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Tuesday
April 15, 1997

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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.

Kansas City—Independence, MO

WHEN: May 6, 1997 at 9:00 am to 12:00 noon

WHERE: Harry S. Truman Library
Whistle Stop Room
U.S. Highway 24 and Delaware Street
Independence, MO 64050

Long Beach, CA

WHEN: May 20, 1997 at 9:00 am to 12:00 noon

WHERE: Glenn M. Anderson Federal Building
501 W. Ocean Blvd.
Conference Room 3470
Long Beach, CA 90802

San Francisco, CA

WHEN: May 21, 1997 at 9:00 am to 12:00 noon

WHERE: Phillip Burton Federal Building and Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102

Anchorage, AK

WHEN: May 23, 1997 at 9:00 am to 12:00 noon

WHERE: Federal Building and U.S. Courthouse
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Executive Dining Room (Inside Cafeteria)
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Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register

Vol. 62, No. 72

Tuesday, April 15, 1997

Presidential Documents

Title 3—

The President

Memorandum of April 1, 1997

Delegation of Authority on Rates of Compensation for U.S. Representatives to the United Nations

Memorandum for the Secretary of State

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of State the functions vested in the President by section 2(g) of the United Nations Participation Act of 1945 (Public Law 79–264, 22 U.S.C. 287(g)).

You are authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, April 1, 1997.

[FR Doc. 97–9884
Filed 4–14–97; 8:45 am]
Billing code 4710–01–M

Rules and Regulations

Federal Register

Vol. 62, No. 72

Tuesday, April 15, 1997

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 97–034–1]

Change in Disease Status of The Netherlands Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending our regulations by adding The Netherlands to the list of countries where bovine spongiform encephalopathy (BSE) exists because the disease has been detected in a cow in that country. The effect of this action is to prohibit or restrict the importation of certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts from ruminants which have been in The Netherlands. This action is necessary to reduce the risk that BSE could be introduced into the United States.

DATES: Interim rule effective April 10, 1997. Consideration will be given only to comments received on or before June 16, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–034–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–034–1. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Animal Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–3399; or e-mail: jcougill@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 94 and 95 (referred to below as the regulations) govern the importation of meat, animal products, animal byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

BSE is a neurological disease of bovine animals and other ruminants and is not known to exist in the United States.

It appears that BSE is primarily spread through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants in countries in which BSE exists, are imported into the United States and are fed to ruminants in the United States.

Sections 94.18 and 95.4 of the regulations prohibit and restrict the importation of certain meat, animal products, and animal byproducts from ruminants which have been in countries in which BSE exists. These countries are listed in § 94.18 of the regulations.

The Netherlands' Ministry of Agriculture has reported a case of BSE in The Netherlands. BSE was confirmed by histopathological examination according to standardized procedures for the diagnosis of BSE. The Netherlands' Ministry of Agriculture confirmed that BSE was in a cow born in The Netherlands. The exposure of this animal to the BSE agent could only have occurred in The Netherlands. In order to reduce the risk of introducing BSE into the United States, we are, therefore, adding The Netherlands to the list of countries where BSE is known to exist. Thus, we are prohibiting or restricting the importation into the United States of certain fresh, chilled, and frozen meat, and certain animal products and animal byproducts from ruminants which have been in The Netherlands.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of BSE into the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this rule effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action adds The Netherlands to the list of countries where BSE exists. We are taking this action based on reports we have received from The Netherlands' Ministry of Agriculture, which confirmed that a case of BSE has occurred in The Netherlands.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule will have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

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

Accordingly, 9 CFR part 94 is amended as follows:

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

1. The authority citation for part 94 continues to read as follows:

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

§ 94.18 [Amended]

2. In § 94.18, paragraph (a) is amended by adding the words ''The Netherlands,'' immediately after ''Great Britain.''

Done in Washington, DC, this 10th day of April 1997.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–9633 Filed 4–14–97; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANE–02]

Amendment to Class E Airspace; New Haven, CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule which modified the Class E airspace at New Haven, CT (KHVN) by removing the Class E airspace extending upward from the surface, effective during the times when the Airport Traffic Control Tower (ATCT) is not operating. The final rule resulted from the lack of continuous weather reporting at Tweed-New Haven Municipal Airport.

EFFECTIVE DATE: The direct final rule was effective on 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Raymond Duda, Operations Branch, ANE–530.3, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 7, 1997 (62 FR 5755). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on March 27, 1997. No adverse comments were received, and thus this document confirms that the final rule became effective on that date.

Issued in Burlington, MA, on April 8, 1997.

John J. Boyce,

Assistant Manager, Air Traffic Division, New England Region.

[FR Doc. 97–9578 Filed 4–14–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AWP–32]

Amendment of Class E Airspace, Battle Mountain, NV; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects errors in the airspace description of a final rule that was published in the **Federal Register** on March 21, 1997 (62 FR 13537), Airspace Docket No. 96–AWP–32. That final rule amended the Class E airspace area at Battle Mountain, NV.

EFFECTIVE DATE: 0901 UTC May 22, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 97–7225, Airspace Docket No. 96–AWP–32, published on March 21, 1997 (62 FR 13537), amended the airspace description of the Class E airspace area at Battle Mountain, NV. An error was discovered in the airspace description for the Battle Mountain, NV, Class E airspace area. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace description for the Class E airspace area at Battle Mountain, NV, which is incorporated by reference in § 71.1, as published in the **Federal Register** on March 21, 1997 (62 FR 13537), (Federal Register Document 97–7225; page 13537, column 3) is corrected to read as follows:

§ 71.1 [Corrected]

* * * * *

AWP NV E5 Battle Mountain, NV [Corrected]

Battle Mountain Airport, NV
(Lat. 40°35′57″ N, long. 116°52′28″ W)
Battle Mountain VORTAC
(Lat. 40°34′09″ N, long. 116°55′20″ W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Battle Mountain Airport and within 4.3 miles southeast and 11.7 miles northwest of the Battle Mountain VORTAC 218° radial extending from the Battle Mountain VORTAC to 25 miles southwest of the VORTAC. That airspace extending upward from 1,200 feet above the surface within 8.7 miles southeast and 11.7 miles northwest of the Battle Mountain VORTAC 218° and 038° radials extending from 25 miles southwest to 10.4 miles northeast of the Battle Mountain VORTAC and within 5.6 miles south and 7.8 miles north of the Battle Mountain VORTAC 077° and 257° radials, extending from 7 miles west to 16.1 miles east of the Battle Mountain VORTAC.

* * * * *

Issued in Los Angeles, California, on April 2, 1997.

Sabra W. Kaulia,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–9576 Filed 4–14–97; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Electronic Filing of Disclosure Documents With the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is announcing the adoption of an optional, permanent program for commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") electronically to file Disclosure Documents with the Commission. This permanent filing program is the continuation of a substantially similar pilot program, which commenced on October 15, 1996. Additionally, the Commission has adopted a series of technical amendments to Part 4 of its rules to codify the permanent electronic filing program.

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Deputy Director/Chief Counsel, or Gary L. Goldsholle, Attorney/Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone Number: (202) 418–5450. Facsimile Number: (202) 418–5536. Electronic Mail: tm@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 8, 1996, the Commission announced an optional, six-month pilot program for electronic filing of CPO and CTA Disclosure Documents with the Commission ("Pilot Program") and invited public comment on issues relevant to the Program.[1] The Pilot Program commenced on October 15, 1996, and has been used by over 100 CPOs and CTAs. Under the Pilot Program, CPOs and CTAs have been permitted to file their Disclosure Documents by sending them to a designated Internet electronic mail address for the Commission. Additionally, any related correspondence between Commission staff and the CPOs and CTAs concerning the Disclosure Documents filed under the Pilot Program also has been conducted by means of electronic mail. Based upon its experience administering the Pilot Program and the comments received, the Commission has determined to adopt a permanent filing program that is substantially similar to the Pilot Program.

The Commission announced the Pilot Program in its Interpretation Regarding Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors ("Release").[2] In the Release, the Commission set forth the procedures for filing Disclosure Documents under the Pilot Program and invited interested parties to comment on a wide range of issues relevant to the Pilot Program. Specifically, the Commission requested comment concerning: (1) Whether it is preferable to require CPOs and CTAs to file Disclosure Documents electronically instead of in paper form; (2) whether special encryption procedures or other protections against unauthorized interception should be required; (3) whether special graphical capabilities are needed; (4) whether the Commission should establish uniform formatting requirements for electronically filed documents; and (5) whether word processing programs or versions in addition to those specified in the Release should be permitted. The Commission also noted in the Release that it had received an unsolicited proposal from a vendor who had developed a prototype electronic filing system. The Commission requested comment concerning the advisability of establishing a contractual relationship with an independent vendor to facilitate electronic filing and/or to serve as a repository or conduit for public access to documents, and the willingness of registrants to pay a filing fee to cover the potential cost of implementing a third-party filing system. The Commission also published a notice seeking information and indications of interest from other potential third-party vendors in *Commerce Business Daily*.[3]

II. Analysis of Comments Received and Use of the Pilot Program

Although the Commission received over eighty comments on the issues discussed in the Release, only two commenters addressed issues pertaining to the Pilot Program: the National Futures Association ("NFA") and a CTA.

NFA commended the Commission's decision to initiate the Pilot Program. Indeed, to facilitate the use of the Pilot Program, NFA adopted procedures essentially identical to those established for the Pilot Program, thus allowing CPOs and CTAs to file Disclosure Documents electronically with both the Commission and NFA under the same basic procedures and protocols.[4] NFA opposed the use of a private vendor to provide an electronic filing system for the Commission. In particular, NFA was concerned about the costs likely to be associated with the use or implementation of a third-party system, regardless of whether such costs are ultimately born by registrants or the Commission. NFA commented that it was "not aware of any potential regulatory benefits which would justify these additional costs." NFA also expressed concern that a private vendor might have possession of or access to confidential or sensitive information.

The CTA who submitted comments also strongly opposed the suggestion that the Commission might contract with a private vendor to provide an electronic filing service. Like the NFA, this commenter expressed concern regarding the costs of a privately operated system, stating that he was unwilling to bear any additional costs for an electronic filing system. With respect to issues of format, this commenter opposed the creation of uniform formatting requirements and suggested that the Commission expand the list of acceptable word processing programs. This commenter also expressed the view that an encryption requirement would represent "overkill" in the context of filing of Disclosure Documents. The commenter favored a universal requirement that CPOs and CTAs file Disclosure Documents electronically and urged the Commission to make such documents publicly available in a system analogous to the Securities and Exchange Commission's ("SEC's") EDGAR system.[5]

Based upon the comments received and its experience with the Pilot Program, the Commission has determined to make the pilot program for the electronic filing of CPO and CTA Disclosure Documents permanent. In

[1] 61 FR 42146, 42163–65 (August 14, 1996).

[2] 61 FR 42146.

[3] Commerce Business Daily, Issue No. PSA–1669, August 29, 1996, at 4.

[4] NFA Rule 2–13 requires that CPOs and CTAs who file a Disclosure Document with the Commission also must file such Disclosure Document with the NFA at its Chicago office.

[5] EDGAR, which is an acronym for Electronic Data Gathering, Analysis and Retrieval, performs automated collection, validation, indexing, acceptance, and forwarding of submissions by companies and others who are required by law to file forms with the SEC. As of May 6, 1996, all public domestic companies were required to make their filings on EDGAR. Among the items filed on EDGAR are annual and quarterly reports, mutual fund prospectuses and proxy statements. Filings under EDGAR must be prepared in accordance with Regulation S–T (17 CFR Part 232 (1996)) and the SEC's EDGAR Filer Manual. EDGAR filings must be made in ASCII format. On October 19, 1996, the SEC released a Request for Proposals soliciting offers for the construction and operation of a new, modernized, privatized EDGAR electronic filing system.

general, the Commission's experience administering the Pilot Program has been favorable. The CPOs and CTAs who have used the program have expressed support for the additional flexibility and efficiency fostered by electronic filing. Since October 15, 1996, over 100 CPOs and CTAs have filed Disclosure Documents under the program.

The permanent electronic filing program will be nearly identical to the Pilot Program. The Commission encourages NFA to make permanent its procedures for electronic filing, incorporating the modifications announced in this release as well as any subsequent modifications, such as those concerning acceptable word processing programs. Given the relatively modest usage of the Pilot Program, the Commission is reluctant at this time to incur the costs necessary to expand the electronic filing system beyond its current structure or to develop a mechanism for passing such costs on to CPOs and CTAs. Although the Commission's notice in *Commerce Business Daily* generated proposals and expressions of interest from more than a dozen firms, in light of the commenters' views that the costs of using a third-party vendor's electronic filing system would likely outweigh the benefits, the Commission will continue to monitor usage of its and NFA's electronic filing program to determine whether development of a more elaborate filing system or solicitation of bids from third-party vendors becomes appropriate in the future.

While the Commission agrees with the CTA commenter that it may be advantageous for certain CPOs and CTAs to be able to file documents in additional word processing programs and operating systems, this benefit must be weighed against the effects on efficiency of access and review that would result if CPOs and CTAs filed Disclosure Documents in myriad formats. Currently, the relevant Commission staff have access only to the word processing formats identified in the Pilot Program, *i.e.*, WordPerfect for DOS and Microsoft Word for Windows. However, the Commission recognizes the rapid pace at which computer software evolves and thus that word processing standards common today may soon become obsolete. Accordingly, the Commission intends the electronic filing program to accommodate additional word processing or electronic formats as technologies evolve. The Commission will maintain a list of acceptable formats for filing Disclosure Documents and amendments on its Internet website or other publicly accessible source. However, since most word processing programs in use today are able to convert documents into the formats identified in the Pilot Program, the Commission does not believe that it is necessary to expand the list of available formats at the present time. Persons who wish to use the electronic filing program but are unable to use the formats currently permitted may contact the Division of Trading and Markets, Managed Funds Review Branch for assistance.

The Commission also agrees with the CTA commenter that it is not necessary to mandate uniform electronic formatting requirements, other than the specification of acceptable word processing programs.[6] In addition, based upon the comments received and the Commission's experience in operating the Pilot Program, the Commission does not believe that it is necessary to mandate encryption procedures or standards for use in the electronic filing program as currently designed. Since the use of electronic filing procedures remains entirely voluntary, CTAs or CPOs who are unwilling to assume the risk of having an electronic filing intercepted or altered may continue to rely on hardcopy filings. However, the Commission does not wish to preclude CPOs or CTAs from using encryption procedures they believe to be necessary, and registrants who desire to use their own encryption or other security measures may contact the Managed Funds Review Branch to discuss the feasibility of filing encrypted material. The Commission may revisit this issue as encryption technologies and systems develop.

Finally, the Commission does not believe that, at current usage levels, the electronic filing program would justify the expense of creating an ''EDGAR-like'' public access system. Currently, such a system would capture only about one percent of public pool documents and CTA Disclosure Documents. Based upon the SEC's experience with EDGAR, substantial costs are associated with operating a public electronic repository.[7] Moreover, many CPOs and CTAs may not wish to undertake the procedures necessary for electronic filing. The Commission will continue to monitor the progress of EDGAR and other electronic repositories to determine if implementing such a system for Disclosure Documents becomes feasible and appropriate.[8]

III. Procedures for Filing Disclosure Documents Electronically

In establishing a permanent electronic filing program for Disclosure Documents, the Commission encourages CPOs and CTAs to take advantage of the efficiencies this new medium offers. Because electronic mail transmissions are nearly instantaneous, in the limited context of the Pilot Program, the Commission found that the review process for electronically submitted Disclosure Documents was generally completed more quickly than would be the case for paper-based submissions. The Commission expects that, as increasing numbers of registrants connect to the Internet, use of electronic filing procedures will increase.

Upon the effective date of this release, CPOs and CTAs may file a Disclosure Document, or amendments thereto, with the Commission by taking the following steps.

1. Save the Disclosure Document or amendments as either a WordPerfect for DOS (version 5.1 or earlier) or Microsoft Word for Windows (version 6.0 or earlier) file, or another acceptable format as specified on the Commission's Internet website (www.cftc.gov/tm/efile) or publicly available source of guidance. As noted above, CPOs or CTAs who are unable to file Disclosure Documents using these formats may contact the Division of Trading and Markets.

2. Use the CTA's NFA identification number or CPO's pool identification number as the file name for the saved document, with a successively numbered file extension (DD1, DD2, DD3, * * * D10, D11, * * * D99, EE1, EE2, etc.) for each item of correspondence.[9] Note that the

[6] In the future, the Commission may wish to give guidance concerning voluntary formatting measures that could be taken to facilitate the staff's review of Disclosure Documents.

[7] The SEC began developing EDGAR in the early 1980s, and the cost of development has exceeded $111 million, 85% higher than projected. ''SEC System Shows Need For Upgrades,'' USA Today, March 6, 1996, at 2B. In addition, EDGAR has been receiving so many filings that the system recently overflowed and the SEC was forced temporarily to purge data from 1994 to accommodate new submissions. Lisa Bransten, ''SEC Dumps Data as Website Overflows,'' Financial Times (USA Edition), February 26, 1997, at 8.

[8] Of course, the Commission does not intend to preclude a third party from voluntarily compiling Disclosure Documents and making such facilities available to the public.

[9] For example, XYZ, whose NFA identification number is 99999999, is a CTA with separate Disclosure Documents for two trading programs. XYZ names one Disclosure Document ''99999999.DD1'' and the other ''99999999.DD2.'' The first amendment to either Disclosure Document would be named ''99999999.DD3,'' and each subsequent submission for either Disclosure Document would follow sequentially, *e.g.*, 99999999.DD4, 99999999.DD5, etc. In the event that a registrant has more than one version of the Disclosure Document for a particular trading

requirement for CPOs to use the pool identification number represents a change from the Pilot Program and is necessary to assist Commission staff in distinguishing among multiple pools operated by a CPO. CTAs who file more than one Disclosure Document are requested to indicate in the text of the electronic mail message the name of each trading program for which it is filing a Disclosure Document as an attachment. Other than this minor change in nomenclature, registrants who have filed documents under the Pilot Program should continue numbering their submissions sequentially and should not revert back to DD1 for purposes of the permanent electronic filing program.

3. Add the file as an attachment to an electronic mail message addressed to ddoc-efile@cftc.gov.[10] Persons who file Disclosure Documents electronically must agree to receive comments from Commission staff by electronic mail. Accordingly, the message text should include the electronic mail address to which comments, if any, may be sent. Confirmation of receipt of the filed Disclosure Document will be provided by Commission staff to the electronic mail address supplied by the registrant, and the Disclosure Document will proceed through the normal staff review process. Following review of the filed document, staff comments also will be transmitted to the registrant's electronic mail address.

4. The registrant's response to staff comments, if any, should be sent by electronic mail message directly to the Commission staff reviewer's Internet address provided in the staff comment letter. The message should indicate the date of the staff comment message, and any revised text or pages should be attached in the same manner as the original filing (using the registrant's NFA identification number and the appropriate sequential file extension as described in No. 2, above). For instance, if a Disclosure Document is submitted as 99999999.DD9, then the revised text or pages comprising the next document submitted to the Commission should be numbered 99999999.D10.

For purposes of the electronic filing program, a document of up to one megabyte (approximately 230 pages) can be received as an electronic mail attachment. Registrants who have a Disclosure Document in excess of one megabyte should contact the Managed Funds Review Branch.

IV. Final Rules

On August 19, 1996, the Commission authorized publication of a series of proposed technical changes to Part 4 of its rules to reflect interpretations set forth in the Release and the proposed establishment of an electronic filing program.[11] In connection with the institution of the Pilot Program for electronic filing and the eventual creation of a permanent electronic filing system, the Commission proposed technical amendments to Rules 4.2(a), 4.26(d) and 4.36(d) to accommodate electronic filing with the Commission. The Commission also proposed amendments to Rules 4.1, 4.21 and 4.31, which pertain to the delivery of Disclosure Documents to prospective pool participants and managed account customers and the receipt of electronic acknowledgments of such delivery. Although the Commission requested public comment on the proposed amendments to Rules 4.2(a), 4.26(d) and 4.36(d), no comments were received. The Commission plans to address the proposed amendments to Rules 4.1, 4.21 and 4.31 in a subsequent release.

A. Rule 4.2(a)—Requirements as to Filing

Rule 4.2(a) currently provides a postal address for all material to be filed with the Commission under Part 4. Rule 4.2(a) was proposed to be amended to provide that Disclosure Documents and amendments to Disclosure Documents may be filed at an electronic mail address as specified by the Commission in addition to the designated postal address. In light of the Commission's decision to adopt the permanent electronic Disclosure Document filing program announced in this release, the Commission has determined to amend Rule 4.2(a) as set forth in the rule proposal, with minor modifications to the language more accurately to reflect the Commission's intent.

B. Rules 4.26(d) and 4.36(d)—Use, Amendment and Filing of Disclosure Document

The Commission also proposed several technical modifications of Rules 4.26(d) and 4.36(d), which relate to filing of Disclosure Documents. The proposed amendments would have clarified that persons filing Disclosure Documents electronically are required to file the document only once, rather than in duplicate as is required for paper-based filings. In light of the Commission's decision to establish the permanent electronic Disclosure Document filing program announced in this release, the Commission has determined to amend Rules 4.26(d) and 4.36(d) as set forth in the rule proposal, with minor modifications to the language more accurately to reflect the Commission's intent.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611 (1994), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein would affect registered CPOs and CTAs. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[12] The Commission previously determined that registered CPOs are not small entities for the purpose of the RFA.[13] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule.[14]

The amendments adopted herein do not impose any new burdens upon CPOs or CTAs. The proposed amendments enable CPOs and CTAs electronically to file Disclosure Documents with the Commission. Consequently, the Commission believes that the adoption of these rule amendments will in many cases reduce the burden of compliance by CPOs and CTAs.

In certifying pursuant to section 3(a) of the RFA that the proposed revisions would not have a significant economic impact on a substantial number of small entities, the Commission invited comments from any CPOs and CTAs who believed that the proposed revisions, if adopted, would have a significant economic impact on their activities. No such comments were received on the revisions adopted herein.

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

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program or pool offering, each version would similarly be given a separate file extension.

[10] Persons participating in the pilot program are not required to make duplicate filings under Rules 4.26(d) or 4.36(d), as clarified in rule amendments discussed *infra.*

[11] 61 FR 44009 (August 27, 1996).

[12] 47 FR 18618–21 (April 30, 1982).

[13] 47 FR at 18619–20.

[14] 47 FR at 18620.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, Pub. L. 104–13 (May 13, 1995), imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. While this rule has no burden, the group of rules (3038–0005) of which this is a part has the following burden:

Average Burden Hours per Response: 124.75.

Number of Respondents: 4,654.

Frequency of Response: On occasion.

Copies of the OMB approved information collection package associated with this rule may be obtained from: Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB Washington DC 20503, (202) 395–7340.

C. List of Subjects in 17 CFR Part 4

Commodity futures, Reporting and recordkeeping requirements, Filings.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular sections 2(a)(1), 4b, 4c, 4*l*, 4m, 4n, 4*o*, and 8a, 7 U.S.C. 2, 6b, 6c, 6*l*, 6m, 6n, 6*o*, and 12a, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

Subpart A—General Provisions, Definitions and Exemptions

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23.

2. Section 4.2 paragraph (a) is to be revised to read as follows:

§ 4.2 Requirements as to filing.

(a) All material filed with the Commission under this part 4 must be filed with the Commission at its Washington, DC office (Att: Special Counsel, Front Office Audit Unit, Division of Trading and Markets, C.F.T.C., Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581; Provided, however, that Disclosure Documents and amendments thereto may be filed at an electronic mail address for the Commission, as specified by the Commission.

* * * * *

Subpart B—Commodity Pool Operators

3. Section 4.26 paragraph (d) is to be revised to read as follows:

§ 4.26 Use, amendment and filing of Disclosure Document.

* * * * *

(d) Except as provided by § 4.8:

(1) The commodity pool operator must file with the Commission two copies of the Disclosure Document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver the Document to a prospective participant in the pool; Provided, however, that a pool operator electing to file electronically pursuant to § 4.2(a) may file a single copy of the Disclosure Document by that method; and

(2) The commodity pool operator must file with the Commission two copies of the subsequent amendments to the Disclosure Document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment; Provided, however, that a pool operator electing to file electronically pursuant to § 4.2(a) may file a single copy of each such amendment by that method.

Subpart C—Commodity Trading Advisors

4. Section 4.36 paragraph (d) is to be revised to read as follows:

§ 4.36 Use, amendment and filing of Disclosure Document.

* * * * *

(d) (1) The trading advisor must file with the Commission two copies of the Disclosure Documents for each trading program that it offers or that it intends to offer not less than 21 calendar days prior to the date the trading advisor first intends to deliver the Document to a prospective client in the trading program; Provided, however, that a trading advisor electing to file electronically pursuant to § 4.2(a) may file a single copy of the Disclosure Document by that method.

(2) The commodity trading advisor must file with the Commission two copies of all subsequent amendments to the Disclosure Document for each trading program that it offers or that it intends to offer within 21 calendar days of the date upon which the trading advisor first knows or has reason to know of the defect requiring the amendment; *Provided, however,* that a trading advisor electing to file electronically pursuant to § 4.2(a) may file a single copy of each such amendment by that method.

Issued in Washington, DC on April 9, 1997, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–9655 Filed 4–14–97; 8:45 am]

BILLING CODE 6351–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in May 1997.

EFFECTIVE DATE: May 1, 1997.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during May 1997.

For annuity benefits, the interest assumptions will be 6.30 percent for the first 25 years following the valuation date and 5.00 percent thereafter. The annuity interest assumptions represent an increase (from those in effect for April 1997) of 0.20 percent for the first 25 years following the valuation date and are otherwise unchanged. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.00 percent for the period during which a benefit is in pay status, 4.25 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. The lump sum interest assumptions represent an increase (from those in effect for April 1997) of 0.25 percent for the period during which a benefit is in pay status and for the seven years directly preceding that period; they are otherwise unchanged.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during May 1997, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—[AMENDED]

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 43 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

TABLE I—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * * *		*		*		*
May 1997	.0630	1–25	.0500	>25	N/A	N/A

TABLE II—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \le n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \le n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y - n_1 - n_2$), interest rate i_3 shall apply from the valuation date for a period of $y—n_1—n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * *	*		*		*		*	
43	05–1–97	06–1–97	5.00	4.25	4.00	4.00	7	8

Issued in Washington, D.C., on this 8th day of April 1997.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–9600 Filed 4–14–97; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 756

[NA–003–FOR]

Navajo Nation Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Navajo Nation abandoned mine land reclamation (AMLR) plan (hereinafter, the ''Navajo Nation plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Navajo Nation proposed revisions to, additions of, or deletions of rules

pertaining to project selection, limited liability, contractor responsibility, reports, certification of completion of coal sites, and utilities and other facilities. The amendment revised the Navajo Nation plan to meet the requirements of the corresponding Federal regulations, to incorporate the additional flexibility afforded by the revised Federal regulations, and to improve operational efficiency.

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (505) 248–5070, Internet address: GPADGETT@CWYGW.OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the Navajo Nation Plan

On May 16, 1988, the Secretary of the Interior approved the Navajo Nation plan. General background information on the Navajo Nation plan, including the Secretary's findings and the disposition of comments, can be found in the May 16, 1988, **Federal Register** (53 FR 17186). Subsequent actions concerning the Navajo Nation's plan and plan amendments can be found at 30 CFR 756.14.

II. Proposed Amendment

By letter dated September 3, 1996, the Navajo Nation submitted a proposed amendment to its plan (administrative record No. NA–245) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). The Navajo Nation submitted the proposed amendment at its own initiative and in response to a September 26, 1994, letter (administrative record No. NA–228) that OSM sent to the Navajo Nation in accordance with 30 CFR 884.15(b). The provisions of the Rules of the Navajo Reclamation Plan that the Navajo Nation proposed to revise, add, or delete were: policies and procedures for the Navajo Reclamation Program, section II, E, 1, project selection; general reclamation requirements for coal reclamation, sections II, L, 1(e), (g), (h), (i), and (j), eligible coal lands and water, limited liability, contractor responsibility, and reports; general reclamation requirements for noncoal reclamation, sections II, L, 2(b)(3) and (4), (c), (d), and (e), eligible noncoal lands and water, limited liability, contractor responsibility, and reports; sections II, M, 1(b), (d), 2, and 2(a) and (b), certification of completion of coal sites; sections II, N, 1 and 1(c), eligible lands and water subsequent to certification; sections II, P, 1, 1(a) through (c), 2, 2(a) through (f), and 3, utilities and other facilities; and administrative and management structure, sections III, E, 1 and 1(a), future reclamation set-aside program.

OSM announced receipt of the proposed amendment in the September 30, 1996, **Federal Register** (61 FR 51070), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NA–249). Because no one requested a public hearing or meeting, none was held. The public comment period ended on October 30, 1996.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 884.14 and 884.15, finds that the proposed plan amendment submitted by the Navajo Nation on September 3, 1996, meets the requirements of the corresponding Federal regulations. Thus, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to the Navajo Nation's Rules

The Navajo Nation proposed revisions to the following previously-approved rules that are nonsubstantive in nature and consist of minor editorial, punctuation, grammatical, and recodification changes (corresponding Federal regulation provisions are listed in parentheses):

Section II, L, 1(e) and (g), (30 CFR 874.12(e) and (g)), eligible coal lands and water;
Section II, L, 2(b)(3) and (4), (30 CFR 875.12(c) and (d)), eligible noncoal lands and water prior to certification;
Section II, M, 1(b) and 2, (30 CFR 875.13(a)(2) and (c)), certification of completion of coal sites;
Section II, N, 1 and 1(c), (30 CFR 875.14(a) and (b)), eligible lands and water subsequent to certification; and
Section III, E, 1 and 1(a), (30 CFR 873.1, 873.11, and 873.12(a)), future reclamation set-aside program.

Because the proposed revisions to these previously-approved rules are nonsubstantive in nature, the Director finds that they meet the requirements of the Federal regulations. The Director approves the proposed revisions to these rules.

2. Substantive Revisions to the Navajo Nation's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

The Navajo Nation proposed the addition of the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulations (listed in parentheses):

Section II, L, 1(h), (30 CFR 874.15), limited liability;
Section II, L, 1(i), (30 CFR 874.16), contractor responsibility;
Section II, L, 1(j), (30 CFR 886.23), reports;
Section II, L, 2(c), (30 CFR 875.19), limited liability;
Section II, L, 2(d), (30 CFR 875.20), contractor responsibility; and
Section II, L, 2(e), (30 CFR 886.23), reports.

Because these proposed added Navajo Nation rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they meet the requirements of the Federal regulations. The Director approves the proposed addition of these rules.

3. Section II, E, 1, Project Selection

The Navajo Nation proposed new language in its rule at section II, E, 1 to provide the following.

> Reclamation techniques for the specified noncoal mine closure and radioactive mine wastes will ensure compliance with the in-house Health Physics Standards and Guidelines in the absence of any Tribal or Federal clean up standards specific to abandoned mine lands. The mine wastes contain low level radioactivity, but the levels are such that the reclamation work can be safely conducted if the health and safety standards are strictly followed. Departmental verification of the clean up standards will be performed at each disturbed area(s).

There are no SMCRA or implementing Federal regulation requirements concerning reclamation standards or techniques for noncoal projects that must be followed or adhered to by State or Indian tribe AMLR programs. The Director finds that the proposed rule at section II, E, 1, which requires reclamation techniques for noncoal mine closures and radioactive mine wastes that ensure compliance with specific Navajo health and safety standards for clean-up of such sites, provides an additional safeguard for human safety that is not inconsistent with the Federal noncoal reclamation regulations at 30 CFR part 875. Therefore, the Director approves the proposed addition of this rule.

