is, were currency fluctuations so volatile and temporary that a business could not reasonably be expected to predict what future currency fluctuations would be? Or, were exchange rate movements such that a business could discern a future general trend in their movement and make an appropriate adjustment? The evidence in this instance indicates the latter situation.

To the extent the POI exhibited some temporary currency fluctuations where on some days the dollar/franc exchange rate exceeded by five percent the quarterly rate, we have determined not to apply the lag period procedure used in *Melamine* to compensate for any such temporary currency fluctuations. We have reconsidered our actions in *Melamine* and find that the Department's actions in *Melamine* were a response to a very unusual situation and should not be followed.

Even assuming, *arguendo*, that the POI exhibited some temporary currency fluctuations, respondent would not be entitled to any remedy under the special rule. Under the special rule set out in 19 CFR 353.60(b), we will not consider any differences between U.S. price and foreign market value due solely to exchange rate fluctuations. We have interpreted this rule to mean that temporary exchange rate fluctuations alone must be responsible for a firm's overall weighted-average dumping margin. *See, e.g.*, Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Federal Republic of Germany (52 FR 822, January 9, 1987) and Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855, April 27, 1987).

To determine whether temporary exchange rate fluctuations are solely responsible for a firm's margin, we use the quarterly exchange rate for those days where the daily exchange rate differs from the quarterly rate by more than five percent. In this instance, we find that, in using the quarterly exchange rate, respondent's margin does not fall to *de minimis* or zero. Accordingly, respondents would not be entitled to any relief under the special rule even assuming, *arguendo*, that we were to determine that exchange rate movements are characterized by temporary fluctuations.

Finally, the Department does not believe that changes in currency exchange rates are, or can be, an appropriate basis for adjustments on circumstances of sale except in extraordinary cases, such as in hyperinflationary economies.

Comment 5

Petitioner asserts that the Department should determine U.S. price on the basis of exporter's sales price (ESP) because Feldmuehle's related selling agent in the United States (FNA) acted as more than a processor of sales-related documents and as more than a communication link between FNA and Feldmuehle. Specifically, petitioner notes that Feldmuehle itself contends that FNA takes title to the merchandise after importation and acts as the importer of record, FNA engages in promotional activities at trade shows and other events, and FNA performs numerous other administrative functions, such as the arrangement for the provision of technical services by mill personnel. Additionally, petitioner alleges that FNA has considerable responsibility and authority with respect to sales of CGP, and is in fact itself the seller of the CGP subject to investigation. Lastly, petitioner argues that the Department should use the information contained in the petition regarding indirect selling expenses as BIA, since Feldmuehle did not report FNA's indirect selling expenses.

DOC Position

Pursuant to section 772 of the Act and 19 CFR 353.41, the terms of sale for purchase price sales must be set prior to the date of importation; the terms of sale for ESP sales, however, may be set either before or after importation. The Department's practice on this issue, however, is to examine several additional criteria when making a decision as to whether a sale should be considered as purchase price of ESP. These additional criteria, cited in our preliminary determination, include the following:

(1) The merchandise in question is shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;

(2) this arrangement is the customary commercial channel for sales of this merchandise between the parties involved; and

(3) the related selling agent located in the United States acts only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

If the above criteria are met, we classify the sales in question as purchase price. Petitioners have not addressed the first two criteria. Analysis of the responses submitted by Feldmuehle indicates that the first two criteria are met in that FNA did not introduce the merchandise into its inventory, nor does it customarily do so. Regarding the third criterion (*i.e.*, whether the related agent is merely a processor of sales-related documentation and a communication link with the unrelated purchaser), we disagree with petitioners that the promotional activities and other administrative functions performed by FNA are significant. Nor do we believe that the fact that FNA takes title to the merchandise after importation and acts as importer of record are significant. Therefore, we believe that FNA only acts as a processor of sales-related documentation and a communication link with the unrelated customer. Thus, we will continue to consider the U.S. sales made by Feldmuehle as purchase price sales.

Comment 6

Respondent argues that, consistent with prior Department practice, U.S. trial and sample sales are properly excludable from the Department's determination of U.S. price because the volume of these sales during the POI was insignificant.

Petitioner argues that trial and sample sales should be used in the Department's determination of U.S. price because section 772 of the Act does not provide for the exclusion of U.S. sales made outside the ordinary course of trade. Petitioner notes that the Department has stated that there is no requirement that a U.S. sale be in the ordinary course of business; that is only a requirement for home market sales.

DOC Position

We agree with respondent. Neither the Department nor respondent has ever maintained that these trial and sample sales are outside the ordinary course of trade; indeed, they are not. However, the Department is not required to review every U.S. sale in conducting its LTFV investigations, and routinely disregards U.S. sales in its investigations when it determines that the volumes of such sales involved are insignificant.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, for Feldmuehle and all other producers/manufacturers/exporters, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of CGP from France that are entered, or withdrawn from warehouse, for consumption on or after June 13, 1991, which is the date of publication of our preliminary determination in the **Federal Register**.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Feldmuehle Beghin, S.A.	32.44
All Others	32.44

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: October 28, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-26543 Filed 11-1-91; 8:45 am]

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[A-428-808]

Notice of Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From Germany

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Steve Alley, Office of Antidumping Investigations, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3773.

Final Determination

Background

Since the publication of our affirmative preliminary determination on June 13, 1991 (56 FR 27239), the following events have occurred.

From June 17 through June 19, 1991, and on June 20 through June 23, 1991, the Department conducted verifications in Germany of the questionnaire responses submitted by MD Papier, GmbH (MD) and Haindl Papier, GmbH (Haindl), the respondents in this investigation.

On June 20, 1991, the petitioner in this investigation, the Committee on the American Paper Institute to Safeguard the U.S. Coated Groundwood Paper Industry, requested a public hearing.

On June 20 and June 24, 1991, MD and Haindl requested a public hearing. On June 28 and July 2, 1991, Haindl and MD requested that the Department postpone the final determination in this investigation for 60 days, pursuant to section 735(a)(2) of the Tariff Act of 1930, as amended (the Act). On July 2, 1991, petitioner submitted a letter opposing the postponement request. On July 12, 1991, MD submitted a revised computer tape with changes required as a result of the verification process.

On July 17, 1991, the Department published a notice in the **Federal Register** (56 FR 32548) postponing the final determination in this investigation until not later than October 28, 1991.

From August 6 through August 7, 1991, the Department conducted verification of Haindl's questionnaire response at the offices of the company's U.S. sales agent located in New York, New York.

Petitioner and respondents filed case briefs on September 26, 1991, and rebuttal briefs on October 1, 1991. A public hearing was held on October 7, 1991.

Scope of Investigation

The product covered by this investigation is coated groundwood paper. For purposes of this investigation, coated groundwood paper is paper coated on both sides with kaolin (China clay) or other inorganic substances (*e.g.*, calcium carbonate), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of (1) basis weight (*e.g.*, pounds per ream or grams per one square meter sheet); (2) GE brightness; or (3) the form in which it is sold (*e.g.*, reels, sheets, or other forms). "Paperboard" is specifically excluded from the scope of this investigation. For purposes of this investigation, paperboard is defined to be coated groundwood paper 12 points (0.012 inch) or more in thickness.

This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 4810.21.00.00, 4810.29.00.00, and 4823.59.40:40. Although the HTS item numbers are provided for convenience and customs purposes our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1990, through December 31, 1990.

Such or Similar Comparisons

We have determined for purposes of the final determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of coated groundwood paper from Germany to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of coated groundwood paper to sales of identical or similar coated groundwood paper in Germany.

United States Price

For MD and Haindl, we based USP on purchase price, in accordance with section 772(b) of the Act, where U.S. sales were made to an unrelated party prior to importation into the United States. For Haindl, exporter's sales price (ESP) methodology is not appropriate because the subject merchandise was not introduced into the inventory of Haindl's related U.S. selling agent, this was the customary commercial channel for sales of this merchandise between the parties involved, and Haindl's related U.S. selling agent acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. customer. (See "Comment 1", Haindl, of the Interested Party Comments section of this notice for further discussion). Miscellaneous adjustments were made to both Haindl's and MD's reported U.S. sales data based on information found at verification.

Haindl Papier GmbH

We calculated purchase price based on packed, delivered prices. We excluded trial sales from our analysis because these sales were made in very small quantities. (See "Comment 5," Haindl, of the Interested Party Comments section of this notice for further discussion). We made deductions, where appropriate, for loading charges, foreign inland freight, freight forwarding, ocean freight, marine

insurance, U.S. duty, U.S. brokerage, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts and rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the U.S. price the amount of the German value-added tax that would have been collected had the German government taxed the exports.

MD Papier GmbH

We calculated purchase price based on packed, delivered prices. We made deductions, where appropriate, for containerization expenses, handling charges, foreign inland freight, ocean freight, transportation insurance, U.S. duty, U.S. brokerage, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts and rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the U.S. price the amount of the German value-added tax that would have been collected had the German government taxed the exports.

Foreign Market Value

In order to determine whether there were sufficient sales of coated groundwood paper in the home market to serve as a viable basis for calculating foreign market value (FMV), we compared the volume of home market sales of coated groundwood paper to the volume of third country sales of coated groundwood paper, in accordance with section 733(a)(1) of the Act. For both Haindl and MD, the volume of home market sales was greater than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales constituted a viable basis for calculating FMV, in accordance with 19 CFR 153.48. Miscellaneous adjustments were made to both Haindl's and MD's reported home market sales data based on information discovered at verification.

Haindl Papier GmbH

We calculated FMV based on f.o.b. factory and delivered prices to unrelated customers in the home market. We excluded all home market sales to related parties in our analysis because they constituted a very small percentage by volume of home market sales made during the POI. We made deductions, where appropriate, for loading charges, foreign inland freight, freight forwarding, discounts and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act. We recalculated packing costs for both U.S. and home market sales because we did not consider machinery costs to be part of packing costs.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, warranty expenses, and technical service expenses. We recalculated Haindl's imputed credit expenses incurred on home market sales by deducting both discounts and rebates from the gross unit price to be consistent with Haindl's narrative response. We recalculated imputed credit expenses incurred on U.S. sales by deducting discounts and rebates from gross unit price.

We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes in the two markets.

We made adjustments, where appropriate, for differences in commissions when incurred in both markets, in accordance with 19 CFR 353.56(a)(2). We determined that the related party commission paid on U.S. sales is at arm's-length because the commission rate was comparable to that which Haindl's related selling agent received on sales of CGP in the U.S. market from another, unrelated CGP manufacturer. (See "Comment 2," Haindl Papier, GmbH of the Interested Party Comments section of this notice for further discussion). Where commissions were paid only in the United States, we allowed an adjustment for indirect selling expenses incurred in Germany to offset commissions paid in the United States, in accordance with 19 CFR 353.56(b).

We recalculated Haindl's inventory carrying costs incurred in the home market by backing out all charges and adjustments from the gross unit price. In addition, we reclassified credit insurance, reported as a direct selling expense by Haindl, as an indirect selling expense because these expenses were not directly related to sales. These expenses were included as part of the offset to commissions paid in the U.S. market.

Lastly, we made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57.

MD Papier GmbH

We calculated FMV based on f.o.b. factory and delivered prices to related and unrelated customers in the home market. We included sales to a related customer, pursuant to 19 CFR 353.22(b), since we determined at verification that the prices paid by this customer were at arm's length. We excluded from FMV sales made in U.S. dollars because they were made in very small quantities. We made deductions, were appropriate, for foreign inland freight, transportation insurance, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

Pursuant to 19 CFR 353.56, we made circumstances of sale adjustments, where appropriate, for differences in credit expenses and warranty expenses. We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

We recalculated MD's imputed credit expenses incurred on U.S. and home market sales by deducting discounts from the gross unit price. We recalculated credit expenses for those sales where payment had not yet been received by MD. For these sales, we used the weighted-average number of days between the date of shipment and the date of payment for all sales during the POI as the number of days for which payment was outstanding. We also recalculated MD's home market warranty expenses based on actual 1990 warranty expenses.

We also allowed an adjustment for home market indirect selling expenses to offset commissions paid in the U.S. market, in accordance with 19 CFR 353.56(b). We recalculated MD's inventory carrying costs incurred in the home market by backing out all charges and adjustments from the gross unit price. In addition, we reclassified credit insurance, reported by MD as a direct selling expense, as an indirect selling expense because this expense was not directly related to sales. This expense was included as part of the offset to commissions paid in the U.S. market.

Lastly, we made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57.

Currency Conversion

Prior to the preliminary determination in this investigation, respondents requested that the Department apply the provisions of 19 CFR 353.60(b) to account for the effect of what respondents characterized as temporary fluctuations in the exchange rate between the Deutschemark and the U.S. dollar during the POI.

We were unable to consider Haindl's and MD's requests in our preliminary determination due to the late date on which the claims were made. We now determine that the special rule for currency conversion as outlined in section 353.60(b) does not apply in this investigation. Accordingly, we have

made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. We have explained our position regarding Haindl's and MD's request for currency conversion in "Comment 1" in the Interested Party Comments section of this notice.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondents by using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Interested Party Comments

Analysis of Comments Received

We invited interested parties to comment on the preliminary determination of this investigation. We received case and rebuttal briefs from the petitioner and both respondents.

Comment 1

Respondents maintain that the Department should invoke the special rule for currency conversion provided for in section 353.60(b) of the Department's regulations because a significant portion of Haindl's and MD's margins resulted solely from the aberrational dollar/mark exchange rate during the POI that resulted from the conflict in the Persian Gulf.

Respondents have requested that because these fluctuations were merely temporary, the Department should lag the exchange rate and use either the July 1990 exchange rate or second quarter rates which reflected conditions before the crisis began. In support of their contention that there have been temporary exchange rate fluctuations, respondents provided charts showing that the U.S. dollar had declined noticeably against the deutschemark during the POI and that the dollar began to appreciate again at the end of January 1991 (the month after the end of the POI). Respondents assert that this decline of the dollar was aberrational and primarily attributable to the Iraqi invasion of Kuwait, and that once the crisis was resolved the dollar recovered to its pre-POI level.

Under these circumstances, respondents maintain that they were not obliged to adjust their U.S. prices to account for the temporary fluctuations. Although respondents recognize that in past cases the Department has interpreted § 353.60(b) as applying only where the entire margin results from the exchange rate fluctuation, respondents contend that an adjustment for that part of the dumping margin that results solely from exchange rate fluctuations is consistent with the rationale underlying the regulation. Furthermore, respondent Haindl claims it is appropriate for the Department to use a circumstance of sale adjustment to take account of exchange rate anomalies that do not fall within the Department's narrow reading of § 353.60(b).

Petitioner contends that the Department should use the quarterly exchange rate in effect during the POI, because contrary to respondents' assertions, the German exchange rate did not experience temporary and volatile fluctuations during the POI. Rather the mark/dollar exchange rate exhibited a sustained and gradual trend during the POI which had already been in existence for the preceding year. Because the exchange rate was not part of a temporary fluctuation, respondents should have adjusted their prices. Even if fluctuations in the exchange rates during the POI could be viewed as temporary, Petitioner maintains that the special rule still does not apply because the differences between U.S. price and FMV would not result solely from temporary exchange rate fluctuations. The "special rule" was not intended to deal with calculating the amount of a dumping margin, rather only to adjust for margins which exist entirely because of temporary exchange rate fluctuations. Moreover, Petitioner also states that a 180-day lag period is unprecedented and excessive. Finally, petitioner argues that a circumstance of sale adjustment is inappropriate because the Department has only made such an adjustment to adjust constructed value for hyperinflation, which facts do not exist in this case.

DOC Position

The special rule for investigations outlined in 19 CFR 353.60(b) provides:

For purposes of investigations, producers, resellers, and importers will be expected to act within a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates. When the price of the merchandise is affected by temporary exchange rate fluctuations, the Secretary will not take into account in fair value comparisons any difference between United States price and foreign market value resulting solely from such exchange rate fluctuation.

We interpret 19 CFR 353.60(b) to mean that if there has been a sustained change in the exchange rate, and respondents can demonstrate that they revised their prices within a reasonable period of time to reflect that change, then we will use an appropriate lag period to convert foreign currency. (See, Final Determination of Sales at Less Than Fair Value; Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855)). If temporary exchange rate fluctuations occur during the POI (*i.e.*, the daily rate varies from the quarterly average rate by more than five percent), we will, following present policy, also use the quarterly exchange rate for those days in our LTFV analysis, but *only if* this results in a reduction of the weighted-average dumping margin for that company to *de minimis* or zero. (See, Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Federal Republic of Germany (52 FR 822, January 9, 1987) and Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855, April 27, 1987). Accordingly, we do not interpret the special rule outlined in 19 CFR 353.60(b) as envisioning the treatment of an entire POI as a temporary fluctuation.

Regarding the nature of the exchange rate fluctuation in this case, we agree with petitioner that the movement of exchange rates during the POI can be characterized as a non-volatile continuation of a sustained depreciation of the U.S. dollar against the deutschemark that, while not entirely steady, (*i.e.*, on occasion the daily rate varied from the quarterly rate by more than five percent), began up to two years before the POI. Since respondent did not make price adjustments in response to this sustained change in exchange rates, no special treatment under the provision of the regulations dealing with sustained changes is warranted here.

Regarding respondent's comparison of fluctuations during the POI to periods before and after in support of its claim that the entire POI was a temporary aberration from a relatively stable exchange rate over the past several years or a time of great uncertainty in currency markets, we do not believe that 19 CFR 353.60(b) contemplated the use of *post hoc* analysis to determine whether currency fluctuations were temporary. We interpret the special rule to be prospective in outlook. That is, were currency fluctuations so volatile and temporary that a business could not

reasonably be expected to predict what future currency fluctuations would be? Or, were exchange rate movements such that a business could discern a future general trend in their movement and make an appropriate adjustment? The evidence in this instance indicates the latter situation.

To the extent the POI exhibited some temporary currency fluctuations where on some days the dollar/deutschemark exchange rate exceeded by five percent the quarterly rate, we have determined not to apply the lag period procedure used in *Melamine Chemicals* 732 F.2d 924 (Fed. Cir. 1984) (*Melamine*) to compensate for any such temporary currency fluctuations. We have reconsidered our actions in *Melamine* and find that the Department's actions in *Melamine* were a response to a very unusual situation and should not be followed.

Even assuming, *arguendo*, that the POI exhibited some temporary currency fluctuations, respondent would not be entitled to any remedy under the special rule. Under the special rule set out in 19 CFR 353.60(b), we will not consider any differences between U.S. price and foreign market value due solely to exchange rate fluctuations. We have interpreted this rule to mean that temporary exchange rate fluctuations alone must be responsible for a firm's overall weighted-average dumping margin. See, e.g., Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Federal republic of Germany (52 FR 822, January 9, 1987) and Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855, April 27, 1987).

To determine whether temporary exchange rate fluctuations are solely responsible for a firm's margin, we use the quarterly exchange rate for those days where the daily exchange rate differs from the quarterly rate by more than five percent. In this instance, we find that, in using the quarterly exchange rate, respondent's margin does not fall to *de minimis* or zero. Accordingly, respondents would not be entitled to any relief under the special rule even assuming, *arguendo*, that we were to determine that exchange rate movements were characterized by temporary fluctuations.

Finally, the Department does not believe that changes in currency exchange rates are, or can be, an appropriate basis for adjustments on circumstances of sale except in extraordinary cases, such as in hyperinflationary economies.

MD Papier, GmbH

Comment 1

Respondent claims that the Department should change its calculation in the final determination so that it deducts both quantity and cash discounts from the gross unit price of the U.S. sale when calculating credit expenses, as it did in its calculation of home market credit expenses in order to be consistent.

DOC Position

We agree with respondent and have deducted both quantity and cash discounts from the gross unit price in calculating U.S. credit expenses.

Comment 2

Petitioner contends that the Department should include all bank and credit expenses incurred by MD on its U.S. sales in its circumstances of sale adjustment.

DOC Position

In our preliminary and final determinations, we included all bank and credit expenses incurred on U.S. sales in our circumstance of sale adjustment.

Comment 3

Petitioner claims the Department should disallow the circumstance of sale adjustment for MD's home market warranty expenses because MD has failed to identify the precise nature of the expenses incurred for each customer. Since respondent has failed to segregate direct and indirect expenses (or variable and non-variable expenses), the Department should treat the entire claim as an indirect selling expense.

Respondent contends that it has clearly stated that it incurred home market warranty expenses for defective merchandise delivered to its customers, and that fixed expenses were not included in its claim. All fixed expenses, such as salaries, utilities, rent, and other general administrative costs, were properly reported as indirect selling expenses.

DOC Position

We agree with respondent. The expenses associated with MD's warranty claim were verified for completeness and accuracy. Only those expenses directly related to warranty claims for sales under investigation were reported. No fixed expenses were included in this claim. Therefore, we consider these expenses to be direct selling expenses.

Comment 4

Petitioner contends that MD has improperly included mill-to-warehouse expenses in its freight deduction to FMV. Since these expenses are all pre-sale and are not directly related to sales, these expenses should be disallowed.

Respondent maintains that the Department's current policy is to deduct both pre-sale and post-sale freight charges from U.S. price and FMV. MD has claimed only those home market freight expenses that it could tie directly to sales during a particular month. In addition, MD also adjusted the quantity of merchandise shipped to eliminate the double-counting of quantities. Therefore, the Department should deduct both pre-sale and post-sale home market freight expenses from foreign market value.

DOC Position

We agree with respondent that all movement charges, both pre-sale and post-sale, reported by MD should be deducted. We verified that the home market freight expenses reported by MD were both accurate and complete. In Gray Portland Cement and Clinker From Japan (56 FR 12156), the Department determined that because it deducted all pre- and post-sale movement expenses incurred in transporting the merchandise from the plant to the point of sale in calculating U.S. price, a fair price-to-price comparison requires a similar deduction to FMV, consistent with the Department's policy. Therefore, we have deducted all verified pre-sale and post-sale freight expenses from FMV.

Haindl Papier, GmbH

Comment 1

Petitioner argues that all sales made by Haindl to the United States should be regarded as ESP sales, not purchase price. Petitioner supports this argument by stating that Haindl's U.S. subsidiary, Perkins-Goodwin (P–G), is involved significantly in the pricing, marketing and selling of CGP in the United States, and is not just a processor of sales-related documentation and communications link between Haindl and its unrelated U.S. customers. Accordingly, all sales should be considered ESP sales. The Department should then determine an amount for indirect selling expenses for Haindl based on BIA, which petitioner claims is information provided in the petition.

Respondent contends that all sales made through P–G should be treated as purchase price sales. Respondent claims that P–G only helps to facilitate the sale, and does not maintain an inventory of CGP. Respondent further argues that P–

G does not conduct significant marketing and promotional activities in the United States. Rather, respondent states that P–G spends a small amount on advertising, and that this advertising should be treated as an indirect selling expense. Finally, respondent argues that there is nothing on the record to support petitioner's claim that P–G maintains authority to renegotiate contracts with customers in the United States.

DOC Position

We agree with respondents. Pursuant to section 772 of the Act and section 353.41 of the Department's regulations, the terms of sale for purchase price sales must be set prior to the date of importation; the terms of sale for exporters sales price (ESP) sales, however, may be set either before or after importation. Therefore, where the terms of sale are set prior to the date of importation, the Department must examine several additional criteria when making a decision as to whether a sale should be considered as purchase price or ESP. These additional criteria, cited in our preliminary determination, include the following:

(1) The merchandise in question is shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;

(2) This arrangement is the customary commercial channel for sales of this merchandise between the parties involved; and

(3) The related selling agent located in the United States acts only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

If the above criteria are met, we classify the sales in question as purchase price. In the case of Haindl, Petitioners have not addressed the first two criteria. Analysis of the responses submitted by Haindl indicates that the first two criteria are met in that P–G did not introduce the merchandise into its inventory, nor did it customarily do so. Regarding the third criterion (*i.e.*, whether the related agent is merely a processor of sales-related documentation and a communication link with the unrelated purchaser), we disagree with petitioners that the marketing and promotional activities conducted by P–G are significant. In fact, the advertising done by P–G is of a generic nature and does not refer specifically to the merchandise under investigation. In addition, P–G acts only as an intermediary in the pricing negotiations between Haindl and its U.S. customers; it does not set prices independently. Therefore, we conclude that P–G only acts as a processor of sales-related documentation and a communication link with the unrelated customer. Thus, we will continue to consider the U.S. sales made by Haindl as purchase price sales.

Comment 2

Petitioner contends that if sales made by Haindl to the United States are regarded as purchase price sales, then the commissions paid by Haindl to P–G should be deducted from the U.S. price. Petitioner argues that these commissions are directly related to certain sales since the commissions are earned at the time a particular sale occurs. Petitioner further argues that these commissions are arm's-length transactions.

Respondent argues that the commissions it pays to P–G are intracompany transfers of funds which should not be deducted from U.S. price.

DOC Position

The Court of Appeals' remand in LMI, 912 F.2d 455 (Fed. Cir. 1990), of Brass Sheet and Strip from Italy instructed the Department to adjust for commissions paid to a related party in the home market when the commissions were determined to be (1) at arm's-length and (2) directly related to the sales in question. Subsequent to this, the Department has developed the following guidelines to determine whether commissions paid to related parties either in the United States or in the foreign market are at arm's-length:

(1) We will compare the commission paid to the related selling agent to those paid by respondent to any unrelated selling agents in the same market (home or U.S.) or in any third country market.

(2) In cases where there is not an unrelated sales agent, we will compare the commission earned by the related selling agent on sales of merchandise produced by the respondent to commissions earned by the related selling agent on sales of merchandise produced by other unrelated sellers or manufacturers.

In appropriate circumstances we will also examine the nature of the agreements or contracts between the manufacturer(s) and selling agent(s) which establish the framework for payment of commissions and for services rendered in return for payment, in order to ensure that both related and unrelated agents perform approximately the same services for the commission. If, based on the above analysis, the Department is satisfied that the commissions are at arm's-length as well as directly related to the sale, we will make an adjustment for these commissions.

In this investigation, we find that the related party commissions are arm's-length transactions and are directly related to sales under investigation. During verification, we examined the contracts establishing the commission relationship between P–G and Haindl and verified that these commissions are earned at the time a sale occurs. Furthermore, P–G receives a comparable commission rate for sales in the U.S. market of CGP from other unrelated manufacturers of CGP. Therefore, we have deducted from the U.S. price the commission Haindl paid to P–G on sales of CGP in the United States

Comment 3

Petitioner argues that the Department should disregard the freight forwarding fee calculated by Haindl and should rely instead on BIA, which petitioner argues is the largest freight forwarding percentage retained by Interot, a wholly-owned subsidiary of Haindl. Petitioner claims that it is unreasonable for respondent to allocate these expenses over the number of U.S. transactions rather than over the volume or value of U.S. sales.

Respondent contends that the method used to allocate freight forwarding expenses was reasonable. Respondent states that there was no other possible way to allocate these expenses since none of Interot's employees work exclusively on exports or domestic sales. However, because the size of U.S. shipments was typically much larger than that of home market shipments, and because the same amount of service is provided on a small shipment as a large shipment, respondent claims its methodology was reasonable and was accepted at verification.

DOC Position

We agree with respondent's methodology for calculation of freight forwarding expenses for purposes of our final determination. At verification we established the appropriateness and the reasonableness of such methodology. According to the shipping manager for Interot, the amount of work involved in preparing an export shipment was not any greater than that involved in domestic shipments. Based on these discussions and on a review of documents associated with the sales process, we accept the allocation of freight forwarding expenses over the total number of U.S. transactions.

Comment 4

Petitioner contends that the Department should include advertising expenses incurred by P–G in its

circumstance of sale adjustment. Petitioner states that the verification report showed that some advertising done by P–G was directed at all parties involved in the production and sale of CGP, including the customer's customer (printers and publishers) and, therefore, is a direct selling expense and should be included as an adjustment to U.S. price.

Respondent states that the advertising expense should not be deducted in the calculation of U.S. price, since it is institutional advertising that is not product specific nor limited to Haindl's products, and, cannot be treated as a direct selling expense.

DOC Position

We disagree with petitioner. The P–G advertisement was not limited to CGP, nor was it limited to Haindl products. Therefore, it is not a direct selling expense and has not been included as an adjustment to U.S. price.

Comment 5

Petitioner argues that Haindl's trial sales should be included in the Department's calculation of U.S. price. Petitioner contends that the law does not provide for the exclusion of U.S. sales made outside the ordinary course of trade.

Respondent argues that the trial sale should be excluded from the Department's calculation of U.S. price. Respondent points out that unlike administrative reviews, there is no requirement in less-than-fair-value investigations that every import into the United States be covered. Given that, in the present case, the sales in question involve very small quantities, it was appropriate and consistent with Departmental practice, to exclude those few trial sales.

DOC Position

We disagree with petitioner. Neither the Department nor respondent has ever maintained that these trial and sample sales are outside the ordinary course of trade; indeed, they are not. However, the Department is not required to review every U.S. sale in conducting its LTFV investigation. The sales in question represent a very small percentage of U.S. sales by volume, and therefore have not been included in our analysis.

Comment 6

Petitioner contends that the Department should adjust FMV to reflect the correct loading costs that were verified by the Department.

DOC Position

We agree with petitioner and have used the verified figures for loading costs in our final determination.

Comment 7

Petitioner contends that the inventory carrying costs reported by Haindl should be disallowed since the Department was unable to verify this amount and since there was no supporting documentation for these figures on the record.

Respondent states that the inventory carrying costs were verified and that there is nothing in the verification report which indicates that there was a problem with this adjustment.

DOC Position

We agree with respondent. As the verification report states, we examined the computer program used to calculate the monthly quantities used in Haindl's inventory carrying cost calculation. No errors or discrepancies were noted. Therefore, we have allowed an adjustment for these expenses.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, for Haindl and MD and all other procedures/manufacturers/exporters, we are directing the Customs Service to continue to suspend liquidation of all entries of coated groundwood paper from Germany, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after June 13, 1991, which is the date of publication of our preliminary determination in the **Federal Register**.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States prices as shown in the table below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage (percent)
Haindl Papier GmbH	39.49
MD Papier GmbH	31.40
All others	34.51

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)), and 19 CFR 353.20.

Dated: October 28, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-26544 Filed 11-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-307-803]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker From Venezuela

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

EFFECTIVE DATE: November 11, 1991.

FOR FURTHER INFORMATION CONTACT: David C. Smith, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3798.

PRELIMINARY DETERMINATION: We preliminarily determine that gray portland cement and clinker from Venezuela are being, or are likely to be, sold in the United States at less than fair value, as provided in section 773 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History.

Since the publication of our notice of initiation on June 14, 1991, (56 FR 27496), the following events have occurred.

On July 16, 1991, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that a regional industry in the United States is materially injured, or threatened with material injury, by reason of imports of gray portland cement and clinker from Venezuela (56 FR 32589).

On July 12, 1991, the Department presented its questionnaire to Venezolana de Cementos, S.A.C.A. (Vencemos), the sales of which accounted for more than 60 percent of imports of gray portland cement and clinker during the period of investigation (POI).

In August and September 1991 we received replies to the questionnaire from Vencemos and from Cementos Caribe, C.A. (Caribe), a voluntary respondent. Subsequent to these replies, we issued deficiency questionnaires. In

addition, based on information in the respondents' initial questionnaire responses, a further manufacturing questionnaire section was issued to Vencemos. Responses to all of the aforementioned questionnaire sections and supplements were received from the respondents in time for consideration for purposes of this preliminary determination.

On September 12, 1991, petitioner alleged that Vencemos was selling clinker in its largest third country market at prices below the cost of production. Given that Vencemos' home market was not viable with respect to sales of clinker, on October 10, 1991, the Department initiated a cost of production (COP) investigation with regard to Vencemos' sales of clinker to that third country. The Department issued a COP questionnaire on October 16, 1991, but the responses to that questionnaire will not be received before this preliminary determination. We will analyze and verify the COP responses for use in the Department's final determination.

On August 2, 1991, the Department received challenges to petitioner's standing from two U.S. producers of gray portland cement and clinker. We received responses to our standing questionnaire from those companies on August 21, 1991. See "Standing" section of this notice, below.

On October 4, 1991, petitioner alleged the existence of critical circumstances and on October 10, 1991, the Department requested shipment information from respondents. See "Critical Circumstances" section of this notice, below.

Scope of the Investigation

The products covered by this investigation are gray portland cement and clinker. Gray portland cement and clinker are currently classifiable under subheadings 2523.29 and 2523.10 of the Harmonized Tariff Schedule (HTS). Gray portland cement has also been entered under HTS subheading 2523.90 as "other hydraulic cements." Gray portland cement in a hydraulic cement and the primary component of concrete. Clinker, an intermediate material produced when manufacturing cement, has no use other than grinding into finished cement. Oil well cement is also including within the scope of this investigation; microfine cement is not included within the scope of this investigation. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation is December 1, 1990 through May 31, 1991.

Such or Similar Comparisons

We have determined that there are two such or similar categories of merchandise: gray portland cement, and clinker. Where there were no sales of identical merchandise in the home market or third country with which to compare merchandise sold in the United States, sales of the most similar merchandise were compared.

Product comparisons were made on the basis of standards established by the American Society of Testing Materials (ASTM). All cement sold by Vencemos in the United States is imported as Type I cement; some is then further manufactured into various other products. For Vencemos, U.S. Type I sales (and further manufactured products) were compared to home market sales of Type I cement. Vencemos' single sale of clinker to the United States was compared to sales of clinker in a third country since the home market was not viable with respect to clinker.

Caribe sold only Type III cement to the United States. In its home market, Caribe predominantly sold Type I cement, although it did sell limited quantities of Type III cement and a "special manufacture" Type I cement. Because the Type III sold in the home market is identical to the merchandise sold in the U.S., the Department made comparisons using that product.

In an attempt to compare sales of comparable quantities, where possible, for Vencemos, we compared U.S. sales of bulk cement to home market sales of bagged cement. For Caribe, it was necessary to compare home market sales of begged cement to U.S. sales in both bagged and bulk form, because Caribe sold Type III in the home market only in bagged form.

We made adjustments for differences in the physical characteristics of the merchandise, where appropriate, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of gray portland cement and clinker from Venezuela to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

A. Caribe

For Caribe, we based United States price on purchases price, in accordance with section 772(b) of the Act, because all sales were made directly to unrelated parties prior to importation into the United States and because exporter's sales price (ESP) methodology was not indicated by other circumstances. We calculated purchase price based on packed, FOB Venezuelan port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling, and loading expenses.

B. Vencemos

For Vencemos' cement sales, we based United States price on ESP, in accordance with section 772(c) of the Act, because the first sales to unrelated parties occurred after importation into the United States.

We calculated ESP based on packed, picked-up or delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for loading charges in Venezuela, demurrage, ocean freight, marine insurance, U.S. inland freight, U.S. brokerage and duties, U.S. loading and unloading, price adjustments, discounts, and Florida sales tax. In accordance with section 772(e)(1) and (2) of the Act, we made additional deductions, where appropriate, for advertising, credit, technical service and quality control expenses, and indirect selling expenses. Indirect selling expenses consist of terminal costs, inventory carrying costs and general indirect selling expenses associated with selling in Venezuela and the United States.

In addition, we made further deductions, where appropriate, for all value added to the cement in the United States, pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with the production of the further manufactured products, other than the costs associated with the imported cement, and a proportional amount of any profit related to the further manufacture. Profit was calculated by deducting all applicable expenses from the sales price. The total profit was then allocated proportionally to all components of cost. Only the profit attributable to the value added was deducted.

In determining the costs incurred to produce the further manufactured products, the Department included (1) the costs of manufacture; (2) movement and packing expenses; and (3) general

expenses, including selling, general, and administrative expenses, and interest expenses.

For Vencemos' clinker sales, we based United States price on purchase price, in accordance with section 772(b) of the Act, because the single sale in the POI was made to an unrelated party prior to importation into the United States and because ESP methodology was not indicated by other circumstances. We calculated purchase price based on the FOB Venezuelan port price to an unrelated customer in the United States. We made deductions, where appropriate, for loading and demurrage expenses.

Foreign Market Value

In order to determine whether there were sufficient sales of gray portland cement and clinker in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales in each such or similar category to the volume of third country sales in the same such or similar category, in accordance with section 773(a)(1) of the Act. Caribe and Vencemos both had viable home markets with respect to sales of cement made during the POI. Vencemos' home market was not viable for sales of clinker. In selecting which third country market to use for comparison purposes, we first determined which third-country markets had "adequate" volumes of sales, within the meaning of 19 CFR 353.49(b)(1). We determined that the volume of sales to a third country market was adequate if the sales of such or similar merchandise exceeded or was equal to five percent of the volume sold to the United States. In selecting which third country market, having an adequate sales volume, was the most appropriate for comparison purposes, we selected the third country market with the largest volume of sales, in accordance with 19 CFR 353.49(b)(2).

A. Caribe

We calculated FMV based on FOB plant or delivered prices to unrelated customers in the home market, in accordance with section 773(a)(1)(A) of the Act.

We made deductions, where appropriate, for inland freight, loading expenses, and freight allowances. We made circumstance of sale adjustments, where appropriate, for differences in credit, advertising, warranty, testing, and royalty expenses, pursuant to 19 CFR 353.56(a). We recalculated the loading adjustment to exclude inappropriately allocated reimbursement expenses in that field. We recalculated the credit adjustment in accordance with the Department's standard methodology. We disallowed a claimed offset to the credit adjustment for potential interest revenue. Because resales of cement in Venezuela are subject to varying municipal tax rates, we made a circumstance of sale adjustment for taxes by deducting the home market taxes (prices were reported inclusive of taxes) and adding the actual tax paid on U.S. sales. Where appropriate, we deducted home market packing costs and added U.S. packing costs.

B. Vencemos

For cement sales, we calculated FMV based on FOB plant or delivered prices to unrelated customers in the home market, in accordance with section 773(a)(1)(A) of the Act.

We made deductions, where appropriate, for foreign inland freight, loading and unloading expenses, portable silo expenses, association fees, taxes and credit. We also deducted indirect selling expenses, including inventory carrying expenses, terminal expenses, and other indirect selling expenses. This deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses incurred in the U.S. market, in accordance with 19 CFR 353.56(b). Because resales of cement in Venezuela are subject to varying municipal tax rates, we made a circumstance of sale adjustment for taxes by deducting the home market taxes (prices were reported inclusive of taxes) and adding the actual tax paid on U.S. sales. Where appropriate, we deducted home market packing costs.