4. Sections II, M, 1(d) and 2(a) and (b), and P, 1(a) through (c), 2(a) through (f), and 3, Utilities and Other Facilities

Sections II, M, 1(d)

The Navajo Nation proposed to delete its rule at section II, M, 1(d), which required a description of the Navajo Nation's ability to fund all potential coal-related problems that occur during the life of the AMLR program after the Navajo Nation's certification of completion of coal reclamation. There is no direct counterpart in the Federal regulations, but 30 CFR 875.13(a)(3) has similar requirements. It requires a State or Indian tribe to agree to acknowledge and give top priority to any coal-related problem that may be found or occur during the life of the approved AMLR program after the State's or Indian tribe's certification of completion of coal reclamation. Such agreement is provided in the Navajo Nation's rules at section II, N, 1(c), which requires that, if eligible coal problems occur after certification, the Navajo Nation will address such coal problems in the next grant cycle. Because the rule at section II, N, 1(c) provides for coal reclamation after certification, as required by 30 CFR 875.13(a)(3), and because the deleted rule at section II, M, 1(d) has no direct counterpart in the Federal regulations, the Director finds that deletion of the rule at II, M, 1(d) rule is not inconsistent with the Federal regulations at 30 CFR part 875. Therefore, the Director approves the proposed deletion.

Sections II, M, 2(a) and (b) and P, 1(a) through (c) and 2(a) through (f)

The Navajo Nation proposed to revise its noncoal reclamation rules by deleting the introductory sentence for section II, M, 2(a) and deleting in its entirety section II, M, 2(b). The introductory sentence for section 2(a) indicates that this section applies to reclamation projects involving the restoration of lands and water adversely affected by past mineral mining; projects involving the protection, repair, replacement, construction, or enhancement of utilities; and the construction of public facilities in communities impacted by coal and other mineral mining and processing practices. Section 2(b) states that, where the Navajo Nation President determines there is a need for activities or construction of specific public facilities related to the coal or minerals industry, the provisions of Part O (should be "P") of the Navajo plan, entitled Utilities and Other Facilities, apply. The Navajo Nation also proposed to delete the requirements provided by its rules at sections II, P, 1(a) through (c) and 2(a) through (f), which set forth criteria and procedures for funding public utilities and other facilities projects.

The Federal regulatory counterparts to the deleted rules at sections II, M, 2(a) and (b) are at 30 CFR 875.15(a) and (d). The counterparts to the deleted rules at sections II, P, 1(a) through (c) and 2(a) through (f) are in the Federal regulations at 30 CFR 875.15(c) and (e). All of these Federal regulations continue to allow States and Indian tribes to include in their AMLR plans provisions for the funding of public utilities and other facilities.

The effect of the Navajo Nation's proposed rule deletions is that the Navajo Nation no longer has rules that would allow it to apply for and receive AMLR funds for the construction of public utilities and other facilities. OSM does not determine for a State or Indian tribe that has an approved AMLR program how to allocate the limited AMLR funds each receives to carry out the purposes of title IV of SMCRA.

In addition, the proposed deletion of the Navajo Nation rules at section II, M, 2(a) and (b) and P, 1(a) through (c) and 2(a) through (f) is consistent with the overall intent of the Navajo Nation to direct its AMLR funds to specific noncoal reclamation projects and to not use these funds for public utilities and other facilities. As provided at section 405(d) of SMCRA, approval of the Navajo Nation plan granted to the Navajo Nation exclusive responsibility and authority to implement the provisions of its approved program. The approval carries with it the responsibility to administer the AMLR program in an efficient manner and to carefully consider all expenditures, including determining which reclamation projects will receive AMLR funding. The approval of the AMLR program means the Navajo Nation can spend its AMLR funds on reclamation projects of its own choosing so long as the program continues to be in compliance with the procedures, guidelines, and requirements established under subsection 405(a) of SMCRA.

For these reasons, the Director finds that the deletion of the Navajo Nation rules at sections II, M, 2(a) and (b) and P, 1(a) through (c) and 2(a) through (f) is not inconsistent with the Federal requirements at 30 CFR 875.15(a), (c), (d), and (e). Therefore, the Director approves the proposed deletion of these rules.

Section II, P, 3

The Navajo Nation proposed to delete its rule at section II, P, 3, which provides for (1) preparation of a news release concerning the grant application for funding of public utilities and other facilities and providing an opportunity for public comment, (2) evaluation of public comments, and (3) a determination that the funding meets the requirements of the Navajo Nation rules and is in the best interest of the Navajo Nation. There is no direct Federal regulation counterpart to section II, P, 3, but the requirements of 30 CFR 875.15(e) generally are counterparts to the deleted provisions. The deletion of this Navajo Nation rule is consistent with the Navajo Nation's deletion of all rules concerning public utilities and other facilities.

For this reason and for the reasons discussed in the preceding findings for sections II, M, 1(d), 2(a) and (b) and P, 1(a) through (c) and 2(a) through (f), the Director finds that the deletion of section II, P, 3 is not inconsistent with the Federal regulations at 30 CFR 875.15. The Director approves the proposed deletion of this rule.

IV. Summary and Disposition of Comments

As discussed below, OSM did not receive any comments on the proposed amendment.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Navajo Nation plan (administrative record Nos. NA–246 and 248). No comments were received from any Federal agencies.

V. Director's Decision

Based on the above findings, the Director approves the Navajo Nation's proposed plan amendment as submitted on September 3, 1996.

The Director approves, as discussed in: finding No. 1, section II, L, 1(e) and (g), concerning eligible coal lands and water, section II, L, 2(b)(3) and (4), concerning eligible noncoal lands and water prior to certification, section II, M, 1(b) and 2, concerning certification of completion of coal sites, section II, N, 1 and 1(c), concerning eligible lands and water subsequent to certification, and section III, E, 1 and 1(a), concerning future reclamation set-aside program; finding No. 2, section II, L, 1(h), concerning limited liability, section II, L, 1(i), concerning contractor responsibility, section II, L, 1(j), concerning reports, section II, L, 2(c), concerning limited liability, section II, L, 2(d), concerning contractor responsibility, and section II, L 2(e), concerning reports; finding No. 3, section II, E, 1, concerning project selection; and finding No. 4, deletion of section II, M, 1(d), concerning certification of completion of coal sites, deletion of sections II, M, (2)(a) and (b) and P, 1(a), (b), and (c), (2)(a) through (f), and (3), concerning utilities and other facilities.

The Director approves the rules as proposed by the Navajo Nation with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 756, codifying decisions concerning the Navajo Nation plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the Tribe plan amendment process and to encourage Tribes to bring their plans into conformity with the Federal standards without undue delay. Consistency of Tribe and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of Tribe or State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific Tribe or State, not by OSM. Decisions on proposed Tribe or State AMLR plans and revisions thereof submitted by a Tribe or State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed Tribe or State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Tribe or State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the Tribe or State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

6. Unfunded Mandates Reform Act

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or private sector.

List of Subjects in 30 CFR Part 756

Abandoned mine reclamation programs, Indian lands, Surface mining, Underground mining.

Dated: March 24, 1997.

James F. Fulton,

Acting Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter E of the Code of Federal Regulations is amended as set forth below:

PART 756—INDIAN TRIBE ABANDONED MINE LAND RECLAMATION PROGRAMS

1. The authority citation for Part 756 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and Pub. L. 100–71.

2. Section 756.14 is amended by adding paragraph (d) to read as follows:

§ 756.14 Approval of amendments to the Navajo Nation's abandoned mine land plan.

* * * * *

(d) Revisions to, additions of, or deletions of the following rules, as submitted to OSM on September 3, 1996, are approved effective April 15, 1997.

Section II, E, 1, Project selection,

Sections II, L, 1(e) and (g), Eligible coal lands and water,

Section II, L, 1(h), Limited liability,

Section II, L, 1(i), Contractor responsibility,

Section II, L, 1(j), Reports,

Sections II, L, 2(b)(3) and (4), Eligible noncoal lands and water prior to certification,

Section II, L, 2(c), Limited liability,

Section II, L, 2(d), Contractor responsibility,

Section II, L, 2(e), Reports,

Sections II, M, 1(b) and (d), 2, and 2(a) and (b), Certification of completion of coal sites,

Sections II, N, 1 and 1(c), Eligible lands and water subsequent to certification,

Sections II, P, 1(a) through (c), 2(a) through (f), and (3), Utilities and other facilities, and

Section III, E, 1 and 1(a), Future reclamation set-aside program.

[FR Doc. 97–9703 Filed 4–14–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS DUBUQUE (LPD 8) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: March 6, 1997.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, Virginia, 22332–2400, *Telephone Number:* (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS DUBUQUE (LPD 8) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special functions as a naval ship: Annex I, section 2 (a)(i), pertaining to the height of the forward masthead light; Annex I, section 2(g), pertaining to the distance of the sidelights above the hull; and, Annex I, section 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table One of § 706.2 is amended by adding, in numerical order, the following entry for the USS DUBUQUE:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
* * * * *	*	*
USS DUBUQUE	LPD 8	4.2
* * * * *	*	*

3. Table Four of § 706.2 is amended by adding the following paragraph:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

19. Sidelights on the following ships do not comply with Annex I, Section 2 (g):

Vessel	Number	Distance in meters of sidelights above maximum allowed height.
* * * * *	*	*
USS DUBUQUE	LPD 8	1.2
* * * * *	*	*

4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for the USS DUBUQUE:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained.
* * *	*	*	*	*	*
USS DUBUQUE	LPD 8	N/A	N/A	X	57
* * *	*	*	*	*	*

Dated: March 6, 1997.

Approved:

W. T. Storz,

Commander, JAGC, U.S. Navy, Acting Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 97–9599 Filed 4–14–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS MAHAN (DDG 72) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: March 19, 1997.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, *Telephone number:* (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS MAHAN (DDG 72) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; and, Annex I, paragraph 3(c) pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS MAHAN:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * * * *	*	*
USS MAHAN	DDG 72	1.90 meters.
* * * * *	*	*

3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS MAHAN:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * * *	*	*
USS MAHAN	DDG 72	102.11 thru 112.50°.
* * * * *	*	*

4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS MAHAN:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
* * *	*	*	*		*
USS MAHAN	DDG 72	X	X	X	13.9
* * *	*	*	*		*

Dated: March 19, 1997.

Approved:

R.R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 97–9598 Filed 4–14–97; 8:45 am]

BILLING CODE 3810–FF–P

PANAMA CANAL COMMISSION

35 CFR Parts 103 and 104

RIN 3207–AA40

Preference in the Transit Schedule/Order of Transiting Vessels; Passenger Steamers Given Preference in Transiting

AGENCY: Panama Canal Commission.

ACTION: Interim rule.

SUMMARY: This document announces a test of a revised vessel transit reservation system. The interim rule to be tested incorporates certain new features, including increasing the number of available reserved transit slots, creation of a third booking period, establishment of new booking fees for transit reservations whenever the total number of vessels awaiting transit is excessively high, and clarification and refinement of procedures concerning cancellations, refunds, and penalties.

The revised vessel transit reservation system to be tested also makes certain passenger vessels seeking preference over other vessels in transiting the Panama Canal, that heretofore were exempt, subject to this interim rule.

DATES: The test and the effective date of the interim rule shall commence at 2:00 p.m. (1400 hours) April 21, 1997.

ADDRESSES: Written comments concerning any aspect of the test should be directed to John A. Mills, Secretary, Panama Canal Commission, 1825 I Street, NW, Suite 1050, Washington, DC 20006–5402, Telephone (202) 634–6441, Fax (202) 634–6439, Internet E-Mail: PanCanalWO@AOL.COM.

FOR FURTHER INFORMATION CONTACT: John A. Mills, Secretary, Panama Canal Commission, 1825 I Street, NW, Suite 1050, Washington, DC 20006–5402, *Telephone:* (202) 634–6441, Fax (202) 634–6439, *Internet E-Mail:* PanCanalWO@AOL.COM.

SUPPLEMENTARY INFORMATION: Section 1801 of the Panama Canal Act of 1979, as amended (22 U.S.C. 3811), authorizes the Panama Canal Commission (PCC) to prescribe and, from time to time, amend regulations governing the passage and control of vessels through the Panama Canal or any part thereof, including the locks and approaches thereto. This interim rule constitutes such a regulation.

Articles II and III of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal expressly provides for payment of tolls and other charges for transit and ancillary services that are just, reasonable, equitable and consistent with international law. The booking fees that are a component of this interim rule are for transit and ancillary services.

This interim rule involves public property, the Panama Canal, and, therefore, is excluded from coverage of the Administrative Procedures Act. 5 U.S.C. 553(a)(2). Nevertheless, in implementing this interim rule, PCC has elected to proceed in a manner generally consistent with the provisions of the Administrative Procedures Act concerning notice of proposed rule making.

On March 5, 1997, PCC published in the **Federal Register** (Volume 62, Number 43, Pages 9997–10000), a notice of proposed rule with request for comments concerning a test of this interim rule. During the 30-day comment period, PCC received a number of written submissions from interested persons.

PCC considered all data, views, comments and suggestions submitted, some of which remain under consideration and will be assessed in light of the test results.

PCC believes this interim rule is the best mechanism for fairly testing the various new features of the revised vessel transit reservation system, and will thus enable PCC at the end of the test to make informed, objective assessments concerning which system features are mutually beneficial to PCC and its customers. Depending on the test results, PCC may modify this interim rule in some aspects prior to implementation of the final rule.

To insure thoroughness in testing this interim rule, throughout the test period, PCC solicits detailed, objective data concerning the operational and economic impact of this interim rule on Canal customers.

The test of the revised Panama Canal Vessel Transit Reservation System will commence at 2:00 p.m. (1400 hours), on April 21, 1997. The test will be 120 days or longer in duration.

PCC strongly encourages all interested persons to submit written data, views or arguments anytime during the test period. All will be considered by PCC. Whenever suggested revisions to the interim rule are indicated, revisions based thereon will be incorporated into the final rule to be published at the conclusion of the test.

PCC is exempt from Executive Order 12866. The provisions of that directive, therefore, do not apply to this interim rule. Even if the Order was applicable, this interim rule would not have any significant economic impact on any substantial number of small entities under the Regulatory Flexibility Act of 1980.

Additionally, PCC has determined that implementation of this interim rule will not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of PCC certifies that these regulatory changes meet the applicable standards contained in sections 3(a) and 3(b)(2) of Executive Order No. 12988 of February 7, 1996.

List of Subjects in 35 CFR Parts 103 and 104

Panama Canal, Reporting and recordkeeping requirements, Vessels.

Chapter I of 35 CFR is amended by removing §§ 103.8 and 103.9 and adding a new Part 104, to read as follows:

PART 104—VESSEL TRANSIT RESERVATION SYSTEM

Sec.

Authority: 22 U.S.C. 3811.

§ 104.1 Applicability and scope.

Subject to the limitations imposed by Article III of the 1901 Treaty to Facilitate the Construction of a Ship Canal, entered into by the United States and Great Britain, and by Articles II and VI of the 1977 Treaty concerning the Permanent Neutrality and Operation of the Panama Canal, between the United States and the Republic of Panama, Canal authorities have implemented a vessel transit reservation system that allows vessels desiring transit of the Panama Canal to reserve transit slots by complying with the provisions of this part.

§ 104.2 Definitions.

(a) *Booked for transit* means that a vessel, in advance of arriving at the Canal, has been assigned a specific date by Canal authorities on which it will be moved through the Canal and that the vessel has otherwise complied with the provisions of this part.

(b) *Regular transit* means movement through the Canal of a vessel that has not been booked for transit.

(c) *Required arrival time* means the date and the hour of the day established by Canal authorities as the deadline by which a vessel booked for transit must arrive at a terminus of the Canal in order to transit on its reserved transit date.

§ 104.3 Booking periods; allocation of booking slots.

(a) Vessel agents only may request reserved transit slots for vessels during the following booking periods:

(1) First period—365 to 22 days prior to the requested transit date.

(2) Second period—21 days to 4 days prior to the requested transit date.

(3) Third period—3 to 2 days prior to the requested transit date.

(b) A total of 21 reserved transit slots will be made available for all three booking periods, allocation of which among the booking periods is to be determined by Canal authorities. Canal authorities, from time to time, may adjust the total number of available reserved transit slots to ensure continued safe and efficient operation of the Canal.

§ 104.4 Booked transits.

(a) The specific order vessels transit the Canal, whether booked or regular transits, shall be determined by Canal authorities. Except as provided in this part, a vessel booked for transit may not transit prior to its reserved transit date, unless Canal authorities determine that assigning the vessel an earlier transit slot would not impair safe and efficient operation of the Canal.

(b) Notwithstanding any subsequent assignment of an earlier transit slot, a vessel booked for transit will be charged the prescribed booking fee.

(c) Substitution of reserved transit slots between or among vessels booked for transit will be permitted only on conditions specified by Canal authorities.

§ 104.5 Passenger vessel preference.

To the extent consistent with efficient operation of the Canal, and subject to being booked for transit, commercial passenger vessels running on fixed published schedules will be given preference over other vessels in transiting, as determined by Canal authorities.

§ 104.6 Booking fees.

(a) The booking fee for reserving a transit slot for a vessel measured in accordance with § 135.13(a) of this chapter, shall be $0.26 per PC/UMS Net Ton.

(b) The booking fee for reserving a transit slot for a vessel subject to transitional relief measures and measured in accordance with § 135.13(b) of this chapter, shall be $0.23 per Panama Canal Gross Ton, as specified on the last tonnage certificate issued to the vessel by Canal authorities between March 23, 1976 and September 30, 1994, inclusive.

(c) Notwithstanding any contrary provision, whenever the total number of vessels awaiting transit at both terminuses of the Canal is projected by Canal authorities to be, within 48-hours, 90 or more vessels, any vessel booked for transit that transits the Canal while this condition is in effect shall automatically be assessed a booking fee of $0.69 per PC/UMS Net Ton.

(d) Notwithstanding any contrary provision, the minimum booking fee for any vessel booked for transit shall be $1500.

§ 104.7 Penalties.

(a) The reserved transit slot of a vessel booked for transit will be cancelled by Canal authorities and a penalty fee assessed in a sum that is the greater of the prescribed booking fee or $1,500, in the following situations:

(1) When a vessel that is subject to transit restrictions (e.g., clear cut, clear-cut daylight) has been booked for transit and does not arrive at a terminus of the Canal by 0200 hours of the day of the scheduled transit;

(2) When a vessel that is not subject to transit restrictions has been booked for transit and does not arrive at a terminus of the Canal by 1400 hours of the day of the scheduled transit; or

(3) When a vessel booked for transit arrives on time but cannot or, at the vessel operator's election, does not transit as scheduled, despite the readiness of Canal authorities to proceed.

(b) Canal authorities may waive assessment of a penalty fee if the vessel agent presents acceptable proof that late arrival of the vessel was due to a medical or humanitarian emergency arising during the voyage, or a naturally occurring, extraordinary phenomenon or event of major proportions that could not have been reasonably predicted in advance.

(c) Failure of the vessel agent to provide complete and accurate information required by Canal authorities when requesting transit bookings may result in rejection of the booking request or cancellation of the vessel's reserved transit slot.

(d) When a vessel's reserved transit slot is cancelled, and unless otherwise directed by the vessel agent, upon arrival, Canal authorities will re-schedule the vessel for regular transit.

§ 104.8 Re-scheduling.

(a) Except as otherwise provided, a vessel agent, without penalty, may request cancellation of a vessel's reserved transit slot and rescheduling of the vessel for regular transit or, alternatively, may request assignment of an alternate reserved transit slot, in the following situations:

(1) If for whatever reason Canal authorities cancel or significantly delay the transit of a vessel booked for transit that is otherwise ready to proceed as scheduled;

(2) If for whatever reason Canal authorities delay the transit of a vessel booked for transit to such a degree that the delay is likely to cause the vessel to be unable to meet its required arrival time for a later, second reserved transit, booked before the delay of the first reserved transit occurred; or

(3) If a vessel is booked for transit on the assumption that the vessel will pay the booking fee prescribed by § 104.6(a) or (b) but, subsequently, a change in traffic conditions occurs triggering the higher booking fee prescribed by § 104.6(c).

(b) A vessel booked for transit will be deemed to have transited the Canal on its reserved transit date if the vessel arrives at the first set of locks at either terminus of the Canal prior to 2400 hours that day and its in-transit time (ITT) is 18 hours or less. ITT begins when the vessel enters the first set of locks at either Canal terminus and ends when the vessel departs the last set of locks at the opposite terminus. No booking fee will be charged if ITT, through no fault of the vessel, exceeds 18 hours.

§ 104.9 Cancellations.

(a) A vessel agent may cancel the transit reservation of a vessel by giving notice prescribed by Canal authorities. In such event, and except as otherwise provided, a cancellation fee will be charged. The amount of the fee will depend on the amount of notice (days or hours) received by Canal authorities in advance of the vessel's required arrival time, according to the following schedule:

Advance notice periods	Cancellation fee (the greater of)
31 days or more	None
30 to 11 days	20% of booking fee or $500
10 to 7 days	40% of booking fee or $750
6 to 2 days	60% of booking fee or $1,000
1 day to 8 hours	80% of booking fee or $1,200

(b) Receipt of notice of cancellation of a transit reservation by Canal authorities after the vessel's required arrival time will result in levy of a cancellation fee equal to the entire prescribed booking fee.

§ 104.10 Regular transits.

Vessels not booked for transit will be scheduled for movement through the Canal on the date and in the order determined by Canal authorities. In establishing the daily schedule of vessels to be moved through the Canal, the order in which vessels arrive is only one of several considerations. In general, regular transits will equal or exceed in number, one-half the total number of daily vessel transits.

§ 104.11 Temporary suspension of system.

(a) Canal authorities may temporarily suspend, in whole or in part, for whatever period of time deemed necessary, the vessel transit reservation system established by this part, whenever Canal authorities determine that such action is necessary to ensure continued safe and efficient operation of the Canal.

(b) No penalty or fee shall be levied against any vessel booked for transit whose reserved transit slot is cancelled by reason of a temporary suspension of the system pursuant to this section.

§ 104.12 Further implementation.

(a) In order to ensure safe and efficient operation of the system, Canal authorities may establish additional policies and procedures, define additional terms and issue clarifications and interpretations not inconsistent with the provisions of this part, which will be published and distributed periodically to Canal customers through notices to shipping or other appropriate means.

(b) In the event any provision of this part conflicts with any implementation provision issued pursuant to this section, the provisions of this part shall govern.

Dated: April 10, 1997.

John A. Mills,

Secretary, Panama Canal Commission.

[FR Doc. 97–9631 Filed 4–14–97; 8:45 am]

BILLING CODE 3640–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–5811–1]

RIN 2060–AH16

Revision of New Source Performance Standards for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: On August 6, 1975 the Environmental Protection Agency (Agency) promulgated new source performance standards (NSPS) to limit emissions of total fluoride compounds from several affected facilities in the phosphate fertilizers industry. Amongst the affected facilities covered by the NSPS were triple superphosphate plants and granular triple superphosphate (GTSP) storage facilities. The NSPS for GTSP fertilizer storage facilities in 40 CFR Part 60, Subpart X were promulgated for the purpose of limiting total fluoride emissions resulting from the continuation during storage of the chemical reactions through which GTSP is manufactured. After an initial curing period, the GTSP fertilizers cease to emit appreciable quantities of fluorides. As now written, the NSPS cover all GTSP storage facilities and there is no provision to exempt facilities storing only cured fertilizers.

Today's action clarifies the coverage of the NSPS to limit its applicability to those facilities which store fresh GTSP. As a result of today's action, the NSPS will include a work practice through which manufacturers will hold fresh GTSP in storage until it has cured prior to shipment to their customers. This limits the testing and recordkeeping requirements of Subpart X to only those facilities associated with the manufacture of GTSP and, thereby, removes any recordkeeping burden currently imposed upon downstream distributors and users of this product.

DATES: This rule is effective June 16, 1997 unless notice is received by May 15, 1997 that adverse or critical comments will be submitted, or that an opportunity to submit such comments at a public hearing is requested. If adverse comments are received, the effective date will be delayed and timely notice will be published in the **Federal Register**.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–97–4 at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street, SW., Washington, D.C. 20460. The Agency requests that a separate copy also be sent to the contact person listed below. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 4 p.m., Monday through Friday. The docket is an organized and complete file of all the information submitted to or otherwise considered by the Agency in the development of this rulemaking. For additional information on the availability of electronic information, see Supplementary Information.

FOR FURTHER INFORMATION CONTACT: For information concerning specific aspects of this action, contact Mr. David Painter (telephone number (919) 541–5515), Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Today's action amends Subpart X by limiting its applicability to those facilities which store fresh GTSP. The practical effect of the revision is to apply the provisions of the NSPS to those storage facilities which are co-located with GTSP production facilities. This is accomplished by a work practice through which manufacturers will hold fresh GTSP in storage until it has cured prior to shipment to their customers. In effect, this action excludes from coverage those facilities which store and distribute cured GTSP.

Electronic Information

An electronic copy of this document is available on the Technology Transfer Network (TTN), one of Agency's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bps modem. If more information on the TTN is needed, call the TTN HELP line at (919) 541–5384.

The information in this document is organized as shown below.

I. Statutory Authority

The statutory authority for this action is provided by sections 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601).

II. Background

On August 6, 1975 (40 FR 33152), the Agency promulgated NSPS to limit emissions of total fluoride compounds from several affected facilities in the phosphate fertilizers industry including GTSP storage facilities. The main concern which prompted that inclusion was the continued off-gassing of fluorides from fresh GTSP during storage subsequent to the initial reactions associated with the manufacture of GTSP. For the purposes of the NSPS, fresh GTSP was defined as that produced within the past ten days. Recently, representatives of the Missouri Farmers Association (MFA) have advised the Agency that a literal interpretation of the NSPS could lead to application of the NSPS to its distribution facilities which store only cured GTSP and which are located far from the point of manufacture. The MFA posited that application of the NSPS in this instance would provide no appreciable benefit to the environment while imposing unproductive paperwork. To support their position, the MFA provided the Agency test data which indicated that one of their warehouses, which is typical of distribution facilities, emits less than one pound per year of total fluorides.

As a part of the Agency's consideration of the concerns raised by the MFA, it obtained data from two companies that manufacture and store GTSP. Those data were developed using methods which differed from those employed by the MFA and gave the same results. That is, emissions of fluorides were associated with storage of fresh GTSP and those emissions were inconsequential after three days. The Agency concluded that cured GTSP stored by facilities such as those of the MFA does not emit appreciable quantities of fluorides and that no practical benefit could be derived by applying Subpart X to distribution facilities which store cured GTSP. Consequently, today's action limits the applicability of Subpart X to only those facilities which store fresh GTSP.

III. Selection of Revised Standards

The purpose of establishing the existing NSPS was to control emissions of total fluoride originating from storage buildings containing fresh GTSP. The total fluoride emissions result from continuation of the chemical reactions employed in the manufacture of GTSP. These reactions cause the formation and release of a variety of fluoride compounds. The reactions continue for a period of time after newly manufactured GTSP is placed into storage and are referred to as ''curing'' of the fertilizer. Thus, the need for controlling emissions during storage coincides with the curing period.

When the NSPS were developed, conventional wisdom was that curing of fresh GTSP occurred over a period of three to five days. Test data which was then available was for buildings storing GTSP that was ten days old. The test data became the technical basis for the current standard which defines fresh GTSP as that which is produced no more than ten days prior to a performance test.

In recent discussions with interested parties, the Agency found consensus that the language of the NSPS should be amended to specifically limit their applicability to those facilities storing fresh GTSP. The most direct approach to resolving the issue raised by MFA is to include in the NSPS a work practice that eliminates the shipment of fresh GTSP from the manufacturer. This approach clearly ensures that downstream customers such as MFA will not be storing fresh GTSP.

When the Agency first discussed this approach with the manufacturers of GTSP, they raised concerns about storing fertilizer longer than needed because of the definition of fresh fertilizer in the current rule. They provided the Agency with data which directly relate the age of GTSP to its potential for emissions of total fluorides. After discussing the new data with State agency and industry technical staffs, the Agency concluded that curing reactions causing significant air emissions are complete within three days of the completion of the manufacturing process. Thus, today's action changes the definition of fresh GTSP such that GTSP is defined as fresh for three, instead of ten, days after production. In keeping with this updated definition, today's action also changes the amount of fresh GTSP that will satisfy the performance testing requirement from 20 to six percent of the amount of GTSP in storage. This change is proportional to the change in the number of days during which GTSP is defined as fresh. The manufacturers have indicated that they find the approach of holding GTSP in storage until it is cured to be an acceptable resolution to the problem raised by the MFA. That is, this approach clearly limits coverage of the standards to only the time period when emissions are actually occurring and relieves their customers, such as MFA, from the paperwork burden associated with the NSPS as now implemented.

IV. Impacts of Revised Standards

A. Applicability

Today's action will limit the applicability of Subpart X to only those facilities that store fresh GTSP. The intent of today's action is to remove from the coverage of the NSPS those facilities storing cured GTSP.

B. Air Quality Impacts

Today's action will have no impact upon air quality in relation to that which was estimated for the NSPS when they were first promulgated. The original impact estimates of the NSPS were based upon the assumption that only those GTSP storage buildings located at production facilities would be subject to the standards. Further, today's action will have no measureable impact upon actual air quality.

C. Nonair Environmental and Energy Impacts

There will be no nonair environmental and energy impacts.

D. Cost and Economic Impacts

There will be a cost savings resulting from removal of recordkeeping and reporting burdens associated with the NSPS as now implemented. The Agency has no information available upon which to base an estimate of the savings that will result.

V. Administrative Requirements

A. Public Participation and Effective Date

The Agency is publishing this action as a direct final rule because it views it as non-controversial and anticipates no adverse comments. However, in a separate document in this issue of the **Federal Register**, the Agency is proposing to revise the NSPS should adverse or critical comments be filed. Thus, today's direct final action will be effective June 16, 1997 unless the Agency receives notice by May 15, 1997 that adverse or critical comments will be submitted or that a party requests the opportunity to submit such oral comments pursuant to section 307(d)(5) of the Clean Air Act, as amended.

If the Agency receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The Agency will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective June 16, 1997.

B. Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB), and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the Agency has determined that this rule is not ''significant'' because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995 (109 Stat. 48), requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative for State, local, and tribal governments and the private sector that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or unless the selection of this alternative is inconsistent with law.

Because this rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

D. Regulatory Flexibility

The Agency has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. This determination has been made because the effect of today's action is to clarify the NSPS to ensure that there are no impacts upon small entities.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

F. Paperwork Reduction Act

This regulation does not impose any new information collection requirements and results in no change to the currently approved collection. The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0037 (EPA ICR # 1061.06). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions;

develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Intergovernmental relations, Phosphate fertilizers production, Reporting and recordkeeping requirements.

Dated: April 8, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7601 and 7602.

Subpart X—[Amended]

2. In § 60.241, paragraphs (a) and (d) are revised to read as follows:

§ 60.241 Definitions.

* * * * *

(a) *Granular triple superphosphate storage facility* means any facility curing or storing fresh granular triple superphosphate.

* * * * *

(d) *Fresh granular triple superphosphate* means granular triple superphosphate produced within the preceding 72 hours.

3. In § 60.242, paragraph (b) is added to read as follows:

§ 60.242 Standard for fluorides.

* * * * *

(b) No owner or operator subject to the provisions of this subpart shall ship fresh granular triple superphosphate from an affected facility.

4. In § 60.243, paragraphs (b) and (c) are revised and paragraph (d) is added to read as follows:

§ 60.243 Monitoring of operations.

* * * * *

(b) The owner or operator of any granular triple superphosphate storage facility subject to the provisions of this subpart shall maintain a daily record of total equivalent P_2O_5 stored by multiplying the percentage P_2O_5 content, as determined by § 60.244(c)(3), times the total mass of granular triple superphosphate stored.

(c) The owner or operator of any granular triple superphosphate storage facility subject to the provisions of this subpart shall install, calibrate, maintain, and operate a monitoring device which continuously measures and permanently records the total pressure drop across any process scrubbing system. The monitoring device shall have an accuracy of ± 5 percent over its operating range.

(d) The owner or operator of any granular triple superphosphate storage facility subject to the provisions of this subpart shall develop for approval by the Administrator a site-specific methodology including sufficient recordkeeping for the purposes of demonstrating compliance with § 60.242 (b).

5. In § 60.244, paragraph (a)(2) is revised to read as follows:

§ 60.244 Test methods and procedures.

(a) * * *

(2) Fresh granular triple superphosphate is at least six percent of the total amount of triple superphosphate, or

* * * * *

[FR Doc. 97–9583 Filed 4–14–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95–116; FCC 97–74]

Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The First Memorandum Opinion and Order on Reconsideration, (Order) released March 11, 1997, affirms and clarifies the Commission's rules implementing section 251(b)(2) of the Communications Act of 1934, as amended, which requires all LECs to offer long-term number portability in accordance with requirements prescribed by the Commission in the *First Report and Order*, 61 FR 38605 (July 25, 1996). The *First Report & Order* also requires all LECs to implement long-term number portability in the 100 largest Metropolitan Statistical Areas (MSAs) according to a five-phase deployment schedule that commences October 1, 1997, and concludes December 31, 1998. The Commission herein concludes, first, that Query on Release (QOR) is not an acceptable long-term number portability method. Second, the Commission extends the completion deadlines in the implementation schedule for wireline carriers by three months for Phase I and by 45 days for Phase II, clarifies the requirements imposed thereunder, concludes that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for portability, and addresses issues raised by rural LECs and certain other parties. Finally, the Commission affirms and clarifies its implementation schedule for wireless carriers.

DATES: Effective May 15, 1997. Information collections, however, which are subject to approval by the Office of Mangement and Budget (OMB), shall become effective upon approval by OMB, but no sooner than September 12, 1997. A document announcing the information collections approval by OMB will be published in the **Federal Register** at a later date.

FOR FURTHER INFORMATION CONTACT: Jeannie Su, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Analysis

This is a summary of the Commission's Order on Reconsideration adopted March 6, 1997, and released March 11, 1997.

Synopsis of First Memorandum Opinion and Order on Reconsideration

Introduction

1. On June 27, 1996, the Commission adopted the *First Report and Order and Further Notice of Proposed Rulemaking (First Report & Order),* 61 FR 38605 (July 25, 1996), in this docket implementing the requirement under Section 251(b) of the Communications Act of 1934, as amended (the Act), that all local exchange carriers (LECs) offer, ''to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.'' 47 U.S.C. 251(b). By this action, the Commission resolves certain petitions for reconsideration or clarification of the Commission's number portability rules adopted in the *First Report & Order.* First, the Commission concludes that Query on Release (QOR) is not an acceptable long-term number portability method. Second, the Commission extends the completion deadlines in the implementation schedule for wireline carriers by three months for Phase I and by 45 days for Phase II, clarifies the requirements imposed thereunder, concludes that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for portability, and addresses issues raised by rural LECs and certain other parties. Finally, the Commission affirms and clarifies its implementation schedule for wireless carriers.

Background

2. Pursuant to the statutory requirement of section 251(b), the *First Report & Order* requires all LECs to implement a long-term number portability method in the 100 largest Metropolitan Statistical Areas (MSAs) according to a phased deployment schedule that commences October 1, 1997, and concludes December 31, 1998. Thereafter, in areas outside the 100 largest MSAs, each LEC must make long-term number portability available within six months after a specific request by another telecommunications carrier. The *First Report & Order* also requires all cellular, broadband personal communications services (PCS), and covered Specialized Mobile Radio (SMR) providers to be able to deliver calls from their networks to ported numbers by December 31, 1998, and requires cellular, broadband PCS, and covered SMR providers to offer number portability throughout their networks and have the capability to support roaming nationwide by June 30, 1999.

3. Rather than choosing a particular technology for the provision of number portability, the Commission established performance criteria that any long-term number portability method selected by a LEC must meet. The Commission noted, however, that one of the criteria it adopted effectively precludes carriers from implementing QOR. The *First Report & Order* further concludes that long-term number portability should be provided through a system of regional databases that will be managed by one or more independent administrators selected by the North American Numbering Council (NANC).

4. The *First Report & Order* also requires wireline LECs, pending their deployment of a long-term number portability method, to provide currently available number portability measures upon request by another telecommunications carrier. Consistent with Section 251(e)(2) of the Communications Act, the *First Report & Order* sets forth principles that ensure that the costs of currently available measures are borne by all telecommunications carriers on a competitively neutral basis, and permits states to utilize various cost recovery mechanisms, so long as they are consistent with these statutory requirements and the Commission's principles. The Commission also concurrently adopted a *Further Notice of Proposed Rulemaking (Further NPRM),* 61 FR 38687 (July 25, 1996), seeking comment on cost recovery for long-term number portability.

Discussion

Issues Relating to Long-Term Number Portability Methods

Performance Criteria

5. *Criterion Four.* The Commission concludes that criterion four should be removed from the list of minimum performance criteria required for number portability, because all interconnected carriers are likely to rely upon each other's networks to some extent to process and route calls in a market in which a long-term number portability method has been deployed. For example, under both Location Routing Number (LRN) and Query on Release (QOR), the competitive LEC may be dependent upon facilities provided by the original service provider for the proper routing of all ported calls, because the original service provider is the entity that launches a query to the number portability database to obtain the location routing number for the dialed number. Furthermore, the Commission finds no basis in the record for drawing a principled distinction between permissible and impermissible levels of reliance on the original service provider's network. For these reasons, the Commission finds that criterion four—which requires that any number portability method may not ''require telecommunications carriers to rely on databases, other network facilities, or services provided by other telecommunications carriers in order to route calls to the proper termination point''—is, from a practical perspective, unworkable. Moreover, many of the Commission's concerns about reliance on a competitor's network (*e.g.*, the possibility of service degradation and call blocking) are addressed by criterion six. Thus, criterion four does not appear to be necessary in order to implement the statutory definition of number portability. In light of the Commission's decision to eliminate criterion four, the Commission concludes that AirTouch's requested clarification of criterion four is moot.

6. *Criterion Six.* With respect to criterion six, the Commission affirms its conclusion in the *First Report & Order* that any long-term number portability method must not result in any degradation of service quality or network reliability when customers switch carriers. The Commission further concludes, based on the record in this proceeding, that criterion six prohibits the use of QOR as a long-term number portability method. The Commission agrees with the commenters, primarily potential new providers of local exchange services (also referred to as ''competitive LECs''), that: (1) QOR results in degradation of service by imposing post-dial delay only on calls ported to new carriers; (2) if network reliability problems were to arise as a result of QOR, those problems would disproportionately affect customers who port their numbers; and (3) QOR should not be permitted on an intranetwork basis, because it is not ''competitively neutral.'' The Commission discusses each of these conclusions in more detail below.

Service Degradation

7. After considering petitioners' arguments and concerns, the Commission affirms its conclusion in the *First Report & Order* that, in accordance with criterion six, a long-term number portability method may not cause customers to experience ''a greater dialing delay or call set up time'' as compared to when the customer was with the original carrier. Criterion six implements the statutory requirement that consumers be able to retain their

numbers ''without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.''

8. At the outset, the Commission agrees with AT&T and Time Warner that the time it takes to receive a call is an important factor for many subscribers, particularly businesses that receive and respond to a large number of calls on a daily basis. If the party making a call to a business experiences additional delay because that business has switched carriers, that delay may negatively impact how the business is perceived, which, in turn, could dissuade the business from switching carriers in the first place. Therefore, the Commission clarifies that performance criterion six requires that calls *to* customers who change carriers (not just calls *from* customers who change carriers) must not take longer to complete merely because the customer has switched local service providers. In order to implement the statutory requirement that consumers should be able to change carriers and retain their original phone number without impairment of quality, reliability, or convenience, the Commission concludes that any post-dial delay imposed by a number portability method should be roughly equivalent for all consumers, whether they are calling to or from a ported or a non-ported number.

9. The Commission further concludes that consumers that switch telecommunications carriers and retain their numbers would experience ''impairment of quality'' if QOR were used, because the post-dial delay imposed by QOR is not equivalent for all consumers. Under QOR, calls that are placed to ported numbers must undergo a series of signalling and routing steps that result in longer post-dial delay than occurs for calls that are placed to non-ported numbers. No party disputes that QOR causes additional post-dial delay. There is disagreement, however, over the appropriate baseline for comparison. Proponents of QOR erroneously focus on the post-dial delay of alternative number portability technologies, comparing the incremental post-dial delay associated with a call to a ported number using LRN with that of a call to a ported number using QOR. That is not the statutory standard. The Commission agrees with AT&T and MCI that the proper comparison for incremental post-dial delay is the difference in delay between calls placed to ported numbers and calls placed to non-ported numbers, because that is the delay that occurs ''when switching from one telecommunications carrier to another.'' According to the most conservative estimates, calls to ported numbers from a network that uses QOR would experience an additional post-dial delay of approximately 1.3 seconds as compared to calls placed to non-ported numbers. Because the Commission finds that post-dial delay of 1.3 seconds is significant, it concludes that QOR violates the statutory definition of number portability and criterion six. By contrast, under LRN, there is no differential between ported and non-ported calls; for all calls, it takes the same amount of time to query the database for appropriate routing instructions. LRN therefore does not impair service quality when a customer changes carriers. Accordingly, the Commission concludes that LRN is consistent with the statutory definition of number portability and performance criterion six.

10. The Commission also rejects petitioners' argument that some degree of added post-dial delay should be acceptable, provided that it is not ''perceptible'' to the public. First, the Commission agrees with AT&T that the studies submitted by petitioners fail to demonstrate that 1.3 seconds of post-dial delay is imperceptible to the public. Second, the Commission agrees with those parties that contend that, even if the additional post-dial delay were imperceptible to the caller, QOR could adversely affect competitors, because the incumbent LEC could truthfully advertise the fact that calls to customers that remain on the incumbent LEC's network are completed more quickly than calls to customers that switch to a competitor's network. MCI points out that this could create a marketplace perception that competitive LECs are operating inferior networks, which could harm competition. In response, six incumbent LECs have voluntarily committed not to mention the call set-up time differences between LRN and QOR in their advertising materials. As AT&T and MCI point out, however, the incumbent LECs' voluntary commitment is limited to ''advertising materials,'' and therefore does not preclude them from mentioning call set up in all other aspects of their marketing, such as direct sales and telemarketing, news releases, studies commenced to compare competitors' service performance, and editorials. Furthermore, because only six incumbent LECs signed the letter, the Commission has no basis on which to conclude that all incumbent LECs will refrain from using the differences in call set-up time to influence marketplace perceptions and inhibit competition. Thus, the Commission declines to designate a threshold below which added post-dial delay is permissible. Moreover, given the Commission's concerns about these marketplace perceptions, the Commission finds U S West's suggestion that the Commission survey consumers to ascertain whether they can perceive the post-dial delay associated with QOR to be unnecessary.

Network Reliability

11. *QOR*. As discussed above, criterion six requires that no long-term number portability method may result in ''any degradation of service quality or network reliability when customers switch carriers.'' The Commission agrees with the opponents of QOR that technical concerns raised by QOR are more likely to impact ported numbers adversely than non-ported numbers. For example, QOR requires fewer SS7 links to the number portability database than LRN because of the lower number of queries to support. There is a risk, therefore, that an SS7 network engineered to accommodate a lower traffic level would not be able to handle an unexpected sharp increase in the number of calls to ported numbers. Such increases could occur in response to advertising or promotions by competitive LECs with ported numbers. Difficulties in querying the database may result in call blockage (*i.e.*, lost or incomplete calls) and increased post-dial delay, but only on calls to ported numbers. The Commission also notes that the apparent advantage of QOR in requiring fewer queries to the database is offset by the fact that it will require at least two additional signalling messages for each call to a ported number before routing instructions are obtained. This additional load on the signalling network creates the potential for reliability problems for ported calls. The Commission concludes that network reliability concerns posed by QOR violate criterion six and the statutory definition of number portability because, if any network problems arise as a result of QOR, they would disproportionately affect consumers who port their numbers.

12. *LRN*. As a related matter, proponents of QOR assert that deployment of LRN is more likely to result in network failure than if carriers are permitted to use the QOR enhancement to LRN. Although the proponents of QOR do not frame their arguments in terms of the performance criteria the Commission adopted in the *First Report & Order*, the thrust of their argument appears to fall within the scope of criterion five, which requires that no number portability method

should result in ''unreasonable degradation in service quality or network reliability when implemented.''

13. The Commission also concludes that petitioners have not demonstrated that LRN fails to meet criterion five. Although the initial deployment of any new technology may pose some risk to the network, the Commission is not persuaded that deployment of LRN will result in unreasonable degradation of network reliability when deployed under the revised schedule adopted in this *First Reconsideration Order.* Indeed, petitioners' concerns about LRN's impact on network reliability are mitigated by a number of factors. First, as the Commission noted previously, LRN has been examined extensively by a number of state commissions and industry workshops, and had been selected for deployment by at least six states prior to the adoption of the *First Report & Order.* Second, the Commission provided in the *First Report & Order* for a field test of LRN in the Chicago MSA (Chicago trial), which should help to protect against network reliability problems. If technical problems with LRN arise with respect to the Chicago trial, the Commission can take appropriate action at that time. Third, as discussed in more detail below, the Commission is extending the implementation schedule for Phase I to allow carriers additional time to test number portability in a live environment, and to take appropriate steps to safeguard network reliability. Indeed, the Bellcore study submitted by SBC supports the Commission's conclusion that additional time for testing, integration, and soaking (limited use of the software in a live environment for a length of time sufficient to find initial defects) will help to reduce the probability of network failure. Fourth, as the Commission clarifies below, its implementation schedule does not require a flashcut implementation on October 1, 1997, for those MSAs in the first phase of the deployment schedule. Rather, number portability may be implemented gradually throughout the initial phase, provided that implementation in the designated markets is completed by the end of that phase.

Intranetwork Use of QOR

14. Incumbent LECs ask the Commission to permit them to use QOR on all calls that originate on their network and are placed to numbers that originally were assigned to one of their end offices (*i.e.,* calls ''within their own network'' or ''intranetwork calls''). The Commission concludes that their request is misleading insofar as it implies that only calls to and from their own customers would be affected. In fact, calls that are placed to numbers that have been ported would require a query to the number portability database after the originating switch is notified by the terminating switch in the incumbent LEC's service area that the called number has been ported. The Commission agrees with MCI that, as customers subscribe to alternative carriers, the only calls that will remain ''within'' the incumbent LEC's network will be calls from one of the incumbent LEC's customers to another. As discussed above, however, the call to the ported number would experience increased post-dial delay because of the additional signalling and routing preparations required by QOR. Such disparity in treatment between ported and non-ported numbers violates criterion six and the statutory definition of number portability.

Public Interest Considerations

Overview

15. Petitioners further assert that, regardless of the Commission's performance criteria, incumbent LECs should not be prohibited from using QOR as a number portability method, because deployment of QOR serves the public interest. First, they claim that QOR will result in significant cost savings. Second, they claim that permitting incumbent LECs to use QOR will make it easier for them to meet the Commission's implementation schedule.

16. As an initial matter, the Commission disagrees with the petitioners' premise that LECs should be permitted to implement QOR regardless of the performance criteria, if the Commission determines that QOR serves the public interest. As stated above, the Commission concludes that QOR violates criterion six, which is required by the statute. Thus, the Commission is not at liberty to apply a public interest analysis that could result in an abrogation of the statutory mandate. Nevertheless, because the parties raised public interest concerns, the Commission addresses them in order to establish that its decision to prohibit QOR is not contrary to the public interest.

17. *Discussion.* As most carriers recognize, LRN is the more economical way to provide long term number portability once ported numbers for a given switch reach a certain level, although the point at which it becomes more cost-effective to use LRN rather than QOR remains in dispute. From an economic perspective, the question is whether the present discounted value of the cost of initially deploying LRN is less than the present discounted value of the cost of deploying QOR initially and LRN at some later date. Proponents of QOR contend that the use of the QOR enhancement to LRN would result in real cost savings, not just a short-term deferral of expenses, because the number of ported calls in some areas will never reach the level where it is more cost effective to disable QOR and complete the build-out necessary to support LRN. The Commission concludes, however, that the statutory scheme that Congress has put in place should, over time, result in vigorous facilities-based competition in most areas, and therefore LRN will be the most economical long-term solution. Thus, deploying QOR would most likely result in short-term cost savings, not overall cost savings. In fact, at least one incumbent LEC, Ameritech, has already decided that it is beneficial to deploy LRN from the outset, rather than converting from QOR to LRN at some later date. Even if facilities-based competition does not develop in the immediate future, however, the Commission concludes that the harm that QOR imposes on competitors outweighs the benefit of allowing incumbent LECs to defer the cost of implementing a superior long-term number portability solution.

18. Moreover, the Commission is not convinced that the incumbent LEC's estimates of the short-term savings associated with QOR are reliable. The Commission is particularly concerned by the fact that the cost savings estimates submitted by incumbent LECs have varied significantly over the course of this proceeding. In some cases, estimates from the same carrier have changed by 100 percent or more. Further, the changed estimates have not moved in the same direction; some carriers' estimates of the cost savings increased drastically and other carriers' estimates decreased equally drastically. While the Commission recognizes that carriers have worked over time to refine their projections, the wide variation in the estimates submitted by individual carriers at different points in this proceeding raises questions about the reliability of these estimates. Furthermore, the fact that some carriers have not explained the basis for the assumptions underlying their estimates precludes the Commission from conducting an independent evaluation of the reasonableness and reliability of their projected cost savings and, consequently, limits the weight the

Commission can reasonably assign to those estimates.

19. In addition, MCI alleges that the cost savings that would be realized by permitting the deployment of QOR are far less than the estimated $54 million to $136.3 million in annual savings alleged by individual incumbent LECs. The LECs collectively estimate they would save between $624 and $649 million if permitted to use QOR. MCI has provided figures indicating that the LECs collectively would save only $50 million, but that figure only includes estimated savings for four out of the seven carriers. MCI was unable to estimate cost savings for three carriers due to insufficient information in the record. For three of the carriers for which MCI was able to provide estimates, however, these estimates ranged from 20% to 23% of the corresponding LEC figure. For the fourth carrier, MCI argued that QOR actually would cost more than LRN.

20. MCI's calculation of the asserted cost savings associated with QOR challenges a key assumption underlying the incumbent LECs' estimates. Specifically, MCI claims that the LECs substantially underestimate the number of transactions (*i.e.*, queries) per second (tps) that an SCP pair can perform and, consequently, their estimate of the number of SCP pairs that must be deployed to provide LRN is overstated. AT&T also alleges that the incumbent LECs' savings estimates do not take into account offsetting increases in additional switching facilities costs that would be required for QOR. MCI and AT&T further contend that the incumbent LECs' estimates of the relative costs of deploying LRN and QOR must be adjusted downward to account for revenues that they will receive to perform database queries at the request of rural and other LECs that do not have the capability to perform such queries themselves. Although incumbent LECs would obtain such revenues with both the LRN and QOR methodologies, the revenue stream is likely to be significantly greater with LRN because the number of database queries is likely to be much greater. Indeed, Pacific, a proponent of QOR, acknowledges that its estimate of the cost savings associated with QOR would be reduced by as much as $18 million if such revenues were included in the estimate. In view of the significant changes in the estimates of the cost savings associated with QOR submitted by individual incumbent LECs over the past months, a lack of data explaining many of the assumptions underlying their estimates, and the questions raised by MCI and AT&T with respect to specific aspects of the estimates, the Commission finds, on balance, that the incumbent LECs have not substantiated their claim that deployment of QOR will produce significant cost savings.

21. Moreover, a recent submission by Illuminet, a provider of SS7, database, and other services to independent LECs and other entities, casts doubt on the reasonableness of one of the most basic assumptions underlying the incumbent LECs' estimates of the relative costs of QOR and LRN. Incumbent LEC estimates assume that the LEC number portability architecture will be deployed through a network of SCPs, and that a major cost driver of LRN is the number of SCPs needed to handle increased traffic volumes. On the other hand, Illuminet advocates using an STP-based architecture, in which call routing information from the regional database is transferred to a carrier's STP instead of an SCP, and the SCP is not involved in processing the number portability query. Illuminet asserts that STPs are designed specifically to do ten-digit translations such as LRN query processing and can process number portability queries at a much faster rate than SCPs. In contrast, SCPs are designed to support multiple call processing applications and process significantly fewer queries per second. Carriers using an STP-based architecture, therefore, would need to purchase and install a relatively smaller number of STPs instead of the larger number of SCPs alleged by the LECs, and would not need to purchase and install additional SS7 links between the SCPs and STPs. Thus, according to Illuminet, use of an STP-based architecture would reduce dramatically the cost of LRN. In response, Pacific acknowledges that a combined STP-SCP approach may reduce some costs, but that expenses related to upgrading switch processors, links, and existing STPs will still be substantial. Although the Commission acknowledges that carriers deploying LRN will incur costs other than those associated with SCPs, the Commission agrees with Illuminet that an STP-based approach should reduce the relative cost differential between LRN and QOR.

Conclusion

22. Congress recognized that there are costs associated with the implementation of local number portability. Although carriers may realize some short-term cost savings if permitted to use QOR instead of LRN, the exact amount of savings from utilizing QOR is unclear. Even if the cost savings figures submitted by the LECs were correct, the Commission believes that the benefits to consumers of such savings do not outweigh the harm that QOR would impose on competitive LECs, the cost of disrupting state efforts to implement LRN, or any delay in implementation that might result from such disruption. Thus, the Commission concludes that permitting carriers to deploy QOR as a long-term number portability method does not serve the public interest.

Implementation Schedule for Wireline Carriers

Background

23. In the *First Report & Order*, the Commission required local exchange carriers operating in the 100 largest MSAs to offer long-term service provider portability, according to a phased deployment schedule commencing on October 1, 1997, and concluding on December 31, 1998. The Commission required deployment in one specified MSA in each of the seven BOC regions by the end of fourth quarter 1997 (''Phase I''), 16 additional specified MSAs by the end of first quarter 1998 (''Phase II''), 22 additional specified MSAs by the end of second quarter 1998 (''Phase III''), 25 additional specified MSAs by the end of third quarter 1998 (''Phase IV''), and 30 additional specified MSAs by the end of fourth quarter 1998 (''Phase V''). The Commission noted that, in establishing the deployment schedule, it relied upon representations of switch vendors regarding the dates by which the necessary switching software will be generally available for deployment. In particular, vendors estimated that they could begin to make software for at least one long-term number portability method generally available for deployment by carriers around mid-1997. In addition, a carrier may file a specific request for number portability beginning January 1, 1999, for areas outside the 100 largest MSAs, and each LEC must make long-term number portability available in that MSA within six months after the specific request. The Commission also directed the carriers that are members of the Illinois Commerce Commission Local Number Portability Workshop (ICC Workshop) to conduct in the Chicago MSA, concluding no later than August 31, 1997, a field test of LRN or another technically feasible long-term number portability method that comports with the performance criteria. The Commission noted that section 251(f)(2) of the Act permits a LEC with fewer than two percent of the country's total installed subscriber lines to petition a state commission for suspension or

modification of the interconnection requirements of sections 251 (b) and (c).

24. The Commission delegated to the Chief, Common Carrier Bureau, the authority to monitor the progress of LECs implementing number portability, and to direct carriers to take any actions necessary to ensure compliance with its deployment schedule. The Commission also delegated to the Chief, Common Carrier Bureau, the authority to waive or stay any of the dates in the implementation schedule, for a period not to exceed nine months (*i.e.,* no later than September 30, 1999, for the MSAs in Phase V of the deployment schedule), as is necessary to ensure the efficient development of number portability. In the event a carrier is unable to meet the Commission's deadlines for implementing a long-term number portability method, it may file with the Commission, at least 60 days in advance of the implementation deadline, a petition to extend the time by which implementation of long-term number portability in its network will be completed. The Commission emphasized, however, that carriers are expected to meet the prescribed deadlines, and a carrier seeking relief must present extraordinary circumstances beyond its control in order to obtain an extension of time. The Commission required a carrier seeking such relief to demonstrate through substantial, credible evidence the basis for its contention that it is unable to comply with the deployment schedule.

Deployment Only in Requested Switches

25. *Discussion.* The Commission agrees with the majority of the parties commenting on this issue that it is reasonable to focus initial efforts in implementing number portability in areas where competing carriers plan to enter. This approach will permit LECs to target their resources where number portability is needed and avoid expenditures in areas within an MSA in which competitors are not currently interested. The Commission further agrees that such a procedure will foster efficient deployment, network planning, and testing, reduce costs, and lessen demands on software vendors. Moreover, the Commission believes that limiting deployment to switches in which a competitor expresses interest in number portability will address the concerns of smaller and rural LECs with end offices within the 100 largest MSAs that they may have to upgrade their networks at significant expense even if no competitors desire portability. Limiting deployment to switches in which a competitor expresses interest in deployment will be consistent to a large extent with procedures suggested by Ameritech and BellSouth and already considered by several state commissions, as well as the Commission's past practice in implementing conversion to equal access for independent telephone companies.

26. The Commission therefore concludes that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for the provision of portability. The Commission leaves it to the industry and to state commissions to determine the most efficient procedure for identifying those switches in which carriers have expressed interest and which will be deployed with number portability according to the original deployment schedule for the 100 largest MSAs. The Commission finds, however, that any procedure to identify and request switches for deployment of number portability must comply with certain minimum criteria to ensure that minimal burden is imposed upon carriers requesting deployment in particular switches, and that carriers that receive requests for deployment in their switches have adequate time to fulfill the requests. As explained below, the Commission requires that: (1) Any wireline carrier that is certified, or has applied for certification, to provide local exchange service in the relevant state, or any licensed CMRS provider, must be allowed to make a request for deployment; (2) requests for deployment must be submitted at least nine months before the deadline in the Commission's deployment schedule for that MSA; (3) carriers must make available lists of their switches for which deployment has and has not been requested; and (4) additional switches must be deployed upon request within the time frames described below.

27. First, any wireline carrier that is certified (or has applied for certification) to provide local exchange service in a state, or any licensed CMRS provider, must be given a reasonable opportunity to make a specific request for deployment of number portability in any particular switch located in the MSAs in that state designated in the *First Report & Order.* According to the Act, any carrier that desires number portability from a LEC must be able to obtain portability, in accordance with the requirements established by the Commission. 47 U.S.C. 251(b)(2). A state commission, however, may review whether the requests made by a carrier are unreasonable, given the state commission's knowledge of that carrier's plans to enter the state. Based on the limited information available to the Commission at this time, the states that are reviewing seemingly unreasonable requests appear to be acting in good faith to accommodate carriers' interests in number portability capabilities. If the Commission receives evidence in the future that states are unreasonably limiting deployment, then it can revisit this issue at that time.

28. Second, a carrier must make its specific requests for deployment of number portability in particular switches at least nine months before the deadline for completion of implementation of number portability in that MSA. The Commission concludes that this deadline will enable a LEC to plan ahead for the deployment of number portability in multiple switches in a given MSA. The Commission encourages carriers to make such requests earlier than the nine-month deadline to give the LEC that operates the switch in which portability is requested more time to implement number portability capabilities. In addition, carriers may agree among themselves, or state commissions may require carriers, to comply with a deadline for submitting requests that is more than nine months prior to the implementation deadline.

29. The Commission encourages carriers, before requests for deployment are submitted, to seek to reach a consensus on the particular switches that initially will be deployed with number portability. The Commission notes, moreover, that the state commission may decide, or carriers affected in the state may agree, that it would be preferable for the state commission to aggregate the requests to produce a master list of requested switches. In addition, the Commission concludes that carriers may negotiate private agreements specifying that a carrier will not request that certain switches be deployed according to the Commission's schedule if the LEC from which deployment is requested agrees to deploy other number portability-capable switches, either inside or outside the 100 largest MSAs, at an earlier date than the deadlines in the Commission's schedule. For example, NEXTLINK suggests waiving the scheduled deployment deadlines for switches in the 100 largest MSAs for which no competitor expresses interest in deployment, and allowing carriers instead to deploy switches outside the 100 largest MSAs in which a competitor expresses interest, according to the deadlines for those unrequested switches within the 100 largest MSAs.

30. Third, after carriers have submitted their requests, a carrier must make readily available upon request to any interested parties a list of its switches for which number portability has been requested and a list of its switches for which number portability has not been requested. The Commission finds that simplifying the task of identifying the switches in each MSA in which number portability is initially scheduled to be deployed is consistent with its policy of facilitating the deployment of number portability in areas where new competitors plan to enter.

31. Fourth, carriers must be able to request at any time that number portability be deployed in additional switches. LECs must provide portability in these additional switches upon request, after the deployment deadline mandated by the Commission's schedule for that MSA, within the time frames that the Commission adopts here, unless requesting carriers specify a later date. Although carriers may make specific requests for deployment in additional switches in a particular MSA at any time, the time frames set forth below will commence after the deadline for deployment in that particular MSA in the implementation schedule. The Commission agrees with Sprint and Time Warner that specific time frames within which number portability must be deployed in all switches that were not initially requested are necessary to ensure that competitive LECs can be certain that portability will be available in areas in which they plan to compete and can formulate their business plans accordingly. Absent this certainty, competing carriers would have an incentive to request more switches during the initial request process, including those serving markets which they do not plan to enter in the near future, in order to ensure deployment of portability in any switch in which they might ever want portability. The Commission finds, therefore, that establishing specific time frames for deployment in all additional switches will benefit competitive LECs by ensuring that portability will be available to them at a designated future time, and will benefit incumbent LECs by reducing their initial deployment burdens.

32. The Commission finds that the time frames developed by the carriers participating in the ICC Workshop generally successfully balance the needs of competitive LECs for certainty of deployment and the burdens faced by incumbent LECs in deploying number portability in additional switches that require different levels of upgrades. The Commission therefore adopts, with slight modification, the time frames developed by the ICC Workshop for the conversion of additional exchanges: (1) Equipped Remote Switches within 30 days; (2) Hardware Capable Switches within 60 days; (3) Capable Switches Requiring Hardware within 180 days; and (4) Non-Capable Switches within 180 days. For example, if carriers request deployment in a certain number of switches in the Pittsburgh, PA MSA nine months before that MSA's Phase III deadline of June 30, 1998 (*i.e.*, they make requests by September 30, 1998), and a carrier requests on April 1, 1998, deployment in an additional Equipped Remote Switch in Pittsburgh, then the additional switch must be equipped with number portability capability on or before July 30, 1998 (*i.e.*, 30 days after June 30, 1998). The Commission notes that the ICC Workshop developed the time frames for the first three switch categories, but did not reach agreement on a time frame for converting a Non-Capable Switch. Since the Commission finds, as discussed above, that specific time frames for deployment of all additional switches are necessary, the Commission finds that it is reasonable to allow no more time for deployment of any switches within the 100 largest MSAs than is allowed for deployment of switches outside the 100 largest MSAs. Deployment in additional switches will be less burdensome for carriers with networks within the 100 largest MSAs that have already made network-wide upgrades, *e.g.*, SCP hardware and OSS modifications, to support number portability in the initially requested switches.

33. Carriers seeking relief from these deadlines may file a petition for waiver under the procedures set forth in the *First Report & Order.* The Commission notes that the deadlines for switches in categories (1) and (2) are shorter than switches in categories (3) and (4) because the former require less extensive upgrades. The Commission realizes that the shorter deadlines for switches in categories (1) and (2) do not allow time for carriers to file a petition for waiver under the procedure established in the *First Report & Order* on the grounds of extraordinary circumstances that prevent it from complying with the Commission's deployment requirements. The Commission therefore will suspend the deadlines for switches in categories (1) and (2) during the period that the Commission is considering a carrier's petition for waiver. For example, if a LEC receives a request for deployment in an additional switch that is an Equipped Remote Switch, and five days later the LEC files a petition for waiver, then the LEC need not deploy number portability in the switch until 25 days after the Commission denies its petition, or until the date specified in the Commission's grant of the petition.