We made a difference in merchandise adjustment to FMV in accordance with 19 CFR 353.57. We converted the weighted-average net price from metric tons to short tons for comparison to U.S. prices denominated in short tons.

For clinker sales we calculated FMV based on FOB prices to unrelated customers in a third country. We made a deduction for loading expenses. We disallowed a claimed deduction for ship survey fees since there was no accompanying narrative or calculation methodology in Vencemos' responses. We made a circumstance of sale adjustment for credit. We recalculated the credit adjustment in accordance with the Department's standard methodology. Because sales of cement in the third country and the United States are subject to varying export taxes, we made a circumstance of sale adjustment for taxes by deducting the third-country tax (prices were reported inclusive of taxes) and adding the actual tax paid on U.S. sales. All sales of clinker were made in bulk; therefore no packing charges are applicable. We made a difference in merchandise adjustment to FMV in accordance with 19 CFR 353.57.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of cement and clinker from Venezuela. Section 773(e)(1) of the Act provides that critical circumstances exist when we determine that there is a reasonable basis to believe or suspect the following:

(1) That there is a history of dumping of the same class or kind of merchandise, or that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise at less than fair market value, and

(2) That there have been massive imports of the subject merchandise over a relatively short period.

To determine whether imports have been massive over a relatively short period, we based our analysis on respondents' shipment data for equal periods immediately preceding and following the filing of the petition.

Pursuant to 19 CFR 353.16 (f) and (g), we examined a period beginning in the month in which the petition was filed and ending three months later. Thus, we selected the period from May 21, 1991 (the day the "proceeding began") to August 21, 1991 as the comparison period.

We then compared the quantity of imports during the base period for each respondent to the imports during the immediately preceding period of comparable duration. We did not find that shipments from either of the respondents had increased by at least 15 percent during the comparison period (19 CFR 353.16(f)(2)). Based on the above, we find that imports of gray portland cement and clinker have not been massive over a relatively short period.

Since we do not find that there have been massive imports, we need not consider whether there is a history of dumping or whether importers of this merchandise knew or should have known that such merchandise was being sold at less than fair value. Therefore, we find that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of cement and clinker from Venezuela.

Standing

Two U.S. producers of the subject merchandise have opposed the filing of this investigation and have argued that petitioner does not have standing to bring this action. As a result of our survey of those in opposition to the petition, we have concluded that these companies account for an insignificant share of domestic production.

There is nothing in the statute, the legislative history, or our regulations requiring that petitioners establish affirmatively that they have the support of a majority of the domestic producers of the subject merchandise. In many cases, such a requirement would be so onerous as to preclude access to import relief under the antidumping duty laws. This position has recently been upheld by the Court of International Trade in *Koyo Seiko* v. *United States*, CIT Slip Op. 91-52 (June 27, 1991). Accordingly, we find that petitioner in this investigation has standing to bring this case.

Currency Conversion

When calculating foreign market value, we normally make currency conversions in accordance with 19 CFR 353.60, using the exchange rates certified by the Federal Reserve Bank of New York. Since the Federal Reserve Bank of New York stopped providing exchange rates for Venezuela prior to the POI, we used exchange rates provided by the International Monetary Fund.

Verification

As provided in section 776(a) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of gray portland cement and clinker from Venezuela, as defined in the "Scope of the Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Cementos Caribe, C.A.	50.02
Venezolana de Cementos, S.A.C.A.	49.20
All others	49.26

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than December 10, 1991, and rebuttal briefs no later than December 16, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on December 18, 1991, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15.

Dated: October 28, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-26546 Filed 11-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-087]

Final Results of Antidumping Duty Administrative Reviews: Portable Electric Typewriters From Japan

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

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Ross L. Cotjanle, Beth Graham, or Larry Sullivan, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3534, 377-4105 or 377-0114, respectively.

FINAL RESULTS:

Case History

On August 6, 1991, the Department of Commerce ("the Department") published in the **Feberal Register** (56 FR 37335) the preliminary results of the administrative reviews of the antidumping duty order on portable electric typewriters ("PETs") from Japan (45 FR 30618, May 9, 1980) covering the periods May 1, 1988, through April 30, 1989 and May 1, 1989, through April 30, 1990.

In the preliminary results, the Department stated that it was requesting that Nakajima All Co., Ltd. ("Nakajima") submit certain information pertaining to the Feberal Republic of Germany (FRG) sales within the context of the 1989-90 review. On August 9, 1991, Nakajima stated that it would not submit the requested information in the 1989-90 review.

Petitioner and two respondents requested a public hearing in these reviews. Case briefs were filed by all parties on August 20, 1991, and rebuttal briefs were filed by the parties on August 28, 1991. A public hearing was held on October 2, 1991.

We have now completed these administrative reviews in accordance with section 751(a) of the Tariff Act of 1930 ("the Act").

Scope of the Review

In accordance with the Court of International Trade's ("CIT") decision in *Smith Corona Corp.* v. *United States*, 706 F. Supp. 908 (CIT 1988) aff'd 915 F.2d 683 (Fed. Cir. 1990) that portable automatic typewriters ("PATs") and PETs with a calculating mechanism are within the scope of the order, on April 5, 1990, the Department published in the **Federal Register:** Portable Electric Typewriters; Court of International Trade Decision Concerning the Scope of

the Antidumping Duty Order (55 FR 12701) ("CIT Decision"), a notice suspending liquidation of all unliquidated entries of PATs and PETs incorporating a calculating mechanism, entered, or withdrawn from warehouse, for consumption on or after February 3, 1989, the date of the CIT decision. On September 26, 1990, the Court of Appeals for the Federal Circuit ("CAFC") affirmed the CIT's decision and established conclusively that PATs and PETs with a calculating mechanism are within the scope of the antidumping duty order on PETs from Japan. See, Portable Electric Typewriters from Japan; Court of Appeals for the Federal Circuit Decision Concerning the Scope of the Antidumping Duty Order (55 FR 42423, October 19, 1990). Therefore, beginning February 3, 1989, these reviews cover PETs, PATs, and PETs incorporating a calculating mechanism. (For a complete explanation of the history of the scope in this proceeding, see Final Scope Ruling; Portable Electric Typewriters from Japan (55 FR 47358, November 13, 1990), and CIT Decision.)

The merchandise covered by these reviews is now currently classifiable under subheadings 8469.10.00, 8469.21.00 and 8469.29.00 of the Harmonized Tariff System (HTS). Prior to January 1, 1989, this merchandise was classifiable under item 675.0510 and, in some cases, under item 676.0540 of the Tariff Schedules of the United States Annotated (TSUSA). Although the HTS and TSUSA subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Review Periods

The review periods are May 1, 1988, through April 30, 1989, and May 1, 1989, through April 30, 1990.

Use of Best Information Available

Two firms failed to respond to our request for information. Specifically, for both review periods, Canon refused to respond to our questionnaires. For the 1989–90 review period, Brother responded to some of the Department's requests for information but refused to respond to the Department's April 12, 1991, request for information. In deciding what to use as best information available ("BIA"), 19 CFR 353.37(b) provides that the Department may take into account whether a party fails to provide requested information. Thus, the Department determines on a case-by-case basis what is BIA. For purposes of these final results, we have applied BIA depending on whether the companies refused to participate or attempted to cooperate in these administrative reviews.

When a company fails to provide the information requested in a timely manner, or otherwise significantly impedes the Department's review, the Department considers the company uncooperative and generally assigns to that company the higher of: (a) the highest rate assigned to any company in a previous review or (b) the highest rate for a responding company with shipments during the review period. See 19 CFR 353.37(b). See also Issues Appendix in Final Results of Antidumping Administrative Review: Antifriction Bearings from the Federal Republic of Germany ("Bearings"), 56 FR 31695, 31704 (July 11, 1991).

Where a company is considered by the Department to be cooperative because it partially responded to its requests, it generally assigns to that company the higher of: (a) the highest rate for a responding firm with shipments during the period, or (b) the highest rate for that company for any previous review or the original investigation. See *e.g.*, Anhydrous Sodium Metasilicate from France; Final Results of Antidumping Duty Administrative Review, 53 FR 4195 (February 12, 1988). This practice has been upheld by the Courts. *Rhone Poulenc, Inc.* v. *United States*, 710 F.Supp. 341 (CIT 1989); *Aff'd* 899 F.2d 1185 (Fed. Cir. 1990) *reh'g denied* April 20, 1990; *reh'g in banc declined* May 2, 1990.

For Canon, we assigned the highest rate for any respondent in prior reviews. For Brother, we assigned the highest rate from its prior review. See Comment 13.

United States Price and Foreign Market Value

The calculation methodology used in these final results is identical to the methodology described in the notice of preliminary results except for those instances noted below in the "Interested Party Comments" section of this notice.

Interested Party Comments

Petitioner's and respondent's comments are discussed below.

Comment 1

Smith Corona argues that because Japanese-language PETs qualify as such or similar merchandise the Department should require respondents to report sales of these PETs in the home market for purposes of determining viability. *See, The Timken Co.* v. *United States*, 630 F. Supp. at 1334–40 (CIT 1989); 893 F.2d 337 (Fed. Cir. 1990) ("Timken"). Smith Corona, citing Cyanuric Acid and its Chlorinated Derivatives from Japan for Use in the Swimming Pool Trade, 49 FR 7424, 7427, (1984), maintains that even if Japanese-language PETs were not subject to the order they still should be considered such or similar merchandise. Smith Corona contends that the Department has used foreign-language typewriters in its analysis previously and should continue to do so in this review. Therefore, Smith Corona argues that the Department should require respondents to submit this additional information regarding home market sales or reject the responses as insufficient.

Smith Corona further argues that if Japanese-language typewriters were to be imported into the United States, they would be subject to the antidumping duty order. Smith Corona cites *Smith Corona Corp* v. *United States* 12 CIT 854, 862, 698 F.Supp. 240, 247 (1988), in arguing that Japanese-language typewriters perform the same primary function as English-language PETs (i.e., print letters on paper). In addition, Smith Corona asserts, Japanese-language PETs satisfy all of the criteria set forth in the Department's November 1990 scope determination (Portable Electric Typewriters from Japan, 55 FR 40358, 40370, November 13, 1990).

Matsushita contends that the current reviews do not include word processing units and because its Japanese-language machines are all word processors, Matsushita states that they have correctly been excluded from the products subject to review. Matsushita argues that the law and case precedent prohibit the Department from matching U.S. merchandise with foreign market products outside the "class or kind" of merchandise covered by the scope of the proceeding (see § 771(16)(C)(i) of the Act; Preliminary Results of antidumping Administrative Review:

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany 56 FR 11200, 11203, March 15, 1991.) Matsushita asserts that the Department's questionnaire properly did not mention or request information regarding word processors because this merchandise was not suspended until after the period of review. Matsushita concludes by stating that the Department verified that Matsushita had no home market sales of any merchandise subject to this review.

Nakajima stated that it had no sales of Japanese-language PETs in its home market or third country markets during the 1989-90 review period. Therefore, Nakajima argues, the Department

cannot determine that Nakajima failed to report such sales and use BIA.

DOC Position

We disagree with Smith Corona. Regardless of whether japanese-language PETs are such or similar merchandise to PETs sold in the United States or within the class or kind of merchandise covered by this order, both Nakajima and Matsushita reported that they had no sales of Japanese-language typewriters in Japan. The Department verified the responses of both Nakajima and Matsushita for the 1989–90 review and found that Matsushita and Nakajima had properly reported home market and third country sales information. Therefore, the Department has no reason to solicit further information regarding home market sales, as requested by Smith Corona. Furthermore, because no personal word processors were included within the scope of this order until November 2, 1990, they would not be included in the 1989–90 review, which only covers the period through April 30, 1990.

Comment 2

Smith Corona claims that computer-interface typewriters are within the scope of the antidumping duty order and that Nakajima improperly excluded sales of this merchandise from its responses. Smith Corona argues that because Nakajima failed to report these sales, Nakajima's sales listings are incomplete. Therefore, the Department must use BIA and assign the highest current rate to any respondent withholding these sales from its response. See, Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan (52 FR 30700, 30704, August 17, 1987).

Nakajima contends that Smith Corona's argument that computer-interface PETs be included in these reviews does not apply to Nakajima. When Smith Corona raised this issue on July 19, 1991, prior to the Department's preliminary results, Nakajima responded that it did not sell computer-interface PETs during the 1989–90 review period (see, Nakajima's July 23, 1991 letter). Furthermore, Nakajima states that the Department verified the completeness of Nakajima's sales listing in the 1989–90 review and found no deficiencies. Nakajima also claims that it cooperated with the Department by reporting each category and model of PET it sold during the 1988–89 review period (See, September 18, 1989 response).

Matsushita rejects the allegation made by petitioner and asserts that six of its reported models have computer-interface capability. Furthermore, Matsushita argues, the Department verified that Matsushita reported all merchandise required by the Department's questionnaire.

DOC Position

We disagree with Smith Corona. The issue of whether non-automatic computer-interface PETs are within the scope of the PETs order is the subject of a separate pending scope inquiry. Because non-automatic computer-interface PETs have not been determined to be within the scope of the order, such machines were properly excluded in this review. However, it should be noted that automatic PETs with computer-interface capability are within the scope of the order and these reviews, and were reported by Matsushita in the 1989–90 review. See *Smith Corona Corp.* v. *United States*, 706 F. Supp. 908 (CIT 1988) *aff'd* 915 F.2d 683 (Fed. Cir. 1990) and Final Scope Ruling; Portable Electric Typewriters from Japan (55 FR 47358, 47368 (November 13, 1990)). Furthermore, the Department verified that Nakajima and Matsushita had accurately reported that sales of automatic PETs with computer-interface capability. Therefore, we are accepting the sales responses submitted by respondents.

Comment 3

Nakajima contends that the Department made clerical errors in the 1989–90 review concerning the difference in merchandise adjustment ("difmer") for one model and the grouping of sales for a different model.

Smith Corona agrees with Nakajima's allegation of clerical errors.

DOC Position

We agree with both parties and have corrected the calculations accordingly for purposes of these final results.

Comment 4

Nakajima argues that the overwhelming share of the margin determined by the Department in the preliminary results for the 1989–90 review period resulted from the Department's use of quarterly, rather than daily, exchange rates in calculating the foreign market value ("FMV") of the merchandise. As set forth in 19 CFR 353.60(b) "when the price of the merchandise is affected by temporary exchange rate fluctuations, the Secretary will not take into account in fair value comparisons any difference between the United States price and foreign market value resulting solely from such exchange rate fluctuations." Nakajima argues that the courts have consistently upheld this rule (see, *Luciano Pisoni Fabbrica Accessori Instrumenti Musicali* v. *United States* ("*Pisoni*"), 640 F. Supp. 255 (CIT 1986), and *Industrial Quimica Del Nalon, S.A* v. *United States* ("*Quimica*"), 729 F. Supp. 103 (CIT 1989). Therefore, in accordance with *Pisoni* and *Quimica*, the Department should use the daily exchange rates in order to calculate Nakajima's dumping margins for the review period.

In *Pisoni*, Nakajima states that the CIT ordered a remand to determine whether differences in exchange rates resulted in dumping margins in that case. Nakajima contends that the CIT held that "the purpose of the antidumping laws would be violated if Commerce found a dumping margin based on the use of quarterly rates, while no margin would result if Commerce were to use the rates prevailing at the time of the transaction." Nakajima also notes that when the Department recalculated the margins on remand, they were found to be *de minimis*. It also alleges that in *Quimica*, the court applied the same rationale to administrative reviews.

If the Department refuses to apply section 353.60(b) and use daily rates, then Nakajima, citing *Budd Co.* v. *United States* ("*Budd*"), 746 F. Supp. 1093, 1099–1100 (CIT 1990), proposes that it should make a circumstance of sale adjustment under section 773(a)(4) of the Act, to eliminate dumping margins created by exchange rule fluctuations.

Smith Corona contends that the Department's application of quarterly exchange rates, and daily rates only for variances over five percent, is in accordance with 31 U.S.C. 5151 (b), (c), and (d) and 19 CFR 353.60(a), and that Nakajima's argument should be rejected. See, *Bearing Corp. of America* v. *United States* ("*NTN Bearing*"), 14 CIT _____, 747 F. Supp. 726, 732 (1990). Further, Smith Corona adds that because this is not a fair value investigation, the special rule outlined in 19 CFR 353.60(b) does not apply.

Smith Corona claims that Nakajima is incorrect in its reliance on *Pisoni* and *Quimica*. In *Pisoni*, Smith Corona states that there were a limited number of home market sales and the Court found that the dumping margin resulted solely from the use of quarterly rates. In this case, however, Smith Corona argues that Nakajima has not proven that the dumping margins would be eliminated by the use of daily rates. In *Quimica*, the Court held that 19 CFR 353.60(b) should be applied in the context of an administrative review. However, Smith

Corona states that the court did not reach the issue of whether in the case of sustained changes in the currency exchange rates, the special rule should be applied. Instead, Smith Corona asserts that the court deferred to the Department's "expertise" and remanded the case so that the Department would be able to analyze whether temporary or sustained changes in exchange rates created the dumping margins. In this case, Smith Corona alleges that the exchange rate changes were steady and sustained, rather than a temporary fluctuation. In such cases, Smith Corona argues that the Department's regulations require respondents to take actions to revise their pricing "within a reasonable period of time." In this instance, Smith Corona contends that Nakajima has failed to show any price revisions or other actions.

DOC Position

We disagree with Nakajima. The "special rule" contained in 19 CFR 353.60(b) is explicitly limited to application in less than fair value investigations, not administrative reviews. The CIT's decision in *Quimica* that the rule is applicable to reviews is not final. Furthermore, it is the Department's view that sufficient flexibility exists under the law in determining "fair value" in investigations to permit application of the "special rule" in the narrow circumstances therein defined, but that no discretion exists in determining "foreign market value" in reviews under section 751 of the Act to make currency conversions other than as specified in 31 USC 5151. As a matter of policy, the Department believes that the limited flexibility set forth in the regulations is warranted in initial investigations for circumstances essentially beyond the control of exporters and importers unaccustomed to the disciplines and rules of the antidumping law. Such flexibility would be inappropriate in the administration of an antidumping duty order, under which exporters and importers are, or must be presumed to be, on notice that changes in exchange rates can and will affect their antidumping duty liability. Therefore, these parties can be expected to set their prices accordingly. See, *Toho Titanium Co.* v. *United States*, 743 F. Supp. 888 (CIT 1990).

The Department also does not believe that changes in currency exchange rates are, or can be, an appropriate basis for adjustments for differences in circumstances of sale except in extraordinary cases, such as in hyperinflationary economies. *Budd* is inapposite to this proceeding because it concerned exchange rate fluctuations in a hyperinflationary economy.

Finally, we agree with Smith Corona that in those instances where the daily exchange rate varies more than five percent from the quarterly exchange rate, the daily exchange rate should be used, because this is the applicable Federal Reserve rate for those days. See 31 U.S.C. 5151 (d) and 19 CFR 353.60(a).

Comment 5

Nakajima argues that the Department should maintain its practice of reviewing U.S. sales based on the date of sale. Nakajima asserts that the Department has historically included within the scope of the review all transactions with dates of sale falling within the review period.

Nakajima argues that the Department's long-standing practice of using date of sale to determine which transactions are covered by a review is consistent with section 773(a)(1) of the Act. It also argues that determination of viability should also be based on sales during the relevant period pursuant to 19 CFR 353.49(b) which provides that the comparison third-country market is selected based on the volume of merchandise sold in the market as well as the similarity of that merchandise to the merchandise sold to the United States. Nakajima claims that the Department's approach resulted in foreign market sales being selected for comparison based on sales volumes in a different review period.

Nakajima claims that in the first review of the order on PETs from Japan, this same issue arose, concerning the inclusion of sales made by Nakajima in the review period but shipped after the end of the review period. Nakajima also claims that, at that time, the Department held that the review encompassed all sales made during the period, whether entered during or after the period of review. Nakajima asserts that the Department has consistently followed this sales-based approach in each of the subsequent reviews.

Nakajima further alleges that the Department did not request in the context of the 1989-90 review, third country sales data contemporaneous with U.S. sales made during the 1988-89 review, until its notice of preliminary results. Nakajima claims that its information was accurate based on the Department's longstanding practice of reviewing sales made during the review period. Nakajima refused to supply the information because it believes the change in practice was unreasonable and unlawful, and because it was given an inadequate amount of time to respond. Nakajima, citing *Olympic Adhesives, Inc.* v. *United States*, 899 F. 2d 1565, 1571 (Fed. Cir. 1990) ("Olympic Adhesives") states that the Deparmtent's use of BIA in the prelimary results is contrary to law, as the Department had not previously requested this information.

Nakajima also contends that the Department acted inconsistently by retroactively applying a change in practice. Nakajima cities the Bearings, 56 FR 31695, 31700, in which the Department, in a similar situation, only changed its practice prospectively, because not all of the relevant information was available.

Nakajima further contends that, contrary to the Department's August 15, 1991, memorandum explaining the basis for the approach taken in the preliminary results, the reference to entries in section 751 of the Act does not mean that transactions subject to an administrative review should be grouped by date of entry. Customs must assess duties on entries, but the Department must calculate dumping margins based on sales. 19 CFR 353.22(b) states that a review "normally will cover, as appropriate, entries, exports, or sales of the merchandise during the 12 months immediately preceding the most recent anniversary month." Nakajima argues that this regulation clearly authorizes review of all sales occurring during the period of review.

Smith Corona agrees with the Department's decision to review entries rather than sales and believes that there is no reason for the Department to reclassify Nakajima's sales according to the date of sale. The ITA's August 15, 1991, memorandum indicated that it would be reviewing entries rather than sales based on section 751(a)(2) (A) and (B) of the Act. Not only is the Department's decision consistent with the Act, but it is also supported by the Department's regulations which give the agency discretion to base the review on "entries, exports or sales." See 19 CFR 353.22(b). Smith Corona also asserts that the Department correctly determined that sales should be used for the purpose of the viability test regarding merchandise sold in one period with entries occurring in a later period. Smith Corona, citing section 751(a)(2) of the Act and 19 CFR 353.22(b) contends that the Act and the regulations support the Department's conclusion with regard to purchase price sales.

Smith Corona claims that ITA's approach with respect to purchase price sales is consistent with commercial considerations. Since purchase price sales must take place before the date of

importation, the review of purchase price sales based on the date of sale could result in the assignment of dumping duties before the merchandise enters the United States. Faced with high dumping margins, companies could choose not to make the sale and avoid the duty. By conducting reviews based on entry date, the Department can thwart this possibility.

Smith Corona charges that Nakajima miscited Bearings as an example of prospective application of a policy change. The issue in Bearings was whether ESP sales of merchandise entered before the suspension of liquidation should be used as a basis for establishing assessment rates. Since, in this instance, the Department is considering purchase price sales which were entered prior to suspension of liquidation, the Bearings example is not relevant to this case.

Smith Corona rebuts Nakajima's compliant that the Department prejudiced Nakajima by reclassifying certain purchase price sales from the 1988–89 period to the 1989–90 review period, and subsequently using BIA. Smith Corona states that in this instance, unlike Olympic Adhesives, the Department gave Nakajima the opportunity to submit the appropriate third country sale data and it refused.

DOC Position

The Department has reconsidered its use of the entry-based approach in the preliminary results with respect to certain purchase price sales. We have determined that for purposes of this proceeding and specifically, the 1988–89 and 1989–90 review periods, it is appropriate to classify and analyze Nakajima's purchase price sales within the period in which they were sold rather than entered.

While section 751(a)(2) of the Tariff Act refers to entries, 19 CFR 353.22 of the regulations indicates that the agency may review a period based on "entries, exports, or sales". The regulations, as Smith Corona acknowledged at the hearing, clearly provide the Department with the flexibility needed to develop its administrative practice.

It should be noted that the Department's reconsideration of this issue in this proceeding is not indicative of the adoption by the Department of a sales-based approach or the rejection of an entry-based approach with respect to purchase price sales. Rather, the Department decided that a fairer and more reasonable act than introducing this practice into an on-going proceeding would be to propose the entry-based approach for purchase price sales in a forthcoming **Federal Register** Advance Notice of Proposed Rule-Making.

Comment 6

Smith Corona argues that the Department should assign a rate based on BIA to those U.S. sales by Nakajima for which contemporaneous third country sales data were not provided. In its preliminary results, the Department used the third country sales reported in the 1989–90 review period as BIA for FMV for the sales which were made in the 1988–89 review period. Smith Corona recommends that the Department assign the highest current margin applied to any respondents in this review as BIA for all U.S. sales for which Nakajima did not supply contemporaneous third country sales data.

Nakajima contends that Smith Corona's argument that its third country sales listing was deficient and that the Department should use BIA is incorrect. Nakajima claims that the Department did not find any deficiencies in Nakajima's sales listing for either the 1988–89, or the 1989–90 review. More specifically, in this instance, Nakajima did report contemporaneous third country sales in both the 1988–89 and 1989–90 reviews. It was only after the Department decided in its preliminary results to change its long-standing practice of reviewing sales, that it was requested to report certain 1988–89 sales in the 1989–90 review period. Nakajima argues that it is wrong for the Department to apply BIA because of its decision in the preliminary results to apply a new practice retroactively to reviews in which all data were submitted consistent with the Department's long-standing sales-based approach. Nakajima asserts that in order for the Department to use BIA, respondent must fail or refuse to supply requested information to the Department. (See, Olympic Adhesives).

DOC Position

As stated in the Department's response to comment 5, the Department has reconsidered the entry-based approach which it used in the preliminary results with respect to certain purchase price sales and determined that, for purposes of the 1988–89 and 1989–90 review periods in this proceeding, it is appropriate to classify and analyze Nakajima's purchase price sales within the period in which they were sold rather than entered. Accordingly, Nakajima's third country sales listing was not deficient since contemporaneous third country sales were reported for its U.S. sales and the Department has no need to use BIA.

Comment 7

Nakajima argues that PATs entered prior to April 5, 1990, are governed by the Department's 1987 scope ruling and are not subject to the antidumping duty order on PETS. (The Department's scope ruling of January 14, 1987, held that PATs and PETs with a calculating mechanism were outside the scope of the order (Final Results of Antidumping Administrative Review: Portable Electric Typewriters from Japan (52 FR 1504, 1505–06, January 14, 1987)).) Nakajima specifically argues that the Act provides that importers have a right to rely on the challenged agency decision until such time as the Department publishes a notice of a final court judgment overturning the agency ruling. Citing § 516a(c)(1) of the Act, Nakajima argues that because the Department did not publish the required notice until April 5, 1990, all imports entered before publication of the specified notice are to be liquidated in accordance with the original agency decision of January 14, 1987.

Nakajima contends that § 516a(c)(1) of the Act provides that, absent a court injunction suspending liquidation, the administering authority "shall" liquidate merchandise entered before the date of publication in the **Federal Register** of the notice of the court decision. Further, Nakajima argues that the CAFC's decision upholding the CIT's February 3, 1989 decision on scope did not require the Department to apply the court decision to entries made prior to the April 5, 1990 notice. Nakajima states that the CIT's decision is not sufficient notice on which to base the effective date of suspension of liquidation. The CIT decision did not order suspension of liquidation pending appeal, and, in fact, the Department denied Smith Corona's request for suspension of liquidation by letter dated May 19, 1989. The court rejected Smith Corona's suit challenging that ruling. *Smith Corona Corp.* v. *United States*, 718 F. Supp. 63 (CIT 1989).

Nakajima argues that the Department's memorandum justifying its retroactive suspension of liquidation by relying on the language of the CAFC in *Timken*, and the decision in *Smith Corona Corp.* v. *United States*, 915 F.2d 683 (Fed. Cir. 1990) was incorrect. The Department states that, based on these cases, it should have published a notice within ten days of the February 3, 1989 decision. Nakajima argues, however, that the Court did not authorize the retroactive application of suspension of liquidation in either *Timken* or *Smith Corona Corp.* v. *United States*, 915 F.2d 683 (Fed. Cir. 1990).

Smith Corona agrees with the Department's decision to suspend liquidation of PATs and PETs with a calculating mechanism entered after February 3, 1989. Smith Corona argues that the Department's notice of April 5, 1990, properly effectuated the court's holding that the Department should have suspended liquidation within ten days of the CIT's ruling by publishing a **Federal Register** notice and the language of § 516a(e) of the Act. Smith Corona states that generally there is no bar against retroactive suspension of liquidation and in *Timken*, the Court ordered retroactive suspension of liquidation under similar circumstances.

Smith Corona rebuts Nakajima's argument that importers were denied fair notice of the suspension of liquidation. Smith Corona argues that Nakajima was a party to the proceeding and received notice of the February 3, 1989 decision as well as the earlier decision that PATs and PETs with a calculating mechanism were within the scope of the order.

DOC Position

We agree with Smith Corona. The Department has previously addressed this issue fully (*see* Memorandum from Pamela A. Green to Susan Kuhback, March 22, 1991). Pursuant to *Timken* and *Smith Corona*, the Department should have published notice of the CIT's February 3, 1989, decision within ten days. The Department's action of April 5, 1990, was in accordance with the *Timken* decision and the statute and legislative history as interpreted by the CAFC. In accordance with *Timken*, entries of PATs and PETs with calculating mechanisms made subsequent to the CIT decision were subject to suspension of liquidation until a final court decision was reached. In *Smith Corona*, the CAFC affirmed the CIT's scope decision but reversed its refusal to require suspension of liquidation pending a conclusive court decision (*Smith Corona*, 915 F.2d at 688). The CAFC cited *Timken* in holding that notice of the CIT decision should have been published within ten days and liquidation of the merchandise at issue should have been suspended. Thus, the Department's determination to publish the April 5, 1990 **Federal Register** notice stating that it had ordered Customs to suspend liquidation of PATs and PETs with calculating mechanisms as of February 3, 1989, was correct and in accordance with the decisions of the CAFC rendered in both *Timken* and *Smith Corona*.

Comment 8

Smith Corona asserts that Matsushita did not correctly identify the most similar merchandise for comparison purposes. It states that Matsushita did not match U.S. models to identical models in Canada but rather chose similar models which minimized the dumping margins. Smith Corona notes that the Department, besides omitting such important features as the physical dimensions and weight of the products as matching criteria, incorrectly used the size of available text memory rather than the type of text memory, and inappropriately ranked others. Smith Corona specifically criticizes that a difference of 1K of text memory (between the Canadian KX-R340CE and the KX-R440CE) resulted in the selection of a lighter, smaller model, without the "SC" dictionary feature found on the U.S. Model. Smith Corona also argues that the physical dimensions and weight are important factors considered by the consumer when purchasing a PET and the Department has recognized the importance of these characteristics when distinguishing between a PET and an office typewriter. Smith Corona cites four instances where the model match was inappropriate because the Canadian model selected was smaller and lighter than the U.S. Model to which it was matched.

Matsushita asserts that petitioner's allegation is both untimely and unfounded. Matsushita states that all interested parties were given the opportunity to submit comments regarding model matching criteria prior to the issuance of the Department's questionnaire. It further states that Smith Corona, along with other interested parties, submitted comments upon which the Department based appendix V of its questionnaire. Matsushita asserts that Smith Corona is objecting not to the model matches but rather to the criteria set forth by the Department in its questionnaire. Matsushita argues that Smith Corona was given adequate opportunity to comment on the criteria and, at this stage of the proceeding, must give compelling reasons to cause the Department to reconsider its decision. See, Final Determination of Sales at Less Than Fair Value: Certain Residential Door Locks and Parts Thereof from Taiwan, ("Door Locks from Taiwan") (54 FR 53153, 53157, December 27, 1989). Matsushita asserts that Smith Corona has not provided any compelling reasons. Matsushita contends that the Department properly delineated model matching criteria which would most likely affect consumers of the merchandise. It argues that text memory capacity, as opposed to the type of internal memory device, is the factor of most concern to a consumer when purchasing a PET. Lastly, Matsushita asserts that Smith Corona's claims regarding differences in weight and physical dimensions are insignificant because these types of differences between models are negligible.

DOC Position

The Department agrees with Matsushita. In these reviews, the Department solicited comments from all interested parties with respect to these characteristics that should be used to select comparison merchandise. The Department received and considered these comments before it selected the matching criteria. Although the Department will continue to consider the appropriateness of its matching criteria and their ranking throughout the course of a proceeding, it will only alter the criteria and the ranking when compelling reasons exist. See, Door Locks from Taiwan. In this instance, Smith Corona has not provided compelling reasons for the Department to revise the matching criteria and their ranking. While the physical dimensions of the merchandise may be one of several factors considered by purchasers of PETs, Smith Corona provided no evidence to show that it is a significant enough factor that it should be used for selecting comparison merchandise. Therefore, the Department has used in its final results the criteria and ranking specified in its questionnaire and accepted the model matches reported by Matsushita in accordance with these criteria.

Comment 9

Smith Corona argues that the method of calculation used by Matsushita for its difference in merchandise ("difmer") adjustment was erroneous because it inappropriately included a per unit cost for the tooling for each product. Smith Corona argues that because Department policy and regulations require that difmer adjustments be made only with respect to costs which relate to actual physical differences in merchandising, tooling, which should be treated as a fixed expense, does not qualify for an adjustment. Smith Corona cites an instance in an earlier administrative review of this same case in which the Department and the CIT rejected an argument that a difference in production lot sizes constituted a difference in physical characteristics. See Final Results of Antidumping Administrative

Review: Portable Electric Typewriters from Japan, 48 FR 40761, 40764 (September 9, 1983); *Silver Reed America, Inc.* v. *United States*, 12 CIT ———, 679 F. Supp. 12, 19, *rehearing on other grounds*, 683 F. Supp. 1393 (1988). Smith Corona claims that the cost of tooling which is used for more than one year is likely to be depreciated, not expensed and that these expenses relate not to physical differences in the merchandise but rather to differences in production volume between U.S. and third-country markets.

Matsushita claims that the Department has previously determined that tooling costs may qualify as a basis for a difmer adjustment (see, Final Results of Antidumping Administrative Review: Television Receivers, Monochrome and Color, from Japan, 55 FR 2399, 2400, January 24, 1990 (*"TV's"*). Matsushita asserts that the tooling costs claimed are not model- or country-specific but rather part-specific. Matsushita contends that certain parts may be common to more than one model or country and that the costs incurred from tooling are variable expenses relating to physical differences in merchandise.

DOC Position

We disagree with Smith Corona. The Department has not been presented with any evidence to indicate that the expenses included in the difmer reported by Matsushita do not qualify for an adjustment pursuant to 19 CFR 353.57. Therefore, we have made an adjustment for difmers as reported by Matsushita.

Comment 10

Smith Corona asserts that Matsushita was unable to provide a five-year history of warranty expenses, as required by the Department's questionnaire, and that the record neither indicates a difference in warranty costs between the U.S. and Canadian markets nor a reflection of any difference in the price of Matsushita's merchandise. Smith Corona also asserts that because Matsushita was unable to identify product-specific or model-specific warranty expenses, no adjustment to FMV should be made for warranty costs.

Matsushita contends that petitioner essentially is contesting the validity of allocated price adjustments. Matsushita argues that is appropriate for the Department to accept allocations when the company itself does not maintain more specific records. See, *e.g.*, Brass Sheet and Strip from the Republic of Korea: Final Results of Antidumping Administrative Review (54 FR 33257, 33258 (August 14, 1989)). Matsushita argues that an adjustment for warranties is wholly appropriate in this instance because warranty expenses affected the company's costs and were reflected in the price of the merchandise. (See, *Smith-Corona Group* v. *United States*, 713 F.2d 1568, 1575-82 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1022 (1983)).

DOC Position

The Department agrees with Matsushita. Although the questionnaire issued for these reviews indicated that respondents should provide warranty expense information for a five-year period, the Department has determined that, in this case, actual warranty expenses incurred by Matsushita for the period of review are the best measure of the manufacturer's warranty costs "built-into" the price of the merchandise. Furthermore, given that the Department is using actual period of review expenses in its analysis for Nakajima, it would be inconsistent for the Department to use a different measure for Matsushita. We also disagree with Smith Corona's assertion that Matsushita failed to establish on the record a difference in the warranty costs incurred in the U.S. and Canadian markets. Based on verification, we established that different warranty expenses were incurred in the two markets and that a circumstance of sale adjustment should be made to account for the difference in warranty expenses incurred.

We also established at verification that the methodology used by Matsushita in the allocation of its U.S. and Canadian warranty expenses was reasonable given the structure of its accounting system. Based on our review of Matsushita's accounting system, we saw no evidence that the warranty expense information for its U.S. and Canadian sales could have been submitted on a product-specific or model-specific basis. Where Matsushita had product-specific information, those warranty expenses were allocated to that product. Those expenses which Matsushita's accounting system could not trace to specific products were allocated on an appropriate basis.Therefore, we have accepted the U.S. and Canadian warranty expenses as reported by Matsushita. In its final results, however, the Department has made a correction to the amount reported for U.S. warranty expenses based on information gathered at verification. This change was inadvertently omitted in the preliminary results.

Comment 11

Smith Corona alleges that certain operations (*i.e.*, addition and subtraction) contained in the Department's computer program did not match with the operations listed in the concurrence memo for the preliminary results. Smith Corona cites instances where the Department errantly added (or subtracted) variables when they should have been subtracted (or added). These clerical errors should be reviewed and revised.

Matsushita contends that the Department properly added and subtracted variables in its computer program. It appears that the Department inserted positive values in its program in order to subtract certain expense variables which Matsushita already had designated on its computer tape as negative values.

DOC Position

We agree with Matsushita. The Department has reviewed the instances cited by petitioner and has determined that the operations listed in its computer program were correct. The inconsistencies between the concurrence meno and the program exist because, in the concurrence memo, we disregarded the fact that some values were incorrectly reported as negative and, therefore, were added in the program, and simple listed the end result of this operation.

Comment 12

Smith Corona asserts that the three royalty expenses Matsushita reported do not apply to all models nor do they apply to the full period under review. Specifically, Smith Corona states that the Department's computer program does not limit the royalty pertaining to the KX-R560 to that model or to the four months for which it is claimed. Smith Corona argues that the Department should ensure the accuracy of the royalty expenses reported by inserting appropriate language into the computer program.