34. The Commission agrees with MCI that, after portability has been introduced in an MSA, the incremental cost and resources needed to add additional end offices are relatively minor because most costs, *e.g.*, SCP hardware and signalling links, OSS modifications, and shared regional database costs, will have already been incurred. Number portability, consequently, can be deployed more quickly in the switches for which number portability is requested after the initial deployment of number portability. The Commission therefore declines to adopt suggestions by USTA and GTE to allow a longer time after receipt of a request for deployment of number portability capability in switches not in the initial deployment.

35. The Commission emphasizes that a carrier operating a non-portability-capable switch must still properly route calls originated by customers served by that switch to ported numbers. When the switch operated by the carrier designated to perform the number portability database query is non-portability-capable, that carrier could either send it to a portability-capable switch operated by that carrier to do the database query, or enter into an arrangement with another carrier to do the query.

36. The Commission concludes that permitting carriers to specify those switches within the 100 largest MSAs in which they desire portability is more workable than the procedures proposed by some petitioners that would require incumbent LECs to file waiver requests for specific switches for which the incumbent LECs believe that no competitor is interested. A waiver procedure would create a period of uncertainty for both the incumbent LEC and the competitive LEC as to whether portability would actually be deployed in that switch. Moreover, a waiver procedure would burden the incumbent LEC with preparing and filing the petition for waiver, require that the Commission review the petition, and potentially burden the state commission with determining whether there is actual competitive interest in the switch. In addition, these proposals by petitioners appear to assume generally that no competitive LEC would oppose the waiver petition; if this is not the case, then a waiver procedure would burden competing carriers with

challenging the waiver. A waiver procedure would also burden both competing carriers and consumers by hampering competitive entry into the market while waiting for a determination by the Commission or a state commission.

37. The Commission believes that the criteria set forth above adequately address MCI's concern that requesting carriers would bear an unnecessary burden of justifying deployment in each end office and endure uncertainty as to deployment. The only burden on requesting carriers is to identify and request their preferred switches. In addition, carriers have a time frame for deployment of the initially unrequested switches within the 100 largest MSAs. Competitive LECs can thus market their services as widely as they desire with assurance that number portability will be available in the areas where, and at the times when, they desire to compete. As an additional safeguard against anticompetitive abuses of the procedures to identify and request those switches for which a carrier desires deployment of number portability, the Commission delegates authority to the Chief, Common Carrier Bureau, to take action to address any problems that arise over any specific procedures.

Extension of Implementation Schedule

38. *Discussion.* The Commission grants, with some modifications, the requests by BellSouth and other parties to extend the deadlines for completion of deployment of long-term number portability for Phases I and II, as set forth in appendix E of this *First Reconsideration Order.* On reconsideration, the Commission extends the end date for Phase I by three months. Thus, deployment in Phase I will now take place from October 1, 1997, through March 31, 1998. The Commission takes this action because it is now persuaded that initial implementation of this new number portability technology is likely to require more time than subsequent deployment once the technology has been thoroughly tested and used in a live environment. For example, initial implementation of this new technology is likely to involve more extensive testing, and may require extra time to resolve any problems that may arise during the testing. It therefore is appropriate that Phase I be longer than subsequent phases in the schedule to allow carriers to take appropriate steps to safeguard network reliability.

39. The Commission also notes that the participants in the Chicago trial have recently informed it that the completion date of the Chicago trial, previously scheduled for August 31, 1997, has been postponed by approximately one month until September 26, 1997. While the Chicago trial participants have committed to providing the Commission with weekly updates on trial progress, the full report on the Chicago trial that participants had planned to file September 30, 1997, is now scheduled to be filed October 17, 1997. Consistent with this notification by the Chicago trial participants, the Commission hereby extends the deadline for carriers that are members of the ICC Workshop to conduct a field test of any technically feasible long-term database method for number portability in the Chicago, Illinois, MSA and to report the results of that trial. While the Commission understands that participants in the Chicago trial are prepared to commence implementation in Chicago immediately upon conclusion of the trial and still expect to meet the original December 31, 1997, deadline, the Commission recognizes that carriers operating in other MSAs may require additional time to interpret the results of the Chicago trial in light of their individual network configurations. Finally, the Commission finds some merit in CBT's argument that an extra 90 days for initial implementation may permit small and mid-size LECs to reduce their testing costs by allowing time for larger LECs to test and resolve the problems of new technology. Given all the factors listed above, the Commission concludes that a three-month extension of the time period for initial deployment in Phase I markets appropriately safeguards network reliability, and therefore is warranted.

40. The Commission also extends the end date for Phase II by 45 days. Thus, deployment in Phase II will now take place from January 1, 1998, through May 15, 1998. The Commission extends Phase II to alleviate potential problems that may arise if deployment in markets in Phase I and II must be completed on the same date. Requiring that implementation be completed in a greater number of markets by a specific deadline may make that deadline more difficult to meet (*e.g.,* by straining vendor resources to perform software upgrades in any given period of time). For the same reason, the Commission declines to extend Phase II by 90 days as requested by BellSouth, as such an extension would establish the same deadline for completion of deployment for Phases II and III. The Commission concludes that the modest adjustment of the deadline for Phase II adopted in this *First Reconsideration Order* will more effectively stagger the deadlines for deployment in different markets than BellSouth's proposal.

41. The Commission clarifies, per BellSouth's request, that implementation of number portability for a phase may begin at any time during that phase, provided that implementation in the designated markets is completed by the end of that phase. Contrary to the allegations of Pacific and other parties, number portability thus need not be introduced ''on virtually the same day'' in the seven of the largest MSAs, especially because it may now be phased into the first markets more gradually over six months, instead of three.

42. The Commission strongly advises carriers to begin implementation early in each phase, however, as they will not be able to obtain a waiver of the schedule if they cannot demonstrate, through substantial, credible evidence, at least sixty days before the completion deadline, the extraordinary circumstances beyond their control that leave them unable to comply with the schedule, including ''a detailed explanation of the activities that the carrier has undertaken to meet the implementation schedule prior to requesting an extension of time.'' This is especially applicable to Phases I and II, given that the Commission now is granting carriers additional time during those phases specifically so that they can implement number portability more gradually. The Commission will not look favorably upon a waiver request if the carrier has not taken significant action to implement portability, if the carrier does not place orders with switch manufacturers in a timely manner, or, for example, if the carrier requests a waiver for a Phase II market because it only began preparing for implementation for a Phase I market in the first quarter of 1998, and then claims that it has too many software upgrades to perform from January through May 15, 1998. Carriers should be able to identify any specific technical problems that may necessitate an extension of the deployment deadline for Phase I during the four months between the scheduled end of the Chicago trial and the deadline for requesting an extension for Phase I, especially because carriers will be receiving initial feedback from testing in Chicago far in advance of the Chicago trial's conclusion. As noted above, the participants in the Chicago trial have committed to providing weekly progress reports as the trial progresses. Initial tests of LRN hardware and software on a subset of switches in the Chicago MSA began in January 1997. Intra-network and database testing

in Chicago is scheduled to take place for several months before the start of the Chicago trial mandated by the Commission.

43. The Commission's decision to extend the deadlines for completing Phases I and II of its deployment schedule reflects the fact that the Commission considers network reliability to be of paramount importance. Consistent with that commitment, in the *First Report & Order* the Commission delegated authority to the Chief, Common Carrier Bureau, to monitor generally the progress of number portability implementation and take appropriate action, as well as establishing a procedure for individual LECs to obtain an extension of the deployment deadlines as necessary for their specific markets. The Chief, Common Carrier Bureau, will monitor the weekly reports from the Chicago trial and any other pertinent developments. The Commission finds that further adjustment of the deployment schedule in response to these developments is more properly a matter for the Chief, Common Carrier Bureau, to handle as number portability technology is tested and carriers discover any actual, specific difficulties. If significant problems arise during the Chicago trial, or other significant implementation problems arise during Phase I, the Chief, Common Carrier Bureau, has the authority to adjust the schedule for the Chicago trial or the deadline for Phase I implementation, as appropriate, to ensure network reliability.

44. Although the findings of the Bellcore study submitted by SBC were vigorously challenged by AT&T and MCI, it bears mention that extending the Phase I completion date by three months is responsive to the recommendation in the Bellcore study that the Commission should allow additional ''time for testing, integration, and soaking (limited use of the software in a live environment for a length of time sufficient to find initial defects) of the software.'' In fact, the Bellcore study specifically recommended that the Commission ''(e)xtend the time interval for introduction of (number portability) by 3 months.'' The Commission's extension of Phase I, in combination with its conclusion that carriers need provide portability only in requested switches, also allows carriers the flexibility to introduce portability more gradually, beginning with a subset of switches within the MSA.

45. The Commission denies the petitions to extend the deployment deadlines for all markets or otherwise provide wireline carriers greater flexibility in the schedule to implement long-term number portability. Although the Commission concludes that initial implementation of this new number portability technology may require additional time, the Commission is not persuaded that implementation in subsequent phases, after the technology has already been tested and installed in the initial markets, need be delayed to the extent requested by some petitioners. The Commission finds on the basis of the record in this proceeding that the implementation schedule as revised in this *First Reconsideration Order* is reasonable, and that granting any further delay of the schedule at this time is premature and unnecessary, especially because there is still approximately one year before LECs must complete deployment for the earliest phase. Petitioners have only speculated that unpredictable events may, at some point in the future, generally delay implementation, and have not shown that a specific factor will render the later schedule impossible to meet for any particular reason, much less for any particular LEC.

46. Petitioners' arguments are even more speculative given that their implementation obligations are likely to be significantly lighter than they assume, because, as the Commission discusses above, LECs are required to deploy number portability only in switches for which they receive requests for number portability capability. Moreover, even if the problems identified by petitioners do in fact develop, in the *First Report & Order* the Commission established a procedure for LECs to obtain an extension of the deployment deadlines as necessary, and delegated authority to the Chief, Common Carrier Bureau, to monitor the progress of number portability implementation.

47. Furthermore, the Commission finds it unnecessary to act on GTE's request that it clarify that LECs may obtain a waiver if they cannot meet the schedule for reasons beyond their control. The waiver procedure established in the *First Report & Order* for extending deployment deadlines as necessary provides an effective vehicle for addressing any problems in implementing number portability that LECs can document. In particular, if problems necessitating delay do arise, the Chief of the Common Carrier Bureau may waive or stay any of the dates in the implementation schedule, as the Chief determines is necessary to ensure the efficient development of number portability, for a period not to exceed nine months. In the event a carrier is unable to meet the deadlines for implementing a long-term number portability method, it may file with the Commission, at least 60 days in advance of the deadline, a petition to extend the time by which implementation in its network will be completed. *See* ALTS Opposition at 6 n.7 (arguing that incumbent LECs should try to settle their claims with carriers and vendors and develop a record before challenging the schedule); Sprint Opposition at 13–14. The Commission notes that carriers may file petitions for waiver of the deployment schedule more than 60 days in advance of an implementation deadline, and thus receive relief earlier, if they are able to present substantial, credible evidence at that time establishing their inability to comply with the deadlines.

48. The Commission rejects USTA's proposal to give every state commission and/or workshop the authority to extend independently the deployment deadlines according to their assessments of the level of local competition in an area. As set forth above, the Commission requires carriers to identify the switches in which they desire number portability capability well before the deadline for deployment in a particular MSA. The Commission finds that this requirement will enable LECs to deploy number portability in areas in which local competition is likely to develop at an early stage, while relieving LECs of the obligation to install the capability in areas that competitive LECs have no initial interest in serving. This requirement, in the Commission's view, addresses USTA's concerns by striking a reasonable balance between a LEC's interest in avoiding unnecessary switch upgrades, and a competitive LEC's interest in having assurances that number portability will be available in areas where it plans to compete to serve existing LEC customers.

49. The Commission declines to expedite the Chicago trial, as requested by NYNEX. The *First Report & Order* scheduled the completion date for the Chicago trial for as early as appeared reasonably possible at that time. Given the record before it now, the Commission concludes that it would not be possible to accelerate the commencement of that trial. Moreover, the Commission agrees with the Chicago trial participants that it would be inappropriate to shorten or delete any of the planned testing.

50. The Commission also declines to order additional field tests, as requested by NYNEX. The requirement that there be a field trial in Chicago is only intended to ensure that at least one field trial is held to identify technical

problems in advance of widespread deployment, which will provide all carriers, as well as the Commission, with information on implementation. All carriers will have an opportunity to monitor testing in Chicago and evaluate the results of the testing on an ongoing basis. The Commission finds, moreover, that LECs currently have access to additional information concerning the impact of number portability on their systems, because many LECs are, and have been for some time, analyzing extensively implementation and inter-carrier OSS impact of number portability under the auspices of state and industry fora. As the Commission stated in the *First Report & Order,* it does not routinely schedule field trials in rulemaking proceedings; its requiring a field trial in the Chicago MSA is an exceptional step that the Commission adopted to safeguard against any risk to the public switched telephone network. The need for any further trials should be determined by the industry.

51. To the extent that other networks differ in design or switch use or other relevant variables, the Commission does not preclude the testing of either software or hardware in other areas or by other carriers, either contemporaneously with the Chicago trial or even before that trial begins. Indeed, the Commission encourages carriers to test portability within their own networks as early as possible. For example, Bell Atlantic plans to do ''first office application'' testing in Gaithersburg, Maryland, from July 15, 1997, to August 30, 1997. The Gaithersburg test, therefore, will have been completed seven months before Bell Atlantic's March 31, 1998, deadline to complete implementation in Philadelphia, the market in which it must deploy long-term number portability in Phase I under the revised schedule. In any event, carriers should have the opportunity to perform their own testing, including on ''live traffic,'' well before the date by which they must request any waiver of the Phase I implementation requirements.

52. The Commission also declines to adopt NYNEX's proposal to deploy portability in smaller MSAs instead of the largest ones during Phase I of the deployment schedule. At this time, there is only speculation that starting with the most populous MSAs will result in technical problems. Indeed, carriers are further ahead in preparing for number portability in many of the larger MSAs than in the smaller ones; for example, several state commissions that had addressed the issue of number portability before issuance of the *First Report & Order* had ordered that deployment begin in several major cities that are currently in Phases I or II of the schedule. Therefore, switching the deadlines of those larger MSAs with other, smaller MSAs now would, at a minimum, disrupt planning by competitive LECs and state commissions in those jurisdictions. Moreover, the three-month extension of the end date of Phase I, in combination with the Commission's conclusion that carriers need provide portability only in requested switches, will serve much the same purpose as NYNEX's request by allowing carriers the flexibility to begin deployment in a subset of switches within each of the Phase I MSAs and gradually increase coverage over the six-month period. In addition, the Commission does not prohibit, but rather encourages, carriers to take whatever additional actions they believe are necessary to safeguard their networks, including testing deployment of portability in one of their smaller MSAs before or during Phase I of the deployment schedule. For example, Bell Atlantic is testing number portability in the smaller market of Gaithersburg, MD before Phase I.

53. The Commission also denies NYNEX's request that it explicitly encourage states to be flexible in opting out of the regional database or choosing to construct joint databases, or to work with less active neighboring states to establish regional databases. The Commission finds that the *First Report & Order* allows sufficient flexibility for states to opt out of the regional databases. In addition, NYNEX's concern that the NANC would not resolve the database issues in time for carriers to meet the deployment schedule is now largely moot, given the recent activities of the NANC. The NANC has committed to making its final recommendations to the Commission on the database system by May 1, 1997. The NANC's working groups and task forces relating to number portability are already organized and holding regular meetings to resolve the database issues. The Local Number Portability Administration Selection Working Group projects that all seven regional databases will be ready for testing on dates ranging from April 18, 1997, to July 1, 1997, and will be ready to support number portability deployment on or before October 1, 1997, in accordance with the deployment schedule set forth in the *First Report & Order.*

54. Finally, the Commission clarifies that the first performance criterion, that any method ''support existing network services, features, and capabilities,'' refers only to services existing at the time of the *First Report & Order.* The Commission cautions LECs that problems in implementing their chosen number portability method due to modifications necessitated by the introduction of a new service or technology will not justify a delay of the deployment schedule. The Commission declines, however, specifically to prohibit the introduction of any new service that is incompatible with LRN, as the *First Report & Order* did not adopt LRN or mandate use of any specific long-term number portability method.

Acceleration of Implementation Schedule

55. *Discussion.* The Commission denies the petitions for reconsideration that advocate: (1) Accelerating deadlines for certain MSAs; (2) allowing carriers with operational networks in the 100 largest MSAs and the authority to provide local exchange service to request portability in any MSA in the 100 largest MSAs beginning July 1, 1997, and requiring LECs to fulfill such requests on a specified date six or more months in the future; (3) adding MSAs outside the largest 100 MSAs to the initial deployment schedule; or (4) combining the deadlines of consolidated MSAs. The current schedule is based on the projected availability of switch software, and recognizes the burden on carriers serving multiple regions and the fact that more significant upgrades may be necessary for carriers operating in smaller areas. Petitioners have not made a showing that the necessary software, hardware, and other resources will be available earlier in areas originally scheduled for later deployment, or will be available in quantities sufficient to support deployment in additional areas, particularly in areas outside the 100 largest MSAs. If such hardware and software is not available for deployment early enough or in sufficient quantities to support deployment in additional areas, then accelerating deployment deadlines for smaller MSAs may divert these limited resources from deployment in other, larger MSAs, and thus delay deployment of number portability where a greater population might benefit from competition.

56. For the reasons stated above, the Commission also rejects ACSI's request to require deployment in Phase I in certain additional markets in which the incumbent LECs are not BOCs. In addition, the Commission continues to believe that non-BOC incumbent LECs, most of which have more limited resources than the BOCs, should have additional time to upgrade and test their networks. Moreover, the Commission

concludes above that LECs need deploy number portability in the 100 largest MSAs only in switches for which another carrier has made a specific request for the provision of portability. Requiring that additional MSAs be deployed in Phase I does not give sufficient notice to carriers or states to establish switch-requesting procedures in MSAs for which they had no previous notice that deployment was required in Phase I. The Commission also declines to adopt USTA's proposal that state commissions be free to accelerate the deployment schedule. While the Commission is sympathetic to the desires of some states to advance deployment where actual competitive interest exists, it concludes that the schedule adopted in the *First Report & Order,* as modified in this *First Reconsideration Order,* represents a reasonable balancing of competing interests, and carriers need to have certainty that these are the requirements with which they must comply. The Commission's *First Report & Order* was silent on the issue of whether states could accelerate the deployment schedule. The Commission therefore grandfathers any state decisions to accelerate deployment for a particular market from one phase to an earlier phase that were adopted prior to release of this *First Reconsideration Order.*

57. The Commission does not prohibit LECs from agreeing to accelerate implementation, either for specific MSAs or specific switches within MSAs. The Commission finds, however, that acceleration of the schedule is more properly determined by private agreements among carriers. Competitive LECs are free to negotiate with incumbent LECs for deployment of number portability ahead of the Commission's schedule. Moreover, to the extent that carriers agree to ''swap'' the implementation deadlines for specific MSAs or switches within MSAs, they can jointly file specific waiver petitions to do so.

58. The Commission grants in part the petitions of ACSI, KMC, and NEXTLINK to allow requests for deployment of number portability in areas outside the 100 largest MSAs to be submitted earlier than January 1, 1999. The Commission therefore modifies its rules to permit carriers to submit requests for deployment of number portability in areas outside the 100 largest MSAs at any time. The Commission declines, however, to require that deployment be completed within six months of request for requests filed prior to January 1, 1999. This modification to the rules will benefit all parties, because receiving earlier notice to upgrade switches will likely ease a LEC's compliance burden and help to ensure that competing carriers will receive portability within the time requested. Finally, the Commission clarifies that, contrary to KMC and ACSI's view, the current schedule does not leave an implementation gap between December 31, 1998, and July 1, 1999, since implementation of requests for deployment of number portability in areas outside the 100 largest MSAs filed on or before January 1, 1999, will occur during the first six months of 1999. KMC and ACSI's suggestion that the Commission permit requests for markets outside the 100 largest MSAs beginning July 1, 1998, and require fulfillment of those requests within six months, would actually require that those smaller markets be completed at the same time as the MSAs in the last phase of the deployment schedule, thus sharply increasing the burden on carriers during that phase.

Exemptions for Rural and/or Smaller LECs

59. *Discussion.* As set forth above, the Commission grants the petitions to limit deployment of portability to those switches for which a competitor has expressed interest in deployment by concluding that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for the provision of portability. The Commission finds that this modification to the rules should address the concerns of parties that urge it to waive number portability requirements for rural and/or smaller LECs serving areas in the largest 100 MSAs until receipt of a request.

60. The Commission denies the petitions that request a blanket waiver of the number portability requirements for rural and/or smaller LECs that receive a request for deployment in one of their switches. The Commission finds that such a blanket waiver is unnecessary and may hamper the development of competition in areas served by smaller and rural LECs that competing carriers want to enter. If, as petitioners allege, competition is not imminent in the areas covered by rural/smaller LEC switches, then the rural or smaller LEC will not receive requests from competing carriers to implement portability, and thus will not need to expend its resources, until competition actually develops in its service area. In addition, by that time extensive non-carrier-specific testing will likely have been done, and carriers' testing costs will likely be smaller.

61. Further, to the extent that portability is requested in a rural or smaller LEC's switch, and that LEC has difficulty complying with the request, it has two avenues for relief. Pursuant to the *First Report & Order,* a LEC may apply for an extension of time on the basis of extraordinary circumstances beyond its control that prevent it from complying with the Commission's deployment schedule. In addition, under section 251(f)(2), a LEC with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide (an ''eligible LEC'') may petition the appropriate state commission for suspension or modification of the requirements of section 251(b). The state commission shall grant such petition to the extent that, and for as long as, the state commission determines that such suspension or modification: (A) Is necessary to avoid a significant adverse economic impact on end users, to avoid imposing an unduly economically burdensome requirement, or to avoid imposing a technically infeasible requirement; and (B) is consistent with the public interest, convenience and necessity. 47 U.S.C. 251(f)(2). The state commission is required to act on the petition within 180 days. 47 U.S.C. 251(f)(2). The Commission believes eligible LECs will have sufficient time to obtain any appropriate section 251(f)(2) relief as provided by the statute, especially since the state commission can suspend the application of the deployment deadlines to that LEC while it is considering the LEC's petition for suspension or modification of the requirements. Section 251(f)(2) provides that ''[t]he State commission shall act upon any petition filed under (section 251(f)(2)) within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.'' 47 U.S.C. 251(f)(2).

62. If, however, a competitor is interested in number portability in a particular switch operated by a rural or smaller LEC, and the LEC cannot demonstrate extraordinary circumstances justifying an extension of the deployment requirements, and the state commission denies a Section 251(f)(2) request for suspension or modification, the Commission finds no statutory basis for excusing such a LEC from its obligations to provide number portability. In addition, issuance of a blanket exemption in this proceeding would be inconsistent with the *Local Competition Order,* 61 FR 45476

(August 29, 1996), in which the Commission generally declined to adopt national rules regarding Section 251(f), or provide for different treatment of rural and smaller carriers. Rather, Congress established a specific procedure under which state commissions are empowered to make case-by-case decisions on the application of number portability requirements to eligible LECs pursuant to Section 251(f)(2), based on the particular facts and circumstances presented. Eligible LECs that have been granted suspension or modification of number portability requirements under Section 251(f)(2) are not bound by the implementation schedule until the state commission removes the suspension.

63. The comments of some parties in this proceeding appear to reflect a misapprehension of the scope of section 251(f). Sections 251(f)(1) and 251(f)(2) apply to different classes of carriers, and provide different types of relief. Section 251(f)(1) applies only to rural LECs, and offers an exemption only from the requirements of section 251(c). In contrast, section 251(f)(2) applies to all LECs with less than two percent of the nation's subscriber lines. In addition, section 251(f)(2) establishes a procedure for requesting *suspension or modification* of the requirements of sections 251(b) *and* 251(c). Number portability is an obligation imposed by section 251(b). Because section 251(f)(1) does not exempt rural LECs from the requirements of section 251(b), there is no exemption for rural LECs of their number portability obligations under section 251(f)(1). The only statutory avenue for relief from the section 251(b) requirements specifically for eligible LECs is to request suspension or modification of the number portability requirements under the procedure established by section 251(f)(2).

64. The plain text of the statute refutes JSI's argument that section 251(f)(1) exempts rural LECs from number portability requirements. JSI states that the section 251(f)(1) exemption from interconnection requirements permits the Commission to impose number portability requirements upon rural LECs only to the extent it is technically feasible for rural LECs to provide portability without having to upgrade their networks to utilize databases, install SS7 or AIN capabilities, or install and furnish functions requiring new switching software. JSI adds that this exemption may be terminated only by a state commission.

65. Because sections 251(b) and 251(c) are separate statutory mandates, the requirements of section 251(b) apply to a rural LEC even if section 251(f)(1) exempts such LECs from a concurrent section 251(c) requirement. To interpret section 251(f)(1) otherwise would undercut section 251(b) and, in this case, would effectively preclude any provision of long-term number portability by rural LECs until termination of the section 251(f)(1) exemption by a state commission. The Commission finds such an interpretation to be contrary to Congress's mandate that all LECs provide number portability, and Congress's exclusion of the section 251(b) obligations, including the duty to provide number portability, from the section 251(f)(1) exemption for rural LECs.

66. Moreover, under JSI's interpretation, the only carriers that would have to provide number portability would be incumbent LECs that are not exempt under section 251(f)(1). Non-incumbent LECs, as well as rural incumbent LECs that are exempt under section 251(f)(1), would not have to satisfy the requirements of section 251(b) and, consequently, would not have to provide number portability. This directly contradicts section 251(b)(2), which specifically requires ''all local exchange carriers'' to provide number portability. 47 U.S.C. 251(b)(2). Section 251(c) sets forth ''additional obligations'' that apply only to incumbent LECs, whereas section 251(b) sets forth obligations that apply to all LECs.

67. Even if the Commission were to agree with JSI's statutory interpretation that rural LECs that are exempt from the section 251(c) requirements are also exempt from any requirements of sections 251 (b) and (c) that overlap, petitioners have not demonstrated that the section 251 (b) and (c) obligations in fact overlap. To provide long-term number portability under section 251(b)(2), LECs obviously must install and use any necessary databases, SS7 or AIN capabilities, or switching software. Section 251(c), in contrast, requires incumbent LECs to provide unbundled access to network elements, including call-related databases. *See* 47 U.S.C. 251(c)(3). Number portability does not require any provision of unbundled access to these elements. Moreover, to provide number portability, carriers can interconnect either directly or indirectly as required under section 251(a)(1). *See* 47 U.S.C. 251(a)(1). For example, a smaller rural carrier and a competing carrier might interconnect indirectly by both establishing direct connections with a third carrier and routing calls to each other through that third carrier. The smaller rural carrier could then provide portability by performing its own database queries and then routing the call to the competing carrier through that third carrier. Another option would be for the smaller rural LEC to contract with that third carrier to perform its queries and the necessary routing. Section 251(c), in contrast, imposes an additional requirement on incumbent LECs to provide ''equal'' interconnection at ''any technically feasible point within the carrier's network,'' which a carrier does not need to provide number portability. *See* 47 U.S.C. 251(c)(2). Thus, sections 251(a) and (b), not section 251(c), require that carriers interconnect and install and use necessary network elements to provide number portability. Rural LECs are not exempt from section 251(a) or (b) requirements under section 251(f)(1). *See* 47 U.S.C. 251(f)(1). The Commission therefore denies JSI and USTA's request to ''automatically exempt'' rural LECs from the number portability requirements to the extent that they are exempt from the requirements of section 251(c) under the provisions of section 251(f)(1).

68. The Commission also denies the requests that it clarify that smaller and/or rural LECs serving areas that only partially overlap one of the 100 largest MSAs need not deploy number portability until receipt of a *bona fide* request. The Commission believes that, when determining whether a suspension or modification is necessary to avoid imposing an unduly economically burdensome requirement, pursuant to section 251(f)(2), state commissions would likely consider whether an eligible LEC's presence in the MSA is truly *de minimus* and whether such a LEC is entitled to a suspension or modification of the number portability requirements on this basis.

69. Finally, NTCA/OPASTCO erroneously claims that the *First Report & Order* violates the Regulatory Flexibility Act (RFA) because its Final Regulatory Flexibility Analysis (FRFA) does not address the impact of the rules on small incumbent LECs, and is, therefore, inconsistent with the *Local Competition Order*. As the Commission stated in the *First Report & Order's* FRFA, small incumbent LECs do not qualify as small businesses because they are dominant in their field of operation. The *Local Competition Order's* FRFA likewise set forth the Commission's view that small incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses due to their dominance in their field of operation. The Commission in that proceeding specifically stated that it

was including small incumbent LECs in its FRFA only because two parties had especially questioned that conclusion in that proceeding's Initial Regulatory Flexibility Analysis (IRFA), and it wanted to ''remove any possible issue of RFA compliance.'' In contrast, no party commented on the IRFA in this proceeding. The Commission attaches, nevertheless, a Supplemental Final Regulatory Flexibility Analysis that further explains its analysis of the rules' impact upon rural and smaller carriers and the basis for selecting the particular options that the Commission has selected. This analysis takes into account NTCA/OPASTCO's specific claim raised in its petition for reconsideration, in order to ''remove any possible issue of RFA compliance.'' The Commission also notes that its establishment of a procedure whereby number portability would only be deployed in requested switches effectively grants the relief sought by NTCA/OPASTCO, the sole petitioner on this issue.

Implementation Requirements for Intermediate (N–1) Carriers

70. *Discussion*. The Commission denies Pacific's request that it require all N–1 carriers, including interexchange carriers, to meet the implementation schedule the Commission established for LECs. Such a requirement is not mandated by the 1996 Act, which subjects only LECs, not interexchange carriers engaged in the provision of interexchange service, to the number portability requirements. 47 U.S.C. 251(b)(2). Moreover, petitioners have not demonstrated a need for the Commission to impose such requirements under its independent rulemaking authority under sections 1, 2, and 4(i) of the Communications Act of 1934, as amended. 47 U.S.C. 151, 152, 154(i). In that regard, the Commission is not convinced that Pacific's hypothetical situation, whereby the N–1 carrier would not perform any queries and the original terminating LEC would thus have to perform all the queries not performed by the originating LEC, will arise often. The industry already appears to favor using the N–1 scenario, under which the N–1 carrier performs the database query, as indicated in the majority of comments on call processing scenario issues received pursuant to the original *Notice of Proposed Rulemaking*. The vast majority of interLATA calls are routed through the major interexchange carriers, and the two largest interexchange carriers, at least, claim they plan to deploy portability as soon as possible. Therefore, most interLATA calls will be queried by the major interexchange carriers, not the incumbent LECs. Moreover, as the Commission stated in the *First Report & Order*, it wishes to allow carriers the flexibility to choose and negotiate among themselves which carrier shall perform the database query, according to what best suits their individual networks and business plans. Finally, the Commission declines to address Pacific's argument that, if the terminating carrier is forced to perform queries, that would violate the fourth performance criterion. Since the Commission is eliminating the fourth performance criterion, Pacific's argument is moot.

71. The Commission clarifies, however, per NYNEX's request, that if an N–1 carrier is designated to perform the query, and that N–1 carrier requires the original terminating LEC to perform the query, then the LEC may charge the N–1 carrier for performing the query, pursuant to guidelines the Commission will establish in the order addressing long-term number portability cost allocation and recovery.

Implementation Schedule for Wireless Carriers

72. *Background*. In the *First Report & Order*, the Commission required all cellular, broadband PCS, and covered SMR carriers to have the capability of querying the appropriate number portability database systems in order to deliver calls from their networks to ported numbers anywhere in the country by December 31, 1998. The term ''covered SMR'' means either 800 MHz or 900 MHz SMR licensees that hold geographic area licenses or incumbent wide area SMR licensees that offer real-time, two-way switched voice service that is interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services. This term does not include local SMR licensees offering mainly dispatch services to specialized customers in a non-cellular system configuration, licensees offering only data, one-way, or stored voice services on an interconnected basis, or any SMR provider that is not interconnected to the public switched network. 47 CFR 52.1(c). The Commission notes that several parties have petitioned for reconsideration of the definition of ''covered SMR.'' The Commission will address this issue in a subsequent order. These wireless carriers may implement the upgrades necessary to accomplish the queries themselves, or they may make arrangements with other carriers to provide that capability. In addition, wireless carriers subject to these rules are required to offer service provider portability throughout their networks, including the ability to support roaming, by June 30, 1999. In the *First Report & Order*, the Commission delegated authority to the Chief, Wireless Telecommunications Bureau, to waive or stay any of the dates in the implementation schedule for a period not to exceed nine months, and to establish reporting requirements in order to monitor the progress of wireless carriers. 47 CFR 52.11 (c), (e). In the event a carrier subject to these requirements is unable to meet the Commission's deadlines for implementing a long-term number portability method, it must file a petition to extend the time by which implementation must be completed with the Commission at least 60 days in advance of the deadline, along with an explanation of the circumstances and the need for such an extension. 47 CFR 52.11(d).

73. *Discussion*. The Commission declines at this time to alter the implementation schedule imposed by the *First Report & Order* for wireless carriers. The Commission recognizes that the wireless industry has lagged behind the wireline industry in developing a method for providing number portability, and that the wireless industry faces special technical challenges in doing so. Nonetheless, the Commission finds that the schedule for implementation of number portability by cellular, broadband PCS, and covered SMR providers is reasonable and takes into account the current stage of development for wireless number portability. The Commission finds that a period of nearly two years is sufficient for wireless carriers either to implement the upgrades necessary to perform the database queries themselves, or to make arrangements with other carriers to provide that capability. The Commission also believes it is reasonable to expect wireless carriers to implement long-term service provider portability, including roaming, in their networks in a period of more than two years. The Commission continues to believe the monitoring and reporting mechanism established in the *First Report & Order* will ensure that wireless carriers will continue to work together to find solutions to technical problems associated with number portability, and to address quickly any implementation issues which may arise. As the Commission provided in the *First Report & Order*, in the event a wireless carrier is unable to meet the Commission's deadlines for implementing a long-term number

portability method, it may file a request for extension with the Commission. If it becomes apparent that the wireless industry is not progressing as quickly as necessary to meet the deadlines for providing querying capability and service provider portability, the Wireless Telecommunications Bureau Chief may waive or stay the implementation dates for a period of up to nine months. The Commission finds that enough flexibility has been incorporated into the implementation schedule for wireless carriers, and that no modification is needed.

74. The Commission also declines to establish target dates in lieu of actual deadlines or to defer imposing number portability requirements on wireless carriers, as some petitioners have suggested. As the Commission stated in the *First Report & Order*, requiring cellular, broadband PCS, and covered SMR providers to provide number portability is in the public interest because these entities are expected to compete in the local exchange market, and number portability will enhance competition among wireless service providers, as well as between wireless service providers and wireline service providers. Service provider portability offered by wireless service providers will enable customers to switch carriers more readily and encourage the successful entry of new service providers into wireless markets. Removing barriers, such as the requirement that customers must change phone numbers when changing providers, is likely to foster the development of new services and create incentives for carriers to lower prices and costs. In light of these positive competitive results that are likely to be produced, the Commission continues to believe that number portability should be provided by wireless carriers with as little delay as possible. Setting specific deadlines, rather than amorphous ''target dates,'' is consistent with this goal.

75. In response to requests by CTIA and BANM, the Commission agrees that some clarification of the requirements under the schedule is necessary. Contrary to the petitioners' claims, the schedule for CMRS providers is not stricter than the schedule for wireline service providers. Some carriers apparently misunderstood the *First Report & Order* to require wireless providers to provide number portability in areas outside the largest 100 MSAs, even if number portability is not requested in those areas. The Commission requires cellular, broadband PCS, and covered SMR providers to have the capability to query the number portability databases nationwide, or arrange with other carriers to perform the queries, by December 31, 1998, in order to route calls from wireless customers to customers who have ported their numbers. The Commission clarifies that, by June 30, 1999, CMRS providers must (1) offer service provider portability in the 100 largest MSAs, and (2) be able to support nationwide roaming. Although the Commission has not provided a specific phased deployment schedule for CMRS providers as it has for wireline carriers, the Commission expects that CMRS providers will phase in implementation in selected switches over a number of months prior to the June 30, 1999, deadline for deployment.

76. In addition, consistent with the modification to the wireline schedule deployment requirements, CMRS carriers need only deploy local number portability by this deadline in the 100 largest MSAs in which they have received a specific request at least nine months before the deadline (*i.e.*, a request has been received by September 30, 1998). As in the wireline context, any wireline carrier that is certified, or has applied for certification, to provide local exchange service in the relevant state, or any licensed CMRS provider, must be allowed to make a request for deployment; and cellular, broadband PCS, and covered SMR providers must make available lists of their switches for which deployment has and has not been requested. Additional switches within the 100 largest MSAs (*i.e.*, those that are not requested initially) must be deployed upon request, after the June 30, 1999, deadline for wireless carriers, within the same time frames that the Commission adopts here for wireline carriers, unless requesting carriers specify a later date. The time frames for deployment of additional wireless switches are as follows: (1) Equipped Remote Switches within 30 days; (2) Hardware Capable Switches within 60 days; (3) Capable Switches Requiring Hardware within 180 days; and (4) Non-Capable Switches within 180 days. As in the wireline context, carriers may submit requests for deployment of number portability in areas outside the 100 largest MSAs at any time. CMRS providers must provide number portability in those smaller areas within six months after receiving a request or within six months after June 30, 1999, whichever is later. As a result, the schedule for wireless providers is comparable to the one for wireline carriers in terms of timing.

77. The Commission adds one further requirement for any procedures that limit deployment in such fashion to requested wireless switches. The existing state procedures for limiting deployment of number portability capabilities within one of the 100 largest MSAs to requested wireline switches generally appear to require carriers to specify which switches located within the MSA the carrier wishes to be deployed. The Commission does not wish to disturb a number of state decisions concluding that it is preferable to limit the selection of wireline switches for deployment to switches located within the MSA rather than switches serving subscribers within the MSA. The Commission recognizes, however, that the wireless switches that provide service to areas within a particular MSA are more likely to be located outside the perimeter of that MSA than the wireline switches that provide service to areas within the MSA. The Commission concludes, therefore, that, when limiting deployment within one of the 100 largest MSAs to particular requested wireless switches, carriers must be able to request deployment in any wireless switch that provides service to any area within that MSA, even if the wireless switch is located outside of the perimeter of that MSA, or outside any of the 100 largest MSAs.

78. By June 30, 1999, the Commission expects that regional or statewide local number portability databases containing both wireless and wireline numbers will be widely available; therefore, the Commission does not anticipate a need to condition the requirement that number portability be required on request after June 30, 1999, upon the existence of regional or statewide databases. If there is a delay in the development of the databases, the Wireless Telecommunications Bureau Chief has been delegated authority to waive or stay the deadline for CMRS providers.

79. In its petition for reconsideration, BANM questions the Commission's authority and its basis in the record for imposing number portability obligations upon CMRS providers. Specifically, BANM claims that the Commission has previously held that its regulatory authority over CMRS providers is limited to instances in which there is a ''clear cut need'' for doing so, and that regulation of number portability is not clearly necessary in the CMRS market. BANM advanced essentially the same argument previously in this proceeding, and its reconsideration petition raises no new issues. Accordingly, the Commission affirms its prior rejection of this argument. As the Commission stated in the *First Report & Order*, the *CT DPUC Petition* does not limit its

authority to require CMRS providers to provide number portability to other CMRS or wireline carriers because that proceeding was restricted to the question of state authority to regulate rates of CMRS providers. The *CT DPUC Petition* did not reach the question of the Commission's authority to impose number portability requirements on CMRS providers. The Commission affirms its determination that it has authority to impose number portability obligations on CMRS providers based on the findings that this requirement will result in pro-competitive effects, and furthers its CMRS regulatory policy of establishing moderate, symmetrical regulation of all services.

80. BANM has not introduced any new evidence or arguments that cause the Commission to reconsider its conclusion in the *First Report & Order* that provision of number portability by CMRS carriers is important to competition. Previously in this proceeding, several PCS providers attested to the importance of number portability in fostering competition in the CMRS industry. The record in this proceeding contains convincing evidence that service provider portability would enhance competition between wireless service providers, as well as between wireless and wireline service providers, by removing the requirement that a customer must change numbers when changing service providers. The Commission also rejects BANM's argument that it failed to make a determination on the technical feasibility of wireless number portability. The record in this proceeding supports the prior conclusion that cellular, broadband PCS, and covered SMR providers will be able to resolve any technical issues necessary to implement number portability.

Deferral of Implementation Until Resolution of Cost Recovery Issues

81. *Background.* Section 251(e)(2) of the Act requires that the costs of establishing number portability ''be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.'' In conjunction with the *First Report & Order,* the Commission adopted a *Further Notice of Proposed Rulemaking (Further NPRM)* that seeks comment on appropriate cost recovery mechanisms for long-term number portability. The Commission has not yet issued the *Second Report & Order* addressing these issues, although it intends to do so in the near future.

82. *Discussion.* The Commission is not persuaded by the requests of U S West and JSI that LECs should be permitted to suspend ongoing preparations to meet the deployment schedule until the Commission has acted on the issues raised in the *Further NPRM* in this proceeding that involve the LECs' recovery of their costs of providing number portability. As stated above, the Commission plans to adopt a *Second Report & Order* in this proceeding in the near future implementing the statutory provision that expenses incurred as a result of number portability be ''borne by all telecommunications carriers on a competitively neutral basis.'' U S West appears to suggest that it necessarily will be barred from assessing charges in the future that are intended to recover costs that it incurs in connection with the implementation of long-term number portability prior to its resolution of the cost recovery issues posed in the *Further NPRM.* That speculative assertion is unfounded. The Commission anticipates that the *Second Report & Order* will be adopted well before a LEC is required by the deployment schedule to commence the provision of long-term number portability to the public in the Phase I markets. Moreover, the Commission expects that LECs will maintain records of the costs that they incur in implementing the requirements of the *First Report & Order* in this proceeding. Those records will enable the LECs to comply with the decisions the Commission reaches in the *Second Report & Order* with respect to their recovery of long-term number portability costs. The Act does not mandate that the Commission complete action on cost recovery issues prior to the LECs' commencement of the planning and other steps required to deploy long-term number portability consistent with the schedule adopted in the *First Report & Order.* Indeed, permitting carriers to suspend their ongoing preparations to meet the deployment schedule for number portability until the Commission has adopted specific cost recovery rules may be inconsistent with the statutory mandate that carriers must provide number portability ''to the extent technically feasible.''

83. The Commission also concludes that U S West has not described, much less documented, the specific ''distorting effects'' on investment decisions, the use of number portability facilities, and the relationships among providers and between providers and their customers that it claims will ensue from the Commission's brief deferral of long-term number portability cost recovery issues. The Commission further agrees with ALTS that U S West's constitutional claim is premature, because it is impossible for any party to establish that a cost recovery mechanism that has not yet been adopted is unconstitutional. Finally, because the arguments advanced by JSI on behalf of rural carriers with respect to these cost recovery issues repeat the points asserted by U S West, the Commission reaches the same conclusions.

Ordering Clauses

84. Accordingly, it is ordered that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 201–205, 218, 251, and 332 of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 251, and 332, Part 52 of the Commission's rules, 47 CFR 52, is amended as set forth in Appendix B hereto.

85. It is further ordered that the Petitions for Reconsideration and/or Clarification are granted to the extent indicated herein and otherwise are denied.

86. It is further ordered that the policies, rules, and requirements set forth herein are adopted, effective May 15, 1997, except for collections of information subject to approval by the Office of Management and Budget (OMB), which are effective September 12, 1997.

87. It is further ordered that the Motion to Accept Late-Filed Comments of Telecommunications Resellers Association and the Motion to Accept Late-Filed Reply Comments of U S West are granted.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Rule Changes

Part 52 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 52—NUMBERING

1. Section 52.23 is amended by revising paragraphs (a)(4) through (a)(8), removing paragraph (a)(9), and revising paragraphs (b) and (g) to read as follows:

§ 52.23 Deployment of long-term database methods for number portability by LECs.

(a) * * *

(4) Does not result in unreasonable degradation in service quality or network reliability when implemented;

(5) Does not result in any degradation in service quality or network reliability when customers switch carriers;

(6) Does not result in a carrier having a proprietary interest;

(7) Is able to migrate to location and service portability; and

(8) Has no significant adverse impact outside the areas where number portability is deployed.

(b) (1) All LECs must provide a long-term database method for number portability in the 100 largest Metropolitan Statistical Areas (MSAs) by December 31, 1998, in accordance with the deployment schedule set forth in the Appendix to this part, in switches for which another carrier has made a specific request for the provision of number portability, subject to paragraph (b)(2) of this section.

(2) Any procedure to identify and request switches for deployment of number portability must comply with the following criteria:

(i) Any wireline carrier that is certified (or has applied for certification) to provide local exchange service in a state, or any licensed CMRS provider, must be permitted to make a request for deployment of number portability in that state;

(ii) Carriers must submit requests for deployment at least nine months before the deployment deadline for the MSA;

(iii) A LEC must make available upon request to any interested parties a list of its switches for which number portability has been requested and a list of its switches for which number portability has not been requested; and

(iv) After the deadline for deployment of number portability in an MSA in the 100 largest MSAs, according to the deployment schedule set forth in the Appendix to this part, a LEC must deploy number portability in that MSA in additional switches upon request within the following time frames:

(A) For remote switches supported by a host switch equipped for portability (''Equipped Remote Switches''), within 30 days;

(B) For switches that require software but not hardware changes to provide portability (''Hardware Capable Switches''), within 60 days;

(C) For switches that require hardware changes to provide portability (''Capable Switches Requiring Hardware''), within 180 days; and

(D) For switches not capable of portability that must be replaced (''Non-Capable Switches''), within 180 days.

* * * * *

(g) Carriers that are members of the Illinois Local Number Portability Workshop must conduct a field test of any technically feasible long-term database method for number portability in the Chicago, Illinois, area. The carriers participating in the test must jointly file with the Common Carrier Bureau a report of their findings within 30 days following completion of the test. The Chief, Common Carrier Bureau, shall monitor developments during the field test, and may adjust the field test completion deadline as necessary.

2. Section 52.31 is amended by revising paragraph (a) to read as follows:

§ 52.31 Deployment of long-term database methods for number portability by CMRS Providers.

(a) By June 30, 1999, all cellular, broadband PCS, and covered SMR providers must provide a long-term database method for number portability, in the MSAs identified in the Appendix to this part in compliance with the performance criteria set forth in § 52.23(a), in switches for which another carrier has made a specific request for the provision of number portability, subject to paragraph (a)(1) of this section.

(1) Any procedure to identify and request switches for deployment of number portability must comply with the following criteria:

(i) Any wireline carrier that is certified (or has applied for certification) to provide local exchange service in a state, or any licensed CMRS provider, must be permitted to make a request for deployment of number portability in that state;

(ii) For the MSAs identified in the Appendix to this part, carriers must submit requests for deployment by September 30, 1998;

(iii) A cellular, broadband PCS, or covered SMR provider must make available upon request to any interested parties a list of its switches for which number portability has been requested and a list of its switches for which number portability has not been requested;

(iv) After June 30, 1999, a cellular, broadband PCS, or covered SMR provider must deploy additional switches serving the MSAs identified in the Appendix to this part upon request within the following time frames:

(A) For remote switches supported by a host switch equipped for portability (''Equipped Remote Switches''), within 30 days;

(B) For switches that require software but not hardware changes to provide portability (''Hardware Capable Switches''), within 60 days;

(C) For switches that require hardware changes to provide portability (''Capable Switches Requiring Hardware''), within 180 days; and

(D) For switches not capable of portability that must be replaced (''Non-Capable Switches''), within 180 days.

(v) Carriers must be able to request deployment in any wireless switch that serves any area within that MSA, even if the wireless switch is outside that MSA, or outside any of the MSAs identified in the Appendix to this part.

(2) By June 30, 1999, all cellular, broadband PCS, and covered SMR providers must be able to support roaming nationwide.

* * * * *

3. The Appendix to part 52 is revised to read as follows:

Appendix to Part 52—Deployment Schedule for Long-Term Database Methods for Local Number Portability

Implementation must be completed by the carriers in the relevant MSAs during the periods specified below:

PHASE I—10/1/97–3/31/98

Chicago, IL	3
Philadelphia, PA	4
Atlanta, GA	8
New York, NY	2
Los Angeles, CA	1
Houston, TX	7
Minneapolis, MN	12

PHASE II—1/1/98–5/15/98

Detroit, MI	6
Cleveland, OH	20
Washington, DC	5
Baltimore, MD	18
Miami, FL	24
Fort Lauderdale, FL	39
Orlando, FL	40
Cincinnati, OH	30
Tampa, FL	23
Boston, MA	9
Riverside, CA	10
San Diego, CA	14
Dallas, TX	11
St. Louis, MO	16
Phoenix, AZ	17
Seattle, WA	22

PHASE III—4/1/98–6/30/98

Indianapolis, IN	34
Milwaukee, WI	35
Columbus, OH	38
Pittsburgh, PA	19
Newark, NJ	25
Norfolk, VA	32
New Orleans, LA	41
Charlotte, NC	43
Greensboro, NC	48
Nashville, TN	51
Las Vegas, NV	50
Nassau, NY	13
Buffalo, NY	44
Orange Co, CA	15
Oakland, CA	21
San Francisco, CA	29
Rochester, NY	49
Kansas City, KS	28
Fort Worth, TX	33
Hartford, CT	46
Denver, CO	26
Portland, OR	27

PHASE IV—7/1/98–9/30/98

Grand Rapids, MI	56
Dayton, OH	61
Akron, OH	73
Gary, IN	80
Bergen, NJ	42

Middlesex, NJ	52
Monmouth, NJ	54
Richmond, VA	63
Memphis, TN	53
Louisville, KY	57
Jacksonville, FL	58
Raleigh, NC	59
West Palm Beach, FL	62
Greenville, SC	66
Honolulu, HI	65
Providence, RI	47
Albany, NY	64
San Jose, CA	31
Sacramento, CA	36
Fresno, CA	68
San Antonio, TX	37
Oklahoma City, OK	55
Austin, TX	60
Salt Lake City, UT	45
Tucson, AZ	71
PHASE V—10/1/98–12/31/98	
Toledo, OH	81
Youngstown, OH	85
Ann Arbor, MI	95
Fort Wayne, IN	100
Scranton, PA	78
Allentown, PA	82
Harrisburg, PA	83
Jersey City, NJ	88
Wilmington, DE	89
Birmingham, AL	67
Knoxville, KY	79
Baton Rouge, LA	87
Charleston, SC	92
Sarasota, FL	93
Mobile, AL	96
Columbia, SC	98
Tulsa, OK	70
Syracuse, NY	69
Springfield, MA	86
Ventura, CA	72
Bakersfield, CA	84
Stockton, CA	94
Vallejo, CA	99
El Paso, TX	74
Little Rock, AR	90
Wichita, KS	97
New Haven, CT	91
Omaha, NE	75
Albuquerque, NM	76
Tacoma, WA	77

Supplemental Final Regulatory Flexibility Analysis

1. As required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (*NPRM*). The Commission sought written public comment on the proposals in the *NPRM*. In addition, pursuant to section 603, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *First Report & Order*. That FRFA conformed to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) 5 U.S.C. 601 *et seq.* The SBREFA is title II of the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996). The Supplemental Final Regulatory Flexibility Analysis in this *First Memorandum Opinion and Order on Reconsideration* (*First Reconsideration Order*) (Supplemental FRFA) also conforms to the RFA.

A. Need for and Objectives of this First Reconsideration Order and the Rules Adopted Herein

2. The need for and objectives of the rules adopted in this *First Reconsideration Order* are the same as those discussed in the FRFA in the *First Report & Order*. In general, the rules implement the statutory requirement that all LECs provide telephone number portability when technically feasible. In this *First Reconsideration Order*, the Commission grants in part and denies in part several of the petitions filed for reconsideration and/or clarification of the *First Report & Order*, in order to further the same needs and objectives. First, the Commission concludes that QOR is not an acceptable long-term number portability method. Second, the Commission extends the implementation schedule for wireline carriers, clarifies the requirements imposed thereunder, and addresses issues raised by rural LECs and certain other parties. The Commission concludes that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for the provision of portability. Finally, the Commission affirms and clarifies the implementation schedule for wireless carriers.

B. Analysis of Significant Issues Raised in Response to the FRFA

3. *Summary of the FRFA*. In the FRFA, the Commission concluded that incumbent LECs do not qualify as small businesses because they are dominant in their field of operation, and, accordingly, the Commission did not address the impact of the rules on incumbent LECs. The Commission noted that the RFA generally defines the term ‘‘small business’’ as having the same meaning as the term ‘‘small business concern’’ under the Small Business Act. 15 U.S.C. 632. A small business concern is one that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. According to the SBA's regulations, entities engaged in the provision of telephone service may have a maximum of 1,500 employees in order to qualify as a small business concern. 13 CFR 121.201. This standard also applies in determining whether an entity is a small business for purposes of the Regulatory Flexibility Act.

4. The Commission did recognize that these rules may have a significant economic impact on a substantial number of small businesses insofar as they apply to telecommunications carriers other than incumbent LECs, including competitive LECs, as well as cellular, broadband PCS, and covered SMR providers. Based upon data contained in the most recent census and a report by the Commission's Common Carrier Bureau, the Commission estimated that 2,100 carriers could be affected. The Commission also discussed the reporting requirements imposed by the *First Report & Order*.

5. Finally, the Commission discussed the steps it had taken to minimize the impact on small entities, consistent with stated objectives. The Commission concluded that the actions in the *First Report & Order* would benefit small entities by facilitating their entry into the local exchange market. The Commission found that the record in this proceeding indicated that the lack of number portability would deter entry by competitive providers of local service because of the value customers place on retaining their telephone numbers. These competitive providers, many of which may be small entities, may find it easier to enter the market as a result of number portability, which will eliminate this barrier to entry. The Commission noted that, in general, it attempted to keep burdens on local exchange carriers to a minimum. For example, the Commission adopted a phased deployment schedule for implementation in the 100 largest MSAs, and then elsewhere upon a carrier's request; the Commission conditioned the provision of currently available measures upon request only; the Commission did not require cellular, broadband PCS, and covered SMR providers, which may be small businesses, to offer currently available number portability measures; and it did not require paging and messaging service providers, which may be small entities, to provide any number portability.

1. Treatment of Small Incumbent LECs

6. *Comments*. NTCA/OPASTCO claims that the *First Report & Order*'s Final Regulatory Flexibility Analysis does not address the impact of the rules on small incumbent LECs, and is thus inconsistent with the *Local Competition Order*. NTCA/OPASTCO suggests that exempting rural LECs from number portability requirements absent a *bona fide* request would fulfill the Commission's responsibility under the Regulatory Flexibility Act.

7. *Discussion*. Because the small incumbent LECs subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with the Commission's prior practice, they are excluded from the definition of ‘‘small entity’’ and ‘‘small business concerns.’’ As the Commission stated in the *Local Competition Order*, it has found incumbent LECs to be ‘‘dominant in their field of operation’’ since the early 1980's, and that it consistently has certified under the RFA (5 U.S.C. 605(b)) that incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses. The Commission has made similar determinations in other areas. Accordingly, the use of the terms ‘‘small entities’’ and ‘‘small businesses’’ does not encompass small incumbent LECs. Although the Commission is not fully persuaded on the basis of this record that the prior practice has been incorrect, in light of the special concerns raised by NTCA/OPASTCO in this proceeding, for regulatory flexibility analysis purposes, the Commission will include small incumbent LECs in this Supplemental FRFA and use the term ‘‘small incumbent LECs’’ to refer to any incumbent LECs that arguably might be defined by SBA as ‘‘small business concerns.’’ Out of an abundance of caution, therefore, the Commission will include small incumbent LECs in the Supplemental FRFA in this *First Reconsideration Order* to remove any possible issue of RFA compliance.

2. Other Issues

8. Although not in response to the FRFA, certain parties urge the Commission to waive number portability requirements for rural and/or smaller LECs serving areas in the largest 100 MSAs until receipt of a *bona fide* request, or to grant an exemption from the Commission's rules on the basis of rural and/or smaller LEC status. The Commission discusses these issues above in the *First Reconsideration Order.*

C. Description and Estimates of the Number of Small Entities Affected by this First Reconsideration Order

9. For the purposes of this *First Reconsideration Order,* the RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. *See* 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. 15 U.S.C. 632. SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities with fewer than 1,500 employees. The Commission first discusses generally the total number of small telephone companies falling within both of those SIC categories. Then, the Commission discusses the number of small businesses within the two subcategories that may be affected by these rules, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under the rules.

10. Consistent with the prior practice, the Commission shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this Supplemental FRFA. Nevertheless, as mentioned above, the Commission includes small incumbent LECs in this Supplemental FRFA. Accordingly, the use of the terms ''small entities'' and ''small businesses'' does not encompass ''small incumbent LECs.'' The Commission uses the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.'' *See* 13 CFR § 121.201 (SIC 4813).

11. *Total Number of Telephone Companies Affected.* Many of the decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by SBA. The United States Bureau of the Census (''the Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' 15 U.S.C. 632(a)(1). For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. The Commission believes that these rules may affect certain subcategories within that estimate, *i.e.,* wireline carriers and service providers, including local exchange carriers and competitive access providers; and wireless carriers, including cellular service carriers, broadband PCS licensees, and SMR licensees. The Commission discusses those subcategories below in further detail. The Commission believes, on the other hand, that these rules will not affect certain subcategories within that estimate, *i.e.,* interexchange carriers, operator service providers, pay telephone operators, mobile service carriers, and resellers, and, moreover, will not affect small cable system operators.

12. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. 13 CFR 121.201. Standard Industrial Classification (SIC) Code 4812. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, the Commission is unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in this *First Reconsideration Order.*

13. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which the Commission is aware appears to be the data that the Commission collects annually in connection with the Telecommunications Relay Service (TRS). According to the Commission's most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this *First Reconsideration Order.*

14. *Competitive Access Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which the Commission is aware appears to be the data that the Commission collects annually in connection with the TRS. According to the Commission's most recent data, 57 companies reported that they were engaged in the provision of competitive access services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 57 small entity CAPs that may be affected by the decisions and rules adopted in this *First Reconsideration Order.*

15. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons. 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, the Commission is unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules adopted in this *First Reconsideration Order.*

16. *Cellular Service Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for telephone communications

companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of cellular service carriers nationwide of which the Commission is aware appears to be the data that the Commission collects annually in connection with the TRS. According to the Commission's most recent data, 792 companies reported that they were engaged in the provision of cellular services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimate that there are fewer than 792 small entity cellular service carriers that may be affected by the decisions and rules adopted in this *First Reconsideration Order.*

17. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. However, licenses for blocks C through F have not been awarded fully; therefore, there are few, if any, small businesses currently providing PCS services. Based on this information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

18. SMR Licensees. Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The rules adopted in this *First Reconsideration Order* may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. The Commission assumes, for purposes of this Supplemental FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in this *First Reconsideration Order.*

19. The Commission's auctions for geographic area licenses in the 900 MHz SMR band concluded in April of 1996. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, the Commission concludes that the number of geographic area SMR licensees affected by the rules adopted in this *First Reconsideration Order* includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, the Commission assumes, for purposes of this Supplemental FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions in this *First Reconsideration Order.*

20. *Cable System Operators.* SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,432 such cable and other pay television services generating $11 million or less in annual receipts that were in operation for at least one year at the end of 1992.

21. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company,'' is one serving fewer than 400,000 subscribers nationwide. 47 CFR 76.901(e). Based on the Commission's most recent information, the Commission estimates that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are fewer than 1,468 small entity cable system operators that may be affected by the decisions and rules adopted in this *First Reconsideration Order.*

22. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' 47 U.S.C. 543(m)(2). There were 63,196,310 basic cable subscribers at the end of 1995, and 1,450 cable system operators serving fewer than one percent (631,960) of subscribers. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

D. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements and Steps Taken to Minimize the Significant Economic Impact of this First Reconsideration Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered and Rejected

23. *Structure of the Analysis.* In this Section of the Supplemental FRFA, the Commission analyzes the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities and small incumbent LECs as a result of this *First Reconsideration Order. See* 5 U.S.C. 604(a)(4). As a part of this discussion, the Commission mentions some of the types of skills that will be needed to meet the new requirements. The Commission also describes the steps taken to minimize the economic impact of its decisions on small entities and small incumbent LECs, including the significant alternatives considered and rejected. *See* 5 U.S.C. 604(a)(5).

24. The Commission provides this summary analysis to provide context for the analysis in this Supplemental FRFA. To the extent that any statement contained in this Supplemental FRFA is perceived as creating ambiguity with respect to the rules or statements made in the *First Report & Order* or preceding Sections of this *First Reconsideration Order,* the rules and statements set forth in the *First Report & Order* and those preceding Sections of this *First Reconsideration Order* shall be controlling.

1. Implementation Schedule

25. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* In the *First Report & Order,* the Commission required local exchange carriers operating in the 100 largest MSAs to offer long-term service provider portability, according to a phased deployment schedule commencing on October 1, 1997, and concluding by December 31, 1998, set forth in appendix F of the *First Report & Order.* In this *First Reconsideration Order,* the Commission extends the end dates for Phase I of the deployment schedule by three months, and for Phase II by 45 days. Thus, deployment will now take place in Phase I from October 1, 1997, through March 31,

1998, and in Phase II from January 1, 1998, through May 15, 1998. The Commission also clarifies that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for the provision of portability. LECs must make available lists of their switches for which deployment has and has not been requested. The parties involved in such requests identifying preferred switches may need to use legal, accounting, economic and/or engineering services.

26. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered.* In this *First Reconsideration Order,* the Commission lightens the burdens on rural and smaller LECs by establishing a procedure whereby, within as well as outside the 100 largest MSAs, portability need only be implemented in the switches for which another carrier has made a specific request for the provision of portability. If, as petitioners allege, competition is not imminent in the areas covered by rural/small LEC switches, then the rural or smaller LEC should not receive requests from competing carriers to implement portability, and thus need not expend its resources until competition does develop. By that time, extensive non-carrier-specific testing will likely have been done, and rural and small LECs need not expend their resources on such testing. The Commission notes that the majority of parties representing small or rural LECs specified as the relief sought that the Commission only impose implementation requirements where competing carriers have shown interest in portability. Moreover, the Commission's extension of Phases I and II of the deployment schedule may permit smaller LECs to reduce their testing costs by allowing time for larger LECs to test and resolve the problems of this new technology.

27. Indeed, in this *First Reconsideration Order,* the Commission rejects several alternatives put forth by parties that might impose greater burdens on small entities and small incumbent LECs. The Commission rejects requests put forth by ACSI, KMC, ICG, NEXTLINK, and ALTS to accelerate the deployment schedule for areas both within and outside the 100 largest MSAs. The Commission also rejects the procedures proposed by some parties that would require LECs to file waiver requests for their specific switches if they believe there is no competitive interest in those switches, instead of requiring LECs to identify in which switches of other LECs they wish portability capabilities. The suggested waiver procedures would burden the LEC from whom portability is requested with preparing and filing the petition for waiver. In addition, a competing carrier that opposes the waiver petition would be burdened with challenging the waiver. In contrast, under the procedure the Commission establishes, the only reporting burden on requesting carriers is to identify and request their preferred switches. Carriers from which portability is being requested, which may be small incumbent LECs, only incur a reporting burden if they wish to lessen their burdens further by requesting more time in which to deploy portability. Finally, the Commission clarifies that CMRS providers, like wireline providers, need only provide portability in requested switches, both within and outside the 100 largest MSAs.