Matsushita asserts that the Department's computer program properly reflects the royalties paid on Matsushita's sales. With regard to the KX-R560, Matsushita had sales of this model only during the months in which the thesaurus royalty was payable. Therefore, the Department need not make any corrections to its program in order to ensure that this royalty was improperly claimed.

DOC Position

The Department agrees with Matsushita. The model KX-R560 was

reported as sold only during those months (January through April) for which the royalty was payable. Every KA-R560 listed the proper thesaurus royalty expense and this expense was not listed for any other models. Therefore, it is not necessary to make any corrections to the computer program. In addition, with respect to the other royalty expenses reported by Matsushita, the Department has thoroughly reviewed the sales listing and the amounts contained therein, as well as checked the reported amounts at verification. We are satisfied that the amounts reported in the sales listing for royalty expenses are correct and that no adjustments to our programming are necessary.

Comment 13

Smith Corona argues that because Brother refused to respond to the Department's questionnaire, and to a specific request regarding liquidated entries, the Department was correct in resorting to the use of BIA in order to assign a rate. It states that in the preliminary results, the Department applied the highest dumping margin determined for Brother in a previous review, 62.79 percent. Smith Corona claims, however, that due to Brother's complete disregard for the Department's requests, the highest rate found for any respondent in these reviews should be assigned to Brother, 88.85 percent.

Brother contends that Smith Corona distorts the record when it alleges that Brother refused to cooperate. Brother argues that it simply notified the Department of the fact that it had no entries, liquidated or unliquidated, of PATs for the time period requested by the Department. Brother asserts that a negative answer is different from a refusal to answer (see, Olympic Adhesives, 899 F.2d 1565, 1573 (Fed. Cir., 1990)). Brother, in citing its submissions to the Department in which it cooperated with the Department's request for information, states that the Department correctly followed established practice in assigning Brother its rate from the 1986-88 administrative reviews (See, Televisions Receivers, Monochrome and Color, from Japan; Preliminary Results of Antidumping Administrative Review, 53 FR 53043, December 30, 1988).

DOC Position

The Department disagrees with Smith Corona. Brother responded to several of the Department's requests for information in this proceeding. Although it did not respond to the Department's last request for information regarding U.S. sales of liquidated entries, the Department considers Brother a cooperative respondent for purposes of assigning a dumping margin based on BIA. It should be noted that the Department's last request was unusual in that it covered sales of merchandise that was already liquidated. Therefore, the Department assigned to Brother a BIA rate consistent with the Department's established practice for cooperative respondents. See the "Use of Best Information Available" section of this notice.

Comment 14

Sharp contends that the Department assigned it an incorrect margin of 37.12 percent in the preliminary determination. Sharp claims that the rate it received was allegedly based on its rate in the "most recently completed administrative review," the all others rate in the original investigation. Sharp states that since it has never received its own rate in these proceedings, it should be assigned 8.13 percent, the all others rate in this review.

DOC Position

We agree that the rate assigned in the preliminary results was incorrect. It is the Department's practice to assign non-shipper companies which have not been reviewed the "all others" rate. In the context of an administrative review, this rate is based on the highest rate of the companies reviewed other than those receiving a rate based entirely on BIA or those which had no shipments during the review period. On this basis, we are assigning Sharp the all others rate calculated in these reviews.

Final Results of Review

Based on comments received, our final results are unchanged from those presented in the notice of preliminary results of review except for the rates for Matsushita, Nakajima, and Sharp. We determine that the following margins exist for the periods May 1, 1988, through April 30, 1989, and May 1, 1989, through April 30, 1990:

Manufacturer/ exporter	Review period	Margin %
Brother	5/01/88-4/30/89	
	5/01/89-4/30/90	62.79
		62.79
Nakajima	5/01/88-4/30/89	
	5/01/89-4/30/90	0.90
		3.87
Matsushita	5/01/88-4/30/89	
	5/01/89-4/30/90	4.92
		0.32
Silver Seiko	5/01/88-4/30/89	
	5/01/89-4/30/90	88.85*
		88.85**
Sharpe	5/01/88-4/30/89	
	5/01/89-4/30/90	0.90**
		3.87**
Canon	5/01/88-4/30/89	
	5/01/89-4/30/90	88.85
		88.85
Fujitsu American, Inc.	5/01/89-4/30/90	5.20*
Juki Corp./Juki Office Machine Corporation	5/01/89-4/30/90	2.40*
Tokyo Electric Company, Ltd.	5/01/89-4/30/90	4.92*
Towa Espo Corporation	5/01/89-4/30/90	1.41*

*These companies had no shipments during the review period. Therefore, we assigned them their rates from the most recently completed administrative review.

**Because Sharp never received its own separate rate and it had no shipments during either of these review periods, it is receiving the all other rate calculated for each of the review periods.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies, except Matsushita, will be that established in the final results of the review for the 1989-90 period; (2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in previous reviews or the original less than fair value investigation, the cash deposit rate will continue to be the rate published in the most recent determination for which the manufacturer or exporter received a company-specific rate; and (3) the cash deposit rate for all other exporters/producers will be 3.87 percent. This is the highest non-BIA rate for any firm included in the 1989-90 review. Because the margin for Matsushita is *de minimis* for the 1989-90 period, no cash deposit shall be required for this firm. These deposit requirements and waiver are effective for all shipments of Japanese PETs entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 353.22(C)(8).

Dated: October 28, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-26547 Filed 11-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Roller Chain, Other Than Bicycle, From Japan; 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 May 23, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on roller chain, other than bicycle, from Japan. The review covers five firms, and the period April 1, 1986, through March 31, 1987.

We gave interested parties the opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the margins from those presented in our preliminary results.

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 23680) the preliminary results of its administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9226; April 12, 1973). The Department has now completed that administrative review with respect to five firms in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle," as used in this review includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain.

This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. During the review period, roller chain, other than bicycle, was classified under various provisions of the Tariff Schedules of the United States Annotated (TSUSA) from item numbers 652.1400 through 652.3800, and is currently classifiable under Harmonized Tariff System (HTS) item numbers 7315.11.00 through 7616.90.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The Department initiated a review covering eleven manufacturers/exporters of roller chain to the United States and the period April 1, 1986, through March 31, 1987. Of these eleven firms, the review of three companies has been deferred, the finding has been revoked with respect to two companies, and the review of another company has been terminated. We are reviewing Daido Kogyo Co., Ltd., and Enuma Chain Manufacturing Co., Ltd., separately. Sugiyama Chain Co., Ltd. (Sugiyama), is not included in this review because we are conducting all outstanding reviews of Sugiyama concurrently. The finding was revoked with respect to Tsubakimoto Chain Co., Ltd. (Tsubakimoto), effective September 1, 1983 (54 FR 33259; August 14, 1989), and with respect to Honda Motor Co., Ltd. (Honda), effective October 8, 1982 (56 FR 18564; April 23, 1991). The review of Nissan Motor Co., Ltd. (Nissan), was terminated May 7, 1991 (56 FR 21128).

This review covers five manufacturers/exporters of roller chain, other than bicycle, from Japan, and the period April 1, 1986, through March 31, 1987. We have reviewed the sales of Hitachi Metals Techno (Hitachi) and Izumi Chain Co., Ltd. (Izumi). We have used the best information available (BIA) for Takasago RK Excel Co., Ltd. (Takasago), Toyota Motor Co., Ltd. (Toyota), and Pulton Chain Co., Ltd. (Pulton), because Takasago and Toyota did not submit a computer tape, and Pulton provided a computer tape the Department could not use. As BIA the Department used the highest rate calculated for a responding firm in this review.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. The Department received comments from the petitioner and three respondents.

Comment 1: The petitioner argues that the home market advertising deduction claimed by Hitachi should be allowed as an indirect selling expense rather than as a direct selling expense, since Hitachi's advertising was not shown to be directed to the ultimate purchaser. Hitachi counters that the advertising which it claimed as a direct selling expense was product-specific, and was in fact designed to promote sales of Hitachi's roller chain to end users or ultimate purchasers.

Department's Position: We disagree. Petitioner failed to raise this issue until after the deadline for submission of new information and after the preliminary results were published. As such, the Department had no reason to question what Hitachi claimed as direct advertising expense, and at that late date was not in a position to request further substantiation from Hitachi. Accordingly, the Department has decided to allow the advertising expenses to be counted as direct expenses, as claimed by Hitachi.

Comment 2: The petitioner claims that Hitachi's home market indirect expenses were deducted twice in the purchase price (PP) and exporter's sale price (ESP) computer programs. Furthermore, the petitioner claims that home market indirect expenses allowed were not properly capped at the level of U.S. commissions for PP, or capped at the level of U.S. commissions and indirect expenses for ESP.

Department's Position: We agree, and have modified our calculations to eliminate the double deductions and to limit home market indirect expenses to the level of their appropriate caps.

Comment 3: The petitioner argues that Hitachi failed to include inventory carrying costs as an indirect selling expense, and that the Department should make this adjustment to ESP using its standard methodology. Hitachi maintains that these costs are theoretical in nature, and are not a real expense associated with the ESP roller chain sales which occurred during the review period.

Department's Position: We agree with the petitioner, and have included an adjustment for inventory carrying costs in our final results. However, because the Department lacked the necessary data to impute inventory carrying costs in the manner suggested by the petitioner, as best information available,

we used the alternative methodology proposed by Hitachi.

Comment 4: Izumi argues that the Department should modify inland freight and packing charges for certain sales which were shown incorrectly in Japanese yen, as opposed to U.S. dollars, in the original questionnaire response. In addition, Izumi requests that the Department correct two model codes which were labelled incorrectly in the computer program.

Department's Position: We agree, and have corrected the referenced errors.

Comment 5: Izumi argues that computer programming language resulted in the inclusion of certain U.S. sales which were outside the review period.

Department's Position: We agree, and have changed the computer program so that only those sales made in both markets during the period April 1, 1986, through March 31, 1987, are included.

Comment 6: Hitachi argues that the Department should correct three computer keypunch errors in Hitachi's submission.

Department's Position: We agree, and have corrected the referenced data input errors.

Comment 7: Pulton argues that the Department's decision to use the best information available (BIA) for Pulton is not in accordance with law. Pulton maintains that the ITA exceeded its authority by requiring Pulton, which does not regularly computerize its records, to submit a computer tape. Pulton also states that the Department's time constraints should not be the basis for denying the firm an opportunity to provide a usable tape. Finally, Pulton claims that the Department's decision not to use Pulton's computer tape is inconsistent with its prior practice.

Department's Position: We disagree with Pulton. Pulton did not demonstrate that submission of the tape constituted an unreasonable additional burden in time and expense in accordance with 19 CFR 353.31(e)(3). In fact, the company cited the burden of computerization only after it had already produced a tape and following the preliminary determination. The Department's time constraints notwithstanding, the record demonstrates that the Department accepted an amended computer tape and otherwise went to extraordinary lengths to help Pulton provide a usable tape. Finally, the Department was consistent with its prior practice in requesting submission of data in computerized format. See *e.g.* Fishnetting of Man-Made Fibers from Japan, 55 FR (April 18, 1990).

Comment 8: Pulton insists that the computer tape it submitted to the Department was usable, and that the ITA rejected the tape without offering substantial evidence on the record that it was not usable.

Department's Position: Subsequent to publication of the preliminary results, the Department reviewed a final printout and format submitted by Pulton's computer consultant, which Pulton claimed would establish that they had originally provided a usable tape. The Department examined these items and compared them to the original submissions, and determined that the data provided was not usable in the form submitted. Problems in working with and using Pulton's submissions are well documented by the Department in the administrative record.

Comment 9: Pulton claims that the Department's return of the additional information it requested constituted an improper removal of evidence from the administrative record.

Department's Position: We disagree. The Department did not "request" the additional computer printout and format that was returned. The Department had already determined that Pulton's computer tape was not usable with the latest computer format submitted, and had already informed Pulton's counsel of this fact in writing. The items that were returned were only accepted in response to an appeal made by Pulton, for the sole purpose of testing Pulton's assertion that its original tape was usable. Once the Department reconfirmed that the tape was deficient, it returned the "test format and printout."

Final Results of the Review

As a result of our analysis of the comments received, we determine that the following weighted-average margins exist for the period April 1, 1986, through March 31, 1987:

Manufacturer/exporter	Margin %
Hitachi Metals Techno	4.88
Izumi Chain Co.	3.54
Pulton Chain Co.	4.88
Takasago RK Excel Co.	4.88
Toyota Motor Co.	4.88

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions for all companies directly to the Customs Service.

Given the interval between the period of review covered by this notice and the actual conduct of this review, and the fact that final margins have been published for reviews in some of the intervening periods, the dumping margins determined in this final results notice will have no impact on the current cash deposit rates.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of roller chain, other than bicycle, from Japan, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The Customs Service shall continue to require a cash deposit of estimated antidumping duties for all merchandise produced or exported by any of the companies covered by this review, based on the final rates for the above period; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews, or the final determination in the original less-than-fair-value investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, another review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or the final results of the most recent review in which the manufacturer received a company-specific rate, or the rate for the manufacturer from the less-than-fair-value investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firm or any previously reviewed firms, will be 4.88 percent. This is the highest most current non-BIA rate for any firm in this proceeding.

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 353.53a(a) of the Commerce Regulations (19 CFR 353.53a(a)) (1985).

Dated: October 24, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-26548 Filed 11-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-807]

Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from the United Kingdom

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Office of Antidumping Investigations, Office of Investigations, Import Administration, U.S. Department of commerce, 14th Street and constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1776.

FINAL DETERMINATION:

Background

Since the publication of our affirmative preliminary determination on June 13, 1991 (56 FR 27241), the following events have occurred.

On June 20, 1991, the petitioners in this investigation, the Committee of the American Paper Institute to Safeguard the U.S. Coasted Groundwood Paper Industry and its nine individual members, requested a public hearing.

From June 24 through June 26, 1991, the Department conducted verification of the questionnaire response submitted by Caledonian paper plc (Caledonian), the respondent in this investigation, in the United Kingdom.

On July 1, 1991, respondent requested that the Department postpone the final determination in this investigation for 60 days, pursuant to 19 CFR 353.20(5)(b). On July 1, 1991, petitioners submitted a letter opposing the postponement request.

On July 2, 1991, respondent requested a public hearing. On July 17, 1991, the Department published a notice in the **Federal Register** (56 FR 32548) postponing the final determination in this investigation until not later than October 28, 1991.

On August 7 and August 8, 1991, the Department conducted verification of Caledonian's questionnaire response at the offices of the company's U.S. sales agent located in Tarrytown, New York.

Petitioners and respondent filed case briefs on September 26, 1991, and rebuttal briefs on October 1, 1991.

On September 30, 1991, respondent submitted a revised computer tape correcting errors found during verification.

A public hearing was held on October 4, 1991.

Scope of Investigation

The product covered by this investigation is coated goundwood paper. For purposes of this investigation, coated groundwood paper is paper coated on both sides with kaolin (China clay) or other inorganic substances (*e.g.*, calcium carbonate), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of 1) basis weight (*e.g.*, mounds per ream or grams per one square meter sheet); 2) GE brightness; or 3) the form in which it is sold (*e.g.*, reels, sheets, or other forms). "Paperboard" is specifically excluded form the scope of this investigation. For purposes of this investigation, paperboard is defined to be coated groundwood paper 12 points (0.012) inch or more in thickness.

Coated groundwood paper is currently classifiable under items 4810.21.00.00, 4810.29.00.00, and 4823.59.40.40 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1990, through December 31, 1990.

Such or Similar Comparisons

We have determined for purposes of the final determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of coated groundwood paper from the United Kingdom to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of coated groundwood paper to sales of identical or similar coated groundwood paper in the United Kingdom.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because all U.S. sales were made to an unrelated party prior to importation into the United States. Exporter's sales price (ESP) methodology is not appropriate since the subject merchandise was not introduced into the inventory of respondent's related U.S. selling agent, respondent's related sales agent acted mainly as a processor of sales-related documentation and communication links with the unrelated U.S. customer, and this was the customary commercial channel for sales of this merchandise between the parties involved. Where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 773(c) of the Act. We excluded from our analyses a resale of merchandise imported prior to the POI and rejected by the original purchaser because the sale subject to examination under the antidumping statute occurred outside the POI. We also excluded trial sales from our analysis because these sales were made in small quantities. (For further discussion of trial sales, see "Comment 3" in the *Interested party Comments* section of this notice.)

We calculated purchase price based on packed, delivered prices. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, foreign port charges, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. port charges, U.S. brokerage and handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts. Caledonian did not estimate cash discounts for any transaction for which payment had not been received from its U.S. customer. Therefore, we used best information available (BIA) to impute a cash discount for sales where a cash discount would still have been possible as of the date of verification. (For further discussion, see "Comment 4" in the Interested Party Comments section of this notice.) In accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of the United Kingdom value-added tax that would have been collected had the merchandise not been exported.

We calculated ESP based on packed, delivered prices. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, foreign port charges, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. port charges, U.S. brokerage and handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts. In accordance with section 772(e)92) of the Act, we made additional deductions for credit expenses, warranty expenses, post-sale warehousing expenses, reslitting costs, indirect selling expenses, and inventory carrying costs. At verification, we found that the calculation of Caledonian's reported U.S. interest rate contained clerical errors. We recalculated credit expenses using the reported interest rate revised to correct for these errors. We also recalculated credit expenses for

shipments to a bankrupt customer, whose payment was still outstanding as of the date of the U.S. verification, based on the average payment period for all other ESP sales. We recalculated indirect selling expenses reported as per ton amounts to reflect a percentage of sales value. in accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of the Untied Kingdom value-added tax that would have been collected had the merchandise not been exported.

Foreign Market Value

In order to determine whether there were sufficient sales of coated groundwood paper in the home market to serve as a viable basis for calculating FMV, in accordance with section 733(a)(1) of the Act, we compared the volume of home market sales of coated groundwood paper to the volume of third country sales of coated groundwood paper. For Caledonian, the volume of home market sales was greater than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales constituted a viable basis for calculating FMV, in accordance with 19 CFR 353.48.

We excluded trial sales from our analysis because these sales were made in small quantities. We based FMV on packed, delivered prices to unrelated customers in the home market. For comparison to purchase price sales, we made deductions, where appropriate, for billing errors. We also made deductions, where appropriate, for foreign inland freight, foreign loading charges, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act. Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, post-sale warehousing expenses, reslitting costs, and warranty expenses. Although Caledonian borrowed in both markets, the U.S. interest rate was the lower of the rates in both markets. This use of the lower of the interest rates in both markets is consistent with the Court of Appeals' remand in *LMI-La Metalli Industriale, S.p.A.* v. *United States*, 912 F.2d 455 (Fed. Cir. 1990), of *Brass Sheet and Strip from Italy (LMI)*. At verification, we found that the calculation of Caledonian's reported U.S. interest rate contained clerical errors. We recalculated credit expenses using the reported interest rate revised to correct for these errors. For sales which, as of the date of the U.S. verification, either had not been shipped by Caledonian and/or had not been paid for by the customer, we recalculated credit expenses using the weighted-average credit period for all sales for which payments had been made. Regarding post-sale warehousing expenses, Caledonian incorrectly did not report a small number of its monthly warehousing fees for sales invoiced to the customer prior to verification. Therefore, we recalculated U.S. warehousing charges based on the formula provided at verification. In addition, Caledonian did not report expenses for U.S. sales which were in the warehouse as of the date of the U.S. verification. As BIA, therefore, we calculated this expense by applying the monthly fee charged by the warehousing company to the period between the date of entry of the merchandise and the date of the U.S. verification, based on the formula provided at verification. We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

Where appropriate, we made adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

For comparisons to ESP sales, we made deductions, where appropriate, for billing errors. We also made deductions, where appropriate, for foreign inland freight, foreign loading charges, credit expenses, warranty expenses, and discounts. For sales which, as of the date of the U.S. verification, either had not been shipped by Caledonian and/or had not been paid for by the customer, we recalculated credit expenses using the weighted-average credit period for all sales for which payment has been made.

We also deducted home market indirect selling expenses, which included inventory carrying expenses and other indirect selling expenses. This deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses incurred in the U.S. market, in accordance with 19 CFR 353.56(b). We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

Currency Conversion

Prior to the preliminary determination in this investigation, respondent requested that the Department apply the provisions of 19 CFR 353.60(b) to account for the effect of temporary fluctuations in the exchange rate between the British pound and the U.S. dollar during the POI.

We were unable to consider Caledonian's request in our preliminary determination due to the late date on which the claim was made. We now determine that the special rule for currency conversion as outlined in 19 CFR 353.60(b) does not apply in this investigation. Accordingly, we have made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. (For further discussion of this topic, see "Comment 1" in the *Interested Party Comments* section of this notice.)

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent by using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Interested Party Comments

Comment 1

Respondent argues that the Department should use the provisions of 19 CFR 353.60(b) and disregard the U.S. dollar/British pound exchange rates in existence during the POI in making fair value comparisons. Rather, respondent argues, the Department should use the exchange rates prevailing during the first and second quarters of 1990.

Respondent maintains that during the POI temporary, volatile exchange rate fluctuations occurred, due to the crisis in the Persian Gulf, and that once the crisis was resolved exchange rates resumed normal levels. Further, respondent claims that it was not able to revise its U.S. prices to reflect the rate changes, given the temporary nature of the exchange rate decline. Finally, respondent maintains that a large portion of the apparent difference between home market and U.S. prices is a result of the exchange rate disparity.

Petitioners argue that the Department should use its standard practice of applying the quarterly rates in effect during the POI. Petitioners contend that it is invalid to determine whether a exchange rate movement is "temporary" by reference to a period after the POI. Therefore, petitioners maintain that the Department should look to the period during and preceding the POI and conclude that, contrary to experiencing

temporary and volatile fluctuations, the British exchange rate (in dollars per British pound) exhibited a sustained and gradual appreciation over the year and a half prior to and including the POI. According to petitioners, since the pound's steady rise was not a temporary fluctuation, Caledonian should have adjusted its prices to eliminate the dumping margins resulting from continuing to sell at prices established in reference to a previously existing exchange rate.

Petitioners also argue that, even if fluctuations in the exchange rates during the POI could be viewed as "temporary," the Department should not apply the "special rule" because the differences between U.S. price and foreign market value would not result solely from these fluctuations. Petitioners cite *Melamine Chemicals, Inc.* v. *United States* (732 F.2d 924, 933 (Fed. Cir. 1984)) and *NTN Bearing Corporation of America* v. *United States* (747 F. Supp. 726 (Ct. Int'l Trade 1990)), in which the Court of International Trade held that the dumping margin must be due solely to exchange rate fluctuations in order to make an adjustment to account for these differences.

In addition, petitioners argue that, if the Department decides to use exchange rates from a prior quarter, the lag period should be no more than the average number of days in which Caledonian expects payment to be made. Petitioners state that this is the amount of time that a rational business organization would take into account when looking at exchange rates for purposes of setting prices.

Finally, petitioners maintain that the Department only grants a circumstance of sale adjustment to account for exchange rate fluctuations under extremely limited circumstances: to adjust in a constructed value situation for the unusual case of hyperinflation.

DOC Position

The special rule for investigations outlined in 19 CFR 353.60(b) provides:

> For purposes of investigations, producers, resellers, and importers will be expected to act within a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates. When the price of the merchandise is affected by temporary exchange rate fluctuations, the Secretary will not take into account in fair value comparisons any difference between United States price and foreign market value resulting solely from such exchange rate fluctuation.

We interpret 19 CFR 353.60(b) to mean that if there has been a sustained change in the exchange rate, and respondents can demonstrate that they revised their prices within a reasonable period of time to reflect that change, then we will use an appropriate lag period to convert foreign currency. (See, Final Determination of Sales at Less Than Fair Value; Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855)). If temporary exchange rate fluctuations occur during the POI (*i.e.*, the daily rate varies from the quarterly average rate by more than five percent), we will, following present policy, also use the quarterly exchange rate for those days in our LTFV analysis, but only if this results in a reduction of the weighted-average dumping margin for that company to *de minimis* or zero. (See, Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Federal Republic of Germany (52 FR 822, January 9, 1987) and Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855, April 27, 1987). Accordingly, we do not interpret the special rule outlined in 19 CFR 353.60(b) as envisioning the treatment of an entire POI as a temporary fluctuation.

Regarding the nature of the exchange rate fluctuation in this case, we agree with petitioners that the movement of exchange rates during the POI can be characterized as a non-volatile continuation of a sustained depreciation of the U.S. dollar against the pound that, while not entirely steady, (*i.e.*, on occasion the daily rate varied from the quarterly rate by more than five percent), began up to two years before the POI. Since respondent did not make price adjustments in response to this sustained change in exchange rates, no special treatment under the provision of the regulations dealing with sustained changes is warranted here.

Regarding respondent's comparison of fluctuations during the POI to periods before and after in support of its claim that the entire POI was a temporary aberration from a relatively stable exchange rate over the past several years or a time of great uncertainty in currency markets, we do not believe that 19 CFR 353.60(b) contemplated the use of *post hoc* analysis to determine whether currency fluctuations were temporary. We interpret the special rule to be prospective in outlook. That is, were currency fluctuations so volatile and temporary that a business could not reasonably be expected to predict what future currency fluctuations would be? Or, were exchange rate movements such that a business could discern a future general trend in their movement and make an appropriate adjustment? The evidence in this instance indicates the latter situation.

To the extent the POI exhibited some temporary currency fluctuations where on some days the dollar/pound exchange rate exceeded by five percent the quarterly rate, we have determined not to apply the lag period procedure used in *Melamine* to compensate for any such temporary currency fluctuations. We have reconsidered our actions in *Melamine* and find that the Department's actions in *Melamine* were a response to a very unusual situation and should not be followed.

Even assuming, *arguendo*, that the POI exhibited some temporary currency fluctuations, respondent would not be entitled to any remedy under the special rule. Under the special rule set out in 19 CFR 353.60(b), we will not consider any differences between U.S. price and foreign market value due solely to exchange rate fluctuations. We have interpreted this rule to mean that temporary exchange rate fluctuations alone must be responsible for a firm's overall weighted-average dumping margin. See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Federal Republic of Germany (52 FR 822, January 9, 1987) and Final Determination of Sales at Less Than Fair Value: Malleable Cast Iron Pipe Fittings From Japan (52 FR 13855, April 27, 1987).

To determine whether temporary exchange rate fluctuations are solely responsible for a firm's margin, we use the quarterly exchange rate for those days where the daily exchange rate differs from the quarterly rate by more than five percent. In this instance, we find that, in using the quarterly exchange rate, respondent's margin does not fall to *de minimis* or zero. Accordingly, respondent would not be entitled to any relief under the special rule even assuming, *arguendo*, that we were to determine that exchange rate movements were characterized by temporary fluctuations.

Finally, the Department does not believe that changes in currency exchange rates are, or can be, an appropriate basis for adjustments on circumstances of sale except in extraordinary cases, such as in hyperinflationary economies.

Comment 2

Petitioners argue that the Department should have included commissions paid to Caledonian's related U.S. sales agent in its adjustment to U.S. prices. Petitioners contend that these commissions are directly related to the sales at issue and represent arm's-length

transactions. In support of these contentions, petitioners note that the commissions are (1) paid pursuant to a written contract, (2) paid as a percentage of the sales value, (3) calculated on each invoice, and (4) earned at the time a particular sale occurs. As Department precedent for its position, petitioners cite Cephalexin Capsules From Canada (54 FR 26820, June 16, 1989), Certain Iron Construction Castings From Canada (51 FR 2412, January 6, 1986), Drycleaning Machinery From West Germany (50 FR 32154, August 8, 1985), and Egg Filler Flats From Canada (50 FR 24009, June 7, 1985). Moreover, petitioners note that the commission paid to Caledonian's related party approximates a "standard" paper commission percentage found by the International Trade Commission (ITC). Finally, petitioners state that, although the commission paid to Caledonian's sales agent was not sufficient to meet its expenses, this fact does not negate the fundamental arm's-length nature of the commission.

Respondent argues that its payments to its related sales agent are not arm's-length commissions directly related to sales. Respondent contends that these commissions are not directly related to sales because (1) they are not the only method of transferring funds between the parties and (2) the sales agent does not pay all of its selling expenses. Therefore, respondent concludes that these payments are simply one way among many in which funds flow between related parties. Furthermore, because Caledonian does not pay commissions to unrelated parties, respondent contends that the Department was unable to verify that commissions paid to its related party were arm's-length transactions. Respondent contends that, absent verification of the arm's-length nature of these payments, it is inappropriate to determine that they are at arm's-length based on a "standard" commission level in the paper industry. Respondent notes that standard commission levels are irrelevant to the commission percentage that it pays unless it can be demonstrated that this "standard" commission covers the same services provided by Caledonian's related party.

Regarding commissions paid on ESP sales, respondent contends that the "commission" paid to its related party functions more as a discount from the selling price to the related party than a commission because the payment of this amount cannot be directly tied to the resale by the related party. Respondent states that this treatment of related party commissions is consistent with the policy articulated in the Generic Cephalexin Capsules From Canada determination noted above. Respondent states that the Department does not accept as adjustments discounts or rebates paid to related parties.

Finally, respondent maintains that treatment of related party commissions as arm's-length transactions in general could lead to manipulation of commission levels in the future in order for companies to avoid dumping deposits. Respondent contends that the possibility of this type of manipulation has led the Department to presume that commissions paid to related parties are not at arm's-length unless the respondent is able to prove otherwise. Respondent states that this presumption was recently upheld by the Federal Circuit in LMI, where the Court held that the burden is on the respondent to demonstrate that commissions paid to related parties are at arm's-length.

DOC Position

The Court of Appeals' remand in LMI instructed the Department to adjust for commissions paid to a related party in the home market when the commissions were determined to be 1) at arm's-length and 2) directly related to the sales in question. Subsequent to this, the Department has developed the following guidelines to determine whether commissions paid to related parties either in the United States or in the foreign market are at arm's-length:

(1) We will compare the commission paid to the related selling agent to those paid by respondent to any unrelated selling agents in the same market (home or U.S.) or in any third country market.

(2) In cases where there is not an unrelated sales agent, we will compare the commission earned by the related selling agent on sales of merchandise produced by the respondent to commissions earned by the related selling agent on sales of merchandise produced by other unrelated sellers or manufacturers.

In appropriate circumstances we will also examine the nature of the agreements or contracts between the manufacturer(s) and selling agent(s) which establish the framework for payment of commissions and for services rendered in return for payment, in order to ensure that both related and unrelated agents perform approximately the same services for the commission. If, based on the above analysis, the Department is satisfied that the commissions are at arm's-length as well as directly related to the sale, we will make an adjustment for these commissions. In this case, Caledonian did not use an unrelated commissionaire to sell its merchandise in the United States. Nor was Caledonian's related U.S. sales agent the commissionaire for unrelated producers.

Petitioners have suggested that the arm's-length nature of the payments between Caledonian and its related agent can be tested by reference to the "standard" commission percentage found by the ITC in its investigation. Absent knowledge of what services are rendered in return for this standard commission, we are unable to determine if the commission paid by Caledonian is comparable.

Because we have no appropriate benchmark against which to test the arm's-length nature of the commission arrangement between Caledonian and its related sales agent, we are not satisfied that these payments are at arm's-length. Therefore, we have not adjusted for them.

Comment 3

Petitioners argue that the Department should include Caledonian's trial sales in its analysis of U.S. price because (1) it is the Department's usual practice to do so and (2) section 772 of the Act does not provide for the exclusion of U.S. sales made outside the ordinary course of trade. Petitioners argue that in the home market, however, the Department should not include Caledonian's trial sales in its analysis because (1) Caledonian charged lower prices for these sales and (2) because they are outside the ordinary course of trade.

Respondent contends that trial reels are properly excluded from the sales listing in both the United States and home market. Respondent states that these reels were provided at either no charge or at reduced prices and that inclusion of these reels would distort the margin analysis. Respondent maintains that it would be unfair to include these sales in one market and not the other.

DOC Position

We agree with respondent. Unlike administrative reviews, there is no requirement in less-than-fair-value investigations that the Department investigate all U.S. sales. In this case, not only would it be unfair to include trail sales in only one market, but inclusion or exclusion of these sales would not have a material impact on the final dumping margin, which is a weighted-average of all of the margins found in this investigation. (Caledonian made only a small number of trial sales, all of which were in very small quantities.) Therefore, we have not included trial sales in our analysis in

either the home market or the United States.

Comment 4

Petitioners argue that, because respondent did not report cash discounts for ESP sales for which payment had not been made, the Department should use BIA to deduct cash discounts from USP for these sales. As BIA, petitioners contend that the Department should use the weighted average of cash discounts paid during the POI on those sales for which payment had been received.

Respondent argues that it is inapprpriate to use BIA to impute a cash discount for these sales. Respondent states that cash discounts will not be granted on these sales because the cash discount period has already expired.

DOC Position

We agree with respondent regarding discounts on ESP transactions. It is inappropriate to calculate a discount when the possibility of payment of the discount no longer exists. However, we noted at verification that respondent also did not impute a discount on unpaid purchase price transactions. We have determined that in certain instances it is appropriate to do so. Therefore, we have calculated a cash discount of those purchase price transactions for which payment had not been received by verification and for which a cash discount would still have been possible (*i.e.*, the payment terms allowed for cash discounts and payment was not untimely according to those terms by the date of the verification). As the imputed discount, we applied the weighted-average discount calculated for sales in the purchase price sales listing having payment terms which allowed for cash discounts and for which payment had been received. Because Caledonian sometimes aggregated other discounts with its reported cash discounts, we capped the weighted-average discount amount at the highest percentage offered in Caledonian's reported payment terms.

Comment 5

Respondent argues that the Department correctly adjusted for cash discounts taken by Calendonian's customers in both the home market and the United States, even though it appeared that at times these customers paid outside the period in which a cash discount was allowed. Petitioners argue that these discounts should be disallowed because Caledonian's explanation for this noncompliance has not been verified.

DOC Position

We agree with respondent. We examined cash discounts granted by Caledonian and found that the discounts reported had actually been taken by the customer. Because these discounts were actually taken, we have allowed them as adjustments to FMV.

Comment 6

Respondent maintains that the Department correctly excluded from the investigation sales made pursuant to a contract signed prior to the POI. Respondent contends that the customer's failure to meet all of the terms of the contract does not invalidate the binding commitment. In support of this position, respondent cites Gray Portland Cement and Clinker From Mexico (55 FR 29244, 29249, July 18, 1990).

DOC Position

We agree. At verification, we established that the parties entered into a binding agreement, and that it was executed prior to the POI. The fact that one of the parties failed to meet all of the essential terms is not controlling for date of sale purposes. Therefore, we have determined that these sales were properly excluded from the sales listing based on a date of sale prior to the POI.

Comment 7

Respondent argues that "stop" orders should not be used to determine the date of sale because these orders merely serve to reserve a place in the company's production schedule.

DOC Position

We agree. We established at verification that a binding commitment on the terms of sale was not made at the time that the "stop" order was placed by the customer. Therefore, it would be inappropriate to use the date of the "stop" order as the date of sale.

Comment 8

Respondent argues that U.S. customs duties and customs fees are properly calculated on the transfer price between Caledonian and its related sales agent because this is the price on which the U.S. Customs Service assesses duties.

DOC Position

We agree. We verified that respondent correctly reported the amount of duties and customs fees actually paid on each sale.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, for Caledonian and all other producers/manufacturers/exporters, we are directing the Customs Service to continue to suspend liquidation of all entries of coated groundwood paper from the United Kingdom, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after June 13, 1991, which is the date of publication of our preliminary determination in the **Federal Register.**

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States prices as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Weighted-average margin percentage
Caledonian Paper plc	35.61
All others	35.61

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)), and 19 CFR 353.20.

Dated: October 28, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-26545 Filed 11-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-048]

Certain Textiles and Textile Products From Argentina; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on certain textiles and textile products from Argentina, specifically men's and boys' woolen garments. Interested parties who object to this revocation must submit their comments in writing not later than November 30, 1991.

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1978, the Department of Commerce (the Department) published a countervailing duty order on certain textiles and textile products from Argentina (48 FR 53421). The department has not received a request to conduct an administrative review of the countervailing duty order on certain textiles and textile products from Argentina for more than four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than November 30, 1991, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by November 30, 1991, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with § 355.25(d) of the Department's regulations.

Dated: October 29, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-26549 Filed 11-1-91; 8:45 am]

BILLING CODE 3510-DS-M

Olivet Nazarene University, et al., Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 4204, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC.

Docket Number: 91-143. *Applicant:* Olivet Nazarene University, 240 E. Marsile, Bourbonnais, IL 60914. *Instrument:* Rapid Kinetics Accessory, Model SFA-12. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used for rate studies of reactions of transition metal and organometallic complexes. In addition, the instrument will be used in the courses CHEM 392, Physical Chemistry and CHEM 373, Biochemistry, giving students an opportunity to study rapid kinetics techniques and generating rate data for analysis and study. *Application Received by Commissioner of Customs:* September 27, 1991.

Docket Number: 91-144. *Applicant:* Texas Agricultural Experimental Station, 1619 Garner Field Road, Uvalde, TX 78801. *Instrument:* Thermogradient Table, Model DB-5002. *Manufacturer:* Van Dok & Deboer B.V., The Netherlands. *Intended Use:* The instrument will be used in experiments designed to test different vegetable species on germination and seed water uptake at a range of temperatures from 5°C (minimum) to 45°C (maximum). It will also be used for a wide range of physiological and pathological investigations. The objectives of these studies will be to determine the relationship between temperature and seed dormancy, seed germination and associated seed physiological processes. *Application Received By Commissioner of Customs:* September 30, 1991.

Docket Number: 91-145. *Applicant:* Veterans Administration Medical Center, Pathology Service, 508 Fulton Street, Durham, NC 27705. *Instrument:* Electron Microscope, Model JEM-1200EX. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for the study of human tissue samples and as an analytical instrument to specifically identify exogenous and endogenous substances (mostly xenobiotics) in human, and perhaps on occasion animal, tissue samples. In addition, the instrument will also be used on a one-to-one basis in the training of medical and graduate students and pathology residents and fellows. *Application Received by Commissioner of Customs:* October 1, 1991.

Docket Number: 91-146. *Applicant:* Alabama A&M University, Normal, AL 35762. *Instrument:* Experimental Set-ups for Structural Loading Frame. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* The instrument will be used for structural analysis in order to understand structural response to loadings. *Application Received by Commissioner of Customs:* October 1, 1991.

Docket Number: 91-147. *Applicant:* The Ohio State University, 1800 Cannen Drive, Room 800 Lincoln Tower, Columbus, OH 43210. *Instrument:* Electron Microscope, Model EM 900 PC. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument will be used for studies of human and animal tissues, DNA and RNA samples, bacterial and viral entities and in vitro cell cultures. In addition, the instrument will be used for educational purposes in the Department of Pathology's resident program. *Application Received by Commissioner of Customs:* October 2, 1991.

Docket Number: 91-148. *Applicant:* Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439-4837. *Instrument:* ICP Mass Spectromenter System, Model PlasmaQuad PQ2. *Manufacturer:* Fissons Instruments, Inc., United Kingdom. *Intended Use:* The instrument will be used in leaching experiments on nuclear waste and in reprocessing optimization experiments on nuclear fuel at expected concentration levels of actinide elements in solutions of <1ng/mL. *Application Received by Commissioner of Customs:* October 2, 1991.

Docket Number: 91-149. *Applicant:* UCLA School of Medicine, 10833 Leconte Avenue, Los Angeles, CA 90024. *Instrument:* Eye Movement Measuring Device. *Manufacturer:* Skalar Medical b.v., The Netherlands. *Intended Use:* The instrument will be used to measure the eye position in humans in experiments involving the study of the interaction of the system the brain uses to maintain clear vision while the head is moving, and developing an understanding of the nature of abnormal eye movements that occur in diseases of the eye, ear or brain. The instrument will also be used to teach residents in Neurology, Otolaryngology and Ophthalmology the testing and

diagnosis of disorders that produce abnormalities in eye movements. *Application Received by Commissioner of Customs:* October 3, 1991.

Docket Number: 91-150. *Applicant:* Lamont-Doherty Geological Observatory of Columbia University, Route 9W, Palisades, NY 10964. *Instrument:* High Temperature Well-Logging Probe with cable. *Manufacturer:* BRGM, France. *Intended Use:* The instrument will be used to determine the heat flow (conductive and convective modeling), hydrothermal and hydrological circulation in geothermal boreholes. In addition, the instrument will be used for the training of graduate students in high-temperature operations and in the analysis of high resolution temperature data. *Application Received By Commissioner of Customs:* October 8, 1991.

Docket Number: 91-151. *Applicant:* University of Hawaii at Manoa, School of Ocean and Earth Science Technology, 1000 Pope Road, Honolulu, HI 96822. *Instrument:* IR Mass Spectrometer, MAT 252. *Manufacturer:* Finnigan Corporation, West Germany. *Intended Use:* The instrument will be used to measure the stable isotopic ratios of hydrogen, carbon, oxygen, nitrogen and sulfur. The different categories of research may be broadly classified as follows:

(1) Carbon and nitrogen isotopic compositions of individual organic compounds,

(2) Carbon and oxygen isotopic compositions of marine fossils and grains,

(3) Isotopic compositions of dissolved organic carbon in seawater,

(4) Hydrogen and oxygen isotopic compositions of clay minerals, and

(5) Sulfur isotopic compositions of sedimentary sulfide minerals.

In addition, the instrument will also be an integral part of graduate programs in Geology and Oceanography. *Application Received By Commissioner of Customs:* October 8, 1991.

Docket Number: 91-152. *Applicant:* Duke University, Durham, NC 27706. *Instrument:* 3-D Coordinate and Measuring Microscope. *Manufacturer:* Reflex Measurement Ltd., United Kingdom. *Intended Use:* The instrument will be used to collect coordinates and measurements in three dimensions for the analysis of shape of biological specimens up to 150 mm^2, with horizontal precision of 0.005 mm, without physically contacting the specimen. Such quantitative data on size and shape of biological specimens are in turn analyzed for comparative studies of functional and evolutionary morphology. In addition, the instrument will be used in the courses Methods in Morphometrics and Topics in Evolutionary Morphology which are concerned with (a) techniques for the acquisition and analysis of morphometric data, and (b) analysis and application of morphometric data to evolutionary questions. In both courses the instrument will be used for the collection of coordinate and measurement data. *Application Received by Commission of Customs:* October 8, 1991.

Docket Number: 91-153. *Applicant:* University of Washington, HSB, G-514, SM-20, Biological Structure, Seattle, WA 98195. *Instrument:* Electron Microscope, Model JEM-1200EXII/SEG/DP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for the studies of various materials including but not limited to:

1. Proliferation of vascular wall cells
2. Mechanisms of cell growth by arterial wall cells
3. Integrity and replication of arterial endothelium
4. Lung structure and function—the pathophysiology of respiratory disorders in the newborn and adult
5. Respiratory failure
6. Mast cell-eosinphil interaction in allergic injury
7. Altered leukotriene release in parasitized phagocytes
8. Mechanisms of arterial graft failure.

Application Received By Commissioner of Customs: October 8, 1991.

Docket Number: 90-222R. *Applicant:* University of California, Department of Geological Sciences, Los Angeles, CA 90089-0740. *Instrument:* Mass Spectrometer, Model VG PRISM. *Manufacturer:* VG Instruments Incorporated, United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of January 15, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-26550 Filed 11-1-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Public Hearing on the Draft Environmental Impact Statement and Draft Management Plan for the Proposed North Inlet—Winyah Bay National Research Reserve in South Carolina

AGENCY: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Public hearing notice.

SUMMARY: Notice is hereby given that the Sanctuaries and Reserves Division, of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will hold a public hearing for the purpose of receiving comments on the Draft Environmental Impact Statement and Draft Management Plan (DEIS/DMP) prepared on the proposed designation of the North Inlet/Winyah Bay National Estuarine Research Reserve in South Carolina. The DEIS and Draft Management Plan address research, monitoring, education and resource protection needs for the proposed reserve.

The Office of Ocean and Coastal Resource Management will hold a public hearing at 7:00 PM on Wednesday, November 20, 1991, at the Georgetown County Public Library, Georgetown, South Carolina, 29448.

The views of interested persons and organizations on the adequacy of the DEIS/DMP are solicited, and may be expressed orally and/or in written statements. Presentations will be scheduled on a first-come, first-heard basis, and may be limited to a maximum of five (5) minutes. The time allotment may be extended before the hearing when the number of speakers can be determined. All comments received at the hearing will be considered in the preparation of the Final Environmental Impact Statement (FEIS) and Draft Management Plan.

The comment period for the DEIS/DMP will end on Monday, December 2, 1991. All written comments received by this deadline will be included in the FEIS.

FOR FURTHER INFORMATION CONTACT: Dolores A. Washington, (202) 606-4122, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW, Room 714, Washington, DC 20235. Copies of the Draft Environmental Impact Statement/Draft Management Plan are available upon request to the Sanctuaries and Reserve Division.

Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Sanctuaries

Dated: October 31, 1991.

John J. Carey,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management

[FR Doc. 91-26648 Filed 11-1-91; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

October 29, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: October 29, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6494. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as no agreement has been reached on a mutually satisfactory solution on Categories 359-C/659-C, the United States Government has decided to control imports in these categories for the prorated period beginning on July 31, 1991 and extending through December 31, 1991.

The United States remains committed to finding a solution concerning Categories 359-C/659-C. Should such a solution be reached in further consultations with the Government of India, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 56 FR 47935, published on September 23, 1991.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 29, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive dated September 17, 1991, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns, among other things, imports of cotton and man-made fiber textile products in Categories 359-C/659-C [1], produced or manufactured in India and exported during the ninety-day period which began on July 31, 1991 and extends through October 28, 1991.

Effective on October 29, 1991, you are directed to amend the September 17, 1991 directive to extend the restraint period for Categories 359-C/659-C through December 31, 1991 at an increased level of 202,356 kilograms [2].

Import charges already made to Categories 359-C/659-C for the ninety-day period shall be retained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-26540 Filed 11-1-91; 8:45 am]

BILLING CODE 3510-DR-F

COMMODITY FUTURES TRADING COMMISSION

New York Mercantile Exchange Proposed Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity option contracts.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has applied for designation as a contract market in heating oil/crude oil spread options and as a contract market in unleaded gasoline/crude oil spread options. 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 proposals 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 January 3, 1992.

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 NYMEX heating oil/crude oil spread option contract or the unleaded gasoline/crude oil spread option 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, telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: The proposed spread option contracts will be based on the price differential between crude oil and the relevant petroleum product, either heating oil or unleaded gasoline. Upon exercise of the proposed option contracts, a trader would assume a position in the NYMEX's crude oil futures contract and an equal but opposite position in either the NYMEX's heating oil or unleaded gasoline futures contract.

Copies of the terms and conditions of the proposed contracts 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 NYMEX in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the

[1] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] The limit has not been adjusted to account for imports exported after July 30, 1991.

Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contracts, or with respect to other materials submitted by the NYMEX in support of the applications, 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 October 29, 1991.

Gerald Gay,

Director.

[FR Doc. 91-26520 Filed 11-1-91; 8:45 am]

BILLING CODE 6351-01-M

Advisory Committee on CFTC-State Cooperation; Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, section 10(a), that the Commodity Futures Trading Commission's Advisory Committee on CFTC-State Cooperation will conduct a public meeting on Thursday, November 21, 1991 in the Hearing Room on the basement level of the Commission's Washington, DC headquarters, 2033 K Street, NW., Washington, DC 20581. This meeting will be held between 9 a.m. and 1 p.m. The agenda will consist of the following:

Agenda

(1) Opening remarks—Wendy L. Gramm, Chairman, CFTC; Fowler C. West, Commissioner, CFTC and Chairman, Advisory Committee on CFTC-State Cooperation;

(2) Discussion of State/Federal Commodity pool issues:

—Overview of regulatory scheme
—Developments in state regulation and participation in commodity pools
—Current and prospective CFTC rulemakings concerning Rule 4.20(d), bifurcated risk disclosure and accredited investors;

(3) Discussion about the implications of the court opinion in *Krommenhoek* v. *A-Mark Precious Metals, Inc.*;

(4) Status report on the adoption by the states of the North American Securities Administrators Association Model State Commodity Code;

(6) Report on National Futures Association's Clearinghouse for Futures-Related Disciplinary Information and discussion of ways to provide access to this information to states;

(7) Report from the CFTC Division of Enforcement on State/Federal cooperative enforcement efforts;

(8) Discussion of other questions of concern to Advisory Committee members.

The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on matters of joint concern to the States and the Commission arising under the Commodity Exchange Act, as amended. The purposes and objectives of the Advisory Committee on CFTC-State Cooperation are more fully set forth in the March 27, 1990 Seventh Renewal Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Fowler C. West, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Advisory Committee on CFTC-State Cooperation c/o Commissioner Fowler C. West, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Commissioner West in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on October 29, 1991.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-26519 Filed 11-1-91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Reserve Officer Training Corps Advisory Committee; Meeting

October 25, 1991.

The Air Force Reserve Officer Training Corps (AFROTC) Advisory Committee will meet on December 11, 1991, from 8 a.m. to 11:40 a.m. at Keesler Air Force Base, Building 2816, room 203, Biloxi, Mississippi 39534-5000.

The AFROTC Advisory Committee meets to offer advice, views and recommendations regarding the educational mission of AFROTC. The Committee is an external source of expertise and serves in an advisory capacity to the Commander, Air Training Command and the Commandant, AFROTC.

Meeting is open to the public.

For further information, contact Air Force Reserve Officer Training Corps Advisory Committee, 2Lt Minh-Tri B. Trinh, Project Officer, AFOTC/XPA, Maxwell, AFB, Alabama 36112-6663, telephone (205) 953-5961/5576.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-26489 Filed 11-1-91; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91-92-003]

Colorado Interstate Gas Co; Tariff Filing

October 29, 1991.

Take notice that on October 17, 1991, Colorado Interstate Gas Company ("CIG") tendered for filing the following tariff sheets to its FERC Gas Tariff Original Volume No. 3, to be effective as shown:

Tariff sheets	Effective date
Second Revised Sheet No. 8.	October 17, 1991.
Second Revised Sheet No. 24.	October 17, 1991.

CIG states that the purpose of this filing is to comply with the Order issued October 2, 1991 in Docket No. RP91-92-001 which required CIG to file revised tariff sheets that restrict the application of CIG's Balancing Charge and Balancing Penalty Charge to the imbalance volumes in excess of the tolerance levels stated in CIG's tariff.

CIG requests any necessary waiver of the Commission's regulations to permit such tariff sheets to become effective as proposed.

CIG states that copies of the filing were served upon all the parties listed on the official service list complied by the Secretary in this proceeding.

Any persons 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 rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 5, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-26476 Filed 11-1-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4026-9]

9th Avenue Landfill Superfund Site Phoenix, Arizona; Proposed Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), notice is hereby given of the proposed administrative cost recover settlement entered into by EPA and the City of Phoenix. Under the proposed settlement, the City of Phoenix will pay EPA the sum of $552,178.35 for reimbursement of all past response costs incurred by the United States at the 19th Avenue landfill Superfund Site through February 28, 1990 (plus interest). The proposed settlement was entered into under the authority granted EPA in section 122(h) of CERCLA, and provides that the City of Phoenix will reimburse EPA the above stated sum within thirty(30) days of the end of the public comment period announced by this Notice.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate or improper. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region IX, (RC-1), 75 Hawthorne St., San Francisco, CA 94105, Attention: Steve Armsey, Regional Hearing Clerk.

DATES: Comments must be submitted on or before December 2, 1991.

ADDRESSES: A Copy of the proposed settlement may be obtained from Steven Armsey, U.S. EPA Region IX Hearing Clerk (RC-1), 75 Hawthorne St., San Francisco, CA 94105. Comments should reference the 19th Avenue Landfill Superfund Site and EPA Docket No. IX-91-30.

FOR FURTHER INFORMATION CONTACT: Mardi Black, Office of Regional Counsel, U.S. EPA, Region IX, 75 Hawthorne St., San Francisco, CA 94105, Telephone: (415) 744-1395.

Dated: October 16, 1991.

Karen Schwinn,

Director, Hazardous Waste Management Division.

[FR Doc. 91-26528 Filed 11-1-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreements Filed; Puerto Rico Ports Authority, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200587.

Title: Puerto Rico Ports Authority/International Shipping Agency, Inc. Marine Terminal Agreement.

Parties: Puerto Rico Ports Authority (Authority"), International Shipping Agency, Inc. ("INTERSHIP").

Filing Agent: Mayra N. Cruz Alvarez, Contracts Supervisor, Commonwealth of Puerto Rico; Ports Authority, G.P.O. Box 2829, San Juan, Puerto Rico 00936.

Synopsis: The Agreement, filed October 24, 1991, permits INTERSHIP to lease from the Authority certain parcels of land, including private terminal bulkheads and finger pier facilities, in the southwestern part of the Port known as the Army Terminal. The term of the Agreement is for fifteen years.

Dated: October 30, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-26583 Filed 11-1-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

CBOC, 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 November 25, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. CBOC, Inc., Oconto Falls, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of Community Bank of Oconto County, Oconto Falls, Wisconsin.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Milk River Investments, Inc., Glasgow, Montana; to acquire at least 80 percent of the voting shares of The First National Bank of Glasgow, Glasgow, Montana.

Board of Governors of the Federal Reserve System, October 29, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-26495 Filed 11-1-91; 8:45 am]

BILLING CODE 6210-01-F

Bruce A. Craig, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have 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 the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 that notice or to the offices of the Board of Governors. Comments must be received not later than November 18, 1991.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Bruce A. Craig, Lumberton, Texas; to acquire 70 percent of the common stock and 70 percent of the preferred stock; Gary R. Mason, Newburg, Maryland, to acquire 10 percent of the common stock, and 10 percent of the preferred stock; Manuel S. Cockburn, La Plata, Maryland, to acquire 10 percent of the common stock and 10 percent of the preferred stock; and Frederick Henry Goodman, Kountze, Texas, to acquire 10 percent of the common, and 10 percent of the preferred stock of Bancwell Financial Corporation, Wells, Texas, and thereby indirectly acquire Bank of East Texas, Chester, Texas.

2. Union Carbide Corporation, Danbury, Connecticut; through Benefit Capital Management Corporation, Danbury, Connecticut, as investment manager for The Prudential Insurance Company of America, separate account no. VCA-GA-5298, Danbury, Connecticut, to acquire 19.48 percent; and Union Carbide Corporation, Danbury, Connecticut, through Benefit Capital Management Corporation, as investment manager for Manufacturers Hanover Trust Company, as trustee for the Retirement Program Plan for Employees of Union Carbide Corporation, Danbury, Connecticut, and its participating subsidiary companies, to acquire 1.95 percent of the voting shares of Ford Bank, Group, Inc., Lubbock, Texas, and thereby indirectly acquire First National Bank of Borger, Borger, Texas; First National Bank in Canyon, Canyon, Texas; First State Bank, Crane, Texas; Yoakum County State Bank, Denver City, Texas; First National Bank of Lubbock, Lubbock, Texas; First National Bank of Plainview, Plainview, Texas; First National Bank of Post, Post, Texas; and First National Bank of Central Texas, Waco, Texas.

Board of Governors of the Federal Reserve System, October 28, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-26499 Filed 11-1-91; 8:45 am]

BILLING CODE 6210-01-F

Financial Investors of the South, 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 November 22, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Financial Investors of the South, Inc., Birmingham, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Alabama, Fultondale, Alabama.

2. SunTrust Banks, Inc., Atlanta, Georgia, and Sun Banks, Inc., Orlando, Florida; to acquire an additional 85.4 percent of the voting shares of Florida Westcoast Banks, Inc., Venice, Florida, for a total of 100 percent and thereby indirectly acquire First National Bank of Venice, Venice, Florida.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Coweta Bancshares, Inc., Coweta, Oklahoma; to acquire at least 80 percent of the voting shares of Security Bank, Coweta, Oklahoma.

2. United Missouri Bancshares, Inc., Kansas City, Missouri; to acquire 100 percent of the voting shares of The Village Corporation, Denver, Colorado, and thereby indirectly acquire Columbine National Bank, Denver, Colorado.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Cowlitz Bancorporation, Longview Washington; to become a bank holding company by acquiring 100 percent of the voting shares of The Cowlitz Bank, Longview, Washington.

Board of Governors of the Federal Reserve System, October 28, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-26497 Filed 11-1-91; 8:45 am]

BILLING CODE 6210-01-F

Illinois Financial Services, Inc., et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) 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 acquire or control voting securities or assets of a company engaged 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.

The 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 25, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Illinois Financial Services, Inc., Chicago, Illinois, and Metropolitan Bancorp, Inc., Chicago, Illinois; to acquire Civic Federal Savings Bank, Chicago, Illinois, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in Chicago, Illinois.

Board of Governors of the Federal Reserve System, October 29, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-26496 Filed 11-1-91; 8:45 am]

BILLING CODE 6210-01-F

Kimberly Leasing Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) 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 acquire or control voting securities or assets of a company engaged 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 each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 22, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Kimberly Leasing Corporation, Augusta, Wisconsin; to acquire Island Place Limited Partnership, Augusta, Wisconsin, and thereby engage in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y.

2. Norwest Corporation, Minneapolis, Minnesota; and two of its subsidiaries, Norwest Financial Services, Inc., Des Moines, Iowa, and Norwest Financial, Inc., Des Moines, Iowa; to acquire Southern Mortgage & Finance Corporation, Las Vegas, New Mexico, and thereby engage in consumer finance business activities pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in the State of New Mexico. **Comments on this application must be received by November 12, 1991.**

Board of Governors of the Federal Reserve System, October 28, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-26498 Filed 11-1-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing amendments to the date, time, and agenda of a meeting of the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee which is scheduled for November 13 and 14, 1991. This meeting was announced in the **Federal Register** of October 17, 1991 (56 FR 52047 at 52048). The place of the meeting remains the same as announced in the October 17, 1991 **Federal Register** notice. These amendments will be announced at the beginning of the open portion of the meeting. This action is being taken to provide additional time for, and to clarify the actual issues to be discussed at, the meeting.

FOR FURTHER INFORMATION CONTACT: Paul F. Tilton, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1090.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 17, 1991, FDA announced that a meeting of the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee would be held on November 13 and 14, 1991. On page 52048, the dates, time, and agenda are amended as follows:

Date, time, and place. November 12, 13, and 14, 1991, 8 a.m., Grand Ballroom, Holiday Inn—Gaithersburg, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, November 12, 1991, 8 a.m. to 12 m., unless public participation does not last that long; open committee discussion will follow the conclusion of the open public hearing and conclude at 5 p.m.; open committee discussion, November 13, 1991, 8 a.m. to 4 p.m.; closed presentation of data, 4 p.m. to 5 p.m.; closed committee deliberations, 5 p.m. to 6 p.m.; open committee discussion, November 14, 1991, 8 a.m. to 4 p.m.; closed presentation of data, 4 p.m. to 5 p.m.; closed committee deliberations, 5 p.m. to 6 p.m.; Paul F. Tilton, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1090.

Open committee discussion. The committee will review and discuss seven premarket approval applications for silicone gel-filled breast prostheses. The committee will also

discuss whether continued availability of the device(s) is necessary for the public health.

Dated: October 28, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91-26462 Filed 11-1-91; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1991:

Name: Advisory Council on Nurses Education.

Date and Time: November 21-22, 1991, 9 a.m.-5 p.m.

Place: Conference Room K, Parklawn Building; 5600 Fishers Lane, Rockville, Maryland 20857.

Closed on November 21, 9 a.m.-3 p.m. Open for remainder of meeting.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nursing Shortage Reduction and Education Extension Act of 1988 (Pub. L. 100-607). The Council also performs final review of grant applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: The open portion of the meeting will cover announcements; considerations of minutes of previous meeting; the reports of the Administrator, Health Resources and Services Administration, the Director, Division of Nursing and staff reports. The meeting will be closed to the public on November 21, from 9 a.m. to 3 p.m. for the review of grant applications for Special Project Grants; Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds, Advance Nurse Education and Nurse Practitioner Grants. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463. Anyone requiring information regarding the subject Council should contact Dr. Mary S. Hill, Executive Secretary, Advisory Council on Nurses Education, room 5C-14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6193.

Agenda Items are subject to change as priorities dictate.

Dated: October 29, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-26463 Filed 11-1-91; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Meeting of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Deafness and Other Communication Disorders Advisory Board on November 18, 1991. The meeting will take place from 8:30 a.m. to 4:30 p.m. in Conference Room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public to discuss the Board's activities and to present special reports. Attendance by the public will be limited to the space available.

Summaries of the Board's meeting and a roster of members may be obtained from Mrs. Monica Davies, National Institute on Deafness and Other Communication Disorders, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, 301-402-1129, upon request.

(Catalog of Federal Domestic Assistance Program No. 13.173 Biological Research Related to Deafness and Other Communication Disorders.)

Dated: October 24, 1991.

Raymond Bahor,

Acting Committee Management Officer, NIH.

[FR Doc. 91-26482 Filed 11-1-91; 8:45 am]

BILLING CODE 4140-01-M

Human Gene Therapy Subcommittee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Human Gene Therapy Subcommittee (a subcommittee of the Recombinant DNA Advisory Committee) on November 21-22, 1991. The meeting will be held at the National Institutes of Health (NIH), Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, starting on November 21 at approximately 9 a.m. to adjournment on November 22 at approximately 5 p.m.

The meeting will be open to the public to discuss the following proposed actions under the *NIH Guidelines for Research Involving Recombinant DNA Molecules* (51 FR 16958):

I. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Therapy Protocol/Dr. Nabel

In a letter dated October 18, 1991, Dr. Gary J. Nabel of the University of Michigan Medical School indicated his intention to submit a human gene therapy protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: "Immunotherapy of Malignancy by *In Vivo* Gene Transfer Into Tumors."

II. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Transfer Protocol/Dr. Cornetta

In a letter dated October 10, 1991, Dr. Kenneth Cornetta of Indiana University indicated his intention to submit a human gene transfer protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: "Retroviral-Mediated Gene Transfer of Bone Marrow Cells During Autologous Bone Marrow Transplantation for Acute Leukemia."

III. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Transfer Protocol/Dr. Economou

In a letter dated October 15, 1991, Dr. James S. Economou of the University of California, Los Angeles, indicated his intention to submit a human gene transfer protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: "The Treatment of Patients with Metastatic Melanoma and Renal Cell Cancer Using *In Vitro* Expanded and Genetically-Engineered (Neomycin Phosphotransferase) Bulk, CD8(+) and/or CD4(+) Tumor Infiltrating Lymphocytes and Bulk, CD8(+) and/or CD4(+) Peripheral Blood Leukocytes in Combination with Recombinant Interleukin-2 Alone, or with Recombinant Interleukin-2 and Recombinant Alpha Interferon."

IV. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Therapy Protocol/Dr. Sobol

In a letter dated October 18, 1991, Dr. Robert E. Sobol of the University of California, San Diego, indicated his intention to submit a human gene therapy protocol to the Human Gene Therapy Subcommittee and the

Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: "Lymphokine Gene Therapy of Cancer: Phase I Study of Tumor Immunotherapy with Autologous Fibroblasts Genetically Modified to Secrete Interleukin-2."

V. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Therapy Protocol/Dr. Greenberg

In a letter dated October 8, 1991, Dr. Philip D. Greenberg of the University of Washington, Seattle, indicated his intention to submit a human gene therapy protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: "A Phase I/II Study of Cellular Adoptive Immunotherapy Using Genetically Modified CD8+ HIV-Specific T Cells for HIV-Seropositive Patients Undergoing Allogeneic Bone Marrow Transplant."

VI. Report from the Working Group on Data Management

At the last Human Gene Therapy Subcommittee meeting on July 30–31, 1991, the subcommittee formed a Working Group on Data Management. The working group was charged with developing a system for analyzing approved protocol results for the purpose of ensuring quality control in the approval process.

The Human Gene Therapy Subcommittee will receive a report from this working group during its meeting on November 21–22, 1991.

VII. Report From the Working Group on New Approaches to Gene Therapy

At the last Human Gene Therapy Subcommittee meeting on July 30–31, 1991, the subcommittee formed a Working Group on New Approaches to Gene Therapy. The working group was charged with gathering information about the past literature on human germ line gene therapy. Another issue to be considered involves selection of speakers who would discuss basic science research that is relevant to germ line gene therapy.

The Human Gene Therapy Subcommittee will receive a report from this working group during its meeting on November 21–22, 1991.

VIII. Report From the Working Group on the Future Role of the Recombinant DNA Advisory Committee

At the last Human Gene Therapy Subcommittee on July 30–31, 1991, the subcommittee requested that the Working Group on the Future Role of the Recombinant DNA Advisory Committee prepare a report about the feasibility of merging the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee.

The Human Gene Therapy Subcommittee will receive a report from this working group during its meeting on November 21–22, 1991.

IX. Other Matters To Be Considered by the Committee

Protocols which are approved by the Human Gene Therapy Subcommittee will be forwarded to the Recombinant DNA Advisory Committee for consideration during its February 10–11, 1992, meeting.

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, telephone (301) 496–9838, FAX (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines*. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: October 29, 1991.

Raymond Bahor,

Acting Committee Management Officer, NIH.

[FR Doc. 91-26481 Filed 11-1-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-91-970; FR-3172-D-01]

Delegation of Authority for the HOME Investment Partnerships (HOME) Program, Other than the Indian Tribe Component of the HOME Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This notice delegates to the Assistant Secretary for Community Planning and Development the Secretary's power and authority with respect to the HOME Investment Partnerships (HOME) Program, subject to specified exceptions. The delegation of authority does not include the power and authority to administer the HOME Program with respect to Indian tribes.

EFFECTIVE DATE: October 28, 1991.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Office of Urban Rehabilitation, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2470, TDD (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This notice states the scope of the authority of the Assistant Secretary for Community Planning and Development for the HOME Program. All of the Secretary's power and authority is delegated, except for the component of the HOME Program involving Indian tribes (which is delegated to the Assistant Secretary for Public and Indian Housing by a separate delegation published elsewhere in today's **Federal Register**). The authority delegated may be redelegated to employees of the Department, except for the authority to issue or waive rules and regulations.

The HOME Program is a new program authorized by the HOME Investment Partnerships Act (Pub. L. 101–625, title II, 104 Stat. 4079, 4094–4128 (November 28, 1990), codified at 42 U.S.C. 12721–12839). In general, under the HOME Program, funds are allocated by formula among eligible state and local governments that qualify as participating jurisdictions to develop affordable housing for low-income and very low-income families. HOME funds are also made available,

on a competitive basis, to Indian tribes to develop affordable housing for low-income and very low-income families. HOME funds are also authorized for technical assistance.

Section A. Authority Delegated

The Secretary of Housing and Urban Development delegates to the Assistant Secretary for Community Planning and Development all power and authority of the Secretary with respect to the HOME Program authorized by the HOME Investment Partnerships Act (42 U.S.C. 12721–17839).

Section B. Authority Excepted

The authority delegated under Section A does not include the power and authority with respect to grants to Indian tribes and technical assistance funds to benefit Indian tribes under the HOME Program, or the power to sue and be sued.

Section C. Authority to Redelegate

The Assistant Secretary for Community Planning and Development may redelegate to employees of the Department any of the power and authority delegated under Section A, and not excepted under Section B of this delegation. However, the Assistant Secretary for Community Planning and Development is not authorized to redelegate the authority to issue or waive rules and regulations.

Authority: HOME Investment Partnerships Act (42 U.S.C. 12721–12839); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 28, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91–26503 Filed 11–1–91; 8:45 am]

BILLING CODE 4210–32–M

[Docket No. D-91-971; FR-3173-D-01]

Delegation of Authority for the HOME Investment Partnerships (HOME) Program, for the Indian Tribe Component of the HOME Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This notice delegates to the Assistant Secretary for Public and Indian Housing and to the General Deputy Assistant Secretary for Public and Indian Housing the Secretary's power and authority with respect to the HOME Investment Partnerships (HOME) Program for Indian tribes, subject to specified exemptions. The delegation of authority does not include the power and authority to administer the remainder of the HOME Program involving states and units of general local government.

EFFECTIVE DATE: October 28, 1991.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office of Indian Housing, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1015, TDD (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This notice states the scope of the authority of the Assistant Secretary and the General Deputy Assistant Secretary for Public and Indian Housing for the HOME Program. All of the Secretary's power and authority for the component of the HOME Program involving Indian tribes is delegated. The authority delegated may be redelegated to employees of the Department, except for the authority to issue or waive rules and regulations.

The HOME Program is a new program authorized by the HOME Investment Partnerships Act (Pub. L. 101–625, title II, 104 Stat. 4079, 4094–4128 (November 28, 1990), codified at 42 U.S.C. 12721–12839). In general, under the HOME Program, funds are allocated by formula among eligible State and local governments that qualify as participating jurisdictions to develop affordable housing for low-income and very low-income families. HOME funds are also authorized for technical assistance.

Section A. Authority Delegated

The Secretary of Housing and Urban Development delegates to the Assistant Secretary and General Deputy Assistant Secretary for Public and Indian Housing the power and authority of the Secretary with respect to grants to Indian tribes and technical assistance to benefit Indian tribes under the HOME Program authorized by the HOME Investment Partnerships Act (42 U.S.C. 12721–12839).

Section B. Authority Excepted

The authority delegated under Section A does not include the power to sue and be sued.

Section C. Authority to Redelegate

The Assistant Secretary and the General Deputy Assistant Secretary for Public and Indian Housing may redelegate to employees of the Department any of the power and the authority delegated under Section A, and not excepted under Section B of this delegation. However, the Assistant Secretary and the General Deputy Assistant Secretary for Public and Indian Housing are not authorized to redelegate the authority to issue or waive rules and regulations.

Authority: HOME Investment Partnerships Act (42 U.S.C. 12721–12839); sec. 7(D), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 28, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91–26504 Filed 11–1–91; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. D-91-964; FR-3111-D-01]

Redelegation of Authority Under Title VI of the Civil Rights Act of 1964

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development.

ACTION: Notice of redelegation of authority.

SUMMARY: Under this notice, the Assistant Secretary for Fair Housing and Equal Opportunity for the Department of Housing and Urban Development (HUD) redelegates the authority to carry out the functions of the "responsible Department official" to make determinations of noncompliance with regard to all violations of 24 CFR part 1 concerning discrimination in Federally-assisted programs. This redelegation is made concurrently to the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity and the Directors of the Regional Offices of Fair Housing and Equal Opportunity (except Region VI in cases involving Public Housing Authorities in the jurisdictions covered by the *Young* v. *Kemp* litigation).

This redelegation supersedes the redelegation of authority published in the **Federal Register** on January 23, 1991 at 56 FR 2588 (FR–2944) and section A(b) of the redelegation published July 30, 1991 at 56 FR 36062 (FR–3082), which together redelegated limited authority to the Deputy Assistant Secretary for Enforcement and Compliance and the Regional Directors of Fair Housing and Equal Opportunity to issue findings of noncompliance for certain specified part

1 violations, in connection with periodic compliance reviews, and the authority to resolve such noncompliance findings by informal means. This redelegation of authority clarifies and expands the authority that was redelegated under the redelegations of January 23, 1991 and July 30, 1991, to cover the authority to issue findings of noncompliance for all violations of part 1, in connection with both complaint investigations and periodic compliance reviews, and the authority to resolve such noncompliance by informal means. This redelegation also reflects the change in position title from Deputy Assistant Secretary for Enforcement and Compliance to General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

EFFECTIVE DATE: October 21, 1991.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Investigations, Office of Fair Housing and Equal Opportunity, room 5208, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-0836. A telecommunications device for deaf persons (TDD) is available at (202) 708-0015. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: 24 CFR part 1 implements the provisions of Title VI of the Civil Rights Act of 1964 which provides that no person in the United States shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development. Under 24 CFR 1.7, the responsible Department official, defined as the Secretary, or delegatee, is required to conduct periodic compliance reviews of recipients to determine whether they are in compliance with part 1; to receive complaints of violations of part 1; and to make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a failure to comply with part 1. Whenever a compliance review, report, complaint or other information indicates a possible failure to comply with part 1, the responsible Department official is required to inform the recipient of the findings and, where possible, resolve the matter by informal means. If the findings cannot be so resolved, procedures for effecting compliance are provided (see 24 CFR 1.8). If an investigation does not warrant action, the responsible Department official will so inform the recipient or complainant, if any.

On May 13, 1971 (36 FR 8821), the Secretary of HUD delegated to the Assistant Secretary for Equal Opportunity (now the Assistant Secretary for Fair Housing and Equal Opportunity) the authority to act as the "responsible Department official" in all matters relating to the carrying out of the requirements of title VI of the Civil Rights Act of 1964 as such authority is set forth in HUD's regulations and procedures at 24 CFR part 1 and 2 (except for 24 CFR 1.4(b)(2)(ii), which was delegated to the Assistant Secretary for Housing Management, now the Assistant Secretary for Public and Indian Housing, in the May 13, 1971 notice).

In a redelegation published January 23, 1991 at 56 FR 2588 (FR-2944), the Assistant Secretary for Fair Housing and Equal Opportunity redelegated the authority of the "responsible Department official" under 24 CFR part 1 to issue findings of noncompliance for certain specified part 1 violations, in connection with periodic compliance reviews, and the authority to resolve such noncompliance findings by informal means. The redelegation was made concurrently to the Deputy Assistant Secretary for Enforcement and Compliance and the Directors of the Regional Office of Fair Housing and Equal Opportunity (except Region VI). In a related redelegation (FR-2945) published on the same date, on the same page of the **Federal Register**, the Deputy Assistant Secretary for Enforcement and Compliance redelegated to the Director of HUD Program Compliance the authority of the "responsible Department official" under 24 CFR part 1 to issue findings of noncompliance for certain specified part 1 violations, in connection with periodic compliance reviews, and the authority to resolve such noncompliance findings by informal means. In a redelegation published July 30, 1991 at 56 FR 36062 (FR-3082), the Assistant Secretary for Fair Housing and Equal Opportunity redelegated to the Regional Director for Fair Housing and Equal Opportunity in Region VI the authority to issue findings of compliance and noncompliance for certain specified part 1 violations, in connection with periodic compliance reviews, and the authority to resolve such noncompliance findings by informal means (except Region VI cases involving Public Housing Authorities in the jurisdictions covered by the *Young* v. *Kemp* litigation).

This redelegation supersedes the redelegation of authority published in the **Federal Register** on January 23, 1991 at 56 FR 2588 (FR-2944) and Section A(b) of the redelegation of authority published on July 30, 1991 at 56 FR 36062 (FR-3082). This redelegation of authority clarifies and expands the authority that was redelegated concurrently to the Deputy Assistant Secretary for Enforcement and Compliance and the Regional Directors for Fair Housing and Equal Opportunity (except Region VI in cases involving Public Housing Authorities in the jurisdictions covered by the *Young* v. *Kemp* litigation) to cover the authority to issue findings of noncompliance for all violations of part 1, in connection with both complaint investigations and periodic compliance reviews, and the authority to resolve such noncompliance by informal means. This redelegation also reflects the change in position title from Deputy Assistant Secretary for Enforcement and Compliance to General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

In a related redelegation of authority published on this same date in the **Federal Register**, the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity delegates to the Director of Investigations the authority to issue findings of noncompliance for all part 1 violations, in connection with both complaint investigations and periodic compliance reviews, and the authority to resolve such noncompliance findings by informal means.

Section A—Authority Redelegated

The Assistant Secretary for Fair Housing and Equal Opportunity redelegates to the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity the authority under 24 CFR 1.7(d)(1) to issue findings of noncompliance for all violations of 24 CFR part 1, in connection with both complaint investigations and periodic compliance reviews, and the authority to resolve such noncompliance findings by informal means.

Section B—Authority Redelegated

The Assistant Secretary for Fair Housing and Equal Opportunity redelegates to the Regional Directors for Fair Housing and Equal Opportunity (except Region VI in cases involving Public Housing Authorities in the jurisdictions covered by the *Young* v. *Kemp* litigation) the authority under 24 CFR 1.7(d)(1) to issue findings of noncompliance for all violations of 24 CFR part 1, in connection with both complaint investigations and periodic compliance reviews, and the authority to resolve such noncompliance findings by informal means.

Section C—No Further Redelegation

The authority granted under section B of this redelegation may not be

redelegated further pursuant to this redelegation.

Section D—Supersedure

This redelegation supersedes the redelegation published January 23, 1991 at 56 FR 2588 (Docket No. D-91-938; FR-2944-D-01) and section A(b) of the redelegation published July 30, 1991 at 56 FR 36062 (Docket No. D-91-956; FR-3082-D-01).