2. Exemptions for Rural or Small LECs

28. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* Section 251(f)(2) provides that LECs with fewer than two percent of the nation's subscriber lines may petition a state commission for a suspension or modification of any requirements of sections 251(b) and 251(c). Section 251(f)(2) is available to all LECs, including competitive LECs, which may be small entities. A small incumbent LEC or a competitive LEC, which may be a small entity, seeking under 251(f)(2) to modify or suspend the number portability requirements imposed by section 251(b)(2), bears the burden of proving that the number portability requirements would: (1) Create a significant adverse economic impact on telecommunications users; (2) be unduly economically burdensome; or (3) be technically infeasible. The parties involved in such a proceeding may need to use legal, accounting, economic and/or engineering services.

29. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered.* As explained above in the *First Reconsideration Order,* the Commission considers it unnecessary to create a general exemption for all small and/or rural LECs, as suggested by some parties. The Commission has effectively granted the small and rural LEC petitioners' requests that it waive number portability requirements for rural and/or small LECs serving areas in the largest 100 MSAs until receipt of a *bona fide* request, since the Commission now requires all competing carriers specifically to request, of any LEC, the particular switches in which they desire portability. To the extent that portability is requested in a rural or small LEC's switch, and that LEC has difficulty complying with the request, it may apply for an extension of time on the basis of extraordinary circumstances beyond its control that prevent it from complying with the Commission's deployment schedule or, if eligible, it may petition the appropriate state commission for suspension or modification of the requirements of section 251(b). 47 U.S.C. 251(f)(2). The Commission's grant of petitioners' requests to limit deployment to requested switches, however, decreases the likelihood that smaller and rural LECs will have to apply for extensions of time or file petitions under section 251(f)(2).

30. As the Commission stated in the *Local Competition Order,* the determination whether a section 251(f)(2) suspension or modification should be continued or granted lies primarily with the relevant state commission. By largely leaving this determination to the states, the *Local Competition Order* stated, the Commission's decisions permit this fact-specific inquiry to be administered in a manner that minimizes regulatory burdens and the economic impact on small entities and small incumbent LECs. However, to minimize further regulatory burdens and minimize the economic impact of the Commission's decision, in the *Local Competition Order* the Commission adopted several rules that may facilitate the efficient resolution of such inquiries, provide guidance, and minimize uncertainty. In the *Local Competition Order*, the Commission found that the rural LEC or smaller LEC must prove to the state commission that the financial harm shown to justify a suspension or modification would be greater than the harm that might typically be expected as a result of competition. Finally, the Commission concluded that section 251(f) adequately provides for varying treatment for smaller or rural LECs where such variances are justified. As a result, the Commission stated, it expects that section 251(f) will significantly minimize regulatory burdens and economic impacts from the rules adopted in the *First Report & Order* and this *First Reconsideration Order.*

3. Reporting Requirements by the Chief, Wireless Telecommunications Bureau, on Carriers' Progress

31. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements*. In the *First Report & Order,* the Commission delegated authority to the Chief, Wireless Telecommunications Bureau, to require reports from cellular, PCS, and covered SMR providers in order to monitor the progress of these providers toward implementing long-term number portability. These reporting requirements were not defined in sufficient detail in the *First Report & Order* to obtain approval from the Office of Management and Budget. Separate approval will be requested when the specific requirements are imposed by the Wireless Telecommunications Bureau.

32. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered*. Although no party to this proceeding suggested that changes to these reporting requirements would affect small entities or small incumbent LECs, several parties requested that the Chief, Wireless Telecommunications Bureau, be given greater authority to act to increase flexibility in the schedule. As explained above in this *First Reconsideration Order,* the Commission lightens the burden on smaller and rural wireless carriers by modifying these rules so that CMRS providers, like wireline providers, need only provide portability in requested switches, both within and outside the 100 largest MSAs. The Commission also declines at this time to alter further the implementation schedule imposed by the *First Report & Order* for wireless carriers because the Commission finds that enough flexibility has been incorporated into the implementation schedule for wireless carriers, and that no modification is needed.

E. Report to Congress

33. The Commission shall send a copy of this Supplemental FRFA, along with this *First Reconsideration Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this Supplemental FRFA will also be published in the **Federal Register**.

[FR Doc. 97–8483 Filed 4–14–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 807 and 852

RIN 2900–AI61

Removal of Certain Limitations on Cost Comparisons Related to Contracting Out of Activities at VA Health-Care Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Acquisition Regulations (VAAR) by removing certain limitations on cost comparisons related to contracting out of activities at VA health-care facilities that are not direct patient care activities nor incident to direct patient care. This reflects statutory changes made by the Veterans' Health Care Eligibility Reform Act of 1996 (Pub. L. 104–262).

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Don Kaliher, Acquisition Policy Team (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–8819.

SUPPLEMENTARY INFORMATION: Previously, 38 U.S.C. 8110(c) placed certain restrictions on Veterans Health Administration (VHA) cost comparison studies (studies similar to those conducted pursuant to Office of Management and Budget (OMB) Circular A–76). Prior to the effective date of this document, these restrictions were reflected in VAAR sections 807.302, 807.304–72, 852.207–71, and 852.207–72. Section 305 of Public Law 104–262, the Veterans' Health Care Eligibility Reform Act of 1996, amended 38 U.S.C. 8110(c), deleting its restrictions on the conduct of cost comparison studies at VHA facilities. Therefore, this document removes provisions of the VAAR to correspond with the statutory changes. In the absence of these VAAR provisions, VHA cost comparison studies will be performed in accordance with, to the extent applicable, remaining provisions of the VAAR, the Federal Acquisition Regulation, VHA directives, OMB Circular A–76, Circular A–76 Revised Supplemental Handbook, and other provisions of law.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule merely reflects statutory changes and would not cause a significant effect on any entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

List of Subjects in 48 CFR Parts 807 and 852

Government procurement.

Approved: April 4, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR parts 807 and 852 are amended as follows:

1. The authority citation for part 807 is revised to read as follows:

Authority: 38 U.S.C. 501; 40 U.S.C. 486(c).

PART 807—ACQUISITION PLANNING

Subpart 807.3—Contractor Versus Government Performance

807.302, 807.304–72 [Removed]

2. Sections 807.302 and 807.304–72 are removed.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for part 852 is revised to read as follows:

Authority: 38 U.S.C. 501; 40 U.S.C. 486(c).

Subpart 852.2—Texts of Provisions and Clauses

852.207–71, 852.207–72 [Removed]

3. Sections 852.207–71 and 852.207–72 are removed.

[FR Doc. 97–9602 Filed 4–14–97; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[Docket No. 960612172–7054–02; I.D. 011697A]

RIN 0648–A121

Fisheries of the Northeastern United States; Technical Amendment; Correction

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

ACTION: Final rule; correction to technical amendment.

SUMMARY: This document contains corrections to a final rule; technical amendment [I.D. 011697A] that was published on March 27, 1997. The technical amendment corrected and clarified regulations implementing the fishery management plans (FMPs) for: Summer flounder, scup, and black sea bass; Atlantic sea scallops; Northeast multispecies; Atlantic surf clams and ocean quahogs; Atlantic mackerel, squid, and butterfish; and Atlantic salmon. These FMPs were consolidated into one part (50 CFR part 648).

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Mary M. Tokarcik, Fisheries Management Specialist, 508–281–9326.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the technical amendment inadvertently revised regulatory text that was implemented in Amendment 5 to the Atlantic Sea Scallop Fishery (62 FR 1829, January 14, 1997).

Correction to the Publication

Accordingly, the publication on March 27, 1997 (62 FR 14644), of the final rule; technical amendment [I.D. 011697A], which was the subject of FR Doc. 97–7714, is corrected as follows:

1. On page 14645, in the second column, in line nine from the top of the page, remove ''(a)(96)'' and insert ''(a)(100)'' and in line ten, remove ''(97)'' and insert ''(101)''.

2. On page 14647, in the third column, instruction 9 to § 648.14 is corrected, paragraph (a)(96), as published on January 14, 1997, is reinstated, and paragraph (a)(101) is added to read as follows:

''9. In § 648.14, paragraphs (a)(19), (a)(37), (a)(40), (a)(43), (a)(48), (a)(50), (a)(57) introductory text, (a)(57)(i), (a)(86), (c)(6), (c)(7), (d)(3), (h)(1), (h)(9), (i)(1), and (x)(1)(iii) are revised, paragraphs (a)(100), (a)(101), and (d)(4) are added, paragraph (c)(10) is removed and paragraph (r) is removed and reserved as follows:''

§ 648.14 Prohibitions.

(a) * * *

(101) Enter or fish in the Gulf of Maine/Georges Bank and Southern New England Regulated Mesh Areas, except as provided in §§ 648.80 (a)(2)(iii) and (b)(2)(iii), and for purposes of transiting, provided that all gear (other than exempted gear) is stowed in accordance with § 648.23(b).

* * * * *

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

Dated: April 8, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–9588 Filed 4–14–97; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 62, No. 72

Tuesday, April 15, 1997

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–48–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 series airplanes. That AD currently requires revising the Limitations Section of the Airplane Flight Manual (AFM) to provide the flight crew with procedures to check the travel range of the aileron. It also requires inspection for damage of the shear pins of the aileron flutter damper and aileron hinge fittings, and various follow-on actions. This action would add a requirement for accomplishment of an installation that eliminates the need for the AFM revision. This action also would add airplanes to the applicability of the existing AD. This proposal is prompted by reports of failure of shear pins in the aileron flutter damper. The actions specified by the proposed AD are intended to prevent damage to the aileron hinge fittings due to failed shear pins, and consequent reduced controllability of the airplane.

DATES: Comments must be received by May 23, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–48–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair Aerospace Group, P.O. Box 6087, Station Centre-ville, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7526; fax (568) 258–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–48–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–48–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 13, 1995, the FAA issued AD 95–26–07, amendment 39–9465 (60 FR 65521, December 20, 1995), applicable to certain Bombardier Model CL–600–2B19 series airplanes. That AD requires the following actions:

1. Revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to provide the flight crew with procedures to check the travel range of the aileron.
2. A visual inspection to detect damage of the shear link, the shear pin, and the aileron attachment fitting; and repair of the aileron attachment fitting, if necessary.
3. Removal of the aileron flutter dampers, the shear links, the pivots, and the attaching hardware.

Additionally, for certain airplanes on which no damaged shear pin is found, that AD provides for accomplishment of the visual inspections on a repetitive basis until the aileron flutter dampers are removed.

That action was prompted by reports of failure of shear pins in the aileron flutter damper. The requirements of that AD are intended to prevent damage to the aileron hinge fittings due to failed shear pins, which subsequently could cause reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

In the preamble to AD 95–26–07, the FAA specified that the actions required by that AD were considered ''interim action'' and that once a terminating modification is developed, approved, and available, the FAA may consider additional rulemaking action. The manufacturer now has developed such a modification, and the FAA has determined that further rulemaking action is indeed necessary; this proposed AD follows from that determination.

Issuance of New Service Information

The manufacturer has issued Canadair Regional Jet Service Bulletin S.B. 601R–27–065, dated September 16, 1996. This service bulletin describes procedures for the installation of redesigned aileron flutter damper shear pins and shear links, the aileron flutter dampers, pivots, and new shear link assemblies. Accomplishment of this installation will provide increased reliability for the aileron system. Accomplishment of the installation eliminates the need for the AFM revision.

The manufacturer also has released Temporary Revision (TR) RJ/45–2, dated April 30, 1996, of the AFM. That TR adds airplanes to its effectivity. The TR indicates that the daily checks to verify proper operation of the aileron control system must be performed on these additional airplanes.

Transport Canada Aviation, which is the airworthiness authority for Canada, classified this service information as mandatory, and issued Canadian airworthiness directive CF–95–14R1, dated November 13, 1996, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 95–26–07. It would continue to require the following:

1. Revision of the Limitations Section of the AFM that advises the flight crew of the need to perform daily checks to check the travel range of the aileron control system;

2. Visual inspection to detect damage of the shear link, the shear pin, and the aileron attachment fitting, and repair of the aileron attachment fitting, if necessary;

3. Removal of the aileron flutter dampers, the shear links, the pivots, and the attaching hardware.

Additionally, for certain airplanes on which no damaged shear pin is found, that AD provides for accomplishment of the visual inspections on a repetitive basis until the aileron flutter dampers are removed.

This new proposed AD would revise the applicability of the existing AD to add certain airplanes that are subject to the currently required AFM revision. This proposed AD also would require installation of redesigned aileron flutter damper shear pins and shear links, aileron flutter dampers, pivots, and new shear link assemblies. Accomplishment of the installation constitutes terminating action for the AFM revision.

The actions would be required to be accomplished in accordance with the service bulletin and AFM TR described previously.

Cost Impact

There are approximately 41 Bombardier Model CL–600–2B19 series airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 95–26–07 take approximately 10 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $24,600, or $600 per airplane.

The new actions that are proposed in this AD action would take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $17,220, or $420 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9465 (60 FR 65521, December 20, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly Canadair): Docket 97–NM–48–AD. Supersedes AD 95–26–07, Amendment 39–9465.

Applicability: Model CL–600–2B19 (Regional Jet Series 100) series airplanes, serial numbers 7003 through 7134 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the aileron hinge fittings due to failure of the shear pins, and consequent reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 95–26–07:

(a) For airplanes having serial numbers 7003 through 7079 inclusive: Within 7 days after January 4, 1996 (the effective date of AD 95–26–07, amendment 39–9465), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

''Before engine start, prior to the first flight of each day, the flight crew or certificated maintenance personnel shall perform a check of the travel range of the aileron as follows:

Aileron—Check travel range (to approx 1/2 travel) using each hydraulic system in turn, with the other hydraulic systems depressurized.''

Note 2: This AFM revision may also be accomplished by inserting a copy of Temporary Revision RJ/45, dated September 7, 1995, or Temporary Revision RJ/45–2, dated April 30, 1996, in the AFM. When these temporary revisions have been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revisions is identical to that specified in Temporary Revision RJ/45 or RJ/45–2.

Note 3: Operators should note that operation of the aircraft remains restricted to the altitude and airspeed limits currently specified in the FAA-approved AFM, Revision 34, Chapter 5, Abnormal Procedures, Section 13, Hydraulic Power, Paragraphs ''A'' through ''C'' and ''M'' through ''O.''

(b) For airplanes having serial numbers 7003 through 7079 inclusive: Perform a visual inspection to detect damage of the shear link, the shear pin, and the aileron attachment fitting, in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision 'A,' dated September 8, 1995, at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes having serial numbers 7003 through 7054 inclusive: Inspect at the next scheduled shear pin replacement, but no later than 30 days after January 4, 1996.

(2) For airplanes having serial numbers 7055 through 7079 inclusive: Inspect at the next scheduled shear pin replacement, but no later than 400 flight hours after January 4, 1996.

(c) If no shear pin is found to be damaged during the inspection required by paragraph (b) of this AD, accomplish the requirements of either paragraph (c)(1) or (c)(2), as applicable, at the times specified:

(1) For airplanes having serial numbers 7003 through 7054 inclusive: At the next scheduled shear pin replacement, but no later than 400 flight hours after accomplishing the inspection specified in paragraph (b) of this AD, remove the aileron flutter dampers, shear link, and pivot, in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision 'A,' dated September 8, 1995. Following removal of the flutter dampers, the shear pin replacement in accordance with the FAA-approved maintenance program is not required.

(2) For airplanes having serial numbers 7055 through 7079 inclusive: Repeat the inspection required by paragraph (b) of this AD at intervals not to exceed 400 flight hours. At the next scheduled shear pin replacement, but no later than 1,500 landings after accomplishing the initial inspection specified in paragraph (b) of this AD, remove the aileron flutter dampers, shear link, and pivot, in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision 'A,' dated September 8, 1995. Following removal of the flutter dampers, the shear pin replacement in accordance with the FAA-approved maintenance program is not required.

(d) If any shear pin is found to be damaged during the inspection required by paragraph (b) of this AD, prior to further flight, remove the aileron flutter dampers, shear link, and pivot, in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision 'A,' dated September 8, 1995. Following removal of the flutter dampers, shear pin replacement in accordance with the FAA-approved maintenance program is not required.

(e) If any aileron hinge fitting is found to be damaged during the inspection required by paragraph (b) of this AD, prior to further flight, repair in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision 'A,' dated September 8, 1995.

New Requirements of this AD

(f) For airplanes having serial numbers 7080 through 7134 inclusive: Within 7 days after the effective date of this AD, revise the Limitations Section of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

''Before engine start, prior to the first flight of each day, the flight crew or certificated maintenance personnel shall perform a check of the travel range of the aileron as follows:

Aileron—Check travel range (to approx 1/2 travel) using each hydraulic system in turn, with the other hydraulic systems depressurized.''

Note 4: This AFM revision may also be accomplished by inserting a copy of Temporary Revision RJ/45–2, dated April 30, 1996, in the AFM. When this temporary revision has been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revisions is identical to that specified in Temporary Revision RJ/45–2.

Note 5: Operators should note that operation of the aircraft remains restricted to the altitude and airspeed limits currently specified in the FAA-approved AFM, Revision 34, Chapter 5, Abnormal Procedures, Section 13, Hydraulic Power, Paragraphs ''A'' through ''C'' and ''M'' through ''O.''

(g) For airplanes having serial numbers 7003 through 7134 inclusive: Within 18 months after the effective date of this AD, install redesigned aileron flutter damper shear pins and shear links, aileron flutter dampers, pivots, and new shear link assemblies; in accordance with Canadair Service Bulletin S.B. 601R–27–065, dated September 16, 1996. Accomplishment of this installation constitutes terminating action for the AFM revisions required by paragraphs (a) and (f) of this AD.

(h) As of the effective date of this AD, no person shall install an aileron flutter damper assembly, part number 600–10179–1, on any airplane.

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

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

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

Issued in Renton, Washington, on April 8, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–9594 Filed 4–14–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–36–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all de Havilland Model DHC–7 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to prohibit positioning of the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop. This proposal is prompted by incidents and accidents

involving airplanes equipped with turboprop engines in which the propeller beta was used improperly during flight. The actions specified by the proposed AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Comments must be received by May 23, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–36–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Peter LeVoci, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7514; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–36–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–36–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In recent years, the FAA has received reports of 14 incidents and/or accidents involving intentional or inadvertent operation of the propellers in the beta range during flight on airplanes equipped with turboprop engines. (Beta is the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.)

Five of the fourteen in-flight beta occurrences were classified as accidents. In each of these five cases, operation of the propellers in the beta range occurred while the airplane was in flight. Operation of the propellers in the beta range during flight, if not prevented, could result in loss of airplane controllability, or engine overspeed with consequent loss of engine power.

Communication between the FAA and the public during a meeting held on June 11–12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the FAA-approved Airplane Flight Manual (AFM) for airplanes that are not certificated for in-flight operation with the power levers below the flight idle stop. (Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.)

FAA's Determinations

The FAA has examined the circumstances and reviewed all available information related to the incidents and accidents described previously. The FAA finds that the Limitations Section of the AFM's for certain airplanes must be revised to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop. The FAA has determined that the affected airplanes include those that are equipped with turboprop engines and that are not certificated for in-flight operation with the power levers below the flight idle stop. Since de Havilland Model DHC–7 series airplanes meet these criteria, the FAA finds that the AFM for these airplanes must be revised to include the limitation and statement of consequences described previously.

U.S. Type Certification of the Airplane

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. The FAA has reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Requirements of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other de Havilland Model DHC–7 series airplanes of the same type design, the proposed AD would require revising the Limitations Section of the AFM to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 45 de Havilland Model DHC–7 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,700, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

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

De Havilland, Inc.: Docket 97–NM–36–AD.

Applicability: All Model DHC–7 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

''Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.''

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

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

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

Issued in Renton, Washington, on April 8, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–9593 Filed 4–14–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter I

[Docket No. FR–4170–N–08]

Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee; Meetings

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of negotiated rulemaking committee meetings.

SUMMARY: On March 6, 1997 (62 FR 10247), HUD published a notice that announced three series of negotiated rulemaking meetings sponsored by HUD to develop the regulations necessary to carry out the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub.L. 104–330, approved October 26, 1996). The meetings announced were scheduled from March 20–27, 1997, April 8–11, 1997, and April 24–May 1, 1997.

The purpose of this notice is to announce a change in dates in the meetings originally scheduled for April 24 through May 1, 1997. The meeting dates for this period are being changed to April 23, 1997 through April 30, 1997.

DATES: The next series of meetings will be held on: April 23, 24, 25, 26, 28, 29, and 30, 1997.

The meetings will begin at approximately 9:00 am and end at approximately 5:00 pm on each day, local time.

ADDRESSES: The meetings will be held at the Cheyenne Mountain Conference Resort, 325 Broadmoor Valley Road, Colorado Springs, CO 8096; telephone (719) 576–4600 or 1–800–588–6532; fax (719) 576–4711 (With the exception of the ''800'' telephone number, these are not toll-free numbers).

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO; telephone (303) 675–1600 (voice) or 1–800–877–8339 (TTY for speech or hearing impaired individuals) (With the exception of the ''800'' number, these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Secretary of HUD has established the Native American Housing Assistance & Self-Determination Negotiated Rulemaking Committee (Committee) to negotiate and develop a proposed rule implementing NAHASDA. On March 6, 1997 (62 FR 10247), HUD published a notice that announced three series of meetings to be held during March and April 1997 in Colorado Springs, Colorado to discuss the regulatory implementation of NAHASDA. The meetings announced were scheduled from March 20–27, 1997, April 8–11, 1997, and April 24–May 1, 1997.

The purpose of this notice is to announce a change in dates in the meetings originally scheduled for April 24 through May 1, 1997. The meeting dates for this period are being changed to April 23, 1997 through April 30, 1997. The precise meeting dates are: April 23, 24, 25, 26, 28, 29, and 30, 1997.

Because of lack of sufficient hotel accommodations during this period, it was necessary to move the meetings for this period to an earlier starting date by one day.

The agenda planned for the meetings includes: (1) The development of regulatory language by workgroups; (2) discussion and approval of the draft regulatory language by the full Committee; and (3) other agenda items which may be agreed upon by the Committee.

The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this notice. Summaries of Committee meetings will be available for public inspection and copying at the address in the same section.

The location and dates of any future meetings will be published in the **Federal Register**. HUD will make every effort to publish such notice at least 15 calendar days prior to each meeting.

Dated: April 10, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–9791 Filed 4–14–97; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

36 CFR Part 327

Shoreline Use Permits, Flotation

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps proposes to amend its regulation which contains guidelines for granting shoreline use permits and conditions under which shoreline use permits can be used. We are proposing this to accommodate special needs of the public, and to incorporate changes deemed necessary to make new technologies available to the public when meeting certain conditions of their shoreline use permits.

DATES: Comments must be submitted on or before May 30, 1997.

ADDRESSES: HQUSACE, CECW–ON, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell E. Lewis, (202) 761–0247, HQUSACE, CECW–ON, Washington, D.C. 20314–1000.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in 16 U.S.C. 460d, the Corps promulgated a regulation which was published in the **Federal Register** as a final rule on July 27, 1990. Since that time a specific instance has led to this amendment to Paragraph 9 of Appendix A, Section 327.30 which gives operational project managers flexibility to take special circumstances of the applicant into consideration when issuing a permit. This language reflects the Corps desire to accommodate basic access for those individuals who have requested waivers due to either obvious limiting health conditions or those documented by a doctor's certification.

Since the development and subsequent publishing of flotation material requirements for all docks and boat mooring buoys required under the shoreline management program in the **Federal Register** on July 27, 1990, new technologies and methods have resulted in product changes and influenced flotation material specifications acceptable to the Corps. Paragraph 14, Appendix C, of Section 327.30 in this proposed rulemaking reflects the Corps amended flotation requirements on all new docks and boat mooring facilities.

Procedural Requirements

Executive Order (E.O.) 12866

The Secretary of the Army has determined that this proposed revision is not a ''major'' rule within the meaning of Executive Order (E.O.) 12866. If approved, this revision will 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, geographic regions, or Federal, State, or local governmental agencies; or (3) have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of a United States-based enterprise to compete with foreign-based enterprise in domestic or export markets.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Collection of Information

This proposed rule contains no collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Executive Order 12612

The Corps has analyzed this proposed rule under principles and criteria in E.O. 12612 and has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12630

The Corps has determined that this proposed rule does not have ''significant'' taking implications. The proposed rule does not pertain to taking of private property interests, nor does it impact private property.

NEPA Statement

The Corps has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This proposed rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

List of Subjects in 36 CFR Part 327

Lakeshore management, Public lands.

For the reasons set forth in the preamble, we propose to amend 36 CFR part 327. as follows:

PART 327—RULES AND REGULATIONS GOVERNING PUBLIC USE OF WATER RESOURCE DEVELOPMENT PROJECTS ADMINISTERED BY THE CHIEF OF ENGINEERS

1. The authority citation for 36 CFR part 327 continues to read as follows:

Authority: 16 U.S.C. 460d and 460*l*-6a.

§ 327.30 [Amended]

2. Appendix A to § 327.30 is amended by revising paragraph 2.c. (9) to read as follows:

Appendix A to § 327.30 Guidelines for Granting Shoreline Use Permits

* * * * *

2. * * *

c. * * *

(9) The district commander or his/her authorized representative may place special conditions on the permit when deemed necessary. Requests for waivers of shoreline management plan permit conditions based on health conditions will be reviewed on a case by case basis by the operations project manager. Efforts will be made to reduce onerous

requirements when a limiting health condition is obvious or when an applicant provides a doctor's certification of need for conditions which are not obvious.

* * * * *

3. Appendix C to § 327.30 is amended by revising paragraph 14. to read as follows:

Appendix C to § 327.30 Shoreline Use Permit Conditions

* * * * *

14. On all new docks and boat mooring buoys, flotation shall be extruded polystyrene, expanded polystyrene, or a copolymer of polythylene and polystyrene moldable foam all with 0.9 lbs./cu. ft. minimum density. No-foam modular blocks using interior air chambers for flotation with a minimum wall thickness of .25″ may also be used. On all foam products, water absorption shall be less than 3.0 lbs./cu. ft at seven days when a 1/16 cu. ft. cube (5″×5″×4.32″) is imersed under ½″ head of water for seven days and dripped for five seconds before weighing. All systems using foam (except extruded polystyrene foam) must encase the foam totally with concrete, galvanized steel, aluminum, recycled plastic lumber, polyethylene, fiberglass, or tough flexible plastic. Reuse of plastic, metal, or other previously used drums or containers for encasement or flotation purpose is prohibited. The encasement shall be designed to resist puncture and penetration by floating debris, boats, animals or other sources. In addition, the protective coating encasement shall be warranted by the manufacturer for a period of at least eight years against cracking, peeling, sloughing and deterioration from ultra violet rays. Extruded polystyrene foam products must be warranted for a period of at least eight years against cracking, peeling, sloughing and determination from ulta violet rays. Extruded polystyrene flotation shall be designed to resist puncture and penetration by floating debris, boats, animals or other sources. Manufacturers of no-foam modular blocks using interior air chambers for flotation must warrant their products for a period of at least eight years against cracking, peeling, sloughing and deterioration from ultra violet rays. Any flotation which is within 40 feet of a line carrying fuel shall, in addition to the requirements for protective coating mentioned above, be 100% impervious to water and fuel. Existing flotation is authorized until it has severely deteriorated and is no longer serviceable or capable of supporting the structure, at which time it shall be replaced with approved flotation. For any floats installed after the effective date of this specification, repair or replacement is required when the foam becomes visible through the encasement protective covering, or the float no longer performs its designed function.

* * * * *

Dated: April 8, 1997.

For the Commander.

Robert W. Burkhardt,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 97–9643 Filed 4–14–97; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–5811–2]

RIN 2060–AH16

Revision of New Source Performance Standards for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (Agency) proposes to clarify the coverage of the new source performance standards (NSPS) to limit their applicability to those facilities which store fresh granular triple superphosphate (GTSP). As a result of the proposed revisions, the NSPS would include a work practice through which manufacturers would hold fresh GTSP in storage until it had cured prior to shipment to their customers. The proposed revisions would limit the testing and recordkeeping requirements of Subpart X to only those facilities associated with the manufacture of GTSP and, thereby, remove any recordkeeping burden currently imposed upon downstream distributors and users of this product.

In the Final Rules section of this **Federal Register**, the Agency is making these revisions without prior proposal. A detailed rationale for the action is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the Agency receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The Agency will address those comments in a subsequent final rule based on this proposed rule. Any rules for which no adverse or critical comment is received will become final after the designated period. The Agency will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this action must be received by May 15, 1997.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–97–4 at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street, S.W., Washington, D.C. 20460. The Agency requests that a separate copy also be sent to the contact person listed below. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 4 p.m., Monday through Friday. The docket is an organized and complete file of all the information submitted to or otherwise considered by the Agency in the development of this rulemaking.

FOR FURTHER INFORMATION CONTACT: For information concerning specific aspects of this action, contact Mr. David Painter [telephone number (919) 541–5515], Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the Final Rules section of this **Federal Register**.

Dated: April 8, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–9584 Filed 4–14–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[DA 97–683]

Domestic and International Satellite Consolidation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; roundtable discussion.

SUMMARY: The International Bureau, Satellite and Radiocommunication Division announces that it will host a roundtable discussion to solicit views on rules and policies for entry of foreign-licensed satellites in the U.S. market, as proposed by the Commission in the Domestic and International Satellite Consolidation Order (*DISCO II*). Comments offered in the roundtable discussion will assist the Commission in assessing the impact of the recent

agreement on basic telecommunications services in the World Trade Organization (WTO) on proposals made in the *DISCO II* proceeding.

DATES: The roundtable discussion will be held on April 18, 1997, at 1:30–3:30 p.m.

ADDRESSES: The roundtable discussion will be held in the Commission Meeting Room, Room 856, 1919 M Street, NW., Washington, DC 20054.

FOR FURTHER INFORMATION CONTACT: Suzanne Hutchings, Attorney, (tel: 202–418–0762, fax: 202–418–0765), and James Taylor, Attorney, (tel: 202–418–2113, fax: 202–418–7270), Satellite and Radiocommunication Division, International Bureau, Suite 500, 2000 M Street N.W., Washington, D.C. 20554.

SUPPLEMENTARY INFORMATION: The International Bureau, Satellite and Radiocommunication Division, will host a roundtable discussion on April 18, 1997, at 1:30–3:30 p.m. in the Commission Meeting Room, Room 856, 1919 M Street, N.W., Washington, D.C. 20054, to solicit views on rules and policies for entry of foreign-licensed satellites in the U.S. market, as proposed by the Commission in the *DISCO II* (61 FR 32399, June 24, 1996). Comments offered in the roundtable discussion will assist the Commission in assessing the impact of the recent agreement on basic telecommunications services in the World Trade Organization (WTO) on proposals made in the *DISCO II* proceeding.

One of the principal aims of the *DISCO II* proceeding was to encourage foreign governments to open their communications markets. As a result of the recent WTO Agreement, nearly 80% of countries making offers on basic telecommunications have committed to a complete opening of their satellite markets effective January 1998 or on a phased-in basis. Additional participants have committed to at least partial opening of their satellite markets, and the United States Trade Representative continues to urge countries to improve on their offers on basic telecommunications.

We seek to assess the impact, if any, of these developments on the Commission's stated goals in *DISCO II,* and on whether proposed *DISCO II* rules and policies should be revised to reflect these developments. Specifically, we ask the industry and the general public their views on whether and how the ECO-Sat and public interest criteria for evaluating applications to access non-U.S.-licensed satellites should change in light of the WTO Agreement.