Authority: 42 U.S.C. 2000d; 42 U.S.C. 3535(d).

Dated: October 21, 1991.

Gordon H. Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 91-26214 Filed 11-1-91; 8:45 am]

BILLING CODE 4210-28-M

Office of General Deputy Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. D-91-965; FR-3112-D-01]

Redelegation of Authority Under Title VI of the Civil Rights Act of 1964

AGENCY: Office of the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development.

ACTION: Notice of redelegation of authority.

SUMMARY: This notice redelegates the authority of the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity to carry out the functions of the "responsible Department official" to make determinations of noncompliance with regard to all violations of 24 CFR part 1 concerning discrimination in Federally-assisted programs. The redelegation is made to the Director, Office of Investigations.

This redelegation supersedes the authority redelegated under the redelegation published in the **Federal Register** on January 23, 1991 at 56 FR 2589 (FR-2945), which redelegated to the Director of the Office of HUD Program Compliance the authority to issue findings of noncompliance for certain specified part 1 violations, in connection with periodic compliance reviews, and the authority to resolve such noncompliance findings by informal means. This redelegation clarifies and expands the authority that was redelegated under the January 23, 1991 redelegation of authority to cover the authority to issue findings of noncompliance for all violations of part 1, in connection with both complaint investigations and periodic compliance reviews, and the authority to resolve such noncompliance by informal means.

EFFECTIVE DATE: October 21, 1991.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Investigations, Office of Fair Housing and Equal Opportunity, room 5208, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-0836. A telecommunications device for deaf persons (TDD) is available at (202) 708-0015. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: 24 CFR part 1 implements the provisions of title VI of the Civil Rights Act of 1964 which provides that no person in the United States shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development. Under 24 CFR 1.7, the responsible Department official, defined as the Secretary, or delegatee, is required to conduct periodic compliance reviews of recipients to determine whether they are in compliance with part 1; to receive complaints of violations of part 1; and to make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a failure to comply with part 1. Whenever a compliance review, report, complaint or other information indicates a possible failure to comply with part 1, the responsible Department official is required to inform the recipient of the findings and, where possible, resolve the matter by informal means. If the findings cannot be so resolved, procedures for effecting compliance are provided (see 24 CFR 1.8). If an investigation does not warrant action, the responsible Department official will so inform the recipient or complainant, if any.

On May 13, 1971 (36 FR 8821), the Secretary of HUD delegated to the Assistant Secretary for Equal Opportunity (now the Assistant Secretary for Fair Housing and Equal Opportunity) the authority to act as the "responsible Department official" in all matters relating to the carrying out of the requirements of title VI of the Civil Rights Act of 1964 as such authority is set forth in HUD's regulations and procedures at 24 CFR parts 1 and 2 (except for 24 CFR 1.4(b)(2)(ii), which was delegated to the Assistant Secretary for Housing Management, now the Assistant Secretary for Public and Indian Housing, in the May 13, 1971 notice).

In a redelegation published January 23, 1991 at 56 FR 2588 (FR-2944), the Assistant Secretary for Fair Housing and Equal Opportunity redelegated the authority of the "responsible Department official" under 24 CFR part 1 to issue findings of noncompliance for certain specified part 1 violations, in connection with periodic compliance reviews, and the authority to resolve such noncompliance findings by informal means. The redelegation was made concurrently to the Deputy Assistant Secretary for Enforcement and Compliance and the Directors of the Regional Office of Fair Housing and Equal Opportunity (except region VI). In a related redelegation (FR-2945) published on the same date, on the same page of the **Federal Register**, the Deputy Assistant Secretary for Enforcement and Compliance redelegated to the Director of HUD Program Compliance the authority of the "responsible Department official" under 24 CFR part 1 to issue findings of noncompliance for certain specified part 1 violations, in connection with periodic compliance reviews, and the authority to resolve such noncompliance findings by informal means. In a redelegation published July 30, 1991 at 56 FR 36062 (FR-3082), the Assistant Secretary for Fair Housing and Equal Opportunity redelegated to the Regional Director for Fair Housing and Equal Opportunity in region VI the authority to issue findings of compliance and noncompliance for certain part 1 violations, in connection with periodic compliance reviews, and the authority to resolve such noncompliance findings by informal means (except region VI cases involving Public Housing Authorities in the jurisdictions covered by the *Young* v. *Kemp* litigation).

This redelegation supersedes the authority redelegated under the redelegation published in the **Federal Register** on January 23, 1991 at 56 FR 2589 (FR-2945), which redelegated to the Director of the Office of HUD Program Compliance the authority to issue findings of noncompliance for certain specified part 1 violations, in connection with periodic compliance reviews, and the authority to resolve such noncompliance findings by informal means. It clarifies and expands the authority that was redelegated under the January 23, 1991 redelegation of authority to cover the authority to issue findings of noncompliance for all violations of part 1, in connection with both complaint investigations and

periodic compliance reviews, and the authority to resolve such noncompliance by informal means. This redelegation also reflects the change in position title from Deputy Assistant Secretary for Enforcement and Compliance to General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

In a notice published concurrently with this notice, the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity and the Regional Directors (except for region VI in *Young v. Kemp* cases) were redelegated the authority to issue findings of noncompliance for all violations of part 1, in connection with both complaint investigations and periodic compliance reviews, and the authority to resolve such noncompliance by informal means.

Section A—Authority Redelegated

The General Deputy Assistant Secretary for Fair Housing and Equal Opportunity redelegates to the Director of Investigations the authority under 24 CFR 1.7(d)(1) to issue findings of noncompliance for all violations of 24 CFR part 1, in connection with both complaint investigations and periodic compliance reviews, and the authority to resolve such noncompliance findings by informal means.

Section B—No Further Redelegation

The Authority granted under section A of this redelegation may not be redelegated further pursuant to this redelegation.

Section C—Supersedure

This redelegation supersedes the redelegation published January 23, 1991 at 56 FR 2589 (Docket No. D-91-939; FR-2945-D-01).

Authority: 42 U.S.C. 2000d; 42 U.S.C. 3535(d).

Dated: October 21, 1991.

Leonora L. Guarraia,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 91-26215 Filed 11-1-91; 8:45 am]

BILLING CODE 4210-28-M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. D-91-966; FR-3113-D-01]

Redelegation of Authority Under Section 504 of the Rehabilitation Act of 1973

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development.

ACTION: Notice of redelegation of authority.

SUMMARY: This redelegation concerns the enforcement of Department of Housing and Urban Development (HUD) regulations implementing section 504 of the Rehabilitation Act of 1973 which prohibits discrimination based on handicap in programs and activities receiving Federal financial assistance from HUD. This notice redelegates certain authority of the "responsible civil rights official" under the HUD regulations at 24 CFR part 8 from the Assistant Secretary for Fair Housing and Equal Opportunity to the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity and the Directors of the Regional Offices of Fair Housing and Equal Opportunity.

EFFECTIVE DATE: October 21, 1991.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Investigations, Office of Fair Housing and Equal Opportunity, room 5208, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-0836. A telecommunications device for deaf persons (TDD) is available at (202) 708-0015. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: HUD regulations at 24 CFR part 8 implement section 504 of the Rehabilitation Act of 1973 which provides that no otherwise qualified persons with handicaps in the United States shall, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development. Any person who believes that he or she has been subject to discrimination prohibited under Part 8 may file a complaint with HUD. Additionally, HUD conducts periodic reviews of the practices of recipients to determine whether they are complying with section 504.

In a notice published on March 22, 1991 at 56 FR 12302 (FR-3016), the Secretary of Housing and Urban Development delegated all authority of the "responsible civil rights official" under 24 CFR part 8 to the Assistant Secretary for Fair Housing and Equal Opportunity. The notice also permitted the Assistant Secretary to redelegate this authority.

This notice redelegates certain specified powers and authorities of the Assistant Secretary of Fair Housing and Equal Opportunity as "responsible civil rights official" under 24 CFR part 8 to the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity and to the Directors of the Regional Offices of Fair Housing and Equal Opportunity. These powers and authorities will be held concurrently. The General Deputy Assistant Secretary for Fair Housing and Equal Opportunity is permitted to redelegate this authority. The Regional Directors may not redelegate this authority.

Accordingly, the Assistant Secretary for Fair Housing and Equal Opportunity redelegates the following authority:

Section A—Authority Redelegated

The Assistant Secretary for Fair Housing and Equal Opportunity redelegates certain powers and authorities under HUD regulations at 24 CFR part 8 as the "responsible civil rights official" to the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity as follows:

1. The authority to issue a preliminary letter of noncompliance under 24 CFR 8.56(g).

2. The authority to issue a formal written determination of noncompliance under 24 CFR 8.56(h)(4).

3. The authority to attempt to resolve a matter through informal means at any stage of processing under 24 CFR 8.56(j).

Section B—Authority Redelegated

The Assistant Secretary for Fair Housing and Equal Opportunity redelegates certain powers and authorities under HUD regulations at 24 CFR part 8 as the "responsible civil rights official" to the Regional Office Directors for Fair Housing and Equal Opportunity as follows:

1. The authority to issue a preliminary letter of noncompliance under 24 CFR 8.56(g).

2. The authority to issue a formal written determination of noncompliance under 24 CFR 8.56(h)(4).

3. The authority to attempt to resolve a matter through informal means at any stage of processing, under 24 CFR 8.56(j).

Section C—No Further Redelegation

The authority granted to the Regional Office Directors under this redelegation may not be further redelegated pursuant to this redelegation.

Dated: October 21, 1991.

Gordon H. Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 91-26216 Filed 11-1-91; 8:45 am]

BILLING CODE 4210-28-M

Office of the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. D-91-967; FR-3114-D-01]

Redelegation of Authority Under Section 504 of the Rehabilitation Act of 1973

AGENCY: Office of the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development.

ACTION: Notice of redelegation of authority.

SUMMARY: This redelegation concerns the enforcement of Department of Housing and Urban Development (HUD) regulations implementing section 504 of the Rehabilitation Act of 1973 which prohibits discrimination based on handicap in programs and activities receiving Federal financial assistance from HUD. This notice redelegates certain authority of the "responsible civil rights official" under the HUD regulations at 24 CFR part 8 to make determinations of noncompliance to the Director, Office of Investigations.

EFFECTIVE DATE: October 21, 1991.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Investigations, Office of Fair Housing and Equal Opportunity, room 5208, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-0836. A telecommunications device for deaf persons (TDD) is available at (202) 708-0015. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: HUD regulations at 24 CFR part 8 implements section 504 of the Rehabilitation Act of 1973 which provides that no otherwise qualified persons with handicaps in the United States shall, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development. Any person who believes that he or she has been subject to discrimination prohibited under part 8 may file a complaint with HUD. Additionally, HUD conducts periodic reviews of the practices of recipients to determine whether they are complying with section 504.

In a related notice published in today's **Federal Register** the Assistant Secretary for Fair Housing and Equal Opportunity has redelegated to the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity and the Regional Directors of Fair Housing and Equal Opportunity certain specified powers and authorities as "responsible civil rights official." This notice redelegates these powers and authorities as the "responsible civil rights official" from the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity to the Director of Investigations. This authority may not be redelegated further by the Director of Investigations.

Accordingly, the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity redelegates the following authority:

Section A—Authority Redelegated

The General Deputy Assistant Secretary for Fair Housing and Equal Opportunity redelegates certain powers and authorities under HUD regulations at 24 CFR part 8 as the "responsible civil rights official" to the Director of Investigations as follows:

1. The authority to issue a preliminary letter of noncompliance under 24 CFR 8.56(g).
2. The authority to issue a formal written determination of noncompliance under 24 CFR 8.56(h)(4).
3. The authority to attempt to resolve a matter through informal means at any stage of processing under 24 CFR 8.56(j).

Section B—No Further Redelegation

The authorities granted to the Director of Investigations under this redelegation may not be further redelegated by the Director of Investigations pursuant to this redelegation.

Dated: October 21, 1991.

Leonora L. Guarraia,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 91-26217 Filed 11-1-91; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-650-4120-02]

Federal-State Coal Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice is to inform the public that the Federal-State Coal Advisory Board (Board) will meet in Denver, Colorado, December 6, 1991. The public is invited to attend. The Board will (1) review the status of regional coal activities, (2) discuss the market outlook for coal, and (3) formulate a recommendation on a long-range lease sale plan for Federal coal.

DATES: The Board will meet at 8:30 a.m. on December 6, 1991.

ADDRESSES: The Board meeting will be held at the Best Western Courtyard Pines Hotel, 4411 Peoria Street, Denver, Colorado 80239, telephone (303) 373-5730.

SUPPLEMENTARY INFORMATION: The Board will review the status of coal leasing activities. Regional coal team representatives will present an update of coal leasing activities within their respective regions, including the outlook for lease sales and the current status of preference right lease applications and lease exchanges, where applicable. In addition, Headquarters Bureau of Land Management personnel will present for discussion information on current activities and issues that impact on the coal management program.

The Board will review the long-range outlook for coal markets and the prospective future demand for leasing Federal coal. This information will be used to assist the Board in formulating a recommendation on a long-range Departmental lease sale plan at this meeting.

The public will have an opportunity to address the Board on agenda topics during the public comment period noted on the agenda below. Written copies of a speaker's remarks would be appreciated. Any comments will become a part of the record of the Board meeting. The Chairperson may impose a time limit on comments to ensure that everyone wishing to address the Board is able to do so.

Agenda—Federal-State Coal Advisory Board Meeting.
December 6, 1991.
Denver, Colorado.
Welcome and Introductions.
—BIM Director.
—Assistant Director, Energy and Mineral Resources.
—Other Staff.
—Review and Approval of 1990 Meeting Agenda.
—Approval of Meeting Minutes.
—Director's Remarks.
—Regional Coal Team Reports.
—Washington Office Report.
—Long-Range Market Outlook.
—Long-Range Lease Sale Plan.
—Discussion.
—Public Comments.
—Board Recommendation.
Adjourn

FOR FURTHER INFORMATION: Daniel Wedderburn, U.S. Department of the Interior, Bureau of Land Management (650), MS 3559, 1849 C Street, NW.,

Washington, DC 20240, Telephone: (202) 208-4636

[FR Doc. 91-26483 Filed 11-1-91; 8:45 am]

BILLING CODE 4310-94-M

Fish and Wildlife Service

Intent to Prepare an Environmental Impact Statement (Notice) on the proposed South Tongue Point Land Exchange and Development Project, Clatsop County, OR

AGENCIES: U.S. Fish and Wildlife Service (lead agency), General Services Administration, U.S. Army Corps of Engineers, and Oregon Division of State Lands (cooperating agencies).

ACTION: Notice of intent.

SUMMARY: This Notice advises the public that the U.S. Fish and Wildlife Service (Service), General Services Administration (GSA), U.S. Army Corps of Engineers (Corps), and Oregon Division of State Lands (State) intend to gather information necessary for the preparation of an Environmental Impact Statement (EIS) for the proposed South Tongue Point land exchange and subsequent development as a marine industrial area and U.S. Navy moorage facility. This Notice is being furnished pursuant to the Council on Environmental Quality Regulations for Implementing National Environmental Policy Act's (NEPA) Regulations (40 CFR 1508.22).

SCOPING INFORMATION: To date, five (5) public meetings, seven (7) formal hearings and numerous information meetings have been conducted by the State in an effort to identify issues and concerns associated with the proposed project. Interested agencies, organizations, and individuals are encouraged to provide written comments to the U.S. Fish and Wildlife Service during the scoping period. The scoping period will extend through November 29, 1991.

FOR FURTHER INFORMATION, CONTACT: David Blum, South Tongue Point Project Coordinator, Oregon Division of State Lands, 775 Summer Street Northeast, Salem, Oregon 97310, (503) 378-3805.

WRITTEN COMMENTS INFORMATION: Written comments should be received by November 29, 1991. Address written comments to: Benjamin Harrison, South Tongue Point EIS Team Leader, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 Northeast 11th Avenue, Portland, Oregon 97232-4181.

ADDITIONAL INFORMATION: GSA is proposing to convey approximately 105 acres of land at South Tongue Point near Astoria, Oregon, (section 12, T8N, R9W) administered by the Corps to the State of Oregon. In exchange for the Federal land, the State is proposing to convey nearby State-owned land of equal appraised value, within the administrative boundary of Lewis and Clark National Wildlife Refuge (Refuge), to GSA who will in turn transfer those lands to the U.S. Fish and Wildlife Service.

The State is proposing to develop a multi-tenant shallow draft marine industrial park and moorage facility for the U.S. Navy on the property conveyed to them. Development plans include a 7-acre site to homeport two mine-hunter coastals and a variety of water-dependent and general industrial uses. Water-dependent uses would have water access by means of pile-supported piers. General industrial uses would be located in upland areas without water access.

This development activity is intended to create real property assets and associated income for the Common School Fund of the State of Oregon, encourage new industrial employment within the area, and contribute to the economic stability and employment diversification of Clatsop County and the State of Oregon. Under the proposed action, the Service would gain fee title to lands within the administrative boundary of the Refuge. This would provide the Service with the needed management flexibility to enhance wildlife populations and their habitats.

The EIS will provide a comprehensive analysis of alternative development plans. Furthermore, the EIS will outline the basis for Service, GSA, and Corps decision makers to select a development plan which best meets the agencies' goals and objectives. These goals and objectives include State economic development goals, minimizing environmental impacts, and consistence with Federal and State statutes and regulations. A draft EIS is scheduled to be available for review and comment in June 1992.

All interested parties are urged to provide written comments regarding the scope of the EIS, alternatives to be developed, and potential significant environmental impacts which may occur from implementation of alternative development plans. Comments are due by November 29, 1991.

The environmental review of this project will be conducted in accordance with the requirements of NEPA (42 U.S.C., et seq.), Council for Environmental Quality Regulations for Implementing NEPA (40 CFR part 1500, et seq.), other appropriate Federal regulations, and Service, GSA, and Corps policies for compliance with those regulations.

Dated: October 25, 1991.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-26494 Filed 11-1-91; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Reclamation

Yuma Division Project, Arizona-California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare a draft environmental impact statement (DEIS) for a channel modification project on the Yuma Division of the lower Colorado River, from Laguna Dam to Yuma, Arizona (Arizona-California).

DATES AND LOCATIONS: There will be one public meeting: December 10, 1991, 7 p.m., Yuma Desalting Plant, 7301 Calle Agua Salada, Yuma, Arizona.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Rorabaugh, Environmental Office, Yuma Projects Office, P.O. Box D, Yuma AZ 85366, telephone (602) 343-8234.

SUPPLEMENTARY INFORMATION: The Yuma Division consists of a 21-mile reach of the lower Colorado River from Laguna Dam to Morales Dam. The upper 12.5 miles of the Yuma Division, from Laguna Dam to Yuma, Arizona, received considerable channel alteration during flood-control releases on the river from 1983 to 1988. The filling of upstream reservoirs on the Colorado River has led to predictions of additional high riverflows occurring every 3 to 5 years.

The existing river channel has meandered out of an armored channel in several areas, lies directly against the floor-control levee in one location, and is generally too narrow to effectively accommodate anticipated high flows. A realigned channel with a capacity of 15,000 cubic feet per second (ft^3/s) is needed to prevent damage from future high flows and reduce sedimentation in the division.

The purposes of the proposed project are to establish a stable river alignment for varying flow regimes, improve and maintain flood-carrying capacity of the river channel, protect adjacent land from erosion, prevent the river from

directly impacting levees, and improve recreation and fish and wildlife habitat.

Three action alternatives will be evaluated in the DEIS. Project features would be located along the Colorado River between Yuma, Arizona, and Laguna Dam and would include dredging new channels and stabilizing banks through construction of training structures and jetties and armoring banklines with riprap. Features of the Yuma Crossing Park, a historical and recreation park, will also be evaluated in the DEIS and included in each of the three alternatives. Mitigation of environmental impacts would be included for each alternative. The three alternatives are:

1. Engineering Alternative.—This alternative would consist of the creation of a 15,000-ft^3/s channel by constructing training structures, jetties, riprapped banklines, and dredging channels to provide for a stable river alignment. While fish, wildlife, and recretional uses have been considered in development of this alternative, they are secondary to engineering considerations.

2. Environmental/Recreational Alternative.—This alternative has essentially the same types of features of Alternative 1 above; however, design features that would benefit recreation and fish and wildlife habitat have been emphasized. These features include maximization of backwater areas, reduction of bankline armoring, and construction of recreational beaches and boat ramps.

3. Repair as Needed Alternatives.—This alternative would address only those areas of the river that need immediate repair or realignment and would not address potential problems in other areas of the river channel that may occur with future high riverflows. These critical areas are located where the river flows directly against the levee and is actively eroding areas which affect structures or property.

Scoping for a channel modification project began with four public meetings and four interagency "advisory group" meeting held in 1980–1981. The planning and environmental compliance process for the project was interrupted during the high riverflows beginning in 1983. In 1987, the Bureau of Reclamation prepared an Environmental Assessment (EA) on the Yuma Division Channel Modification Project. A public meeting and a public hearing were held in 1987 as part of the preparation of the EA, and written comments from agencies and the public were received, as well. On the basis of public and agency comments on the EA, the decision was made to prepare a DEIS for the Yuma Division project. An interagency work group was formed in 1989 to assist in identifying issues, formulating alternatives, assessing environmental impacts, and developing mitigation.

Dated: October 29, 1991.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 91-26487 Filed 11-1-91; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31960]

Wisconsin Central Ltd.—Trackage Rights Exemption— Indiana Harbor Belt Railroad Company

Indiana Harbor Belt Railroad Company (IHB) has agreed to grant overhead trackage rights to Wisconsin Central Ltd. (WCL), over a line (1) between IHB's connection with WCL at Norpaul Yard, Franklin Park, IL, and IHB's connection with The Belt Railway Company of Chicago (BRC), at Elsdon, in Chicago, IL, and (2) between IHB's connections with BRC and Consolidated Rail Corporation, at Elsdon. The transaction was to have been consummated on or after October 26, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). 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 stay the transaction. Pleadings must be filed with the Commission and served on: Janet Gilbert, Wisconsin Central Ltd., 6250 North River Road, Suite 9000, Rosemont, IL 60018.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights— BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: October 25, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-26289 Filed 11-1-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or Method of Collection

(1) Report of Theft or Loss of Controlled Substances.

(2) Form DEA–106, Drug Enforcement Administration.

(3) On occasion.

(4) Individuals or households, businesses or other for-profit, Federal agencies or employees. Federal regulations require DEA registrants to complete and submit Form DEA–106 upon discovery of a theft or loss of controlled substances.

(5) 8398 annual responses at .5 hours per response.

(6) 4199 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on this item is encouraged.

Dated: October 30, 1991.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 91-26484 Filed 11-1-91; 8:45 am]

BILLING CODE 4410-09-M

Immigration and Naturalization Service

[INS NO: 1368-91]

Immigration and Naturalization Service User Fee Advisory Committee; Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee holding meeting: Immigration and Naturalization Service User Fee Advisory Committee.

Date and time: November 21, 1991 at 9 a.m.

Place: Radisson Hotel, 5555 Hazeltine National Drive, Orlando, Florida, telephone number (407) 856-0100.

Status: Open. Sixth meeting of this Advisory Committee.

Purpose: Performance of advisory responsibilities to the Commissioner of the Immigration and Naturalization Service pursuant to section 286(k), of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(k), and the Federal Advisory Committee Act, 5 U.S.C. app. 2. The responsibilities of this standing Advisory Committee are to advise the Commissioner of the Immigration and Naturalization Service on issues related to the performance of airport and seaport immigration inspectional services. This advice should include, but need not be limited to, the time period during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. These responsibilities are related to the assessment of an immigration user fee pursuant to section 286(d) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(d). The Committee focuses attention on those areas of most concern and benefit to the travel industry, the traveling public, and the Federal government.

Agenda

1. Introduction of the Committee members.
2. Discussion of administrative issues.
3. Discussion of activities since last meeting.
4. Discussion of specific concerns and questions of Committee members.
5. Discussion of future traffic trends.
6. Discussion of relevant written statements submitted in advances by members of the public.
7. Scheduling of next meeting.

Public participation: The meeting is open to the public; but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the Contact Person at least two (2) days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting to the Contact Person for consideration by this Advisory Committee. Only written statements received at least five (5) days prior to the meeting by the Contact Person will be considered for discussion at the meeting.

Contact person: Elaine Schaming or Sharon Isenberg, office of the Assistant Commissioner, Inspections, Immigration and Naturalization Service, room 7123, 425 I Street, NW., Washington, DC 20536, telephone Number (202) 514-9588.

Dated: October 28, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-26502 Filed 11-1-91; 8:45 am]

BILLING CODE 4410-10-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law. 92-463), as amended, notice is hereby give that a meeting of the Design Arts Advisory Panel (Project Grants for Individuals, Design Innovation, USA Fellowships, International Exchange Fellowships Section) to the National Council on the Arts will be held on November 20-21, 1991 from 9 a.m.-7 p.m. and November 22 from 9 a.m.-4 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on November 20 from 9 a.m.-10 a.m. and November 22 from 3 p.m.-4 p.m. The topics will be welcoming remarks/instructions to panelists and policy discussion.

The remaining portions of this meeting on November 20 from 10 a.m.-7 p.m., November 21 from 9 a.m.-7 p.m. and November 22 from 9 a.m.-3 p.m. are for the purpose of reviewing proposals for support under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of September 23, 1991, as amended, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: October 23, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-26493 Filed 11-1-91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Ad Hoc Subcommittee Meeting On Yankee Rowe Reactor Pressure Vessel Integrity; Cancellation

The ACRS Ad Hoc Subcommittee meeting on Yankee Rowe Reactor Pressure Vessel Integrity scheduled to be held on Wednesday, November 6, 1991, room P-110, 7920 Norfolk Avenue, Bethesda, MD, to review issues related to reactor pressure vessel integrity for the Yankee Rowe Nuclear Power Station has been cancelled. Cancellation of the meeting is due to Yankee Atomic Electric Company's decision not to purse restart activities for the Yankee Rowe Nuclear Power Station prior to the scheduled April 1992 outage. Notice of this meeting was published in the **Federal Register** on Thursday, October 24, 1991 (56 FR 55143).

This meeting is expected to be rescheduled and the exact date and location will be published in the **Federal Register** at the appropriate time.

FOR FURTHER INFORMATION CONTACT: Mr. Paul A. Boehnert, Senior Staff Engineer, Advisory Committee on Reactor Safeguards (ACRS-P-315), U.S. Nuclear Regulatory Commission, Washington, DC 20555 (telephone 301/492-8558) between 7:30 a.m. and 4:15 p.m.

Dated: October 29, 1991.

Gary R. Quittschreiber,

Chief Nuclear Reactors Branch.

[FR Doc. 91-26512 Filed 11-1-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-416]

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations; Correction to Energy Operations, Inc., Grand Gulf Nuclear Station, Unit 1

On October 16, 1991 (56 FR 51921), the **Federal Register** published the "Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations." On page 51925, for the Grand Gulf Nuclear Station, Unit 1 (application dated September 11, 1991) the first paragraph should read as follows: "The proposed amendment would modify Table 3.3.4.1-2 of the Grand Gulf Nuclear Station, Unit 1 Technical Specifications (TS) to increase the Trip Setpoint and Allowable Value for the Anticipated Transient Without Scram (ATWS) Recirculation Pump Trip System from 1095 psig to 1126 psig and from 1102 psig to 1139 psig, respectively."

Dated at Rockville, Maryland, this 28th day of October, 1991.

For the Nuclear Regulatory Commission.

Paul W. O'Connor,

Project Manager, Project Directorate IV-1, Division of Reactor Projects—III, IV and V Office of Nuclear Reactor Regulation.

[FR Doc. 91-26513 Filed 11-1-91; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 8.33, "Quality Management Program," provides guidance to licensees and applicants for developing policies and procedures for their quality management programs for the medical use of byproduct material.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Rockville, Maryland this 24th day of October 1991.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR DOC. 91-26514 Filed 11-1-91; 8:45 am]

BILLING CODE 7590-01-M

Boston Edison Co., Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-35, issued to Boston Edison Company (the licensee), for operation of the Pilgrim Nuclear Power Station located in Plymouth County, Massachusetts.

The proposed amendment consists of a footnote providing a limited extension of the 7-day LCO of TS 3.5.D.2 for Reactor Core Isolation Cooling (RCIC) inoperability due to the potential for an undesirable DC bus voltage transient-induced trip of the RCIC inverter. The extended LCO is limited to 97 days or until modifications can be completed or testing conducted to verify that the DC bus voltage transients will not exceed the RCIC inverter trip setting during a loss of the coolant accident (LOCA) coincident with a loss of offsite power (LOOP).

For a LOCA coincident with a LOOP, the RCIC inverter may be subjected to a momentary DC bus voltage transient sufficiently high to cause an inverter trip.

During a LOCA with a LOOP, the "A" Core Spray Pump will start approximately one-third of a second after the Emergency Diesel Generator (EDG) circuit breaker closes onto 4160V emergency Bus A5. The battery charger being powered from Bus A5 will energize at approximately the same time that Bus A5 experiences a voltage transient due to the Core Spray Pump motor start. No test data exists for the backup battery charger when subjected to this specific transient. The backup battery charger is currently supplying the RCIC inverter. Extrapolated test data from two battery chargers of similar design indicate the RCIC inverter trip setpoint would not be reached for the LOCA with a LOOP scenario. Because sufficient test data for the battery charger in question were not available to demonstrate that the extrapolation was conservative and that significant margin to the trip setpoint existed, the RCIC System was declared inoperable on October 9, 1991. This change was requested to allow time to design and install a modification to the RCIC inverter to prevent inverter trips.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR

50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of the Pilgrim Nuclear Power Station (PNPS) in accordance with the proposed amendment will not involve a significant increase in the probability of consequences of an accident previously evaluated. This condition does not increase the probability of occurrence of an accident previously evaluated in the safety analysis report because accident initiators are not impacted.

This condition does not increase the consequences of an accident previously evaluated in the safety analysis report because the Reactor Core Isolation Cooling (RCIC) System will perform its mission for all design basis events for which it is credited with performing a safety function.

The RCIC system safety objective is to provide makeup water to the reactor vessel following reactor vessel isolation to prevent the release of radioactive materials to the environs as a result of inadequate core cooling (FSAR 4.7.1). RCIC shall operate automatically to maintain sufficient coolant in the reactor vessel so the integrity of the radioactive material barrier is not compromised. RCIC is designed to cope with a control rod drop accident, a loss of feedwater flow transient, and a loss of offsite power (LOOP) transient (FSAR Appendix G). Each of these events results in an isolated reactor vessel with no assumed breach of the pressure boundary. Reactor water level will drop as a result of the initiating events followed by a "boil down" as the safety relief valves relieve on high pressure. RCIC is designed to automatically restore water level by providing flow in excess of the boiling rate. Technical Specification 3.5.D requires RCIC to be operable whenever there is irradiated fuel in the reactor vessel, reactor pressure is greater than 150 psig, and reactor coolant temperature is greater than 365°F. RCIC is not a core standby cooling system (CSCS) and is not credited in accident analyses for coping with any loss of coolant accident (LOCA) events. The conditions discussed above may increase the probability of a malfunction of the RCIC during a LOCA coincident with a LOOP; however, RCIC is not credited in the safety analysis for LOCA events.

2. The operation of PNPS in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

High DC voltage induced trips of the RCIC inverter result in the RCIC turbine going to its minimum speed condition. This creates no increased potential for intersystem LOCA or any other event because pump discharge check valve 1301–50 and turbine discharge pressure prevent back-leakage from the RPV by design. On a RCIC inverter trip, RCIC flow will decrease, valve 1305–50 will close to isolate reactor pressure and the minimum flow valve will open with the turbine at minimum speed.

3. The operation of PNPS in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

Technical Specification Bases 3.5.C states RCIC is required as an alternative source of makeup water to the high pressure coolant injection (HPCI) system in the case of loss of all offsite AC power. Technical Specification Bases 3.5.D confirms this function and further states that for all other postulated accidents and transients, the automatic depressurization system (ADS) provides redundancy for the HPCI. Since RCIC remains operable for a LOOP, the margin of safety is not significantly reduced.

Therefore, this proposed license amendment does not involve a significant hazard consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 4, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who as been admitted as a party may amend the petition without requesting level of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30 days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler, Director, Project Directorate I-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation; petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to W. S. Stowe, Esquire, Boston Edision Company, 800 Boyleston Street, 36th Floor, Boston, Massachusetts 02799, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 24, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Dated at Rockville, Maryland, this 28th day of October 1991.

For the Nuclear Regulatory Commission.

Ronald B. Eaton,

Senior Project Manager, Project Directorate I-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-26515 Filed 11-1-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-7604]

Consideration of Amendment to B.P. Chemicals America, Inc. License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Source Material License No. SUB-908 issued to B.P. Chemicals America, Inc. for the use and or possession of source material at its facility located in Lima, Ohio.

The licensee requested the amendment in a letter dated July 30, 1990, with the submittal of the decommissioning plans. The licensee submitted supplemental information to its decommissioning plan via letters dated December 26, 1990, February 8, 1991, March 13, 1991, April 2, 1991, July 26, 1991, and July 29 1991, respectively.

The amendment would authorize the licensee to perform decommissioning of the Acrylo I/Acrylo II facilities and associated components, several chemical-processing buildings, associated warehouses and loading docks, the grounds around these structures, and several ponds.

Contamination at the licensee's facility resulted from any acrylonitrile manufacturing process used and marketed by Vistron Corporation, former owner of B.P. Chemicals America, Inc. The catalyst utilized in the manufacturing process contained a small concentration of depleted uranium, and was discountinued in 1971. However, the residual contamination from the catalyst is suspected to be entrained in the currently operating Acrylo II facility system at the site.

B.P. Chemicals America, Inc. is completing the decontamination of the site in stages, which bagan with the Catalyst Plant, which was released for unrestricted use by a license amendment dated August 1, 1988.

The Commission will require the licensee to cleanup the facility and site

to meet the Commission's criteria, and during the decommissioning, the licensee shall maintain effluents as low as reasonably achievable.

Prior to the issuance of the proposed amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended, and the Commission's regulations.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of subpart L, Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR part 2. Pursuant to § 2.1205(a) any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either: (1) By delivery to the Docketing and Service Branch of the Office of the Secretary of One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch;

In addition to meeting other applicable requirements of 10 CFR part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail: (1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should submit a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Each request for a hearing must also be served, by delivering it personally or by mail to: (1) The applicant, B.P. Chemcials Aemerica, Inc. to the attention of Mr. James H. Ross, President/Pland Manager, Fort Amanda & Adgate Roard, P.O. Box 628, Lima, Ohio 45802–0628; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, Md 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Any hearing that is requested and granted will be held in accordance with the Commission's Informal hearing Procedures for Adjudications in Materials Licensing Procedings in 10 CFR part 2, subpart L.

For further details with respect to the proposed action, see the licensee's request for license amendment dated July 30, 1990, which is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC.

Dated at Rockville, Maryland, this 25th day of October, 1991.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 91–26516 Filed 11–1–91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Reservist Leave Bank Program

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is advising Federal agencies of the results of the open season for contributing annual leave under the reservist leave bank program authorized by Public Law 102–25, April 6, 1991, for returning Federal employees who were called to active duty in the U.S. Armed Forces during the Persian Gulf War. This notice provides instructions on the amount of annual leave that is to be credited to the accounts of returning reservists and reminds Federal agencies of the deadline for crediting such leave to these accounts.

FOR FURTHER INFORMATION CONTACT: Joe Cerio, (202) 606–2858 or (FTS) 266–2858.

SUPPLEMENTARY INFORMATION: On May 16, 1991, OPM published a notice in the **Federal Register** that established an open season to accept contributions of annual leave from qualified leave contributors under the reservist leave bank program (56 FR 22741). The open season began on June 2, 1991, and was scheduled to end on July 13, 1991. On July 12, 1991, OPM extended the open season to August 10, 1991, to ensure that employees would have sufficient time to make contributions of annual leave (56 FR 31975). Agencies were instructed to provide OPM with a report by June 24, 1991, on the total number of potential leave recipients—i.e., those who had already returned to civilian positions, as well as those still on active duty who would be eligible to receive contributions of annual leave under this program, as of April 30, 1991. In addition, agencies were instructed to provide a report on the total number of hours of annual leave contributed during the open season by September 7, 1991.

Federal agencies have reported that there are 18,139 potential leave recipients. However, not all of these potential leave recipients have returned to duty in their civilian positions. OPM regulations provide that annual leave creditable to an eligible returnee who has not yet returned to Federal employment shall be held in abeyance by the employing agency until his or her return and that such annual leave shall be forfeited in the case of an eligible returnee who does not return to Federal employment. (See 5 CFR 630.1108 (c) and (d).)

Federal agencies also have reported that 85,558.5 hours of annual leave were contributed by qualified leave contributors under the reservist leave bank program during the open season, which lasted a total of 10 weeks. This amounts to 4.717 hours of annual leave for each potential leave recipient. Because OPM regulations require that the amount of annual leave each eligible returnee receives shall be rounded to the next higher quarterhour (5 CFR 630.1107(b)), the amount of annual leave that must be credited to the account of each eligible returnee is 4.75 hours. (OPM regulations also provide that Federal agencies may grant leave recipients excused absence for the remainder of the hour or charge leave by the quarter-hour for the purpose of this program.)

Federal agencies are required to credit the annual leave accounts of eligible returnees who have returned to Federal employment no later than the end of the second pay period beginning on or after the date the agency is notified of the amount of leave each eligible returnee is to receive (5 CFR 630.1107(d)). Therefore, the 4.75 hours of leave to be credited to the account of each eligible returnee who has returned to Federal employment must be credited no later than the end of the second pay period beginning on or after November 4, 1991.

Finally, agencies are reminded that once the annual leave received under the reservist leave bank program is credited to an eligible returnee's annual leave account, it may be used in the same manner and for the same purposes

as if the leave had accrued under 5 U.S.C. 6303. In addition, such leave is subject to forfeiture at the beginning of the leave year under 5 U.S.C. 6304(a) and shall be included in any lump-sum payment to which the employee may become entitled under 5 U.S.C. 5551 or 5552.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91-26501 Filed 11-1-91; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29863; File No. S7-30-91]

Consolidated Tape Association and Consolidated Quotation; Notice of Filing and Immediate Effectiveness of Fourteenth Charges Amendment to Restated Consolidated Tape Association Plan and Fifth Charges Amendment to Consolidated Quotation Plan

October 25, 1991.

Pursuant to rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on October 1, 1991, the Consolidated Tape Association ("CTA") and the Consolidated Quotation ("CQ") Plan Participants submitted to the Securities and Exchange Commission ("Commission") amendments to the Restated CTA Plan and the CQ Plan increasing the consolidated CTA/CQ Network A professional and nonprofessional subscriber charges.

CTA/CQ has designated the proposals as changing a charge collected on behalf of all of the sponsors and/or participants, permitting them to become effective upon filing, pursuant to the terms of rule 11Aa3-2(c)(3)(i) under the Act. The Commission is publishing this notice to solicit comments from interested persons on the amendments.

I. Description and Purpose of the Amendments

The amendments increase the consolidated CTA/CQ Network A professional and nonprofessional subscriber charges (see attached rate schedule). The new rates shall take effect on January 1, 1992.

In October 1986, the Participants to both the Restated CTA Plan and the CQ Plan consolidated and otherwise restructured Network A subscriber fees.[1] The purpose of the amendments is to increase by six percent the consolidated Network A charges payable by professional and nonprofessional subscribers in order to offset the increased costs of making last sale information available.

On August 1, 1983, CQ Network A rates increased eight percent. On January 1, 1984, CTA Network A rates increased eight percent. Those rates have not increased since (the 1986 fee restructuring was designed as a revenue-neutral measure for the Participants). During that time, the costs attendant to collecting, processing and disseminating Network A data have increased. Furthermore, the installed base of display units has declined six percent since 1988. The proposed six percent rate increase should offset that decline.

II. Solicitation of Comments

Pursuant to Rule 11Aa3-2(c)(3) under the Act, the amendments became effective upon filing with the Commission. The Commission may summarily abrogate the amendments within 60 days of its filing and require refiling and approval of the amendments by Commission order pursuant to rule 11Aa3-2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 553, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC. 20549. Copies of such filings also will be available at the principal office of CTA/CQ. All submissions should refer to File No. S7-30-91 and should be submitted by November 25, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(27).

CONSOLIDATED TAPE ASSOCIATION LAST SALE DEVICE SERVICES; SCHEDULE OF MONTHLY RATES—NETWORK A

[Excluding Applicable Taxes]

Device Charges(1)	Number of display devices	Rate per device
Professional Subscriber	1	$ 127.25
	2	79.50
	3	58.25
	4	53.00
	5	47 75
	6-9	39 75
	10-19	31 75
20-29	30.25	
	30-99	27.50
100-249	26.50	
250-749	23.75	
750-4,999	20.75	
	5,0000-9,999	19.75
	10,000+	18.75

Non-Professional Subscriber (2).	$ 4.25 Each Unit.
Communication Facilities (3) (4) continental USA & Canada Only.	$110.00 Each Connection.
Ticker Printer—Continental USA (3) (4).	$250.00 Each Unit.

Margaret H. McFarland,

Deputy Secretary.

Notes:

(1) Includes last sale prices and bid-asked quotations in Network A Securities. Communication facilities and ticker printer charges apply to last sale ticker service and are in addition to these charges, as are charges by vendor furnishing the equipment.

(2) Charge applies to vendor providing service to nonprofessional subscriber. If ticker service is provided by the NYSE, a monthly charge of $30.00 applies in addition to the communication facilities charge.

(3) Charges are "per connection" and do not include one-time installation, relocation and other miscellaneous charges where applicable, which are generally a direct pass-through from the common carrier to the subscriber.

(4) Charge for delivery of ticker signal to customer location applies to all locations currently serviced. Rate for new locations may be higher.

[FR Doc. 91-26523 Filed 11-1-91; 8:45 am]

BILLING CODE 8010-01-M

[1] At that time, the Participants: (a) Consolidated the CTA Plan's last sale information interrogation charges with both the CTA Plan's last sale information ticker charges and the CQ Plan's quotation information interrogation charges; (b) eliminated a substantially higher fee for the first device at each professional subscriber location; (c) introduced professional subscriber per-device charges based upon the number of devices; and (d) consolidated and substantially reduced the fees payable by nonprofessional subscribers.

[Release No. 34-29879; File No. S7-31-91]

Joint Industry Plan; Filing and Immediate Effectiveness of the Fifteenth Amendment to the Consolidated Tape Association Plan and the Sixth Amendment to the Consolidated Quotation Plan

October 29, 1991.

I. Introduction

Pursuant to Rule 11Aa3-2 [1] under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on October 9, 1991, the participants in the Consolidated Tape Association ("CTA") and the Consolidated Quotation Plan ("CQ Plan") submitted amendments to the Restated CTA Plan the CQ Plan increasing the Network B subscriber fees. The amendment is effective upon filing with the Commission pursuant to paragraph (c)(3)(i) of Rule 11Aa3-2.

II. Description of the Amendments and Plan Participants' Rationale

The amendments revise Schedule A-3 of Exhibit D to the CTA Plan and Schedule A-3 of Exhibit F to the CQ Plan. The amendment to the Restated CTA Plan will increase Network B last sale professional subscriber fees by $1.00 and the non-professional subscriber fees by $0.25. The amendment to the CQ Plan will increase Network B bid/ask professional subscriber fees by $1.00 and non-professional subscriber fees by $0.25. The new rates shall take effect on January 1, 1992.

CTA Amendment

The Network B last sale subscriber charges are being increased as follows:

Service	Current charge	New charge
1. Interrogation Units:		
Professional Subscribers:		
—Participant Member	12.60	13.60
—Non-Member	13.60	14.60
Non-Professionals	3.00	3.25
2. Stock Ticker Displays:		
—First Unit	20.50	21.40
—Additional Units	12.60	13.60

CQ Plan Amendment

Network B bid/ask subscriber charges are being increased as set forth below:

Service	Current charge	New charge
1. Interrogation Units:		
Professional Subscribers:		
—Participant Member	12.65	13.65
—Non-Member	14.60	15.60
Non-Professionals	3.00	3.25

A proposed amendment may be put into effect upon filing with the Commission if it is designated as changing a fee.[2] The participants of the CTA and CQ Plans stated that Network B charges are being increased to help partially offset increases in the costs associated with collecting, processing, and disseminating last sale and quotation information. The costs of administering Network B have increased as well, as the time required to deal with new vendors and new technologies has increased significantly. The rate increase is also intended to partially offset the substantial decline in installed display units over the past several years.

The participants to the Plans stated that the rate increase will, by enabling the Participants to continue to make available last sale and quotation information to brokers, dealers and investors, serve to further the public interest, the protection of investors and the maintenance of fair and orderly markets, and therefore promote fair competition, pursuant to section 11A(a)(1)(C) of the Act. The participants also maintain that by enabling the Participants to continue such data dissemination will promote participation in the Participants' markets and thereby promote competition among orders, investors and members.

III. Solicitation of Comments

Any interested persons are invited to submit written data, views and arguments concerning the amendments. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street, NW., Washington DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CTA/CQ. All submissions should refer to File No. S7-31-91 and should be submitted by November 25, 1991.

From the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3(a)(27).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-26522 Filed 11-1-91; 8:45 am]

BILLING CODE 8010-01-M

[1] 17 CFR 240.11Aa3-2 (1991).

[2] 17 CFR 240.11Aa3-2(c)(3)(i) (1991).

[Release No. 34-29864; File No. S7-29-91]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to Professional Subscriber Fees Under OPRA's National Market System Plan

October 25, 1991.

Pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on October 1, 1991, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"),[1] which was submitted to the Commission pursuant to Section 11A(a)(3)(B) of the Act.

OPRA has designated this proposal as one establishing or changing a fee pursuant to Rule 11Aa3-2(c)(3)(1) under the Act, which renders the fee effective upon the Commission's receipt of the filing. The Commission is publishing this notice to solicit comments on the amendment from interested persons.

I. Description and Purpose of the Amendment

The Plan is proposed to be amended by revising the fees payable by professional subscribers to current last sale and quotation information under the Plan. The proposed amendment is reflected in a revised Fee Schedule, which is an attachment to the form of Professional Subscriber Agreement under the Plan. A copy of the revised Fee Schedule was submitted to the Commission.

The purpose of the amendment is to permit a greater share of the costs incurred in collecting and transmitting options market information to be

[1] See Securities Exchange Act Release No. 17638 (March 18, 1981).

covered by OPRA's revenues, while simplifying the present tiered structure of the professional subscriber fee. OPRA stated that its current professional subscriber fee offers volume discounts to larger subscribers by reducing the charge per display or interrogation device as the total number of devices maintained by a subscriber increases, with 15 separate pricing tiers covering the range from one device to 15,000 or more devices per subscriber. The amendment retains volume discounts, but over the course of the first three years of a four-year phase-in, reduces the number of tiers from 15 to 6.

In addition, the amendment introduces the concept of a member discount, which, depending upon the number of devices per subscriber, after the four-year phase-in will provide a reduction of from 3% to 11% of the standard device charge to those subscribers who are members of one or more of OPRA's participating exchanges. The institution of a member discount reflects that members, through their exchange dues and transaction fees, already pay a greater share of the costs of collecting and transmitting market information than is paid by non-members, since these costs for each exchange exceed the revenues produced by OPRA fees. The member discount is intended to allocate the costs of providing market information more fairly among all professional subscribers, thereby reducing the extent to which members subsidize non-members in this respect. The member discount also reflects that the costs to OPRA of billing and collecting subscriber fees is greater for non-member subscribers than for members.

In its filing, OPRA stated that its need to increase subscriber fees in part reflects a decline in its professional subscriber base that has been experienced since the last increase in the professional subscriber fee was approved by OPRA in January 1989, together with cost increases that have taken place during that same period. As a result, even after the last increase OPRA revenues still cover too small a portion of the costs incurred by the exchanges in collecting option market information and transmitting it to OPRA's processor. In addition, OPRA maintains that, as a result of vastly increased investment by the exchanges in auto-quote equipment and other expensive technology that enhances the capacity and reliability of their options markets, the exchanges' total operating costs have increased substantially. Since the exchanges are unable to absorb these higher operating costs while continuing to subsidize the costs of collecting and disseminating market information to the same extent as in the past, this has led them to conclude that OPRA must implement a fee increase at this time. Even after the proposed increase is fully in effect, OPRA believes that revenues will still cover only a portion of the total costs related to market information collection and transmission.

In order to lessen the impact of the fee increase embodied in the amendment, the increase will be implemented in four stages over four years, with the first stage scheduled to go into effect on January 1, 1992, and the second, third and fourth stages on successive anniversaries of that date. Based on OPRA's projection of a continuing decline it its subscriber device base, the first stage is projected to increase professional subscriber revenues by 13.6%, the second stage by an additional 8.1%, the third stage by an additional 14.3%, and the fourth stage by an additional 13.6%.

II. Request for Comments

Pursuant to Rule 11Aa3-2(c)(3) under the Act, the amendment became effective upon filing with the Commission, except that OPRA has determined that delayed effectiveness shall apply in four stages, the first stage beginning on January 1, 1992. The Commission, however, may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3-2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 USC 552, will be available for inspection and copying at the principal office of OPRA. All submissions should refer to the file number S7-29-91, and should be submitted by November 25, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-26526 Filed 11-1-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29856; International Series release No. 335; File No. 600-20]

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing a Request for Extension of Temporary Registration as a Clearing Agency

October 24, 1991.

On October 16, 1991, the International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") an application, pursuant to section 19(a) of the Securities Exchange of 1934 ("Act"),[1] to extend ISCC's temporary registration as a clearing agency for a period of twelve months or such longer period as the Commission deems appropriate.[2] On May 12, 1989, the Commission granted the application of ISCC for registration as a clearing agency, pursuant to sections 17A and 19(a) of the Act,[3] and rule 17Ab2-1(c) thereunder, for a period of eighteen months.[4] At that time, the Commission granted to ISCC a temporary exemption from compliance with section 17A(b)(3)(C) of the Act,[5] which requires fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. On November 9, 1990, the Commission extended ISCC's temporary registration for one year, until November 30, 1991.[6]

One of the primary reasons for ISCC's registration as a clearing agency was to enable it to provide for the safe and efficient clearance and settlement of international securities transactions by providing links to centralized, efficient processing systems in the Untied States

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[2] 17 CFR 200.30-3(a)(27) (1991).

[1] 15 U.S.C. 78s(a).

[2] Letter from Karen Saperstein, Associate General Counsel, ISCC, to Jonathan Kallman, Associate Director, Division of Market Regulation, Commission (October 16, 1991) ("Registration Letter").

[3] 15 U.S.C. 78q-1 and 78s(a).

[4] Securities Exchange Act Release No. 26812 (May 12, 1989), 54 FR 21691 (May 19, 1989).

[5] 15 U.S.C. 78q-1(b)(3)(C).

[6] Securities Exchange Act Release No. 28606 (November 16, 1990), 55 FR 47976.

and in foreign financial institutions. ISCC continues to develop its capacity to offer these services, but at present, business conditions in the international securities markets have not yet adequately challenged ISCC's linkage agreements with foreign financial institutions to permit ISCC to be permanently registered as a clearing agency.

ISCC has a current exemption from section 17A(b)(3)(C) of the Act due to ISCC's limited participant base. ISCC has represented to the Commission that it believes that it still does not have a meaningful participant base, with only six of the twenty-five ISCC members currently using ISCC services.[7] Since this is an increase of only two active members since ISCC's initial registration approval, ISCC believes that granting "fair representation" to these active members in accordance with section 17A(b)(3)(C) of the Act would allow these members inordinate control over the process for nominating and selecting members of the ISCC Board of Directors. ISCC therefore requests an extension of the exemption from section 17A(b)(3)(C) of the Act as part of the extension of ISCC's temporary registration.[8]

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application within thirty days of the date of publication in the **Federal Register**. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. 600-20. Copies of the application and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-26524 Filed 11-1-91; 8:45 am]

BILLING CODE 8010-01-M

[7] Registration Letter, note 2, *supra*. All six of these members use ISCC's link with the London Stock Exchange, and one member uses ISCC's link with CEDEL.

[8] ID.

[Release No. 34-29866; File No. SR-NYSE-91-27]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Enhancements to Audit Trail Identifiers

October 28, 1991.

On August 22, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to introduce new account identification codes to delineate member firm proprietary transactions for audit trail reporting purposes.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 29681 (September 13, 1991), 56 FR 47820 (September 20, 1991). No comments were received on the proposal.

NYSE Rule 132 presently requires that clearing member firms submitting a transaction to comparison must include specified audit trail data elements, such as the account type for which that transaction was effected.[4] In this regard, specified account identifiers are currently employed that differentiate trades executed for members or member organizations from those executed for customers. The current member/member organization identification codes are D (Program Trade Index Arbitrage), C (Program Trade non-Index Arbitrage), and P (All Other Orders). The Exchange proposes to add three new identifier codes to distinguish transactions effected for the proprietary account of a member/member organization from those executed by a member/member organization as agent for another member/member organization; the codes in place do not distinguish between these two types of transactions.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] An audit trail is a surveillance tool produced and utilized by a self-regulatory organization to detect fraudulent or illegal trading and for investigative purposes in disciplinary proceedings. It is comprised of trade-by-trade data, in chronological order, including the name of the security, quantity, price, execution time and parties to each trade.

[4] Paragraphs (1) to (9) of Supplementary Material .30 to NYSE Rule 132 (Comparison and Settlement of Transactions Through a Fully-Interfaced or Qualified Clearing Agency) specify the trade elements that must be submitted. Moreover, paragraph (10) provides the Exchange with the authority to require additional information as well.

The Exchange will continue to use the current indicators D, C and P for transactions effected for a member/member organization's proprietary account. The NYSE proposes to adopt the following new codes for trades effected by a member/member organization as agent for another member/member organization: M (Program Trade Index Arbitrage), N (Program Trade non-Index Arbitrage), and W (All Other Orders). The following is a compilation of the NYSE's Account Identification Codes, including the proposed codes:[5]

	Program trade index arbitrage	Program trade non-index arbitrage	All other orders
Member/member Organization:			
—Proprietary	D	C	P
—As agent for other member.	M	N	W
Customer:			
—Individual (80A)	J	K	I
—Other Agency	U	Y	A

The Exchange also proposes to add a definition for "Member/Member Organization" in the Definition section of its account identifier schedule.[6]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[7] The Commission believes that the proposed identification codes should prevent fraudulent and manipulative acts by improving the accuracy and efficiency of audit trail information. Specifically, the Commission believes that the new, more

[5] A copy of the complete text of the NYSE's Account Identification Codes, including the corresponding definitions, was submitted to the Commission as Exhibit A to the proposed rule change and is available at the Commission and at the NYSE.

[6] The new definition will read "Member/Member Organization, As Agent for Other Member: a member or member organization trading as agent for the account of another member or member organization."

[7] 15 U.S.C. 78f(b)(5) (1988).

precise identifier codes should facilitate surveillance investigations by clearly demarcating a member's own proprietary trading. In this regard, the Commission believes that fraud and manipulation would be more effectively deterred by more focused surveillance investigations promptly revealing disciplinary violations. In addition, more accurate audit trail information should increase the effectiveness of the Exchange's automated surveillance procedures and provide Exchange staff with a more comprehensive reconstruction of trading activity.

The Commission notes that the Exchange will not implement this new requirement for six months in order to allow its membership to prepare systems adjustments.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR-NYSE-91-27) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-26471 Filed 11-1-91; 8:45 am]

BILLING CODE 8010-01-M

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-29867; File No. SR-NYSE-91-23]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Discontinuance of the Use of Discretionary Market Orders in the Exchange's Automated Bond System

October 28, 1991.

On July 8, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to allow the Exchange to discontinue the acceptance of discretionary market orders by its Automated Bond System ("ABS").[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 29474 (July 23, 1991), 56 FR 36072 (July 30, 1991). No comments were received on the proposal.

At the present time, both limit orders and discretionary market orders are eligible to trade on the ABS.[4] Current NYSE interpretations characterize a discretionary market order as an order, unique to the ABS, that is eligible to trade at the current market price but that also has an undisclosed limit price. Discretionary market orders may be used in the trading of bonds where the spread between the bid and the offer is greater than a half-point. Due to programs in the ABS, a discretionary market order moves up or down with the quotation as the quotation changes. As a result, a discretionary market order to buy will move with changes in the bid and a discretionary market order to sell will move with changes in the offer.

A discretionary market order, however, will not trade beyond the undisclosed limit price. If the disclosed bid (or offer) price reaches the undisclosed limit price of a discretionary market order, the order is converted to a regular limit price order. In addition, if the quotation spread narrows to a half-point or less, a discretionary market order within the quotation is either executed or converted to a regular limit price order.

The NYSE proposes to redesign the ABS system so that it will accept only limit orders, and will no longer accept discretionary market orders.

The NYSE states that it is in the process of redesigning its ABS system. In connection with that effort, the NYSE has reviewed ABS trading procedures, including the use of discretionary market orders. As a result of this review, the NYSE has concluded that ABS users rarely use discretionary market orders.[5] Moreover, the NYSE states that a significant number of ABS user firms have endorsed the discontinuance of the discretionary market order in the ABS system.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, section 6(b)(5) of the Act.[6] Section 6(b)(5) of the Act requires that a national securities exchange have rules that are designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Commission supports the NYSE's efforts to redesign its ABS procedures and believes it important that the Exchange have rules that are tailored to its current trading practices.

The Commission believes that it is appropriate for the NYSE, in connection with its recent review of its bond rules, to revise the ABS system to reflect current bond trading procedures. Specifically, the Commission believes that because ABS subscribers infrequently use discretionary market orders and a significant number of ABS user firms have endorsed the discontinuance of such orders, it is reasonable for the NYSE to discontinue the acceptance of discretionary market orders in the ABS.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-26472 Filed 11-1-91; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] The ABS is an electronic marketplace that enables subscribers to enter and execute orders for fixed income securities in an open market environment. The ABS provides for current quotation and trade information for NYSE bonds. It validates, stores, and matches orders for possible execution, and submits compared trades directly into clearance and settlement for ABS subscribers. The NYSE established the ABS in 1976. The Exchange has stated that the ABS operates in a manner consistent with NYSE Rule 85, which governs the trading of cabinet securities on the Exchange. See letter from Edward W. Morris, Jr., Assistant Secretary, NYSE, to Lee A. Pickard, Director, Division of Market Regulation, submitted to the Commission on March 15, 1976. See also Securities Exchange Act Release No. 26003 (August 16, 1988), 53 FR 31949 (August 22, 1988) (Order approving amendments to the NYSE's bond trading procedures) (File No. SR-NYSE-88-17).

[4] According to the NYSE, the Exchange provided for market orders in bond trading, which operated in a manner substantially similar to current discretionary market orders, when bonds were traded in physical cabinets prior to the development of the ABS. Following ABS development, the Exchange introduced the discretionary market order in ABS as a means of accommodating market orders to an automated system. Telephone conversations between Fred Siesel, NYSE, and Diana Luka-Hopson, Commission, September 23, and October 18, 1991.

[5] According to the NYSE, in recent months, an average of eight discretionary market orders per day have been entered into ABS. Of those eight orders, an average of four discretionary market orders have traded per day. Telephone conversation between Fred Siesel, NYSE, and Diana Luka-Hopson, Commission, October 18 1991.

[6] 15 U.S.C. 78(f)(5) (1988).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30-3(a)(12) (1990).

[Release No. 34-29871; File No. SR-NYSE-91-31]

Self-Regulatory Organizations; Order Granting Temporary Accelerated Approval to Proposed Rule Change by New York Stock Exchange, Inc., Relating to Extension of the Effectiveness of Auxiliary Closing Procedures for Expiration Fridays for an Additional Year

October 28, 1991.

I. Introduction

On September 12, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to extend for one year the auxiliary closing procedures utilized on "expiration Fridays" for market-on-close ("MOC") orders associated with the expiration and settlement of stock index futures, stock index options, and options on stock index futures.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 29770 (October 1, 1991), 56 FR 50963 (October 9, 1991). To date, no comments have been received on the proposal. The Commission is granting accelerated approval to the NYSE's proposal pursuant to a request by the Exchange.[4] The Exchange has requested accelerated approval of the proposal to allow the current procedures, which are due to expire on October 31, 1991, to continue on an uninterrupted basis.

II. Proposal

Since September 1986, the Exchange has utilized auxiliary closing procedures on days when stock index futures, stock index options and options on stock index futures (collectively, "derivative instruments") expire or settle concurrently. In addition, the Exchange has used these auxiliary closing procedures for each monthly expiration Friday since November, 1988 (see note 3, *supra*). These procedures currently require the entry by 3 p.m. of all MOC orders in positions relating to any strategy involving any index derivative product. Any MOC orders entered after 3 p.m. must offset a published imbalance. The procedures also require specialists to make public MOC order imbalances of 50,000 shares or more in the so-called pilot stocks [5] as soon as possible after 3 p.m. and then again after 3:30 p.m.

At the time these procedures were first filed, the Exchange had hoped that during the original year the procedures were in place all options and futures markets would base the settlement price of their derivative products on opening, rather than on closing, Exchange prices. Because the settlement price of certain derivative products has continued to be based on closing NYSE prices, however, the Exchange believes that the extensions of the procedures through October, 1991 have been necessary and appropriate.[6] These procedures have proven to be an effective means of reducing some of the excess market volatility which may result from entering MOC orders related to trading strategies involving index derivative products. Accordingly, the Exchange is seeking at this time to continue to use these procedures on expiration Fridays for an additional year, through October 31, 1992.

The Exchange continues to believe, however, that concerns about excess market volatility that may be associated with the expiration or settlement of derivative index products would be most appropriately addressed if the expiration or settlement value of such products were based on the NYSE opening rather than the closing price on the last business day prior to the expiration or settlement of the product.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange; and, in particular, the requirements of Section 6 [7] and the rules and regulations thereunder. As previously noted, the MOC procedures described herein have been utilized on previous quarterly expirations dating back to September 1986 and on monthly expirations on a pilot basis since November 1988. These procedures were part of efforts by the Commission and the self-regulatory organizations to address stock market volatility associated with the expiration of index derivative products traded in conjunction with stocks as part of index derivative instrument trading strategies.

By requiring early submission of MOC orders and disseminating imbalances, the NYSE has been better able to attract contra-side interest to help alleviate imbalances caused by the liquidation of stock positions related to index derivative product trading strategies. As long as some index derivative products continue to expire based on closing stock prices on expiration Fridays, the Commission agrees with the NYSE that such procedures are necessary to provide a mechanism to handle the large imbalances that can be engendered by firms unwinding index derivative related positions. Thus, the Commission is extending the NYSE's auxiliary closing procedures for expiration Fridays for an additional year. During this time, the Commission expects the Exchange to continue to evaluate whether the expiration Friday procedures have been effective in reducing excess volatility on expiration Fridays. Specifically, the Exchange should submit a report to the Commission by July 31, 1992 detailing the NYSE's experience with the pilot program and containing an analysis of the effectiveness of the expiration Friday procedures in reducing volatility. The report should cover expiration Fridays from October 1991 through June 1992 and, for such expiration, include (1) the names of the pilot stocks and the imbalance (if any) at 3:30 p.m. and at the close for those stocks that had an imbalance of MOC orders of 50,000 shares or more at 3 p.m.; (2) the names of the stocks and the imbalance (if any) at the close for those stocks that did not have an imbalance at 3 p.m., but, due to cancellations, had imbalances of 50,000 shares or more at 3:30 p.m.; (3) for those stocks with an imbalance of 50,000 shares or more at 3 or 3:30, the name of the stocks where the imbalance changed from one side of the market (sell or buy) to the other side (buy or sell) due to

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] These procedures were approved by the Commission on a pilot basis for a one year period beginning in November, 1988 and extending through October, 1989, and then were extended for the first time through October, 1990, and again through October, 1991. See Securities Exchange Act Releases No. 26293 (November 17, 1988), 53 FR 47599; No. 26408 (December 29, 1988), 54 FR 343 (approving File No. SR-NYSE-88-37); No. 27448 (November 16, 1989), 54 FR 48343 (approving File No. SR-NYSE-89-38); and No. 28564 (October 22, 1990), 55 FR 43427 (approving File No. SR-NYSE-90-49).

[4] Telephone conversation between Mary Revell, Branch Chief, Division of Market Regulation, SEC, and Donald Siemer, Director, Market Surveillance Division, NYSE, on October 10, 1991.

[5] The expiration Friday procedures apply to 52 pilot stocks on a list consisting of the 50 highest-weighted Standard & Poor's 500 Index stocks, based on market values, and any of the 20 Major Market Index stocks not among the 50 highest-weighted stocks.

[6] See note 3, *supra*.

[7] 15 U.S.C. 78f (1988).

cancellations of MOC orders, and the size of such imbalance; (4) for all pilot stocks, all MOC order imbalances (of any size) as of 4 p.m.; (5) the change in price of the closing transactions from the previous trade for all pilot stocks; (6) the change in price of the closing transactions from the price of transactions at 4 p.m. (if there are no transactions precisely at 4 p.m., use the price from the transaction effected closest in time to 4 p.m.) for all pilot stocks; and (7) for each pilot stock, the number of shares in MOC orders submitted by 3 p.m. that were cancelled for any reason prior to the close.[8] In addition, the NYSE should submit a proposed rule change no later than July 31, 1992 requesting either an extension of the procedures for an additional year or permanent approval of the expiration Friday auxiliary closing procedures.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the procedures to continue on an uninterrupted basis, and will allow the Exchange to apprise interested parties of the procedures' extension in advance of the November, 1991 expiration. In addition, the procedures proposed here are the identical procedures utilized by the NYSE on earlier expirations, and are intended to reduce excessive market volatility at the close.[9]

It Is Therefore, Ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change is approved for a one-year period ending on October 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-26473 Filed 11-1-91; 8:45 am]

BILLING CODE 8010-01-M

[8] The Commission notes that this list is not exclusive and that the NYSE should add any additional data to the report as it deems necessary in order to assess the effectiveness of the procedures in reducing excess market volatility on expiration Fridays.

[9] No comments were received on the proposed rule change which implemented these procedures, nor on the proposed rule changes which extended these procedures through October, 1991 (see note 3, *supra.*).

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30-3(a)(12) (1990).

[Release No. 34-29876; File No. SR-OCC-91-14]

Self-Regulatory Organizations; The Options Clearing Corp.; Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Capped Index Options

October 28, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 21, 1991, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR-OCC-91-14) as described in Items I, II, and III below, which items have been prepared by OCC. On October 7, 1991, OCC filed an amendment to the proposed rule change.[1] This order grants accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend OCC's By-laws and Rules to allow OCC to issue, clear, and settle capped index options that have been proposed for trading by the Chicago Board Options Exchange, Incorporated ("CBOE") [2] and the American Stock Exchange, Inc. ("AMEX").[3] The CBOE Proposal was approved on October 28, 1991.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

In its filing with the Commission, OCC including statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

[1] Letter from James C. Yong, Assistant Vice President and Deputy General Counsel, OCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation ("Division"), Commission (October 4, 1991).

[2] Securities Exchange Act Release No. 29489 (July 25, 1991), 56 FR 36852 (File No. SR-CBOE-91-24) ("CBOE Proposal").

[3] Securities Exchange Act Release No. 29821 (October 15, 1991), 56 FR 54595 (File No. SR-AMEX-91-24) ("AMEX Proposal").

[4] Securities Exchange Act Release No. 29865 (October 28, 1991) ("CBOE Approval Order).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) General Purpose

The general purpose of the proposal is to amend OCC's By-laws and Rules to accommodate capped index options, which have been proposed for trading in the CBOE Proposal and the AMEX Proposal. A "capped" or "capped-style" index option is an index option for which the exchange on which the option is traded has established a "cap interval." [5] The exercise price for a capped option plus the cap interval (in the case of a call) or minus the cap interval (in the case of a put) is equal to the "cap price" for the option. A capped index option is automatically exercised on the day following any day when the current index value [6] of the underlying index equals or exceeds (in the case of a call) or equals or is less than (in the case of a put) the cap price for the option ("hitting the cap price"). A capped index option, like a European-style option, also may be exercised on its expiration date.

Capped-style options are therefore different from both American-style options (which in general may be exercised on any day commencing on their day of issuance through their expiration date) and European-style options (which may be exercised only on their expiration date).[7] OCC, therefore, is providing in its By-laws that capped-style options will constitute a third "style of options."

(2) Particular Changes in OCC's By-Laws and Rules

(a) *Article I.* In Article I of OCC's By-laws, the definition of "style of option"

[5] The term "cap interval" in respect of a series of capped index options is defined in OCC's By-laws as the value specified by the exchange on which such series is to be traded which, when added to the exercise price for such series (in the case of a series of calls) or subtracted from the exercise price for such series (in the case of a series of puts), results in the cap price for such series. OCC By-laws, Article XVII, Section 1(o).

[6] The term "current index value" is defined in OCC's By-laws to mean the level of the index at the close of trading on any trading day or at any time of day specified in a rule by the relevant exchange. OCC By-laws, Article XVII, Section 1(i).

[7] Exchange rules provide that a holder of an American-style option may exercise the option on the business day prior to the expiration date but not on the expiration date and that a holder of a European-style option may exercise the option only on the business day prior to the expiration date. *See, e.g.,* CBOE Rule 24.1(j). These rules refer to the notification given by a holder to the holder's broker. The text is referring, in this paragraph and the previous paragraph, to the exercise notice given to OCC by an OCC clearing member.

is amended to state expressly that OCC will treat capped options as constituting a separate category of options in terms of their exercise feature. A definition of the terms "capped" and "capped-style" is added.

(b) *Article VI.* Changes are made in Article VI of OCC's By-laws to state that information provided to OCC in reports of matched trades of capped options must include the ticker symbol for the options contract. Article VI is also amended to provide that the exchange on which a series of capped options is to be traded must make the cap interval for a series of capped options public before trading in the series commences, and to make clear that no exercise notice is filed with OCC in connection with the automatic exercise of a capped option.

(c) *Article XVII.* In Article XVII, Section 1 of OCC's By-laws, the term "exercise settlement amount" is defined to apply to any capped index option that is automatically exercised, as well as to any index option that is exercised as currently permitted by OCC's Rules.[8] In the case of a capped index option that is automatically exercised, the exercise settlement amount is equal to the index multiplier times the cap interval. In the case of any other exercise of an index option, the exercise settlement amount remains equal to the index multiplier times the difference between the exercise price and the current index value.

A statement of the rights of holder of capped index options is added to Article XVII, Section 2 of OCC's By-laws to parallel the existing statements of the rights of holders of American-style and European-style index options.

(d) *Rule 602.* A provision is added to Rule 602 to state that OCC will take the cap price into account in determining margin requirements and credits in respect of capped options.

(e) *Rule 611.* OCC Rule 611 is amended to permit OCC to provide spread margin treatment in a customer's account in a situation where a customer (1) has a long position or "long leg" consisting of index options of one style and a short position or "short leg" consisting of index options with the same underlying index but of another style and (2) receives spread margin treatment from the customer's broker for the two positions. This situation could occur, for example, with American-style and capped-style options on the S&P 100 index.[9] Rule 611 currently prohibits OCC from giving such positions spread treatment, because the rule permits spread treatment only for customer positions in the same "class of options," and the definition of the term "class of options" provides that options of different styles are in different classes. CBOE's rules governing customer margin, on the other hand, are stated in terms that permit customers to receive spread margin treatment from their brokers so long as the short and long positions are for the same underlying index and have the same index multiplier. CBOE's rules, therefore, permit customers to receive spread margin treatment for spreads consisting of a long option of one style and a short option of another style on the same underlying index. The inconsistency between OCC's rules and exchange rules on this point makes it possible that a clearing member could find itself "squeezed" between its requirement to deposit clearing-level margin for a customer's short positions and its inability to collect customer-level margin for the positions. The amendment to Rule 611 would eliminate the inconsistency between OCC Rules and exchange rules and, thereby, would prevent this situation from occurring.

(f) *Chapter XVIII.* New provisions are added to Chapter XVIII of OCC's Rules, which contains OCC rules for index options, to accommodate capped index options. Automatic exercise of all long positions in a series of capped index options and assignment of the obligation to pay the exercise settlement amount to all short positions in the series will occur on the business day after the day on which the current index value hits the cap price (or, if the current index value should happen to hit the cap price on the trading day before the expiration date, on the expiration date). Except for the situation where the cap price is hit on the trading day immediately preceding expiration day, settlement for capped index options occurs on the second day after the cap price is hit. OCC Rules provide that in the event that the cap price is hit on the trading day immediately preceding expiration day, settlement for capped index options will occur on the following business day, which is the first and not the second business day after the cap price is hit.

* * * * *

The proposed changes to OCC's By-laws and Rules are consistent with the purposes and requirements of Section 17A of the Act because they facilitate the prompt and accurate clearance and settlement of transactions in capped index options. This is accomplished by applying rules and procedures comparable to those that have been used successfully in the clearance and settlement of transactions in established index option products. The proposed rule change is also consistent with the requirements of Section 17A of the Act that OCC's rules provide for the safeguarding of funds and securities in OCC's custody or control or for which OCC is responsible in that a system of safeguards which is substantially the same as that which OCC currently uses for American-style and European-style index options will be applied to capped index options.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments concerning the proposed rule change were not and are not intended to be solicited in connection with the proposed rule change, and none have been received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) [10] of the Act requires that OCC's rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and be designed to assure the safeguarding of securities and funds in OCC's custody or control or for which OCC is responsible. The Commission believes that OCC's proposal is consistent with these requirements because the proposed rules extensively utilize, with appropriate variations targeting specific differences between capped index options and the other styles of index options (*i.e.*, American and European), existing OCC rules pertaining to index option products.

[8] Apart from the automatic exercise of capped index options, OCC's Rules permit exercise in two other ways. First, the clearing member carrying the option may file an exercise notice with OCC (OCC Rule 810). Second, OCC presumes that the holder of any option that is "in-the-money" on its expiration date by more than an amount specified in OCC's Rules will wish to exercise the option, and OCC accordingly acts as though an exercise notice had been filed on the expiration date for any such option unless OCC receives a contrary instruction from the clearing member carrying the option within a time period specified in OCC's Rules (OCC Rule 805(f)).

[9] The revision to Rue 611 proposed in the filing would also permit spread margin treatment for foreign currency options where American-style and European style options are available on the same underlying currency. For example, revised Rule 611 would permit spread margin treatment for an American-style British Pound option against a European-style British Pound option.

[10] 15 U.S.C. 78q-1(b)(3)(F).

These existing OCC rules have been utilized successfully over time for OCC's clearance and settlement of transactions in established index option products. Certain noteworthy aspects of the proposal are discussed below.

First, because capped index options can be exercised automatically, OCC's Rules have been amended to reflect the fact that in the event of automatic exercise there will be no exercise notice submitted by a participant. Instead, on the business day after the cap price is hit (T+1), all options in the subject series will be exercised and assigned. Settlement of the options will occur the following business day (T+2.[11] The Commission expressed its concern that participants would not receive adequate notice that their capped index options had been exercised and/or assigned. Notice of exercise and assignment of a capped index option would be particularly important to participants that owe money the next business day for settlement purposes (*e.g.*, call and put writers). In response to the Commission's concern, OCC has represented that the information processing procedures currently used by the exchanges and OCC will provide adequate notification to clearing members that an option series has hit the cap price and has thus expired.[12] Therefore, clearing members should have ample notice on the day of exercise and assignment that the cap price was hit on the previous business day and that settlement will occur the following day.

Second, as indicated above, OCC has amended its rules to establish the settlement day for capped index options generally as the second business day after the cap price has been hit (T+2). The Commission believes that settlement on T+2 is appropriate for capped index options in light of their unique automatic exercise element. The Commission also believes it important to highlight an exception to this general capped option index settlement rule. The Commission understands that the amended OCC Rules provide that in the event that the cap price is hit on the day immediately preceding the expiration day, settlement for the capped index option will occur on the following business day, which is the first and not the second business day after the cap price is hit.