- Should our consideration of additional public interest factors, including the promotion of competition in the United States, be modified or expanded?
- How should the proposed ECO-Sat test be modified with respect to satellites licensed by WTO members, including systems that have investment by non-WTO members?
- Should the proposed ECO-Sat test and public interest factors be modified with respect to satellites licensed by non-WTO members? If so, what specific criteria should be applied?
- Should the proposed ECO-Sat test and public interest factors be modified with respect to satellite services not covered by the U.S. WTO offer on basic telecommunications, *i.e.* DTH, DBS, and DARS? If so, what specific criteria should be applied?

Members of industry and the public who wish to comment in writing should submit their views sufficiently in advance of the roundtable meeting so as to enable all participants to review them. A public file has been set up in the International Bureau's Reference Room on the First Floor of 2000 M Street, N.W. for the written submissions provided during this inquiry. The address for all correspondence: Office of the International Bureau Chief, Satellite Policy Branch, Suite 800, 2000 M Street, N.W., Stop Code 0800, Washington, D.C. 20554.

Persons with other business currently before the Commission are asked to ensure that comments offered do not violate any restrictions on *ex parte* presentations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–9627 Filed 4–14–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 960520141–7077–05; I.D. 021897B]

RIN 0648–AH05

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 1997 Scup Recreational Fishery Measures

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS issues this proposed rule to retain, for 1997, the 1996 recreational management measures for the scup fishery implemented under the regulations implementing Amendment 8 to the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP). This rule proposes no change to the measures implemented under Amendment 8, that is, a 7–inch (17.78–cm) minimum fish size, no possession limit and no season for the recreational scup fishery. The intent of this document is to comply with implementing regulations for the scup fishery that require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of the resource.

DATES: Public comments must be received on or before May 15, 1997.

ADDRESSES: Copies of the Environmental Assessment prepared for the 1997 scup specifications and supporting documents used by the Monitoring Committee are available from: Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901–6790. Comments should be sent to: Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930. Please mark the outside of the envelope ''Comments on the Recreational Fishing Measures for Scup.''

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, (508) 281–9221.

SUPPLEMENTARY INFORMATION: The FMP was developed jointly by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) in consultation with the New England and South Atlantic Fishery Management Councils. Implementing regulations for the fishery are found at 50 CFR part 648.

Section 648.120 outlines the process for determining annual commercial and recreational catch quotas and other restrictions for the scup fishery. The Scup Monitoring Committee (Committee), made up of representatives from the Council, the Commission, the New England Fishery Management Council, and NMFS, is required to review, on an annual basis, scientific and other relevant information and to recommend a quota and other restrictions necessary to achieve an annual exploitation rate of 47 percent in 1997 through 1999, 33 percent in 2000 and 2001, and the exploitation rate associated with F_{max} (currently 19 percent) in 2002. This schedule is mandated by the FMP to prevent overfishing and to rebuild the scup resource. The Committee reviews the following information annually: (1) Commercial and recreational catch data; (2) current estimates of stock mortality; (3) stock status; (4) recent estimates of recruitment; (5) virtual population analysis (a method for analyzing fish stock abundance); (6) levels of regulatory noncompliance by fishermen or individual states; (7) impact of fish size and net mesh regulations; (8) impact of gear, other than otter trawls, on the mortality of scup; and (9) other relevant information. Pursuant to § 648.120, after this review, the Committee recommends to the Council and Commission management measures to ensure achievement of the appropriate exploitation rate. The Council and Commission, in turn, make a recommendation to the Regional Administrator.

Final specifications for the 1997 scup fishery were published on March 14, 1997 (62 FR 12105), including a coastwide recreational harvest limit of 1.947 million lb (0.88 million kg). The recreational season, possession limit, and minimum size were not established as part of those specifications because recreational catch data for 1996 were not available for the Committee's use to evaluate the effectiveness of the 1996 measures. Shortly after preliminary 1996 data became available, the Committee met again to review the data and to recommend measures for the 1997 recreational fishery intended to achieve the recreational harvest limit. The Committee, noting uncertainties in the stock assessment and stock size projections for 1997, and the landings projections for 1996, recommended to the Council and Commission that the management measures implemented in 1996 for the recreational fishery, specifically a minimum fish size of 7 inches (17.78 cm), be continued for 1997. The Committee did not recommend a season or possession limit for 1997. The Council and Commission adopted the recommendation on December 17, 1996, and this recommendation is proposed in this action.

The Council and Commission recommended the continuation of the 1996 limits after reviewing data that indicated that, while projected 1996 landings would be 2.3 million lb (1.04 million kg), or 16 percent greater than the harvest limit proposed for 1997, 1995 recreational landings were only 1.3 million lb (0.6 million kg), or 32 percent less than the harvest limit proposed for 1997. Given this variability in landings around the harvest level proposed in 1997, when little or no restrictions were in place, the Council and Commission were reluctant to implement further restrictions at this time. In addition, the Council and Commission noted uncertainties in the analyses and projections cited by the Committee and concluded that the availability of larger scup (i.e., scup larger than 7 inches (17.78 cm)) was not expected to increase. The Council and Commission determined that the 7–inch (17.78–cm) minimum size regulation would constrain anglers to the 1997 coastwide recreational harvest limit of 1.947 million lb (0.88 million kg). To adopt an increase in size or possession limit at this time could preclude the harvest limit from being taken.

Classification

This action is authorized by 50 CFR Part 648, and has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act will not have a significant economic impact on a substantial number of small entities as follows:

This action would retain for 1997, the same management measures for the recreational scup fishery implemented in 1996. Specifically, this action would continue the minimum fish size of 7 inches (17.8 cm) and no possession limit in order to allow the recreational sector of the scup fishery to harvest the coastwide harvest limit of 1.947 million lb (0.88 million kg). The Council and Commission recommended the continuation of the 1996 measures after reviewing data that indicated that, while projected 1996 landings could be 2.3 million lb (1.04 million kg), or approximately 17 percent greater than the 1997 harvest limit, recreational landings for 1995 were only 1.3 million lb (0.6 million kg), or 32 percent less than the 1997 harvest limit. The 1997 harvest level represents an 8.2 percent increase relative to the mean of those two landings levels.

Currently, there are 290 vessels issued charter/party permits for the scup fishery. It is probable that all of these vessels would qualify as small entities (that is, having annual receipts of less than 2 million dollars). Based on 1995 angler intercept data, scup were the primary species sought in an estimated 2.3 percent of the reported trips in the North Atlantic region. Scup was not among the top ten species sought in either the Mid-Atlantic or the South Atlantic (including North Carolina) regions. Those data include trips by all modes, including party/charter and private/rental vessels, as well as fishing from shore and man made structures (e.g., piers). These data, however, cannot predict the extent to which participation would be effected by the proposed measures. Achievement of the target harvest limit is dependent upon the assumption that participation (effort) as well as scup availability, will not change in 1997. Since the result of this action is no change in the recreational fishing measures for 1997, compliance costs are not expected to increase, and no vessels are expected to cease operations. Likewise, since fewer than 3 percent of the reported trips indicate scup as the primary species sought, ex-vessel revenues are not expected to increase or decrease by 5 percent or more for 20 percent or more of these participants in the recreational fishery. This presumption is supported by the fact that the identical measures implemented under Amendment 8 to the Fishery Management Plan for the Summer Flounder and Scup Fisheries were determined to not have a significant economic impact on a substantial number of small entities. It is, therefore, likely that this rule would similarly not have a significant impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis was not prepared.

Dated: April 9, 1996.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 97–9589 Filed 4–14–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 72

Tuesday, April 15, 1997

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Collection of Public Information with Use of a Survey

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request clearance for a new information collection in order to render service to associations of producers of agricultural, forestry, and fisheries products and federations and subsidiaries thereof as authorized in the Cooperative Marketing Act of 1926.

DATES: Comments on this notice must be received by June 16, 1997 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Tracey L. Kennedy, Agricultural Economist, RBS, U.S. Department of Agriculture, 1400 Independence Avenue S.W., Stop 3252, Washington, D.C. 20250–3252, Telephone (202) 690–1428.

SUPPLEMENTARY INFORMATION:

Title: Annual Survey of Cooperative Involvement in International Markets.

Type of Request: New information collection.

Abstract: The mission of the Rural Business-Cooperative Service (RBS), formerly Agricultural Cooperative Service (ACS), is to assist farmer-owned cooperatives in improving the economic well-being of their farmer-members. This is accomplished through a comprehensive program of research on structural, operational, and policy issues affecting cooperatives; technical advisory assistance to individual cooperatives and to groups of producers who wish to organize cooperatives; and development of educational and informational material. The authority to carry out RBS's mission is defined in the Cooperative Marketing Act of 1926 (44 Stat. 802–1926).

Authority and Duties of Division (7 U.S.C. 453)

(a) The division shall render service to associations of producers of agricultural products, and federations and subsidiaries thereof, engaged in the cooperative marketing of agricultural products including processing, warehousing, manufacturing, storage, the cooperative purchasing of farm supplies, credit, financing, insurance, and other cooperative activities.

(b) The division is authorized to:

(1) acquire, analyze and disseminate economic, statistical, and historical information regarding the progress, organization, and business methods of cooperative associations in the United States and foreign countries.

(2) conduct studies of the economic, legal, financial, social and other phases of cooperation, and publish the results thereof. Such studies shall include the analyses of the organization, operation, financial and merchandising problems of cooperative organizations.

(3) make surveys and analyses if deemed advisable of the accounts and business practices of representative cooperative associations upon their request; to report to the association so surveyed the results thereof; and with the consent of the association so surveyed to publish summaries of the results of such surveys, together with similar facts, for the guidance of cooperative associations and for the purpose of assisting cooperative associations in developing methods of business and market analysis.

(4) acquire from all available sources, information concerning crop prospects, supply, demand, current receipts, exports, imports, and prices of agricultural products handled or marketed by cooperative associations, and to employ qualified commodity marketing specialists to summarize and analyze this information and disseminate the same among cooperative associations and others.''

RBS also has a stated objective to ''assist U.S. farmer cooperatives to expand their participation in international trade of agricultural products and supplies and to review their progress.'' As trade agreements are implemented and domestic farm supports are reduced, a global presence is increasingly important to producers, their communities, and to job-creation and retention in agri- and food-related industries. Measurement and monitoring of cooperatives' global presence are stated objectives of RBS's International Trade Program. In order to carry out the agency's mission and objectives, RBS needs to collect information from the cooperative community. This information collection is designed to provide time-series data that will provide a better understanding of the opportunities and limitations of producer-owned cooperatives in global markets. The data provide the basis for research on trade-related issues affecting cooperatives, and background for trade-related policy analysis.

Beginning in 1980, RBS's predecessor agency Agricultural Cooperative Service (ACS) collected cooperative trade data at five year intervals. Value of cooperative exports by commodity and destination were measured, as well as information related to method of sale. Values of imports by cooperatives, by commodity and country of origin were collected in 1986 and 1991. However, data collected at five-year intervals do not provide for meaningful analysis. Further, previous collections have been strictly limited to exports and imports, neglecting other important international arrangements such as strategic alliances and foreign direct investment. A more comprehensive, annual information collection is required to accomplish RBS objectives and paint a more accurate picture of cooperative involvement in international markets. These data are generally not available to RBS unless provided by the cooperatives.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average one (1) hour per response.

Respondents: Cooperatives involved in international activities.

Estimated Number of Respondents: 170.

Estimated Number of Responses per Respondent: one per year.

Estimated Total Annual Burden on Respondents: 170 hours.

Copies of this information collection can be obtained from Sam Spencer, Regulations and Paperwork Management Division, at (202) 720–9725.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Sam Spencer, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, 1400 Independence Avenue S.W., Stop 0743, Washington, D.C. 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of a public record.

Dated: April 7, 1997.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 97–9637 Filed 4–14–97; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 26–97]

Foreign-Trade Zone 50—Long Beach, CA; Application for Subzone; L.A. Gear, Inc. (Casual and Athletic Footwear) Long Beach, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Harbor Commissioners of the City of Long Beach, grantee of FTZ 50, requesting subzone status for the footwear distribution facility of L.A. Gear, Inc., located in Ontario, California, some 40 miles northeast of Long Beach. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 7, 1997.

The L.A. Gear facility (412,358 sq. ft. on 19.08 acres; 149 employees) is located at 1661 & 1777 South Vintage Avenue in Ontario. It is used to distribute a wide range of casual and athletic shoes, most of which are sourced from abroad. The products are distributed throughout the U.S. and abroad.

Zone procedures would exempt L.A. Gear from Customs duty payments on the foreign products that are reexported. On its domestic sales, it would be able to defer Customs duty payments on merchandise that is sourced from abroad. The application indicates that zone savings would help improve the international competitiveness of the facility.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 16, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period July 1, 1997.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, Joe Sachs, Director, One World Trade Center, Ste. 1670, Long Beach, California 90831

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Ave., N.W., Washington, D.C. 20230

Dated: April 8, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–9657 Filed 4–14–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia: Initiation of Administrative Review and Request for Revocation in Part of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping administrative review and request for revocation in part of the antidumping duty order.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct an administrative review of the antidumping duty order on certain fresh cut flowers from Colombia. A request for revocation from the antidumping duty order was also received from HOSA, Ltda. In accordance with the Department's regulations, we are initiating this administrative review for the period March 1, 1996 through February 28, 1997, for those named exporters/growers for whom a request for review was received. The Department is also noting HOSA's request for revocation from the antidumping duty order.

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Graham, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4105.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 C.F.R. 353.22(a), for an administrative review of the antidumping duty order on certain fresh cut flowers from Colombia. The Department has also received a request for revocation from HOSA, Ltda.

Initiation of Reviews

In accordance with section 19 C.F.R. 353.22(c), we are initiating an administrative review of the antidumping duty order on certain fresh cut flowers from Colombia. We intend to issue the final results of this review not later than March 31, 1998.

We received requests for review of the following specifically-named exporters/growers who shipped subject merchandise during the period:

Abaco Tulipanex de Colombia
Achalay
Aga Group
  Agricola la Celestina
  Agricola la Maria
  Agricola Benilda Ltda.
Agrex de Oriente
Agricola Acevedo Ltda.
Agricola Altiplano
Agricola Arenales Ltda.
Agricola Bonanza Ltda.
Agricola Circasia Ltda.
Agricola de Occident
Agricola del Monte
Agricola el Cactus S.A.
Agricola el Redil
Agricola Guali S.A.
Agricola la Corsaria Ltda.
Agricola la Siberia
Agricola Las Cuadras Group
  Agricola las Cuadras Ltda.

Flores de Hacaritama
Agricola Megaflor Ltda.
Agricola Yuldama
Agrocaribu Ltda.
Agro de Narino
Agrodex Group
Agricola de las Mercedes
Agricola el Retiro Ltda.
Agrodex Ltda.
Degaflores Ltda.
Flores Camino Real Ltda.
Flores Cuatro Esquinas Ltda.
Flores de la Comuna Ltda.
Flores de las Mercedes
Flores de Los Amigos Ltda.
Flores de los Arrayanes Ltda.
Flores De Mayo Ltda.
Flores del Gallinero Ltda.
Flores del Potrero Ltda.
Flores dos Hectareas Ltda.
Flores de Pueblo Viejo Ltda.
Flores el Trentino Ltda.
Flores la Conejera Ltda.
Flores Manare Ltda.
Florlinda Ltda.
Horticola el Triunfo
Horticola Montecarlo Ltda.
Agroindustrial Don Eusebio Ltda. Group
Agroindustrial Don Eusebio Ltda.
Celia Flowers
Passion Flowers
Primo Flowers
Temptation Flowers
Agroindustrial Madonna S.A.
Agroindustrias de Narino Ltda.
Agromonte Ltda.
Agropecuria Cuernavaca Ltda.
Agropecuaria la Marcela
Agropecuaria Mauricio
Agrorosas
Agrotabio Kent
Aguacarga
Alcala
Alstroflores Ltda.
Amoret
Ancas Ltda.
Andalucia
Andes Group
Cultivos Buenavista Ltda.
Flores de los Andes Ltda.
Flores Horizonte Ltda.
Inversiones Penas Blancas Ltda.
A.Q.
Arboles Azules Ltda.
Aspen Gardens Ltda.
Astro Ltda.
Becerra Castellanos y Cia.
Bojaca Group
Agricola Bojaca
Universal Flowers
Flores y Plantas Tropicales
Flores del Neusa Nove Ltda.
Tropiflora
Caicedo Group
Agro Bosque S.A.
Andalucia S.A.
Aranjuez S.A.
Columbiano S.A. ''CAICO''
Caico
Exportaciones Bochica S.A.
Floral Ltda.
Flores del Cauca
Inversiones Targa Ltda.
Productos el Zorro
Via el Rosal
Cantarrana Group
Cantarrana Ltda.
Agricola los Venados Ltda.
Carcol Ltda.
Cienfuegos Group
Cienfuegos Ltda.
Flores la Conchita
Cigarral Group
Flores Cigarral
Flores Tayrona
Classic
Claveles Colombianos Group
Claveles Colombianos Ltda.
Elegant Flowers Ltda.
Fantasia Flowers Ltda.
Splendid Flowers Ltda.
Sun Flowers Ltda.
Claveles de los Alpes Ltda.
Clavelez
Coexflor
Colibri Flowers Ltda.
Color Explosion
Combiflor
Consorcio Agroindustrial
Cota
Crest D'or
Crop S.A.
Cultiflores Ltda.
Cultivos Guameru
Cultivos Medellin Ltda.
Cultivos Miramonte Group
Cultivos Miramonte S.A.
Flores Mocari S.A.
Cultivos Tahami Ltda.
Cypress Valley
Daflor Ltda.
Degaflor
De La Pava Guevara E. Hijos Ltda.
Del Monte
Del Tropico Ltda.
Dianticola Colombiana Ltda.
Disagro
Diveragricola
Dynasty Roses Ltda.
El Antelio S.A.
Elite Flowers (The Elite Flower/Rosen Tantau)
El Milaro
El Tambo
El Timbul Ltda.
Envy Farms Group
Envy Farms
Flores Marandua Ltda.
Euroflora
Exoticas
Exotic Flowers
Exotico
Expoflora Ltda.
Exportadora
Falcon Farms de Colombia S.A. (formerly Flores de Cajibio Ltda.)
Farm Fresh Flowers Group
Agricola de la Fontana
Flores de Hunza
Flores Tibati
Inversiones Cubivan
Ferson Trading
Flamingo Flowers
Flor Colombiana S.A.
Flora Bellisima
Flora Intercontinental
Floralex Ltda.
Floralex Ltda.
Flores el Puente Ltda.
Agricola Los Gaques Ltda.
Florandia Herrera Camacho & Cia.
Floraterra Group
Floraterra S.A.
Flores Casablanca S.A.
Flores San Mateo S.A.
Siete Flores S.A.
Floreales Group
Floreales Ltda.
Kimbaya
Florenal (Flores el Arenal) Ltda.
Flores Abaco S.A.
Flores Acuarela S.A.
Flores Agromonte
Flores Aguila
Flores Colon Ltda.
Flores de la Sabana S.A.
Flores de Serrezuela S.A.
Flores de Suesca S.A.
Flores del Rio Group
Agricola Cardenal S.A.
Flores del Rio S.A.
Indigo S.A.
Flores El Molino S.A.
Flores El Zorro Ltda.
Flores la Cabanuela
Flores la Fragrancia
Flores la Gioconda
Flores la Lucerna
Flores la Macarena
Flores la Pampa
Flores la Union/Gomez Arango & Cia. Group
Santana
Flores las Caicas
Flores las Mesitas
Flores los Sauces
Flores Monserrate Ltda.
Flores Montecarlo
Flores Monteverde
Flores Palimana
Flores Ramo Ltda.
Flores S.A.
Flores Sagaro
Flores Saint Valentine
Flores Sairam Ltda.
Flores San Andres
Flores San Carlos
Flores San Juan S.A.
Flores Santa Fe Ltda.
Flores Santana
Flores Sausalito
Flores Selectas
Flores Silvestres
Flores Sindamanoi
Flores Suasuque
Flores Tenerife Ltda.
Flores Tiba S.A.

Flores Tocarinda
Flores Tomine Ltda.
Flores Tropicales (Happy Candy) Group
  Flores Tropicales Ltda.
  Happy Candy Ltda.
  Mercedes Ltda.
  Rosas Colombianos Ltda.
Flores Urimaco
Flores Violette
Florex Group
  Agricola Guacari S.A.
  Agricola el Castillo
  Flores San Joaquin
  Flores Altamira S.A.
  Flores de Exportacion S.A.
Florexpo
Floricola
Floricola la Gaitana S.A.
Florimex Colombia Ltda.
Florisol
Florpacifico
Flor y Color
Flowers of the World/Rosa
Four Seasons
Fracolsa
Fresh Flowers
F. Salazar
Funza Group
  Flores Alborada
  Flores de Funza S.A.
  Flores del Bosque Ltda.
Garden and Flowers Ltda.
German Ocampo
Granja
Green Flowers
Grupo el Jardin
  Agricola el Jardin Ltda.
  La Marotte S.A.
  Orquideas Acatayma Ltda.
Guacatay Group
  Agricola Guacatay S.A.
  Jardines Bacata Ltda.
Gypso Flowers
Hacienda la Embarrada
Hacienda Matute
Hana/Hisa Group
  Flores Hana Ichi de Colombia Ltda.
  Flores Tokai Hisa
Hernando Monroy
Horticultra Montecarlo
Horticultura de la Sasan
Horticultura El Molino
Hosa Group
  Horticultura de la Sabana S.A.
  HOSA Ltda.
  Innovacion Andina S.A.
  Minispray S.A.
  Prohosa Ltda.
Illusion Flowers
Industria Santa Clara
Industrial Agricola
Industrial Terwengel Ltda.
Ingro Ltda.
Inverpalmas
Inversiones Almer Ltda.
Inversiones Bucarelia
Inversiones Cota
Inversiones el Bambu Ltda.
Inversiones Flores del Alto
Inversiones Maya, Ltda.
Inversiones Morcote
Inversiones Morrosquillo
Inversiones Playa
Inversiones & Producciones Tecnica
Inversiones Santa Rita Ltda.
Inversiones Silma
Inversiones Sima
Inversiones Supala S.A.
Inversiones Valley Flowers Ltda.
Iturrama S.A.
Jardin de Carolina
Jardines Choconta
Jardines Darpu
Jardines Natalia Ltda.
Jardines Tocarema
Jardines de America
Jardines de Timana
J.M. Torres
Karla Flowers
Kingdom S.A.
La Colina
La Embairada
La Flores Ltda.
La Floresta
La Plazoleta Ltda.
Las Amalias Group
  Las Amalias S.A.
  Pompones Ltda.
  La Fleurette de Colombia Ltda.
  Ramiflora Ltda.
Las Flores
Laura Flowers
L.H.
Linda Colombiana Ltda.
Loma Linda
Loreana Flowers
Los Geranios Ltda.
Luisa Flowers
Luisiana Farms
M. Alejandra
Manjui Ltda.
Mauricio Uribe
Maxima Farms Group
  Agricola los Arboles S.A.
  Colombian D.C. Flowers
  Polo Flowers
  Rainbow Flowers
  Maxima Farms Inc.
Merastec
Monteverde Ltda.
Morcoto
Nasino
Natuflora Ltda./San Martin Bloque B
Olga Rincon
Oro Verde Group
  Inversiones Miraflores S.A.
  Inversiones Oro Verde S.A.
Otono (Agroindustrial Otono)
Papagayo Group
  Agricola Papagayo Ltda.
  Inversiones Calypso S.A.
Petalos de Colombia Ltda.
Pinar Guameru
Piracania
Pisochago Ltda.
Plantaciones Delta Ltda.
Plantas S.A.
Prismaflor
Propagar Plantas S.A.
Queens Flowers Group
  Agroindustrial del Rio Frio
  Cultivos General Ltda.
  Flora Nova
  Flora Atlas Ltda.
  Flores Calima S.A.
  Flores Canelon Ltda.
  Flores de Bojaca
  Flores del Cacique
  Flores del Hato
  Flores el Aljibe Ltda.
  Flores el Cipres
  Flores El Pino Ltda.
  Flores El Roble S.A.
  Flores el Tandil
  Flores la Mana
  Flores las Acacias Ltda.
  Flores la Valvanera Ltda.
  Flores Jayvana
  Flores Ubate Ltda.
  Jardines de Chia Ltda.
  Jardines Fredonia Ltda.
  Jardines Piracanta
  M.G. Consultores Ltda.
  Mountain Roses
  Queens Flowers de Colombia Ltda.
  Quality Flowers S.A.
  Florval S.A. (Floval)
  Jardines des Rosal
Reme Salamanca
Rosa Bella
Rosaflor
Rosales de Colombia Ltda.
Rosales de Suba Ltda.
Rosas Sabanilla Group
  Flores la Colmena Ltda.
  Rosas Sabanilla Ltda.
  Inversiones la Serena
  Agricola la Capilla
Rosas y Jardines
Rose
Rosex Ltda.
Roselandia
San Ernesto
San Valentine
Sansa Flowers
Santa Rosa Group
  Flores Santa Rosa Ltda.
  Floricola La Ramada Ltda.
Santana Flowers Group
  Santana Flowers Ltda.
  Hacienda Curibital Ltda.
  Inversiones Istra Ltda.
Sarena
Select Pro
Senda Brava Ltda.
Shasta Flowers y Compania Ltda.
Shila
Siempreviva
Soagro Group
  Agricola el Mortino Ltda.
  Flores Aguaclara Ltda.
  Flores del Monte Ltda.
  Flores la Estancia
  Jaramillo y Daza
Solor Flores Ltda.
Starlight
Superflora Ltda.

Susca
Sweet Farms
Flores Santa Rosa Ltda.
Floricola la Ramada Ltda.
Agropecuaria Sierra Loma
Tag Ltda.
The Beall Company
The Rose
Tinzuque Group
Tinzuque Ltda.
Catu S.A.
Tomino
Toto Flowers Group
Flores de Suesca S.A.
Toto Flowers
Tropical Garden
Tuchany Group
Tuchany S.A.
Flores Sibate
Flores Tikaya
Flores Munya
Uniflor Ltda.
Vegaflor
Velez de Monchaux Group
Velez De Monchaux e Hijos y Cia S. en C.
Agroteusa
Victoria Flowers
Villa Cultivos Ltda.
Villa Diana
Vuelven Ltda.
Zipa Flowers

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 C.F.R. 353.34(b) and 355.34(b).

This initiation and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(l) and 355.22(c)(l).

Dated: April 9, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–9656 Filed 4–14–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–804]

Silicon Metal from Argentina: Notice of Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Court Decision.

SUMMARY: On March 28, 1997, the United States Court of International Trade (CIT) affirmed the International Trade Administration's remand determination that energy is physically incorporated into silicon metal during the production process and its consequent upward adjustment to U.S. price for those taxes imposed on the incorporated energy.

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Carole Showers or Elizabeth Graham, Office of Antidumping/Countervailing Enforcement I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3217 or (202) 482–4105.

SUPPLEMENTARY INFORMATION:

Background

On December 14, 1993, in *Silicon Metal From Argentina; Final Results of Antidumping Duty Administrative Review,* 58 FR 65336, the International Trade Administration (ITA) made an upward adjustment to U.S. price for the rebate of various taxes under the *Reembolso* program, including taxes on electrical energy. In *American Alloys, Inc.* versus *United States,* 30 F.3d 1469, 1474 (Fed. Cir. 1994) (*American Alloys III*), the Federal Circuit reversed the lower court's holding in *American Alloys, Inc.* versus *United States,* 810 F. Supp. 1294 (CIT 1993) (*American Alloys I*), and held that U.S. price may not be adjusted for a rebated tax unless it is determined that the rebated tax bears a direct relationship to the exported product or a physically incorporated component of that product. Pursuant to the Federal Circuit's opinion, the CIT remanded the case to Commerce to make such a determination with respect to the taxes in question. On August 17, 1995, Commerce submitted the results of its redetermination on remand to the CIT wherein it made an upward adjustment to U.S. price for taxes paid on energy which it found to be physically incorporated into the subject merchandise. The CIT affirmed those remand results in *American Alloys, Inc.* versus *United States,* Slip Op. 97–37 (CIT Mar. 28, 1997) (*American Alloys IV*).

In its decision in *Timken Co.* versus *United States,* 893 F.2d 337 (Fed. Cir. 1990), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. section 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's opinion in *American Alloys IV* on March 28, 1997, constitutes a decision not in harmony with the Department's final results of administrative review. Publication of this notice fulfills the *Timken* requirement.

Accordingly, the Department will continue to suspend liquidation pending the expiration of the period of appeal, or, if appealed, upon a "conclusive" court decision.

Dated: April 8, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9658 Filed 4–14–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued. Applicant has requested expedited review.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 96–AE003.'' The Rice Millers'' Association's (''RMA'') original Certificate was issued on August 16, 1996 (61 FR 43733, August 26, 1996). A summary of the application for an amendment is as follows.

Summary of the Application

Applicant: Rice Millers'' Association, 4301 North Fairfax Drive, Suite 305, Arlington, Virginia 22203–1616.

Contact: Cynthia H. Tough, Vice President of International Affairs for the USA Rice Federation, *Telephone:* (703) 351–8161.

Application No.: 96–AE003.

Date Deemed Submitted: March 31, 1997.

Proposed Amendment: RMA seeks to amend its Certificate to expand the eligibility for membership in the RMA Certificate to include both mill members and associate members. Associate members include a broad range of companies with an interest in the rice industry, including bag manufacturers, brokers, equipment manufacturers/suppliers, exporters, food processing companies, freight forwarders, grain elevators, grain merchandisers, industry associations, inspection companies, management companies, port authorities, and stevedoring/shipping companies. Any proprietor, partnership, or corporation, whether or not engaged in rice milling in the United States, which is not a member of RMA and which wishes to participate in the activities covered by the Certificate, may join the ETCR upon meeting the qualifications for membership in RMA.

Therefore, the definition of ''Member'' in RMA's Certificate would be amended to read as follows: ''Member'' means a member of the Rice Millers' Association which has been certified as a ''Member'' within the meaning of Section 325.2(l) of the Regulations and is listed in Attachment I. Members must sign the Operating Agreement of the Rice Millers'' Association Export Trade Certificate of Review in order to participate in the certified activities. Any RMA member, including any mill member or associate member, which is not a Member listed in Attachment I may join RMA's Export Trade Certificate of Review by requesting that RMA file for an amended certificate and by signing the Operating Agreement. Any proprietor, partnership, or corporation either engaged in rice milling in the United States or not engaged in rice milling in the United States, which is not a member of RMA and which wishes to participate in the activities covered by this certificate, may join RMA's membership upon meeting the qualifications for membership and then request that RMA file for an amended certificate. A Member may withdraw from coverage under this certificate at any time by giving written notice to RMA, a copy of which RMA will promptly transmit to the Secretary of Commerce and the Attorney General.''

Dated: April 9, 1997.

W. Dawn Busby,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 97–9617 Filed 4–14–97; 8:45 am]

BILLING CODE 3510–DR–I

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040997A]

Groundfish of the Bering Sea and Aleutian Islands

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

ACTION: Notice of receipt of an experimental fishing permit.

SUMMARY: This notice announces receipt of an application from John Gauvin, Groundfish Forum, Inc., for an Experimental Fishing Permit (EFP). If awarded, this permit would be used to systematically test the effects of a different trawl net design on species and size composition of catch in trawls targeting flatfish. It is intended to promote the objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

ADDRESSES: Copies of the EFP application are available from Steven Pennoyer, Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228.

SUPPLEMENTARY INFORMATION: The FMP and its implementing regulations at 50 CFR part 679.6 authorize issuance of EFPs to allow fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations. NMFS received a request from the applicant on March 14, 1997, that, if approved, would be used to systematically test the effects of a different trawl net design on species and size composition of catch in trawls targeting flatfish. Information from this experiment could be used by the fishing industry to reduce catches of non-target species (e.g., pollock and cod) while fishing for flatfish, thereby reducing waste and discard of those species.