Third, OCC has amended its margin rules to accommodate for capped index options. According to the proposal, capped index options will be margined the same as other index options except that OCC will not permit any calculation of premium margin or additional margin to exceed the cap interval.[13] The proposal provides for spread margin treatment for index options and capped index options of the same index group notwithstanding the fact that the two options are different styles of options that normally would have to be segregated for purposes of calculating margin. The Commission believes the proposed margin rules for capped index options are consistent with the Act and will help to assure the safeguarding of funds in the custody of OCC or under its control. However, the Commission has expressed its concern as to whether the margin treatment for capped index options is workable within the parameters of OCC's existing financial margin model. OCC has responded by way of a representation that it has modified its margin system to accommodate the changes described in the filing.[14]

In addition to the foregoing, OCC has requested that the Commission find good cause for approving the proposed rule change prior to thirty days after the date of publication of this notice in the **Federal Register**. The Commission finds good cause for approving OCC's proposed rule change because accelerated approval will permit OCC to issue, clear, and settle capped index options contemporaneously with their trading as proposed in the CBOE Proposal and the AMEX Proposal. Although notice of OCC's proposed rule change did not appear in the **Federal Register**, notices of the CBOE and Amex proposed rule changes have appeared in the **Federal Register**, and notice of the principal characteristics of capped index options was given in connection with those filings. In addition, the Commission believes that the proposed changes to OCC's By-laws and Rules are consistent with the purposes and requirements of Section 17A of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-91-14 and should be submitted by November 25, 1991.

V. Conclusion

On the basis of the foregoing, the Commission finds that OCC's proposed rule change is consistent with the Act and, in particular, with section 17A of the Act.

It is therefore ordered, under section 19(b)(2) of the Act,[15] that the proposal (File No. SR-OCC-91-14) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-26525 Filed 11-1-91; 8:45 am]

BILLING CODE 8010-01-M

[11] As explained below, if the cap price is hit on the trading day preceding the expiration date, settlement will occur on the following business day (T+1).

[12] OCC has represented that the exchanges have indicated that on the day a capped index option has expired they will advise their membership of such fact through their standard communication channels and that the trading post on the floor of each exchange will not display the expired capped series on the morning of the next trading day. OCC also has represented that it will inform its clearing members through its information network, which includes information memoranda and electronic on-line communication facilities, that a capped index option series has reached its cap price and has thus expired. Finally, OCC has represented that it will amend immediately its Delivery Advice Memorandum Report, which OCC provides daily to every clearing member, to include information pertaining to capped index options that have expired at the close of business on the most recent trading day. Letter from Don. L. Horwitz, General Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (October 28, 1991) ("Representation Letter").

[13] OCC generally requires two kinds of margin from participants relating to certain options positions. "Premium margin" is equivalent to the current market value of the option, and "additional margin" represents the liquidating value (cost) to OCC under a worst case scenario calculated by using a sophisticated options pricing model.

[14] OCC also indicates that the development and testing of changes to its margining system meet all OCC standards, including performance testing, and is consistent with the intent of the filing. Representation Letter, *supra* note 12.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30-3(a)(12).

[Release No. 34-29862; File No. S7-9-90]

Self-Regulatory Organizations; Application for Extension of Temporary Registration as a Securities Information Processor and Order Granting Accelerated Approval to National Association of Securities Dealers, Inc. for Market Services, Inc.

October 25, 1991.

Pursuant to section 11A(b)(3) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 8, 1991,[2] the National Association of Securities Dealers, ("NASD") filed with the Securities and Exchange Commission ("Commission"), an application for extension of the temporary registration as an exclusive securities information processor ("SIP")[3] to its subsidiary, Market Services, Inc. ("MSI"),[4] for one year for the operation of the PORTAL Market.[5] The NASD filed its application for registration on March 28, 1990, pursuant to section 11A(b)(2) of the Act,[6] and Rule 11Ab2-1 thereunder.[7] The Commission issued an order granting temporary registration as an exclusive SIP to MSI for a one year period of October 25, 1990. The Commission is publishing this notice to solicit comments on the proposed extension.

Section 11A(b)(1) of the Act provides that "it shall be unlawful for any securities information processor unless registered in accordance with this subsection, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a securities information processor." [8] In approving the temporary registration, the Commission reviewed the MSI SIP application, as well as the operation of the NASD's PORTAL system. As part of its submissions, the NASD represented that it had considered the implications of the new system on the capacity of the NASD's other systems, the adequacy of the PORTAL system's capacity to process the expected traffic in PORTAL itself, and the adequacy of the PORTAL system's protection against unauthorized access, computer viruses and other internal or external intrusions. The NASD represented that its capacity and security plans are designed to provide adequate protections that are comparable to those generally in use for similar systems. The Commission also examined the information and documents contained in the NASD's submissions with regard to standards and procedures for collection, processing, distribution and publication of information with respect to quotations for, and transactions in securities; personnel qualifications; financial condition; and such other matters as the Commission determined to be germane to the provisions of the Act and the rules and regulations thereunder.

As part of its original submissions, the NASD represented that it had considered the implications of the new system on the capacity of the NASD's other systems,[9] the adequacy of the PORTAL system's capacity to process the expected traffic in PORTAL itself, and the adequacy of the PORTAL system's protection against hackers, computer viruses and other internal intrusions. The NASD represented that its capacity and security plans are designed to provide adequate protections that are comparable to those generally in use for similar systems.

Because the PORTAL Market is the first NASD service operated on Stratus computers, the NASD has not developed the drivers and traffic generators required to conduct a formalized stress test of the PORTAL Market. A capacity test was performed by simulating actual operation of the PORTAL Market through manual input of typical transactions. From this simulated production test, the NASD represented that the system has sufficient capacity to support the PORTAL Market through early expansion and growth in user traffic. It further indicated that the system can be upgraded with little or no impact on continuous operation. The NASD also stated that at the initial phase of the PORTAL Market there will be no backup system available, but that all available system resources are being applied to handle potential PORTAL Market capacity.

In its approval of the temporary registration, the Commission noted with concern the lack of a back-up system for the PORTAL Market and the inability of the NASD to perform a formalized stress test of the system. The Commission, however, believed that the PORTAL Market provided institutional investors with an important trading mechanism to assist them in meeting the requirements of Rule 144A, and thus found a temporary SIP registration appropriate if the benefits of trading in the PORTAL Market were to be achieved. The decision to grant the NASD registration as a SIP for MSI for one-year period was based primarily on the low-volume expected during the first year of operation.

Given the continued low volume of the PORTAL Market, the Commission believes that a temporary extension of the SIP registration is appropriate for a one year period. The Commission will continue to monitor the development of the PORTAL Market, and will assess whether the volume in PORTAL is such that it necessitates the implementation of a back-up and stress test capabilities.

The Commission, therefore, finds, pursuant to Section 11A(b)(3) of the Act, that, based on the NASD's representations and on the performance of the PORTAL system to date, MSI is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as securities information processor, comply with the provisions of the Act and the rules and regulations thereunder, carry out its functions in a manner consistent with the purposes of Section 11A, and insofar as it is acting as an exclusive processor, operate fairly and efficiently.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change the are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for

[1] 15 USC 78k-1 (1991).

[2] See letter from Frank J. Wilson, Vice President and General Counsel, NASD, to Christine A. Sakach, Branch Chief, National Market System Branch, Division of Market Regulation, SEC, dated October 7, 1991.

[3] See Securities Exchange Act Release No. 28581 (October 25, 1990), 55 FR 45897. On April 27, 1990, the Commission granted the NASD a temporary exception from registration as a SIP to allow the NASD to operate the PORTAL Market while the Commission completed its review of the securities information processor application. See Securities Exchange Act Release No. 27957, (April 27, 1990), 55 FR 19140.

[4] MSI is a securities information processor within the definition of Section 3(a)(22)(A) of the Act and an exclusive processor within the definition of Section 3(a)(22)(B) of the Act.

[5] The PORTAL Market is a screen-based system for primary placements and secondary trading of Rule 144A securities. See Securities Exchange Act Release No. 27956 (April 27, 1990), 55 FR 18781.

[6] 15 USC 78k-1 (1991).

[7] See letter to Jonathan G. Katz, Secretary, SEC, from Frank J. Wilson, Executive Vice-President and General Counsel, NASD, dated March 28, 1990. The Notice of Application for Registration was published in Securities Exchange Act Release No. 27957 (April 27, 1990), 55 FR 19138.

[8] 15 USC 78k-1(b)(1) (1987).

[9] At present the PORTAL Market is the only NASD service operated on Stratus equipment and therefore cannot affect the operational capacity of the NASDAQ System.

inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submission should refer to the file number in the caption above and should be submitted by [November 25, 1991.

It is therefore ordered, pursuant to section 11A(b)(1) of the Act, that the application of the NASD for the registration of MSI as a securities information processor be, and hereby is, extended for a one-year period from the date of this order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-26521 Filed 11-1-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18380; File No. 812-7775]

Empire Fidelity Investments Life Insurance Company, et al.

October 25, 1991.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Empire Fidelity Investments Life Insurance Company ("Empire Fidelity Life"), Empire Fidelity Investments Variable Annuity Account A ("Account") and Fidelity Brokerage Services, Inc. ("Fidelity Brokerage").

RELEVANT 1940 ACT SECTIONS: Exemptions requested from Sections 22(d), 26(a)(2)(C) and 27(c)(2) pursuant to Section 6(c).

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of mortality and expense risk charges from the assets of the Account under certain deferred variable annuity contracts and permitting them to waive the contingent deferred sales charge applicable under the contracts in certain circumstances.

FILING DATES: The application was filed on August 19, 1991 and amended on October 10, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on November 19, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, One World Financial Center, New York, N.Y. 10281, Attention: Rodney R. Rohda, President. Copies to William R. Galeota, Shea & Gardner, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272-3046 or Heidi Stam, Assistant Chief, at (202) 272-2060, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Empire Fidelity Life is a stock life insurance company organized under the laws of the State of New York. Empire Fidelity Life is a wholly-owned subsidiary of Fidelty Investments Life Insurance Company, which is itself a wholly-owned subsidiary of FM Corp. ("FMR"), the holding company for the group of financial services companies known as Fidelity Investments. Fidelity Brokerage is a wholly-owned subsidiary of FMR.

2. The Account was established by Empire Fidelity Life as a separate account under New York law on July 15, 1991. The Account was established for the purpose of funding certain variable annuity contracts (the "contracts") issued by Empire Fidelity Life.

3. The contract allows the owner to accumulate funds on a tax-deferred basis. The contract's value varies based on the investment experience of the selected subaccounts of the Account and/or the interest credited under the fixed-rate investment option funded through Empire Fidelity Life's general account (the "Guaranteed Account"). There are seven subaccounts in the Account. Five subaccounts will invest exclusively in shares of the portfolios of the Variable Insurance Products Fund and two subaccounts will invest in shares of portfolios of the Variable Insurance Products Fund II.

4. When a purchase payment is allocated to or an amount is transferred into the Guaranteed Account, an interest rate will be assigned to that amount. That rate will be guaranteed for a certain period of time depending on when the amount was allocated to the Guaranteed Account. When this initial period expires, a new interest rate will be assigned to that amount which will be guaranteed for a period of at least a year. Thereafter, interest rates credited to that amount will be similarly guaranteed for successive periods of at least one year. Therefore, different interest rates may apply to different amounts, in the Guaranteed Account depending on when the amount was initially allocated. Furthermore, the interest rate applicable to any particular amount may vary from time to time.

5. Empire Fidelity Life imposes an administrative charge to compensate it for the expenses it incurs administering the contracts. These expenses include the costs of issuing the contracts, maintaining necessary systems and records, and providing reports. The administrative charge has two components: a daily administrative charge and an annual maintenance charge prior to the annuity date. The daily administrative charge is assessed by deducting daily from the assets of the subaccounts a percentage of those assets equivalent to an effective annual rate of 0.25%. The annual maintenance charge is deducted on each contract anniversary before the annuity date and a pro rata portion of that charge is deducted upon surrender of the contract. This charge is currently $30 per year, although Empire Fidelity Life reserves the right to increase this charge to $50. The charge is currently waived if the owner's total purchase payments, less any withdrawals, equals at least $25,000. Empire Fidelity Life reserves the right to assess this charge against all contracts. According to Applicants, these administrative charges contain no element of anticipated profit and meet the standards in Rule 26a-1 under the 1940.

6. Empire Fidelity Life deducts a daily asset charge for its assumption of mortality and expense risks at an effective annual rate of 0.75%. Empire Fidelity Life bears a mortality risk because it agrees to make annuity income payments for the life of the annuitant or joint annuitants no matter how long that will be. Empire Fidelity Life also bears a mortality risk because it guarantees the purchase rates for the annuity options. This risk is increased

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[10] 17 CFR 200.30-3(a)(40) (1991).

by the ability of the owner to substitute a healthier life as the annuitant prior to the annuity date. In addition, Empire Fidelity Life bears a mortality risk by guaranteeing a death benefit, which may be greater than the contract value, if the last surviving annuitant dies prior to the annuity date and prior to age 70. The expense risk that Empire Fidelity Life assumes is the risk that the costs of issuing and administering the contracts will be greater than expected when setting the administrative charges. Of the 0.75% charge, 0.65% is for assuming mortality risks and 0.10% is for assuming expense risks. Empire Fidelity Life will realize a gain from the charge for these risks to the extent that it is not needed to provide for benefits and expenses under the contracts.

7. When a partial or full withdrawal is made within the first five contract years, the amount of purchase payments withdrawn from the owner's contract value (less any amount entitled to a 10% exception) will be subject to a contingent deferred sales charge (also referred to as a surrender charge or withdrawal charge). The withdrawal charge is 5% during the first contract year and decreases one percent per year through the fifth contract year. There is no charge in year six or thereafter. For purposes of determining this withdrawal charge, any amount withdrawn in excess of amounts entitled to the 10% exception will be considered as a withdrawal of purchase payments until an amount equal to all of the owner's purchase payments have been withdrawn. Additional purchase payments during the first five years will increase the dollar amount of the potential withdrawal charge but will not cause the schedule of charges to begin again. For example, additional purchase payments made and withdrawn during year five will be subject to a 1% charge. Additional payments made after the fifth contract year will not be subject to any withdrawal charge.

8. Empire Fidelity Life will waive the surrender charge in connection with the full surrender of the contract within thirty days after notice is mailed to the contract owner of any of the following: (1) the renewal interest rate on any portion of the contract value allocated to the Guaranteed Account has decreased by more than 1% from the expiring interest rate; (2) the annual maintenance charge on a contract has been increased above the current level being charged when the contract was issued; or (3) the annual maintenance charge has been imposed as a result of a change in practice if that charge had been waived for the owner's contract.

9. Applicants submit that Empire Fidelity Life is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the charge of 0.75% made under the contracts for mortality and expense risks is consistent with the protection of investors, because it is a proper insurance charge. In return for this amount Empire Fidelity Life assumes certain risks in the contracts. Applicants contend that the mortality and expense risk is a reasonable charge to compensate Empire Fidelity Life for those risks.

10. Empire Fidelity Life represents that the charge for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon Empire Fidelity Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Empire Fidelity Life will maintain at its executive office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

11. Applicants acknowledge that the contingent deferred sales charge may be insufficient to cover all costs related to the distribution of the contracts and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses not reimbursed by the contingent deferred sales charge. Empire Fidelity Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Account and contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Empire Fidelity Life at its executive office and will be available to the Commission.

12. Empire Fidelity Life represents that the Account will invest only in management investment companies which undertake, in the event such company adopts a plan under Rule 12b-1 under the 1940 Act to finance distribution expenses, to have a board of trustees (or directors), a majority of whom are not interested persons of the company, formulate and approve any such plan.

13. Section 22(d) of the Act prohibits a registered investment company, its principal underwriter or a dealer in its securities from selling any redeemable security issued by such registered investment company to any person except at the public offering price described in the prospectus. Applicants recognize that the waiver of the contract surrender charge could be viewed as causing the contracts to be sold at other than a uniform offering price. Rule 22d-1 is not directly applicable to Applicants' proposed waiver of the contract surrender charge because it has been interpreted as granting relief only for scheduled variations in front-end loads, not deferred sales loads. Applicants do not rely on Rule 22d-2 only because Applicants do not represent that the proposed waiver reflects differences in sales costs or services. Applicants therefore request that the Commission grant the requested exemption from section 22(d) of the Act to the extent necessary to permit implementation of the proposed waiver.

14. Applicants believe that the waiver of the contingent deferred sales charge under the circumstances described above is fair and provides an additional benefit to contract owners. Specifically, each of the three triggering events may make the owner's contract as administered after the triggering event appear less attractive to the owner than the contract appeared prior to the triggering event. The waiver allows an owner faced with one of the triggering events an opportunity to surrender his or her contract without incurring the contingent deferred sales load. This waiver will be uniformly applied to contract owners experiencing the triggering event and will not dilute the interest of any other contract owner. The applicants will absorb any sales expenses in situations where the contingent deferred sales load is waived. Therefore, Applicants submit that the waiver is consistent with the protection of investors.

15. Applicants submit that the waiver is consistent with the policies of section 22(d) of the 1940 Act and the rules promulgated thereunder because it will be available to all contract owners and will not unfairly discriminate among contract owners.

16. Applicants will implement the waiver guided by the relevant terms of Rule 22d-1 under the 1940 Act which require that (1) the company, its principal underwriter and dealers in the company's securities apply any scheduled variation uniformly to all offerees in the class specified; (2) the company furnishes to existing and prospective investors adequate information concerning any scheduled variations as prescribed in applicable registration statement form requirements; (3) the company revises

its prospectus and statement of additional information to describe the scheduled variation before making it available to purchasers of the company's securities; and (4) the company advises existing investors of the sales charge variation within one year of the date when the variation is first made available to purchasers of the company's securities.

17. Applicants specifically represent that the waiver will be available to all contract owners if and when any of the contingencies triggering the waiver occur. Applicants also represent that the prospectus will describe the waiver and the circumstances in which it will be available.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-26474 Filed 11-1-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25397]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 25, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 18, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Company, et al. (70-7225)

Consolidated Natural Gas Company ("Consolidated"), CNG Tower, Pittsburgh, Pennsylvania 15222-3199, a registered holding company, and CNG Trading ("Trading"), One Park Ridge Center, Pittsburgh, Pennsylvania 15244-0746, a wholly owned nonutility subsidiary company of Consolidated, have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rules 43 and 45 thereunder.

By order dated February 27, 1987 (HCAR No. 24329) ("February 1987 Order"), the Commission, among other things, authorized Consolidated, through December 31, 1991, to form and acquire from Trading (1) short-term notes, (2) long-term, non-negotiable notes, and (3) long-term notes pursuant to Long Term Credit Agreement loans. Consolidated was also authorized to make open account advances to Trading and to purchase shares of Trading common stock. All the open account advances and loans to Trading and purchases of common stock authorized by the February 1987 Order were not to exceed $15 million aggregate principal amount at any one time outstanding.

To date, Trading has issued 5 shares of its common stock to Consolidated at a price of $10,000 per share and has made short-term open account advances to Trading of which $1,060,000 was outstanding on June 30, 1991.

Consolidated now proposes to extend its authorization to December 31, 1996 to provide funds to Trading from time-to-time to finance Trading's continuing business activities through (1) the purchase of shares of Trading common stock, $1.00 par value, (2) open account advances, or (3) long-term loans to Trading, in any combination thereof and in such amounts that the aggregate outstanding amount so obtained from Consolidated will not at any one time exceed $20 million. Consolidated also proposes to indemnify, guarantee performance, and act as surety with respect to obligations of Trading in an aggregate amount not to exceed $20 million at any one time.

Open account advances will be made under letter agreement with Trading and will be repaid on or before a date not more than one year from the date of the first advance with interest at the same effective rate of interest as Consolidated's weighted average effective rate for commercial paper and/or revolving credit borrowings. If no such borrowings are outstanding, then the interest rate shall be predicated on the Federal Funds' effective rate of interest as quoted daily by the Federal Reserve Bank of New York.

Loans to Trading shall be evidenced by long-term nonnegotiable notes of Trading (documented by book entry only) maturing over a period of time (not in excess of 30 years), with the interest predicated on and equal to the effective cost of money to Consolidated obtained through the most recent of its long-term debt financings. In the event Consolidated does not issue long-term debt during the period October 9, 1991 through December 31, 1996 the proceeds of which are allocable to Trading, long-term borrowing rates will be tied to the Salomon Brothers indicative rates for comparable debt issuance published in Salomon Brothers Inc. Bond Market Roundup or an equivalent publication on the date nearest to the time of takedown. Such rate will be adjusted to match Consolidated's cost of borrowing if Consolidated subsequently issues long-term debt within one year of the date of takedown. Should Consolidated not issue long-term debt during the subsequent twelve-month period the proceeds of which are allocable to Trading, the indicative rate at the time of takedown will be used for the life of the note.

Consolidated will obtain the funds required for Trading through internal cash generation, issuance of long-term debt securities, borrowings under credit agreements or through other authorizations approved by the Commission subsequent to the effective date a supplemental order is issued by the Commission with respect to this filing.

The Columbia Gas System, Inc., et al. (70-7688)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, its nonutility subsidiary companies, Columbia Gas System Service Corporation; Columbia LNG Corporation ("Columbia LNG"); Columbia Atlantic Trading Corporation; TriStar Ventures Corporation, 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Natural Resources, Inc.; Columbia Coal Gasification Corporation, 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Gulf Transmission Company; Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314; Columbia Gas Development ot Canada, Ltd., 639—5th Avenue, SW., Calgary, Alberta, Canada T2P OM9; Columbia Gas Development Corporation, 5847 San Felipe, Houston, Texas 77057; Commonwealth Propane,

Inc.; Columbia Propane Corporation, 800 Moorefield Park Drive, Richmond, Virginia 23236; and Columbia's public-utility subsidiary companies, The Inland Gas Company, Inc., 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Gas of Kentucky, Inc.; Columbia Gas of Ohio, Inc.; Columbia Gas of Maryland, Inc.; Columbia Gas of Pennsylvania, Inc. and Commonwealth Gas Services, Inc., 200 Civic Center Drive, Columbus, Ohio 43215, have filed a post-effective amendment to their joint application-declaration under sections 6(a), 6(b), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43 and 45 and 50(a)(5) thereunder.

By Commission order dated December 18, 1989 (HCAR. No. 25001) ("1989 Order"), Columbia LNG was authorized to borrow up to $10 million as short-term advances from Columbia through December 31, 1991. Columbia LNG now proposes to increase the maximum amount of short-term advances from $10 million to $11 million through December 31, 1991. The terms of the advances remain unchanged from the 1989 Order. The increased authorization is needed to meet the working capital requirements of Columbia LNG including, but not limited to, debt service and minor construction projects which are mandatory under state regulations and maintenance requirements for Columbia LNG's Cove Point Facility. All short-term advances will be repaid on or before April 30, 1992.

Allegheny Power System, Inc., et al. (70-7888)

Allegheny power System, Inc. ("Allegheny"), 12 East 49th Street, New York, New York 10017, a registered holding company, and its public-utility subsidiary companies, Monongahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company ("Potomac Edison"), Downsville Pike, Hagerstown, Maryland 21740, and West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, together with Allegheny Generating Company ("AGC"), 12 East 49th Street, New York, New York 10017, a public-utility subsidiary company of Monongahela, Potomac Edison, and West Penn, and Allegheny Power Service Corporation ("APSC"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, a service company subsidiary of Allegheny (collectively, "Applicants"), have filed an application-declaration under sections 6(a), 6(b), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

The Commission has authorized short-term debt borrowings of up to $165 million through September 30, 1993 by Allegheny (HCAR No. 25388, Oct. 1, 1991), up to $64 million through September 30, 1992 by Monongahela (HCAR No. 25148, Sept. 7, 1990), up to $93 million through March 31, 1993 by Potomac Edison (HCAR No. 25290, Mar. 29, 1991), up to $134 million through December 31, 1991 by West Penn (HCAR No. 25022, Jan. 11, 1990),[1] and up to $150 million through March 31, 1993 by AGC (HCAR No. 25267, Mar. 6, 1991). The Applicants now seek to continue or to extend their respective authorizations to engage in short-term debt borrowings through December 31, 1993 and, with the exception of Allegheny and AGC, to increase the aggregate amount of their respective borrowings.

Allegheny, Monongahela, Potomac Edison, West Penn and AGC propose to issue and sell commercial paper ("Commercial Paper") to dealers in commercial paper and, with the exception of AGC, to issue short-term notes ("Notes") to banks in aggregate principal amounts outstanding at any one time not to exceed: (1) $165 million for Allegheny; (2) $86 million for Monongahela; (3) $94 million for Potomac Edison; (4) $147 million for West Penn; and (5) $150 million for AGC.[2] It is proposed that the Notes and Commercial Paper will be issued from time-to-time prior to December 31, 1993, provided that no such Notes or Commercial Paper will mature after June 30, 1994.

Each Note will be dated as of the date of the borrowing which it evidences and will mature not more than 270 days after the date of issuance or renewal thereof. Each Note will bear interest at a mutually agreed upon rate, provided that the effective rate for any 30-day period on an annualized basis will not exceed prime plus two percentage points, and may or may not have prepayment privileges. Allegheny, Monongahela, Potomac Edison and West Penn have agreed to pay for lines of credit for short-term borrowings with a group of banks ("Banks") by paying an annual cash fee no greater than 15 basis points on all or the balance of the lines of credit. The maximum aggregate amount of any short-term borrowings outstanding at any one time on behalf of Allegheny, Monongahela, Potomac Edison and West Penn will not, when taken together with any Commercial Paper then outstanding and any funds borrowed under the Money Pool hereinafter described (but not including any Commercial Paper issued and sold by AGC), be in excess of $492 million.

The Commercial Paper will not be prepayable and will have varying maturities, with no maturity more than 270 days after the date of issue. Merrill Lynch Money Markets, Inc. and Citicorp Securities Markets, Inc. have been designated by the Applicants as their commercial paper dealers ("Dealers"). The Commercial Paper will be sold directly to the Dealers at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. Allegheny, Monongahela, Potomac Edison, West Penn and AGC each intend to issue the Commercial Paper only if the interest cost thereof is reasonably believed by the issuing Applicant to be equal to or less than the effective interest cost at which it could at that time borrow the same amount from the Banks, or in the case of AGC, the effective interest cost at which AGC could borrow the same amount pursuant to the Credit Agreement, or the Applicant cannot at that time borrow the same amount for the same period of time from the Banks, or in the case of AGC, it cannot at that time borrow the same amount for the same period of time.

AGC requests that the exemption from the provisions of section 6(a) provided by the first sentence of section 6(b) be increased to the extent necessary to cover its proposed issuance of $150 million in Commercial Paper.

The Applicants request that the proposed issuance and sale of the Commercial Paper be excepted from the competitive bidding requirements of Rule 50 under subsection (a)(5). Applicants state that it is not practicable to invite competitive bids for the Commercial Paper and current rates for commercial paper of prime borrowers such as the Applicants are published daily in financial publications.

The Credit Agreement, which will back AGC's Commercial Paper, provides for a credit facility, pursuant to which promissory notes ("Promissory Notes") may be issued in the maximum principal amount of $150 million. AGC is seeking

[1] A notice was issued on October 4, 1991 (HCAR No. 25391) of a proposal by West Penn to extend its authorization to December 31, 1993 in an increased amount up to $147 million.

[2] AGC's Commercial Paper will be backed by a funding commitment through a $150 million revolving credit agreement ("Credit Agreement") by and among AGC and a group of nine banks. AGC's total short-term debt outstanding, including Commercial Paper, funds borrowed under the Credit Agreement and the Money Pool hereinafter described, but not including debentures and medium-term notes, will not at any time exceed $150 million, including any Commercial Paper that may still be issued and outstanding under authorization granted by order dated March 6, 1991 (HCAR No. 25267).

to extend its borrowing authority under the Credit Agreement through December 31, 1993. The Promissory Notes will have a maturity of December 31, 1994, which may be extended under the Credit Agreement by the lending banks for one-year periods. Each Promissory Note shall be payable as to principal and shall bear interest from the effective date of such loan to the termination date. At the option of AGC, the Promissory Notes will bear interest at: (1) The alternate base rate which is the higher of Chemical Banks's floating prime or ⅜ of 1% per annum over the average weekly three-month certificate of deposit rate adjusted for reserves and insurance; (2) the London Interbank Offer Rate plus ½ of 1% per annum from the effective date through December 31, 1994; or (3) the certificate of deposit rate plus ½ of 1% per annum, adjusted for reserves and insurance, until December 31, 1994. In addition, each bank may offer fixed rate loans in maturities of one year or more. The effective interest rate applicable to a fixed rate loan will not exceed prime plus two percentage points per annum. The Promissory Notes will be prepayable at any time without premium or penalty except that any loss to the banks' reinvestment of the funds resulting from prepayment prior to the end of an interest period will be reimbursed by AGC. There is a commitment fee of 3/16 of 1% per annum on the average daily unused portion of the credit facility.[3]

The Applicants also propose to establish the Allegheny Power System Money Pool ("Money Pool"). Allegheny, Monongahela, Potomac Edison, and West Penn request authorization, through December 31, 1993, to lend their surplus funds to the Money Pool. The surplus funds available from day to day will be loaned to the Money Pool on a short-term basis (from 1 day to 270 days). Monongahela, Potomac Edison, West Penn and AGC ("Borrowing Companies") request authorization, through December 31, 1993, to borrow from the Money Pool. Allegheny will participate in the Money Pool only insofar as it has funds available for lending through the Money Pool, and AGC will be allowed to borrow from, but not invest in, the Money Pool. APSC will administer the Money Pool, will act as agent for the Applicants, and will invest surplus funds remaining in the Money Pool after satisfaction of the borrowing needs of the Borrowing Companies.

All borrowings from and contributions to the Money Pool will be documented on a daily basis and will be evidenced on the books of each Applicant that is borrowing or contributing surplus funds through the Money Pool. All loans from the Money Pool will be payable on demand, may be prepaid by the Borrowing Companies at any time without premium or penalty, and will bear interest, payable monthly, equal to the daily Federal Funds Effective Rate as quoted by the Federal Reserve Bank of New York. Any Applicant contributing funds to the Money Pool may withdraw them at any time without notice to satisfy its daily need of funds.

It is anticipated that the short-term borrowing requirements of the Borrowing Companies will be met, in the first instance, with the proceeds of borrowings available through the Money Pool, and thereafter, to the extent necessary, with the proceeds of external short-term borrowings through the issuance of Notes, Promissory Notes, and/or the issuance and sale of the Commercial Paper. It is proposed that the aggregate principal amount of borrowings from the Money Pool at any one time outstanding through December 31, 1993 will not, when taken together with any Notes, Promissory Notes, and/or Commercial Paper then outstanding, be in excess of $86 million for Monongahela, $94 million for Potomac Edison, $147 million for West Penn, and $150 million for AGC.

Ohio Power Company (70–7889)

Ohio Power Company ("OPCo"), 301 Cleveland Avenue, S.W., Canton, Ohio 44702, an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a declaration under Section 12(d) of the Act and Rule 44 thereunder.

OPCo proposes to sell a portion of its electric power distribution poles to The Western Reserve Telephone Company and Alltel Ohio, Inc. (collectively, "Telephone Companies"). OPCo and the Telephone Companies are parties to joint use agreements dated January 1, 1970 ("Agreements") that provide for the concurrent use of telecommunications and electric power distribution poles owned by both parties.

As per the Agreements, the ownership of poles jointly used by the parties is 55% to be owned by OPCo and 45% to be owned by the Telephone Companies. In addition, the Agreements provide that if either of the parties owns more than its objective percentage, the other party has the option of purchasing any number of poles up to the number necessary to obtain the objective percentage or pay as an equity settlement an annual rental. The annual rental for the Telephone Companies under the Agreements is $4.50 per pole. In the past, the Telephone Companies have elected to pay the annual rental rather than buy enough poles to reach the objective percentage.

The parties are now negotiating a new joint use agreement ("Joint Use Agreement") which will most likely increase the annual rental for the poles substantially. It is anticipated that the Telephone Companies will elect to purchase poles necessary to reach the objective percentages under the current Agreements.

The price that the Telephone Companies will pay for the poles will be based on OPCo's replacement cost less depreciation. The location of the poles to be purchased and sold shall be arrived at by mutual agreement. Any sale of the poles will be released from the lien of OPCo's Mortgage and Deed of Trust.

In addition to authorization to transfer to the Telephone Companies the number of poles necessary initially to reach the 55%/45% objective percentage, OPCo specifically requests authorization to transfer to the Telephone Companies any additional poles required by the Joint Use Agreement. The price that the Telephone Companies will pay for the additional poles will continue to be based on OPCo's replacement cost less depreciation.

GPU Nuclear Corporation (70–7905)

GPU Nuclear Corporation ("GPUN"), One Upper Pond Road, Parsippany, New Jersey 07054, a service subsidiary company of General Public Utilities Corporation, a registered holding company, has filed an application under Sections 9(a) and 10 of the Act.

GPUN proposes to submit a proposal to provide certain services to Public Service of Colorado ("PSC"), a nonassociate public utility company providing electric service in areas of Colorado, in connection with the final radiation survey for PSC's proposed decommissioning plan for its Fort Saint Vrain nuclear facility ("Ft. St. Vrain"). Such services include: (1) Consulting services; (2) the development of the specifications for an independent verification survey ("Verification Survey"); (3) the development of plans and procedures to comply with the specifications for the Verification Survey; (4) the review of the Ft. St. Vrain final radiation survey; and (5) the conducting of the Verification Survey

[3] Monongahela, Potomac Edison and West Penn have received authorization (HCAR No. 25323) to guarantee to the banks, severally and not jointly, 27%, 28%, and 45%, respectively, of the amount AGC borrows pursuant to the Credit Agreement.

and the issuance of reports in connection therewith (collectively, "Services"). In addition, GPUN anticipates that the Services will include the use of the GPUN Environmental Radioactivity Lab for radiological sample testing and the GPUN Radiological Instrument Shop for the provision of instrumentation and the calibration and maintenance thereof. If PSC accepts GPUN's proposal, GPUN will provide Services at Ft. St. Vrain, through December 31, 1996, on a time and materials basis covering GPUN's costs plus a profit.

GPUN anticipates that the provision of the Services will not interfere with its primary operation and maintenance of nuclear generating facilities on behalf of its public utility affiliates. GPUN anticipates that revenues to be derived from the proposed transaction will not exceed .25% of GPUN's total annual expenditures made by it for the operation, maintenance and construction of the GPU System nuclear plants. In addition, aggregate profits to be derived from the provision of the Services would not be expected to exceed .025% of the total operating revenues of GPUN, on an annual basis. Any such profits would be accounted for in such a manner so as to benefit the ratepayers of GPU's electric utility subsidiaries directly.

The Columbia Gas System, Inc., et al. (70–7910)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, its nonutility subsidiary companies, Columbia Gas System Service Corporation ("Service"); Columbia LNG Corporation ("Columbia LNG"); Columbia Atlantic Trading Corporation ("Columbia Atlantic"); TriStar Ventures Corporation ("TriStar Ventures"); Tristar Capital Corporation ("TriStar Capital"), 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Natural Resources, Inc. ("Columbia Natural"); Columbia Coal Gasification Corporation ("Coal Gasification"), 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Gulf Transmission Company ("Columbia Gulf"), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314; Columbia Gas Development of Canada, Ltd. ("Development Canada"), 639—5th Avenue, SW., Calgary, Alberta, Canada T2P 0M9; Columbia Gas Development Corporation ("Development"), 5847 San Felipe, Houston, Texas 77057; Commonwealth Propane, Inc. ("Commonwealth Propane"); Columbia Propane Corporation ("Columbia Propane"), 800 Moorefield Park Drive, Richmond, Virginia 23236; and Columbia's public-utility subsidiary companies, The Inland Gas Company, Inc. ("Inland"), 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Gas of Kentucky, Inc. ("Columbia Kentucky"); Columbia Gas of Ohio, Inc. ("Columbia Ohio"); Columbia Gas of Maryland, Inc. ("Columbia Maryland"); Columbia Gas of Pennsylvania, Inc. ("Columbia Pennsylvania"); and Commonwealth Gas Services, Inc. ("Commonwealth Services"), 200 Civic Center Drive, Columbus, Ohio 43215, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43 and 45 thereunder.

Columbia's subsidiary companies are principally engaged in various aspects of the natural gas business, including: exploration, production, purchase, storage, transmission, distribution, wholesale and retail sales of natural gas. All such subsidiary companies are hereinafter referred to collectively as the "Subsidiaries." Columbia and the Subsidiaries are sometimes hereinafter collectively referred to as the "System."

The System seeks authorization for the long and short-term financing programs of the Subsidiaries for the period through September 30, 1993, (the "Financing Period"), and authorization to continue the intrasystem money pool ("Money Pool") during the Financing Period.

Columbia, currently a debtor in possession under Chapter 11 of the Bankruptcy Code, has entered into a secured revolving credit facility ("Facility"), pursuant to an order of the Commission dated September 20, 1991 (HCAR No. 25380). The Facility permits Columbia to borrow up to $275 million through September 23, 1993. Interest on all outstanding balances will be charged at rates equal to either: (A) 1% over the lender's alternate reference rate (the higher of lender's announced prime rate or the federal funds rate plus 50 basis points); or (B) 2¼% over the Eurodollar Interbank Offered Rate.

In addition to the funds available under the Facility, funds for the Subsidiaries will be derived from each Subsidiary's internal cash flow and Money Pool borrowings. No further financing sources are projected to be needed by Columbia to provide for the funding requirements of the Subsidiaries while Columbia is in bankruptcy.

Certain Subsidiaries propose to finance part of their capital expenditure programs with funds generated from internal sources, with the balance financed through the sale to Columbia of common stock at par value and/or installment promissory notes ("Installment Notes") up to the amounts indicated below:

	Long-Term Financing		
	Common stock $MM	Long-term debt $MM	Total $MM
Columbia Kentucky		11.2	11.2
Columbia Maryland		5.2	5.2
Columbia Ohio		97.1	97.1
Columbia Pennsylvania		60.2	60.2
Commonwealth Services		21.2	21.2
Columbia Natural		60.0	60.0
Development		90.0	90.0
Development Canada	5.0		5.0
Columbia Propane		2.3	2.3
Commonwealth Propane		4.5	4.5
Columbia Gulf		50.0	50.0
Columbia Atlantic [4]			1.6
Service		10.4	10.4
Total	5.0	412.1	418.7

[4] The financing expected to be required for Columbia Atlantic will take the form of a contribution to capital.

The Installment Notes will be unsecured and will bear interest at a rate determined quarterly based upon the three-month average yield on newly issued "A" rated 25–30 year utility bonds as published in Salomon Brothers' weekly Bond Market Roundup, rounded to the nearest ⅛% per annum. This rate would be used for all Installment Notes issued in the subsequent quarter. The principal amount of the Installment Notes will be repaid over a term, not exceeding 30 years. A default rate equal to 2% per annum in excess of the stated rate on the unpaid principal amount will be assessed if any interest or principal payment becomes past due. All of the Installment Notes will be purchased by Columbia by September 30, 1993.

The Subsidiaries' short-term peak requirements are estimated to be up to $446.7 million for the Financing Period. These requirements will be funded using Money Pool funds derived first, from aggregate temporary surplus cash from subsidiaries, and second, from temporary surplus cash from Columbia Short-term peak funding requirements may also be met from Columbia borrowings under the Facility. All short-term borrowings under the Money Pool will be advances evidenced by a promissory note ("Money Pool Note"). All short-term borrowings from Columbia will also be evidenced by a promissory note ("Short-Term Note"). Advances from the Money Pool or Columbia will be limited to a maximum

amount outstanding at any one time for the Financing Period for each of the Subsidiaries as shown below:

	Short-term debt $MM
Columbia Kentucky	20.0
Columbia Maryland	10.0
Columbia Ohio	195.0
Columbia Pennsylvania	65.0
Commonwealth Services [5]	30.0
Columbia Gulf	25.0
Columbia Natural	30.0
Columbia LNG	18.7
Development	15.0
Inland	5.0
Columbia Propane	3.0
Commonwealth Propane	4.0
Coal Gasification	15.0
Service	11.0
Total	446.7

[5] According to rule 52, Commonwealth Services does not require Commission authorization for the sale of short-term securities. It is included here due to its participation in the Money Pool.

The funds may be advanced, repaid and reborrowed, as required throughout the Financing Period with all such advances to be fully repaid by April 30, 1994. The cost of money on all Money Pool or Short-Term Notes and the investment rate for moneys invested in the Money Pool will be the interest rate per annum equal to the composite weighted average effective rate on short-term transactions of Columbia and/or the Money Pool short-term investment rate. During any month this composite rate may be based on one or any combination of: (A) The cost of Columbia's borrowings under the Facility; and/or (B) the interest rate earned by Columbia on invested excess cash; and/or (C) the interest rate earned by Subsidiaries on investments of excess Money Pool funds. A default rate equal to 2% per annum above the pre-default rate on the unpaid principal amount will be assessed if any interest or principal becomes past due.

It is proposed that the Money Pool, which was last approved by Commission order dated December 18, 1989 (HCAR. No. 25001), be continued for all parties to this application-declaration through the Financing Period. Service will administer the Money pool and Columbia may not borrow from the Money Pool.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-26475 Filed 11-1-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2529]

Florida; Declaration of Disaster Loan Area

Dade County and the contiguous counties of Broward, Collier, and Monroe in the State of Florida constitute a disaster area as a result of damages caused by heavy rains and severe flooding October 8-16, 1991. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 23, 1991 and for economic injury until the close of business on July 23, 1992 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, Georgia 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	8.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 252906. For economic injury the number is 744100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 23, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-26466 Filed 11-1-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended October 25, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47809.

Date filed: October 23, 1991.

Parties: Members of the International Air Transport Association.

Subject: Telex—Mail Vote 517 (Specify Eastern Caribbean Rates in USD).

Proposed Effective Date: December 1, 1991

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-26477 Filed 11-1-91; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended October 25, 1991

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47798.

Date filed: October 21, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 28, 1991.

Description: Application of United Parcel Service Co., pursuant to section 401 of the Act and subpart Q of the Regulations, requests an amendment to its certificate of public convenience and necessity for Route 569 so as to add Dallas/Ft. Worth, Texas, and Louisville, Kentucky, as additional U.S. coterminal points on Route 569.

Docket Number: 47799.

Date filed: October 21, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 18, 1991.

Description: Application of Continental Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity authorizing Continental to provide scheduled foreign air transportation of persons, property, and mail as follows: Between a point or points in the U.S. and the coterminal points Stockholm, Gothenburg (Sweden), Copenhagen (Denmark), and Oslo, Bergen and Stavanger (Norway).

Docket Number: 47801.

Date filed: October 21, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 28, 1991.

Description: Application of Amerijet International, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity authorizing it to provide scheduled foreign air transportation of property and mail between a point or points in the United States and a point or points in Mexico. In addition, Amerijet respectfully requests appropriate designations authorizing it to institute scheduled all-cargo service in the city-pair markets as described.

Docket Number: 47803.

Date filed: October 21, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 28, 1991.

Description: Application of DHL Airways, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, requests a certificate of public convenience and necessity enabling it to provide nonstop all-cargo air services between the coterminal points Cincinnati, Ohio and Houston, Texas (or Dallas/Fort Worth, Texas, or San Antonio, Texas) and the terminal point Mexico City, Mexico. If DHL is awarded Houston as a coterminal point and is so designated to Mexico, it will delete Dallas and San Antonio from its requests.

Docket Number: 47806.

Date filed: October 23, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 20, 1991.

Description: Application of Aero Posta, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit to engage in charter foreign air transportation of passengers, property and mail from a point or points in Argentina to a point in the United States and return.

Docket Number: 47807.

Date filed: October 23, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 20, 1991.

Description: Application of Sun Express Group, Inc. d/b/a Destination Sun Airways, pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations requests a certificate of public convenience and necessity authorizing scheduled interstate and overseas air transportation.

Docket Number: 47810.

Date filed: October 23, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 20, 1991.

Description: Application of Midwest Leisure Travel, Inc., pursuant to section 401(d)(1), of the Act and subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing it to engage in charter interstate and overseas air transportation of persons, property and mail between points in the United States, its territories and possessions (including the District of Columbia).

Docket Number: 47811.

Date filed: October 23, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 20, 1991.

Description: Application of Midwest Leisure Travel, Inc., pursuant to section 401(d)(1) of the Act applies for a certificate of public convenience and necessity authorizing it to engage in charter foreign air transportation of persons, property, and mail between a point or points in the United States, its territories and possessions (including the District of Columbia) and a point or points in the Caribbean Basin, Mexico and Europe.

Docket Number: 47813.

Date filed: October 24, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 21, 1991.

Description: Application of Delta Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity to permit Delta to provide foreign air transportation between the United States and Maylasia and between the United States and Indonesia.

Docket Number: 47595.

Date filed: October 21, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 18, 1991.

Description: Application of Ground Air Transfer, Inc., d/b/a Charter One pursuant to section 401 of the Act and subpart Q of the Regulations, applies for removal of a restriction on its Certificate of Public Convenience and Necessity, Imposed by Ordering Clause No. 3 of Order 91-8-58 (issued August 27, 1991), so that Charter One may engage in scheduled large-plane interstate and overseas operations pursuant to its own Air Carrier Operating Certificate.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-26478 Filed 11-1-91; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Application of Hageland Aviation Services, Inc. for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 91-10-49), Docket 47747.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Hageland Aviation Services, Inc., fit, willing, and able and awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation.

DATES: Persons wishing to file objections should do so no later than November 12, 1991.

ADDRESSES: Objections and answers to objections should be filed in Docket 47747 and addressed to the Documentary Services Division (C-55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Szekely, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: October 28, 1991.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-26479 Filed 11-1-91; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96-192, reguires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80-2-69 established the first interim SFFL, and Order 91-8-39 established the currently effective two-month SFFL applicable through September 30, 1991.

In establishing the SFFL for the two-month period beginning October 1, 1991, we have projected non-fuel costs based on the year ended June 30, 1991 data, and have determined fuel prices on the

basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 91-10-53 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.5085
Latin America	1.3722
Pacific	1.8514
Canada	1.4209

FOR FURTHER INFORMATION CONTACT: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation: October 28, 1991.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-26480 Filed 11-1-91; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 91-056]

Application to Construct a Fixed Access Bridge Across Linden Creek

AGENCY: Coast Guard.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Commandant has authorized a public hearing to be held by the Commander, Seventh Coast Guard District, at Homosassa Springs, Florida. The purpose of the hearing is to consider an application by Mr. David Stewart and Mr. Robert Bohnsack to construct a fixed access bridge across Linden Creek (also known as Peterson Creek or mosquito control ditch), mile 0.1, tributary of Homosassa River, extending Willard Avenue to the north, at Homosassa, Citrus County, Florida (T19, R17, S32). The Coast Guard is the lead federal agency for purposes of the National Environmental Policy Act.

All interested persons may present data, views and comments, orally or in writing, concerning the impact of the proposed bridge on navigation and the human environment. Of particular concern are the effects that a fixed bridge with a vertical clearance of 10.5 feet above mean high water would have on navigation using Linden Creek.

DATES: Comments must be submitted on or before January 3, 1992. A public hearing will be held on Thursday, December 5, 1991, beginning at 7 p.m.

ADDRESSES: Comments should be submitted to Seventh Coast Guard District (oan/br), Mr. Brodie Rich, 909 S.E. First Avenue, Miami, Florida 33131-3050. The location of the public hearing is at the West Citrus Elks Lodge #2693, 7890 W. Grover Cleveland Boulevard, at Homosassa Springs, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Rich, Seventh Coast Guard District (oan/br), telephone (305) 536-4103.

SUPPLEMENTARY INFORMATION: The purpose of the proposed bridge is to provide access to an undeveloped island which is proposed to be developed. The proposed bridge will provide 10.5 feet vertical clearance above mean high water and 46 feet horizontal clearance between pile caps. The approaches would be approximately 200 feet long and 20 feet wide; provide a single 12.75-foot traffic lane; a 1.5-foot jersey barrier on each side of the roadway; and a 3.75-foot sidewalk with a 6-inch curb.

The proposed island development project is called Cherokee Trace. It would consist of construction of 14 townhouses on seven platted waterfront lots (Block 1, Lots 1-4 and Block 29, Lots 1-3) owned by the applicants. There are 23 additional lots located on this undeveloped island which are owned by various individuals. These lots are primarily located within designated wetlands and no further development has been identified. The proposed roadway providing access to the island by extending Willard Avenue would be located immediately east of the Homosassa Elementary School. Traffic on the proposed one-lane bridge would be controlled by a traffic control device. The speed limit would be 15 miles per hour, which is the same as the school zone area.

The hearing will be informal. A Coast Guard representative will preside at the hearing, make a brief opening statement describing the proposed bridge project, and announce the procedures to be followed at the hearing. Each person who wishes to make an oral statement should notify Mr. Brodie Rich, at the number indicated in "For Further Information Contract." Such notification should include the appropriate time required to make the presentation. Depending upon the number of scheduled statements, it may be necessary to limit the amount of time allocated each person. Any limitation of time allocated will be announced at the beginning of the hearing. Comments previously submitted are a matter of record and need not be resubmitted at the hearing. Speakers are encouraged to provide written copies of their oral statements to the hearing officer at the time of the hearing. Those wishing to make written comments only may submit their comments at the hearing, or to the Commander, Seventh Coast Guard District, at the address indicated in "**ADDRESSES.**" A transcript of the hearing, as well as written comments received outside the hearing, will be available for public review at the office of the Seventh Coast Guard District approximately 30 days after the hearing date.

All comments received, whether in writing or presented orally at the public hearing, will be considered before final agency action is taken on the proposed bridge permit application.

Dated: October 30, 1991.

W. J. Ecker,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 91-26518 Filed 11-1-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 32-91]

Treasury Notes, Series AG-1993

October 24, 1991.

The Secretary announced on October 23, 1991, that the interest rate on the notes designated Series AG-1993, described in Department Circular—Public Debt Series—No. 32-91 dated October 17, 1991, will be 6 percent. Interest on the notes will be payable at the rate of 6 percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 91-26508 Filed 11-1-91; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 33-91]

Treasury Notes, Series U-1996

October 25, 1991.

The Secretary announced on October 24, 1991, that the interest rate on the notes designated Series U-1996, described in Department Circular—Public Debt Series—No. 44-91 dated October 17, 1991, will be 6-7/8 percent. Interest on the notes will be payable at the rate of 6-7/8 percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 91-26509 Filed 11-1-91; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 213
Monday, November 4, 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).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: October 29, 1991, 56 FR 55711.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: October 30, 1991, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to Items CAG-25 and CAG-64 on the Agenda scheduled for October 30, 1991:

Item No., Docket No. and Company

CAG-25—RP91-41-000, *et al.*, Columbia Gas Transmission Corporation
CAG-64—RP91-232-000, El Paso Natural Gas Company

Lois D. Cashell,
Secretary.

[FR Doc. 91-26656 Filed 10-31-91; 2:11 pm]

BILLING CODE 6717-02-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:30 a.m., Thursday, November 7, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed 1992 Federal Reserve (A) Bank salary structure adjustment and (B) Board officer salary structure and merit program.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 30, 1991.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 91-26590 Filed 10-31-91; 9:58 am]

BILLING CODE 6210-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES.

AGENCY: Institute of Museum Services.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government in the Sunshine Act (Pubic Law 94-409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIMES AND DATES: 2 p.m. to 4 p.m.—Thursday, November 14th and 9 a.m. to 2 p.m.—Friday, November 15th, 1991.

STATUS: Open.

DAY 1 ADDRESS: Old Post Office Pavilion, 1100 Pennsylvania Avenue, N.W., Room 527, Washington, D.C. 20506.

DAY 2 ADDRESS: National Building Museum, 441 F Street, N.W., Room 311, Washington, D.C. 20001.

FOR FURTHER INFORMATION CONTACT: William Laney, Executive Assistant to the National Museum Services Board, Room 510, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506 (202) 786-0536.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94-462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meetings of November 14 and 15, 1991 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum Services, Room 510—1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, (202) 786-0536, TDD (202) 786-9136 at least seven (7) days prior to the meeting.

National Museum Services Board

November 14, 1991 Meeting Agenda

I. Panel Presentation on Museum Education Issues

November 15, 1991 Meeting Agenda

I. NMSB Chairman's Report & Approval of Minutes of July 26, 1991 Meeting
II. IMS Director's Report
III. Agency Agenda Reports
  A. General Operating Support Program Award Ceiling
  B. General Operating Support Program Evaluation Study
IV. NMSB Open Meeting Agenda

Dated: October 29, 1991.

Linda Bell,
Director of Policy Planning and Budget, Institute of Museum Services.

[FR Doc. 91-26636 Filed 10-31-91; 2:10 pm]

BILLING CODE 7036-01-M

Corrections

Federal Register
Vol. 56, No. 213
Monday, November 4, 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 ENERGY

Alaska Power Administration

[Rate Order No. APA-11]

Snettisham Project—Notice of Order Confirming and Approving an Adjustment of Power Rates on an Interim Basis

Correction

Notice document 91-24342 beginning on page 50894, in the issue of Wednesday, October 9, 1991, was corrected in error in the issue of Wednesday, October 30, 1991. The document as originally printed is correct.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

[Social Security Ruling SSR 91-7c]

Supplemental Security Income—Disability Standards for Children

Correction

In notice document 91-18166 beginning on page 36815 in the issue of Thursday, August 1, 1991, make the following corrections:

1. On page 36816:

a. In the second column, in the fourth full paragraph, in the seventh line, "3d" should read "2d".

b. Under the heading II, in the eighth line, "* * *" should be removed.

2. On page 36817:

a. In the first column, in the fifth line, "1855" should read "855".

b. In the third column, under footnote 6, in the next to last line, and under footnote 7, in the second line, "child disability" should read "child-disability".

3. On page 36818, in the 2nd column, in the 34th line, after "460" insert a comma.

4. On page 36819:

a. In the second column, in the first full paragraph, in the eighth line, "widow's" should read "widows' ".

b. In the same column, under footnote 17, in the last paragraph, in the tenth line, "*Amicur*" should read "*Amicus*".

c. In the third column:

i. In the second line, "widow" should read "widower" and in the third line, "him" should read "his".

ii. In the ninth line, "activity,"" should read "activity."".

iii. In the 21st line, after "benefits" insert a comma.

iv. In the 26th line, "§ 1382(a)(3)" should read "§ 1382c(a)(3)".

v. The paragraph preceding footnote 19 should be removed. Footnote 19, beginning on page 36819 and ending on page 36820, in the first column, the text preceding V, was published incorrectly and is published in its entirety to read as follows:

[19] The dissent, *post*, at 900, n. 2, appears to accept the Secretary's argument that Congress expressly indicated its approval of his approach to child disability in 1976, when it directed him to "publish criteria" to be employed to determine disability in children's cases. Unemployment Compensation Amendments of 1976, section 501(b), 90 Stat. 2683, 2685 (1976). At that time, however, Congress could not have known the exact contours of the Secretary's approach. Congress had before it only the Secretary's 1973 and 1974 DILs and accompanying "medical guides" that eventually became the child-disability listings, and the proposed regulations published for comment at 39 Fed. Reg. 1624 (1974).

The DILs are ambiguous as to the scope of the child disability determination. The 1973 DIL says that "childhood disability will be determined solely in consideration of medical factors," but it also says that "disability in children must be defined in terms of the primary activity in which they engage, namely growth and development," and that "[d]escriptions of a child's activities, behavioral adjustment, and school achievement may be considered in relationship to the overall medical history regarding severity of the impairment." SSA Disability Insurance Letter No. III-11 (1973), App. 90-91. The 1974 DIL does reflect the listings-only approach, but its discussion of the "equivalence" determination suggests a broader inquiry than the Secretary's present rules allow. SSA Disability Insurance Letter No. III-11, Supp. 1 (1974), App. 97 (" 'medical equivalency' concept * * * takes into account the particular effect of disease processes in childhood"; when used to evaluate multiple impairments, "[e]ach impairment must have some substantial adverse effect on the child's major daily activities, and together must 'equal' the specified impact"). Congress could not have guessed that these early directives would evolve into the present regulatory scheme.

Similarly, the 1974 proposed regulations provide that a child with an unlisted impairment qualifies for benefits if his impairment is "determined * * * with appropriate consideration of the particular effect of disease processes in childhood, to be medically the equivalent of a listed impairment." 39 Fed. Reg. at 1626. The regulation defining "medical equivalence" says only that an impairment is equivalent to a listed one "only if the medical findings with respect there-to are at least equivalent in severity and duration to the listing findings of the listed impairment." *Id.*; cf. 20 CFR 416.926 (1989) (current definition of equivalence, requiring claimant to meet all criteria for the one most similar listed impairment). Thus, the proposed regulations gave little warning of the Secretary's current, strictly limited equivalence analysis. At least until SSR 83-19 was promulgated in 1983, it did not become clear that the listings criteria would be applied so rigidly, and that proof of equivalence would require a strict matching of the criteria for the single most similar listed impairment.

The 1976 directive to publish criteria therefore has little bearing on the question whether the Secretary's present approach to child disability is consistent with the statute.

vi. On page 36820, under footnote 19, in the fifth line, "no" should read "not".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28977; File No. SR-NYSE-91-7]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Specialists' Liquidating Transactions

Correction

In notice document 91-6872 beginning on page 12290 in the issue of Friday, March 22, 1991, make the following correction:

On page 12291, in the second column, in the file line at the end of the document, "FR Doc. 6372" should read "FR Doc. 6872".

BILLING CODE 1505-01-D

federal register

Monday
November 4, 1991

Part II

Department of Education

Bilingual Education: Training Development and Improvement Program; Notices

DEPARTMENT OF EDUCATION

Bilingual Education: Training Development and Improvement Program

AGENCY: Department of Education.

ACTION: Notice of final priority for fiscal year 1992.

SUMMARY: The Secretary announces a priority for fiscal year (FY) 1992 under the Bilingual Education: Training Development and Improvement Program. The Secretary takes this action to focus Federal financial assistance on an identified national need. The priority is intended to improve the quality of training in bilingual education at institutions of higher education.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Cynthia J. Ryan, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202-6642. Telephone: (202) 732-1842. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Awards under the Training Development and Improvement (TDI) Program are made to institutions of higher education (IHEs) to encourage reform, innovation, and improvement in higher education programs related to programs for limited English proficient (LEP) persons. Authority for the TDI program is found in section 7041 of the Bilingual Education Act (20 U.S.C. 3321).

The Secretary believes that this program can contribute significantly to implementation of AMERICA 2000, the President's education strategy for moving the Nation toward the National Education Goals. Specifically, the priority established in this notice will address the need emphasized in the strategy for better and more accountable schools by establishing training institutes to assist IHE faculty and administrators in establishing and improving programs that prepare teachers and other educational personnel to help LEP students attain competency in challenging subject matters including English, mathematics, science, history, and geography, and to be prepared for responsible citizenship, further learning, and productive employment.

On July 18, 1991, the Secretary published a notice of proposed priority for this program in the **Federal Register** (56 FR 33025).

The priority involves a shift from past practice in the focus of activities under the TDI Program. Activities of current TDI projects are designed to develop training programs or improve existing training programs at the grantee institutions. Under the priority, a project will be required to provide training institutes for personnel from IHEs located both within the grantee's State and in other States. The intended effect of this requirement is to disseminate information on effective practices in incorporating principles of bilingual education relative to language and cultural heritage into regular education curricula and in training bilingual teachers. The Department is interested in disseminating any materials on effective practices that may be produced by the training institutes.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Public Comment

In the notice of proposed priority, the Secretary invited comments on the proposed priority. The Secretary did not receive any substantive comments. Except for minor editorial revisions, the Secretary has made no changes in this priority since publication of the notice of proposed priority.

Priority

Under 34 CFR 75. 105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Training institutes that will focus on: (1) Incorporating principles of bilingual education relative to language and cultural heritage into regular education curricula; (2) including instructional practices such as cooperative learning strategies and whole language approaches; (3) improving the skills of regular education faculty in preparing educational personnel to participate in programs for limited English proficient persons; and (4) assisting institutions of higher education (IHEs) that do not have bilingual education training programs to establish undergraduate and graduate training programs in bilingual education at their institutions.

The training institutes must be provided by IHEs with experience and expertise in bilingual education training programs and offered to faculty and administrators from IHEs located both within the grantee's State and in other States that have significant populations of limited English proficient students, including States where no institution of higher education has an established training program in bilingual education.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations

34 CFR part 573.

Program Authority: 20 U.S.C. 3321.

Dated: October 7, 1991.

(Catalog of Federal Domestic Assistance Number: 84.003 Bilingual Education: Training Development and Improvement Program)

Lamar Alexander,

Secretary of Education.

[FR Doc. 91-26469 Filed 11-1-91; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.003S]

Bilingual Education: Training Development and Improvement Program; Inviting Applications for New Awards for Fiscal Year (FY) 1992

Purpose of Program: To provide financial assistance to encourage reform, innovation, and improvement in higher education programs related to programs for limited English proficient persons.

Eligible Applicants: Institutions of higher education.

Deadline for Transmittal of Applications: January 23, 1992.

Deadline for Intergovernmental Review: March 23, 1992.

Applications Available: November 4, 1991.

Available Funds: $750,000.

Estimated Range of Awards: $140,000-300,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86; and (b). The regulations for this program in 34 CFR parts 500 and 573.

Priority:

The priority in the notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

For Applications or Information Contact: Cynthia J. Ryan, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202-6642. Telephone: (202) 732-1842. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 3321.

Dated: September 24, 1991.

Rita Esquivel,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 91-26470 Filed 11-1-91; 8:45 am]

BILLING CODE 4000-01-M

federal register

Monday
November 4, 1991

Part III

Department of Education

34 CFR Part 328

Program for Children and Youth With Serious Emotional Disturbance; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 328

RIN 1820-AA91

Program for Children and Youth With Serious Emotional Disturbance

AGENCY: Department of Education.

ACTION: Notice of final regulations.

SUMMARY: The Secretary has established final regulations to implement the Program for Children and Youth with Serious Emotional Disturbance, a new program authority enacted in the Education of the Handicapped Act Amendments of 1990. The regulations provide information about the kinds of projects supported under this program; and provide the application requirements and selection criteria for reviewing applications. The regulations provide assistance for projects that would improve special education and related services to children and youth with serious emotional disturbance (SED).

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of the regulation call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Linda Glidewell Telephone: (202) 732-1099. (TDD: (202) 732-6153.)

SUPPLEMENTARY INFORMATION: The Program for Children and Youth with Serious Emotional Disturbance provides assistance for projects designed to improve special education and related services to children and youth with serious emotional disturbance (SED). Types of projects that may be supported under this program include, but are not limited to: research, development and demonstration projects. This program can help improve learning opportunities and outcomes for all Americans, which is an important principle in the President's AMERICA 2000 strategy for reaching the National Education Goals. These changes do not alter principal objectives of the program but clarify and expand upon the types of activities the program supports.

Section 627(c)(3) of the Act requires reporting on project effectiveness. This requirement is not addressed in these regulations since this is a matter that is covered under the Education Department General Administrative Regulations (EDGAR), 34 CFR 74.82 and 80.40 (performance reporting), and will be implemented under those regulations.

Project effectiveness is documented by describing the proposed and actual activities and success in meeting goals, as well as providing a summary of lessons learned. Such documentation provides for project accountability and addresses: (1) The research question, hypothesis, issue, or problem; (2) the methods and procedures used; (3) the actual sample and procedures; (4) measurement procedures and instruments; (5) description of intervention or data analysis procedures; (6) summary of findings; (7) conclusions and implications; (8) contributions; (9) lessons learned; and (10) next steps.

These regulations constitute a step in implementing the AMERICA 2000 strategy for achieving the National Education Goals agreed to by the President and the Governors.

One aspect of the President's strategy is to foster better and more accountable schools. Under these regulations, the Secretary will seek to identify innovative approaches that will improve today's schools by enhancing services to children with serious emotional disturbance.

Analysis of Comments and Changes

On June 14, 1991, at 56 FR 27481, the Secretary published in the **Federal Register**, a Notice of Proposed Rulemaking for the Program for Children and Youth with Serious Emotional Disturbance. One respondent commented on the proposed regulation.

Comment: The commenter suggested that the types of entities eligible to receive awards, as stipulated in § 328.2(b), should be changed to read "and other appropriate public and private nonprofit institutions or agencies" in collaboration with mental health "and other human service entities."

Discussion: The authorizing legislation stipulates that the Secretary may make grants to local educational agencies in collaboration with mental health entities, and does not authorize awards to other appropriate public and private nonprofit institutions or agencies, nor to other human service agencies.

Change: None.

Comment: The commenter suggested that § 328.3(a)(3) should be revised to indicate that the purpose of developing and demonstrating strategies and approaches is to reduce the "inappropriate" use of out-of-community residential programs.

Discussion: The Secretary believes that the intent of the authorizing legislation for this program is to increase the availability of community programs for children with disabilities. The determination of the appropriateness of a placement for an individual child, either within the community or outside the community, or residential or nonresidential, must be made in accordance with the provisions under part B of the Act. The development and demonstration of strategies and approaches for the reduction of out-of-community residential programs is consistent with the least restrictive environment provision of Part B and would not replace the requirement for a free appropriate public education.

Change: None.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 328

Colleges and universities, Education of children and youth with disabilities, Education of handicapped, Educational research, Elementary and secondary education, Grants program—education,

Infants and children, Reporting and recordkeeping requirements, Schools.

Dated: September 30, 1991.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number: 84.237—Program for Children and Youth with Serious Emotional Disturbance)

The Secretary proposes to amend chapter III, title 34 of the Code of Federal Regulations by adding a new part 328 to read as follows:

PART 328—PROGRAM FOR CHILDREN AND YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE

Subpart A—General

Sec.
328.1 What is the Program for Children and Youth with Serious Emotional Disturbance?
328.2 Who is eligible for an award?
328.3 What priorities may the Secretary fund under this program?
328.4 What priorities may the Secretary establish?
328.5 What regulations apply?
328.6 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

328.20 How does the Secretary evaluate an application?
328.21 What selection criteria does the Secretary use for applications for research projects?
328.22 What selection criteria does the Secretary use for applications for development or demonstration projects?
328.23 When does the Secretary propose new selection criteria?

Subpart D—What Conditions Must Be Met After an Award?

328.30 What special conditions apply to projects assisted under this program?

Authority: 20 U.S.C. 1426, unless otherwise noted.

Subpart A—General

§ 328.1 What is the Program for Children and Youth With Serious Emotional Disturbance?

Under this program, the Secretary may support—

(a) Projects, including research projects, for the purpose of improving special education and related services to children and youth with serious emotional disturbance; and

(b) Demonstration projects to provide services for children and youth with serious emotional disturbance. Funds for projects under this paragraph may also be used—

(1) To facilitate interagency and private sector resource pooling to improve services for children and youth with serious emotional disturbance; and

(2) To provide information and training for those involved with, or who could be involved with, children and youth with serious emotional disturbance.

(Authority: 20 U.S.C. 1426 (a), (b))

§ 328.2 Who is eligible for an award?

(a) To carry out the purpose in § 328.1(a), the Secretary may make grants to, or enter into contracts or cooperative agreements with, institutions of higher education, State and local educational agencies, and other appropriate public and private nonprofit institutions or agencies.

(b) *Demonstration service projects.* To carry out the purposes in § 328.1(b), the Secretary may make grants to local educational agencies in collaboration with mental health entities.

(Authority: 20 U.S.C. 1426 (a), (b))

§ 328.3 What priorities may the Secretary fund under this program?

(a) Under § 328.2(a), the Secretary may support projects that include, but are not limited to—

(1) Studies regarding the present state of special education and related services to children and youth with serious emotional disturbance and their families, including information and data to enable assessments of the status of those services over time;

(2) Developing methodologies and curricula designed to improve special education and related services for these children and youth;

(3) Developing and demonstrating strategies and approaches to reduce the use of out-of-community residential programs and to encourage the increased use of school district-based programs, which may include day treatment programs, after-school programs, and summer programs;

(4) Developing the knowledge, skills and strategies for effective collaboration among special education, regular education, related services, and other professionals and agencies; or

(5) Developing and demonstrating innovative approaches to assist and to prevent children with emotional and behavioral problems from developing serious emotional disturbances that require the provision of special education and related services.

(b) Under § 328.2(b), the Secretary may support demonstration projects that include, but are not limited to—

(1) Increasing the availability, access, and quality of community services for children and youth with serious emotional disturbance and their families;

(2) Improving working relationships among education, school, and community mental health and other relevant personnel, families of those children and youth, and their advocates;

(3) Targeting resources to school settings, such as providing access to school or community mental health professionals or both and other community resources for students with serious emotional disturbance who are in community school settings; and

(4) Taking into account the needs of minority children and youth in all phases of project activity.

(Authority: 20 U.S.C. 1426 (a), (b))

§ 328.4 What priorities may the Secretary establish?

(a) Each year the Secretary may select as a priority one or more of the types of activities listed in § 328.3.

(b) The Secretary announces these priorities in a notice published in the **Federal Register.**

(c) In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105, the Secretary may also propose new priorities for assistance under this program through publication of a notice in the **Federal Register.**

(Authority: 20 U.S.C. 1426(a), and 20 U.S.C. 3474)

§ 328.5 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in title 34 of the Code of Federal Regulations—

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(6) Part 81 (General Education Provisions Act—Enforcement);

(7) Part 82 (New Restrictions on Lobbying);

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(9) Part 86 (Drug-Free Schools and Campuses).

(b) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1

and the Education Department Acquisition Regulation (EDAR) in 48 CFR chapter 34.

(c) The regulations in this part 328.

(Authority: 20 U.S.C. 1426)

§ 328.6 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Application
EDGAR
Grant
Local educational agency (LEA)
Project
Public
Secretary
State
State educational agency (SEA)

(b) *Other definitions.* The following definitions also apply to this part:

Act means the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1400–1485).

Free appropriate public education is defined in 34 CFR part 300.4.

(Authority: 20 U.S.C. 1426)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 328.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 328.21, 328.22, and 328.23.

(b) The Secretary awards up to 100 points under these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1426)

§ 328.21 What selection criteria does the Secretary use for applications for research projects?

The Secretary uses the following criteria to evaluate an application for a research project:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(3) The Secretary reviews each application to determine the quality of the evaluation plans for the project, and considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

Cross Reference: 34 CFR 75.590, *Evaluation by the grantee.*

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel that the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project and other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(e) *Importance.* (15 points) The Secretary reviews each application to determine the importance of the project in lending to the understanding of, remediation of, or compensation for, the problem or issue that relates to the early intervention with or special education of infants, toddlers, children, and youth with disabilities.

(f) *Impact.* (15 points) The Secretary reviews each application to determine the probable impact of the proposed research products on infants, toddlers, children, and youth with disabilities, or personnel responsible for their education.

(g) *Organizational capability.* (5 points) The Secretary considers—

(1) The applicant's experience in special education; and

(2) The ability of the applicant to disseminate the findings of the project to appropriate groups to ensure that the findings can be used effectively.

(h) *Technical soundness.* (35 points) The Secretary reviews each application to determine the technical soundness of the research or evaluation plan, including—

(1) The design;

(2) The proposed sample;

(3) The instrumentation; and

(4) The data analysis procedures.

(Approved by the Office of Management and Budget under Control Number 1820–0028)

(Authority: 20 U.S.C. 1426)

§ 328.22 What selection criteria does the Secretary use for applications for development or demonstration projects?

The Secretary uses the following criteria to evaluate an application for a development or demonstration project:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project and other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

Cross Reference: 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) The Secretary reviews each application to determine—

(1) The extent to which the service delivery problem addressed by the proposed project is of concern to others in the Nation; and

(2) The importance of the project in addressing the problem or issue.

(g) *Innovativeness.* (15 points)

(1) The Secretary reviews each application to determine the innovativeness of the proposed project.

(2) The Secretary looks for a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.

(h) *Organizational capability.* (10 points) The Secretary considers—

(1) The applicant's experience in special education or early intervention services; and

(2) The applicant's ability to disseminate findings of the project to appropriate groups to ensure that they can be used effectively.

(i) *Technical soundness.* (25 points) The Secretary reviews each application to determine the technical soundness of the plan for the development, implementation, and evaluation of the model with respect to such matters as—

(1) The population to be served;

(2) The model planning process;

(3) Recordkeeping systems;

(4) Coordination with other service providers;

(5) The identification and assessment of students;

(6) Interventions to be used, including proposed curricula;

(7) Individualized educational program planning; and

(8) Parent and family participation.

(Approved by the Office of Management and Budget under Control Number 1820-0028)

(Authority: 20 U.S.C. 1426)

§ 328.23 When does the Secretary propose new selection criteria?

(a) The Secretary may propose new selection criteria for applications for projects when the applications cannot be appropriately evaluated using the selection criteria in either § 328.21 or § 328.22.

(b) The Secretary announces the new selection criteria in a notice published in the **Federal Register.**

(Authority: 20 U.S.C. 1426)

Subpart D—What Conditions Must be Met After an Award?

§ 328.30 What special conditions apply to projects assisted under this program?

(a) Each project assisted under this program must—

(1) Apply existing research outcomes from multi-disciplinary fields; and

(2) In complying with 34 CFR 75.590 (Evaluation by the grantee), use a grant evaluation plan that is outcome-oriented and that focuses on the benefits to individual children and youth.

(b) A grantee, if appropriate, must prepare reports describing procedures, findings, and other relevant information in a form that will maximize the dissemination and use of these procedures, findings, and information.

(c) The Secretary requires delivery of those reports, as appropriate, to—

(1) The regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Programs (TAPP) assisted under parts C and D of the Act;

(2) The National Diffusion Network;

(3) The ERIC Clearinghouse on the Handicapped and Gifted;

(4) The Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health;

(5) Appropriate parent and professional organizations;

(6) Organizations representing individuals with disabilities; and

(7) Such other networks as the Secretary may determine to be appropriate.

(Approved by the Office of Management and Budget under Control number 1820-0028)

(Authority: 20 U.S.C. 1426(c))

[FR Doc. 91-26440 Filed 11-1-91; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

H.R. 470/Pub. L. 102-148

To authorize the Secretary of Transportation to release the restrictions, requirements, and conditions imposed in connection with the conveyance of certain lands to the city of Gary, Indiana. (Oct. 30, 1991; 105 Stat. 976; 2 pages) Price: $1.00

S.J. Res. 160/Pub. L. 102-149

Designating the week beginning October 20, 1991, as "World Population Awareness Week". (Oct. 30, 1991; 105 Stat. 978; 2 pages) Price: $1.00

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office:

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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1, 2 (2 Reserved)	(869-013-00001-3)	$12.00	Jan. 1, 1991
3 (1990 Compilation and Parts 100 and 101)	(869-013-00002-1)	14.00	[1] Jan. 1, 1991
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24 Parts:			
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§§ 1.170-1.300	(869-013-00086-2)	18.00	Apr. 1, 1991
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200-End	(869-013-00133-8)	26.00	July 1, 1991
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1991. The CFR volume issued July 1, 1989, should be retained.

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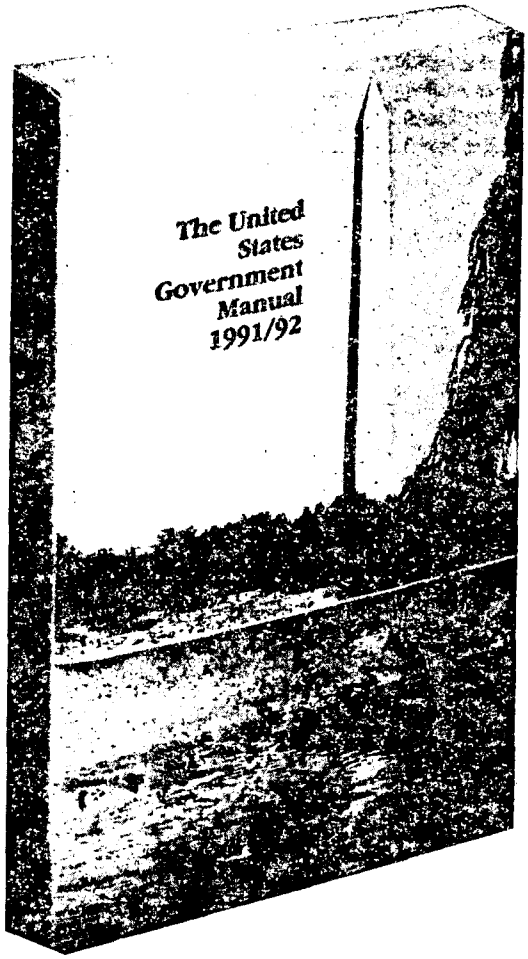

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