In accordance with regulations, NMFS has determined that the proposal warrants further consideration and has initiated consultation with the North Pacific Fishery Management Council (Council) by forwarding the application to the Council. The Council will consider the EFP application during its April 15–19, 1997, meeting and has invited the applicant to appear in support of the application if he so desires.

A copy of the application is available for review from the NMFS Regional Administrator (see **ADDRESSES**).

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

Dated: April 9, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–9630 Filed 4–14–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033197C]

Secretary's Report to Congress on the Pribilof Islands as Required Under Public Law 104–91

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of submission of report to Congress.

SUMMARY: Public Law 104–91, section 3(c) requires the Secretary of Commerce to prepare and submit a report on necessary actions to resolve Federal

responsibility on the Pribilof Islands. The Report was prepared by the National Oceanic and Atmospheric Administration and was signed by the Secretary of Commerce on March 17, 1997. This Notice is intended to publish the main text of the Report and provide information regarding its availability.

FOR FURTHER INFORMATION CONTACT: Nancy Briscoe in the Office of General Counsel, National Oceanic and Atmospheric Administration, 301–713–1393.

SUPPLEMENTARY INFORMATION: On January 6, 1996, President Clinton signed Public Law 104–91. Under Section 3 of the law the Secretary of Commerce was directed to undertake certain activities with regard to the Pribilof Islands, Alaska. Section 3(c) directed the Secretary to prepare a report for Congress which proposed necessary actions by the Secretary and Congress to resolve all federal responsibilities on the Islands.

The Report to Congress on the Pribilof Islands was signed by the Secretary of Commerce on March 17, 1997. The text of the Secretary's Report is attached to this Notice. Full copies of the Exhibits to the Report consist of thousands of pages of documents submitted under the Report process by local entities and residents. Due to the volume of the Exhibits, it was not possible to publish them with this Notice. Full copies of all Exhibits are available at the City Office on St. Paul (907–546–2331), at the City Office on St. George (907–859–2263), at the Regional Archives facility of the National Archives in Anchorage, 645 West 3rd Avenue, Anchorage AK, 99501 (907–463–2408), and at the Office of General Counsel, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 #(301–713–1393).

Secretary's Report on the Pribilof Islands as Required by Public Law 104–91

Prepared By: The National Oceanic and Atmospheric Administration for the Department of Commerce

Final, March 17, 1997.

I. Introduction

The Pribilof Islands of St. Paul and St. George are islands of volcanic origin that lie 800 miles west-south west of Anchorage, Alaska in the Bering Sea. Each island has an approximate land area of 44 square miles generally contained by precipitous cliffs. St. Paul, the larger of the two islands, has a current population of approximately 780 people. The population of St. George is approximately 120 people.

The Pribilof Islands were discovered by Russian navigators in 1786 as a result of their search for the breeding grounds of the North Pacific Fur Seal (''the fur seal''). The next one hundred years were marked by intense harvest of the fur seals to exploit Chinese, Russian and European markets. To harvest the commercially valuable species on the Islands, the Russians enslaved and relocated Aleuts from the southeast who were proficient at killing the seals.

When the United States purchased the Territory of Alaska from the Russians in 1867, responsibility for the welfare of the Pribilovian Aleuts fell to the Federal Government. Since 1867, the United States Government has worked to promote the autonomy and self-governance of the Pribilovian people, and thereby fulfill its obligations to them. Following decades of progressive change in the Federal Government's administration of the Islands, Congress in 1983 enacted legislation to terminate Federal management of the Pribilof Islands.

On January 6, 1996, President Clinton signed Public Law 104–91 (''P.L. 104–91''). Section 3(c) of the law, entitled ''Resolution of Federal Responsibilities,'' requires the Secretary of Commerce to submit to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Resources of the House of Representatives

* * * a report proposing necessary actions by the Secretary of Commerce and Congress to resolve all claims with respect to, and permit the final implementation, fulfillment and completion of—

(a) Title II of the Fur Seal Act Amendments of 1983 (16 U.S.C. 1161 *et seq.*);

(b) The land conveyance entitlement of local entities and residents of the Pribilof Islands under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*);

(c) the provisions of this section; and

(d) any other matters which the Secretary deems appropriate.''

This is the Report of the Secretary of Commerce (''Secretary'') as required under P.L.–104–91.

This Report examines the historical and contemporary relationship of the United States government to the Pribilovian people to afford the context for evaluating current circumstances and Federal responsibilities. The Report is organized as follows: Section II examines historical Federal involvement; Section III describes the current economies on the Islands of St. George and St. Paul and the relationship of the Pribilovian people to the Federal Government; Section IV describes and categorizes the claims asserted against the United States by local entities and residents and, where applicable, provides recommendations for additional Federal action; Section V sets forth the position of the Department of Commerce (''the Department'') and its recommendations for resolution of Federal responsibility on the Pribilof Islands.

II. A History of Federal Involvement on the Pribilof Islands

This Report cannot fully chronicle the complex history of the Pribilof Islands.[1] It is the aim of this Section to provide an historical overview of Federal involvement with the Pribilof Islands as they have evolved into independent, self-sustaining American communities.

A. Origins

The U.S. Government first became directly involved with the Pribilof Islands and the Pribilovian people in 1867 when the islands were acquired with the Territory of Alaska. Immediately thereafter, in 1868, the Islands were declared to be a special Federal reserve for purposes of management and preservation of fur seals and other fur bearing species.

In the first 40 years of Federal ownership of the Pribilof Islands, the lives of the Pribilovians were directed by the companies harvesting the seals under contract with the U.S. Government. During this period, the Pribilovian people derived their livelihood through employment with the fur sealing companies and their lives were subject to the dictates of those companies.

Largely unregulated, the effects of the private, commercial harvest were devastating on the fur seal population. By 1890, the effects of over-harvest and pelagic sealing[2] brought the population close to extinction. At the close of the last private contract in 1909, it was estimated that only 300,000 fur seals remained worldwide.

As a result of the decline in the fur seal population, Federal attention paid to the Islands increased. Although the Government's focus remained primarily on management of the fur seal harvest, the Federal response ensured greater engagement by the United States with the lives of the Pribilovian people.

[1] *A Century of Servitude* (Jones, Dorothy Knee, University Press of America, Library of Congress card no. 80–1407—currently out of print) and *Slaves of the Harvest*, published by the Pribilof Island School District—no additional citation available) have been recommended by the Pribilovian people as guides providing a full accounting of the Islands from Aleutian discovery to the people's recent struggle with autonomy.

[2] Pelagic sealing is the practice of killing seals at sea. It is less selective and less productive than taking seals on land where surplus adult males can be identified and females and pups may be protected.

Pelagic sealing and mass, commercial-contract sealing in the United States was curbed in 1910 when the Sixty-First Congress passed ''An Act to protect the seal fisheries of Alaska, and for other purposes'' (''the 1910 Act'').[3] The effect of the 1910 Act was to abolish the lease/permit system of seal harvest open to the general trading public and to replace it with a broader government authority vested in the Secretary of Commerce and Labor to manage and protect the seal population. To promote conservation of the fur seal, the 1910 Act prohibited the killing of seals by anyone other than an officer, agent or employee of the Federal Government.

The 1910 Act further directed that whenever seals were killed or sealskins taken the Pribilovians were to be employed and were to receive fair compensation for their labor. To administer the program, the 1910 Act specified that the Secretary had:

> * * * the authority to furnish food, shelter, fuel, clothing, and other necessaries of life to the native inhabitants of the Pribilof Islands and to provide for their comfort, maintenance, education and protection.

Notwithstanding relatively minor amendments made in 1912 to give effect to the Fur Seal Treaty of July 7, 1911 between the United States, Great Britain, Japan and Russia, the 1910 Act remained in force until repealed by the Fur Seal Act of February 26, 1944 (''the 1944 Act'').[4] The 1944 Act served primarily to vest control over the fur seals, salmon, and other fisheries in Alaska in the Department of the Interior (''DOI''), which administered the program through the Bureau of Commercial Fisheries (''BCF''). It came on the heels of Japan's abrogation of the 1911 treaty on October 23, 1941 and completion of a provisional fur seal conservation agreement between Canada and the United States which followed in 1942.

War between the United States and Japan was declared in 1941 and in 1942, the Japanese launched a surprise attack on Dutch Harbor, Unalaska. The attack on the Aleutian Chain dramatically exposed the United States' vulnerability in the Bering Sea and thrust the Pribilof Islands directly into the war zone. Because of the threat of attack, the Pribilovians were evacuated from their homes and interned at Funtner Bay on Admiralty Island, Alaska. Their internment lasted two years and they returned to the Pribilofs at the close of the war in May, 1944.

[3] *See* Act of April 21, 1910, 36 Stat. 326.

[4] *See* 16 U.S.C. §§ 631a-631q, 58 Stat. 104.

B. The Late 1940s: The Post-War Era

Internment at Funtner Bay lead to familiarity with other Alaskan natives and in 1948 the Pribilovians joined the Alaska Native Brotherhood (''ANB''). As a result of the efforts of the ANB on behalf of the Pribilof Aleuts, the Secretary of the Interior in 1949 designated a group to study living conditions of native communities around the Bering Sea.[5]

The DOI study found that living standards on the Pribilof Islands were on par with the highest income groups of any native people in Alaska and that living conditions there were exemplary. The survey group recognized, however, that the role of the Federal Government as guardian of their welfare limited the Pribilovian's sense of liberty and was inconsistent with the status of wage earning natives elsewhere in the Alaska Territory. To temper this disparity, recommendations were made to restructure certain operational functions on the Islands. As a result of the recommendations, a job classification and cash compensation wage plan was instituted. The plan included annual and sick leave, retirement benefits and disability insurance. Food, housing, clothing, health, education and recreation costs continued to be paid by the government.

Although Pribilovian monetary compensation under the new system remained below that of their neighbors, a relatively high standard of living was ensured by the offsets provided through the in-kind compensation they continued to receive. As demonstrated by the study, the result was that during this period the Pribilovians enjoyed greater health, recreational, educational and medical benefits than any other Alaskan native group.

The survey group also recommended that the St. Paul community receive a charter, constitution and bylaws in compliance with the 1934 Indian Reorganization Act (''IRA'').[6] The St. Paul charter was established in 1950 and with it the Pribilovian communities of St. Paul and St. George found a voice in Federal and territorial government decision-making. They were also given responsibility for handling all economic affairs of the community and for safe-guarding the peace, safety and morals of the village.

In 1951, the St. Paul IRA council exercised its new rights by filing a claim for native land rights and compensation for past injustices. The land rights were ultimately resolved in 1971 under the Alaska Native Claims Settlement Act (''ANCSA''), discussed below. The claim for past injustices was ultimately brought under the Fair and Honorable Dealings Act, and was settled in 1976.[7]

[5] As cited in *Slaves, Ibid.* at 143.

[6] The IRA was developed to help native Americans retain their identity through the establishment of tribal self-government, the preservation of religious and cultural freedom, and the prevention of economic exploitation.

Additional changes that marked the post-war era included the establishment of a voting precinct on the Islands and the agreement of the Territory of Alaska's Department of Health and Education to provide technical guidance to the Federal Government on medical and educational services. In 1948, a fourth class post office was established on St. Paul and regular mail service connecting St. Paul to the outside world was instituted by Reeve Aleutian Airways. In 1949 the first tourists were welcomed to the Islands and regular commercial flights were instituted. These flights enabled the Pribilovians to travel beyond the confines of their Islands. In the early 50's, large electrical generators were installed which were capable of providing electricity beyond the standard 11:00 p.m. curfew. In short order, modern electrical appliances became household fixtures on the Pribilof Islands.

The introduction of modern conveniences, wages and buying power and the possibility of travel to the outside world, together with the support services still provided by the government, brought them to a socio-economic level on par with, if not surpassing, many other communities in Alaska and the United States (See *A Century of Servitude* for a good description of this period). In light of these changes, DOI began to re-evaluate the role of the Pribilof Island program.

C. The 1950s: Federal Attrition and the Beginning of Autonomy

From 1942 until 1957, the Pribilof fur seals were protected by the interim treaty executed in 1942. In 1957, the Interim North Pacific Fur Seal Convention between Canada, Japan, the Union of Soviet Republics, and the United States was enacted. It established a Fur Seal Commission comprised of representatives of the four governments to coordinate research and management of the fur seal resource.

As the United States' international policy regarding fur seals on the

[7] On August 10, 1988, the President signed legislation authorizing a $21.4 million trust fund for residents of the Aleutian and Pribilof Islands. The legislation was intended as compensation for Aleuts who were evacuated from their homes during World War II. The compensation is part of a larger reparation of $1.3 billion paid Japanese-Americans interned during the War.

Pribilofs continued to evolve toward conservation, BCF realized that their role and presence on the Islands would diminish. In 1959, BCF announced that the Pribilof fur seal harvest would, over time, become a seasonal operation. BCF recognized that this change in policy would significantly affect the Pribilovian people. They acknowledged that the local people would need job training and, given the remoteness of the Pribilofs, recommended off-island relocation.

Preparing for the radical changes that would result from a reduced Federal harvest, BCF arranged for general skills training in Anchorage through the Bureau of Indian Affairs (BIA). To encourage participation, individuals were paid to attend the training. Despite this incentive, enrollment was low.

While the BCF training initiative was largely ignored, their off-island relocation suggestions were met with intense and vociferous opposition. As a result, and recognizing the relative inaccessibility and geographic inhospitability of St. George, BCF revised its relocation plan to accommodate habitation on St. Paul only. It was the opinion of BCF that with the decline in the Federal seal harvest program, particularly on St. George, the number of houses ultimately needed for employees should be held in check. In the years that ensued, the Bureau encouraged the voluntary relocation of St. George residents to St. Paul by providing new homes on St. Paul to St. George residents who moved there. In further support of this policy, new home building on St. George ceased, and all vacant homes there were destroyed.

BCF dropped its outward relocation efforts after disapproval voiced during Committee on Commerce hearings conducted in 1965. The belief that the St. George Pribilovians should be relocated, however, would survive, and would be reintroduced in the next amendments to the Fur Seal Act.

D. The 1960s: Self-Autonomy

(1) The Federal Wage System

In 1960, BCF appointed Howard Baltzo as the new director of the Pribilof Island Program. Mr. Baltzo's primary mandate was to improve the overall living conditions of the Pribilof people in light of impending program changes. The changes Mr. Baltzo made to the program are set forth in his May 1963 report entitled *Program for Administration of the Pribilof Island Federal Reservation Embracing Management of the Fur Seal Resource and Development of the Resident Aleut Inhabitants.* As result of Mr. Baltzo's work, the Federal Civil Service wage scale was introduced in 1962 for all people on the Islands working for the Federal Government. With this change, Pribilovian wages were brought into parity with the rest of the Federal workforce. In turn, in kind compensation such as free rent and food were substantially reduced, being provided only to those with insufficient wages to cover necessities. The Federal Government did, however, continue to maintain and administer the stores, laundries, houses, streets, and all public buildings and to fund educational and medical services for all Pribilovians on both Islands. To preserve Federal jobs, Pribilovian residents continued to be employed in these services.

While in many ways a boon, the Federal wage-scale system brought with it the realities of unemployment. Based on civil service job definitions, many people were newly classified as temporary or part-time employees. Still others lost their jobs. Although they now had autonomy and full wages, without the security of in-kind benefits, many people were caught in the unfortunate position of not being able to pay their bills. Individual indebtedness to the Federal Government for rent, food, clothing and fuel began to mount.[8] Some Islanders left to seek work on mainland Alaska. Most, however, stayed.

(2) The Fur Seal Act Amendments of 1966

In 1965, Senate hearings were held regarding the role of the Federal Government on the Pribilof Islands (''the Bartlett Hearings''). At these hearings, the Pribilovians testified that they would feel more secure owning their own homes and managing the affairs of their villages as self-governed municipalities.

The product of the Bartlett Hearings was the Fur Seal Act Amendment of 1966 (''the 1966 Act'').[9] Amendments to Title I of the 1966 Act incorporated changes that ensured implementation of the Interim Convention on the Conservation of North Pacific Fur Seals signed February 9, 1957, and amended by protocol dated October 8, 1963. Amendments to Title II of the 1966 Act were designed to foster self-sufficiency and self-governance among the native inhabitants of the Pribilof Islands.

Recognizing the significant positive changes brought about on the Islands since 1950, the Committee on Merchant Marine and Fisheries reported in House Report No. 2154:

> During the past 16 years progress has been made in placing the resident Aleuts on the same basis as other citizens and other Federal employees. They are now compensated on a wage rate basis comparable to that in other Alaska communities. They are charged reasonable rates for housing, household supplies, and community services provided by the Government. A locally elected community council manages certain affairs of the community, including the implementation of local ordinances. The St. Paul Island Community Council operates a cooperative canteen-store facility, and members of the Aleut community serve as deputy magistrate, postmaster, and local law-enforcement officers. A small number of home-operated restaurants and theater enterprises also have developed.

The Department of Interior and your committee wants to encourage the development of the Aleut community still further, and significantly reduce Federal expenditures for the fur seal industry operation. Accordingly, the Department now plans three gradual changes in its program for administration of the islands. These involve: first, the transfer to the Aleut community on St. Paul of greater responsibility for the administration and management of the village coupled with increased opportunities for development of new economic activity within the expanded community; second, the consolidation of the St. George Island community with that on St. Paul Island on a voluntary basis -as housing and other facilities on St. Paul increase; and third, transition from year-round to seasonal fur seal industry operations by the Bureau of Commercial Fisheries.[10]

To accomplish these objectives and give effect to the desires of the Pribilovian people, section 206 of the 1966 Act authorized the Secretary of the Interior to set apart land on St. Paul Island for the establishment of a townsite. The townsite was to be surveyed into lots, blocks, streets and alleys and the Secretary was to issue a patent for the townsite to a trustee appointed by him. It was the duty of the trustee to convey to all individual natives of both islands title to improved or unimproved surveyed lots or tracts of land within the townsite. These tracts included plots with government homes on them.

Conveyance was contingent on payment for the property to the Secretary. Before issuance of the patent

[8] Many of these debts were ultimately forgiven. In 1995, outstanding municipal debts for fuel and services were settled through an agreement for in-kind services.

[9] P.L. 89–702, 80 Stat. 1091.

[10] *House Report, Merchant Marine and Fisheries Commission,* House Report No. 2154, Cong. News, Sept. 29, 1966, p. 3630.

and any conveyance, the Secretary was required to make a determination that a self-governing community on St. Paul was in existence, or was likely to be imminently and successfully established. Adhering to their policy of consolidation of the Pribilovians on St. Paul Island, no townsite set-aside was authorized for St. George.

Proceeds from the sale of the lands, together with other available funds such as tax revenues, were to be given to the established local governing body on St. Paul to enable it to provide needed municipal services. In addition, section 206 provided for a sliding-scale 5 year payment to the community to fund municipal services. The first payment was in the sum of $50,000.00. At the close of each succeeding 4 fiscal years, the payments would be $40,000.00, $30,000.00, $20,000.00, and $10,000.00, respectively. Finally, all unsold property remaining after 5 years and no longer required by the Government was to be conveyed to the incorporated municipality, together with all surveyed streets and alleys.

In 1967, just one year after passage of the 1966 Act, a team of researchers from the University of Alaska came to the islands to study St. Paul's economy in light of their emerging self-governance. Based upon available information, the researchers estimated that the average household income on St. Paul was approximately $9,830, while the expenditure for living expenses was $1000 less. They concluded that there was an income and savings base with potential to provide economic self-sufficiency through responsible local leadership.

The report concluded:

> The future of St. Paul rests with the people of the community regardless of what determinations are made by others or what development plans may be prepared. It will be up to the local people to decide whether or not to incorporate as a municipality, and without a positive vote, the town-site provisions of the Fur Seal Act will not apply. Likewise, the carrying out of the development programs, the broadening of the economic base, and other potentials that exist are all dependant on support by the local population * * * St. Paul has the potential for emerging as a vital community. In the long run, however, the future of the Pribilofs rests to a large degree on the attitudes of the young people. How they see their future will determine the future of St. Paul.[11]

Over the ensuing five years, the community failed to incorporate as a municipality. As a result, the Secretary was unable to make the requisite determination of self-governance to permit the land transfers and the realization of the people's desire for home ownership was delayed.

Despite this delay, a number of positive changes were brought to bear on the Islands as a result of the 1966 Act. Effective in 1966, responsibility for some community services, including police and fire protection, were transferred to the local council. The first public tavern opened its doors on St. Paul the same year, and the community took over operation of the hotel that summer. Soon, the community equipped and was operating a maintenance and repair shop and a recreation hall. St. Paul established two movie houses, four refreshment stands, and a barber shop. In 1967, the U.S. Coast Guard Loran Station and the Weather Bureau began to train local residents for jobs. And for the first time, Pribilovian residents enjoyed private car ownership as vehicles were sold by departing Federal employees and construction contractors.

The 1966 Act also served to enhance the retirement benefits of the Pribilovian people. Under a 1951 ruling, the Civil Service Commission had advised the Secretary of the Interior that the resident Aleuts performing services for the Government were considered Federal employees only as of 1950 when they received compensation in the form of wages. Under that ruling, elder Aleuts of retirement age would not receive credit service before 1950. Section 208 of the 1966 Act changed the administrative ruling of the Civil Service Commission by extending retirement credit for service prior to 1950. It also eliminated deposit requirements by those individuals for the accrual of benefits.

E. The 1970s: Self Governance

Effective October 30, 1970, ''Reorganization Plan No. 4 of 1970'' (35 F.R. 15627; 84 Stat. 2090) transferred the functions of BCF to the Secretary of Commerce. As a result, the responsibilities of the Federal Government for continued administration of the Pribilof Island Program were assumed by the National Marine Fisheries Service (''NMFS'') of the newly organized National Oceanic and Atmospheric Administration (''NOAA'').

In 1971, a resolution to accept a charter to incorporate St. Paul was finally passed. On June 29, 1971, the village of St. Paul became a fourth class Alaskan city and assumed all responsibility to provide public services to its residents. Meanwhile, the voices of combined Alaskan native groups had succeeded in bringing about reforms regarding the status of land ownership throughout the State. On December 18, 1971, Congress moved to resolve all Alaskan aboriginal land claims by enacting the Alaska Native Claims Settlement Act (''ANCSA'').[12]

In 1973, the Fur Seal Commission adopted the United States' recommendation to establish a major research program for fur seals by setting aside St. George Island as a research reserve. The goal of the research was to compare population dynamics and behavior between the harvested population on St. Paul and an unharvested population on St. George. As a result, the commercial harvest of seals ceased on St. George after 1972. Economically, the effect was to further diminish Federal employment on St. George. The decision was within the Secretary's authority and lent further support to the administration's declared policy of relocating the St. George islanders because of the relative inability of that remote island to support any kind of economy.

ANCSA required the establishment of Regional and Village native corporations through which the claims of all entitled natives, including the Pribilovians, would be settled. The settlement included the distribution of 40 million acres of land throughout the State and the payment of $962,500,000.00 over an eleven-year period. Transfer of title for all ANCSA conveyances was made through the Department of the Interior, Bureau of Land Management (''BLM'').

To comply with the village corporation provisions of ANCSA, the people of St. Paul established the Tanadgusix Corporation (''TDX'') while the people of St. George established the Tanaq Corporation. TDX received the right to select 138,240 acres of land in the Aleutians, Alaska Peninsula, and St. Paul. Ultimately, 113,000 acres conveyed to TDX. Tanaq received the right to select 115,200 acres. 106,000 acres were ultimately conveyed. A full discussion of remaining ANCSA land entitlements to be resolved is included in the statement and comments from the Department of Interior at Exhibit A.

Under sections 1610(b), 1611(a) and 1613(a) of the ANCSA, conveyances to the native corporations were to include surface rights to the core township lands where each village was located. ANCSA also directed that subsurface rights be transferred to the regional corporations.[13] On the Pribilof Islands,

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[11] Foote, Dan C., V. Fischer, George W. Rogers. *St. Paul Community Study,* Institute of Social, Economic and Government Research, University of Alaska, Fairbanks, Alaska, 1968, p. 72, as cited in *Slaves, ibid.* At 159.

[12] 43 U.S.C. 1601, *et seq,* 85 Stat. 688, Pub.L. 92–203.

[13] The regional corporation for both villages is the Aleut Corporation, currently ranked as the 32nd largest revenue generator in the State.

these provisions created an immediate impasse to the pending transfer of the townsite under the 1966 Act. Under section 206 of the 1966 Act, the Federal Government was obligated to sell tracts of Federal property to Pribilovian individuals as part of the townsite concept. Under ANCSA, the Federal Government was directed to convey interim title to the townships and other lands to the native corporations at no cost. The corporations, in turn, were to transfer title to their shareholders. In both instances, the property to be transferred included government housing.

Faced with a choice of having residents purchase their own land and homes under the 1966 Act or receiving them at no cost under ANCSA, the City of St. Paul voted to take the property and houses through the ANCSA process. Meanwhile, the Department of Interior ruled that the townsite provisions of section 206 of the 1966 Act were preempted by the conveyance provisions of ANCSA.[14]

Having resolved ANCSA as the appropriate mechanism for transfer, NMFS released the majority of property on St. George and St. Paul for corporate selection. Under section (3)(e) of ANCSA, the Federal Government was allowed to retain certain property necessary for its public mission. Accordingly, the Federal Government retained the fur seal rookeries and a number of facilities required for the continued administration of the Islands as a special reserve.

Viewing ANCSA as a guarantee for a more prosperous and secure future on the Islands, the people found renewed vigor and support for their desire to remain on St. George and St. Paul. Recognizing the economic limitations of the ANCSA settlement, the Federal Government continued to encourage the voluntary relocation of St. Georgians to St. Paul and the voluntary migration of unemployed Pribilovians to mainland Alaska and the rest of the United States.

The practical effect of ANCSA and its interplay with the 1966 Act was to establish six entities competing for limited resources on two remote islands. While opportunities for economic growth and self-governance were promoted under both acts, the underlying tensions between the entities arising in subsequent disputes over money, facilities, land and land use would create as many problems as it resolved. That tension would prove to divide the community in enduring fashion, fostering attitudes that would ultimately diminish the bright prospect envisioned by the University of Alaska researchers in 1967. Ultimately, these tensions have affected the ability of the islands to self-govern efficiently and cooperatively.

F. The 1980s: Termination of Federal Responsibility

(1) The Fur Seal Act Amendments of 1983

With the mechanisms for the transfer of land in place and operational under ANCSA, and systems of self-government established commensurate with ANCSA and the 1966 Act, the attention of Congress in the early eighties turned to the promotion of a self-sufficient and self-sustaining economy on the Pribilof Islands.

Despite the programmatic decline of Federal involvement on the Islands, annual funding for the Pribilof program had doubled between 1970 and 1982 to $6.3 million annually. Approximately 95 per cent of each year's funds were spent in support of social welfare programs. Recognizing the autonomy of the Pribilovian people and faced with tight budget constraints and an increasing national deficit, the Administration's 1983 budget proposed to phase-out Federal support on the Pribilofs over four years at a cost of $15.8 million.

In a joint effort to derive a better solution than a slow phase-out, the Secretary of Commerce and the Governor of Alaska formed a working group composed of State, Island and Federal representatives. At the first meeting of the work group, State and Island positions advocated that the Federal Government provide annual appropriations for 5 more years at current levels. Recognizing that continued Federal appropriations for social welfare programs would do nothing to create a stable and self-sustaining economy on the Islands, the Administration proposed that one answer was to build upon the Pribilof's location in the midst of the Bering Sea fisheries. To capture this potential, the Secretary suggested the creation of a one-time $20 million trust to replace the annual appropriations for social welfare and support. Combined with a commitment by the State to construct harbors on both Islands, the trust would give the Pribilovians the resources needed to make the transition to a self-sustaining economy. In addition, the Secretary proposed the transfer of previously exempt ANCSA properties.[15]

During subsequent meetings, the Administration advanced its proposal. The State responded by supporting harbor construction on both Islands. The State also expressed its willingness to assume normal State functions related to transportation and community services, including the provision of schools and educational services and responsibility for airport services. (The State's commitments along these lines are articulated in correspondence dated May 11, 1982 and September 28, 1982 from Governor Hammond to Administrator Calio, and in a Memorandum of Understanding signed by the State dated February 10, 1984. All of these documents are attached at Exhibit 2.)

Over the course of the next several months, the Administration worked with State and Island leaders to develop a Memorandum of Intent (''MOI'') describing the concept of a phase-out linked to the Federal trust appropriation, the transfer of Federal property and State assistance for the construction of a harbor on each Island. Under the MOI, all parties acknowledged that the United States desired to terminate Federal program funding on the Pribilofs under Title II of the Fur Seal Act (''FSA'') while at the same time maintaining its Treaty obligations under Title I. (A copy of the MOI is attached as Exhibit 3.) To ensure that there was no misunderstanding about the intent of the United States to terminate all Title II Federal responsibility on the Islands, the MOI and a letter carefully explaining the Administration's position were sent to every household on the islands. (A copy of the letter is attached as Exhibit 4).

As a result of negotiations and consultation conducted within the framework of the MOI, the Administration set forth in draft legislation its proposal to provide for the orderly termination of Federal management of the Islands. The bill, H.R. 2840, was based on legislation presented in the House of Representatives on April 28, 1983. It was supported by all of the parties affected by it.

Recognizing the need to bifurcate responsibility for the provision of socio-economic welfare development under Title II of the Act from NOAA's responsibility for protection and conservation of the fur seal under Title

[14] See *Alaska District Council of the Assemblies of God, Inc.*, 8 IBLA 153, 155 (Nov. 22, 1972), and opinion of February 5, 1975 from the Regional Solicitor to the BLM State Director (attached as Exhibit 1).

[15] Under the proposal, responsibility for commercial harvest of the fur seal remained with the Federal government; subsistence harvest, however, would continue to be allowed.

I, then NOAA Deputy Administrator Anthony Calio testified to the Committee on Merchant Marine and Fisheries that:

The principal purpose of amending the Fur Seal Act is to end Federal administration, as you have indicated, in the Pribilof Islands, while continuing to fulfill the obligation of the United States under the Interim Convention on the Conservation of North Pacific Fur Seals * * * I believe that the conceptual basis of these amendments is sound and that the time is ripe for the islands to become independent of Federal control * * * If the funds are appropriated, the Department of Commerce will seek no further funds for the Pribilofs other than those needed to maintain an adequate research and conservation program and to implement the Fur Seal Convention.[16]

From the outset, it was the Administration's position that the one-time trust appropriation be used solely to replace social welfare and support services on the Islands and that the success of the proposal was contingent on the commitment by the State for harbor development. This position was shared by all negotiating entities. The ANCSA village corporations and the governing entities of both Islands, together with the Department of Commerce, agreed in the 1983 MOI that:

* * * the State of Alaska's appropriation of the monies necessary to construct boat harbors on St. Paul and St. George Islands and the State's assumption of the responsibilities for airports, roads, and other facilities upon the Islands in accordance with applicable laws and regulations is an indispensable contribution to achieving the goal of self-sufficiency on the Pribilofs.

And, as stated by NOAA during Congressional hearings on the proposed 1983 amendments:

* * * $20 million was proposed in addition to the $6.5 million available for fiscal year 1983. We estimate that $4 million is needed annually to provide for basic community needs on both Islands during the transition to a self reliant economy. Assuming that the $20 million is placed in an interest bearing account, the appropriation should last 5–7 years. We thought this would be ample time to develop a new economic base.[17]

In response to questions raised during those hearings about whether the $20 million would be used for the development of the harbor facilities, former NOAA Administrator Anthony Calio stated that:

The purpose of the $20 million was to try to provide some sort of independence for the islanders, to provide them with some capital to pay their current expenses and for future development. We would not try to constrain the use of those funds in any way as far as the executive branch is concerned. It is essentially a capital fund for their own use. If they feel that in their best interest that is the way to utilize that money, we would not put a constraint on it. We feel that this should not be done, however.[18]

Legal counsel for St. Paul Island concurred with this position. Responding to a question concerning use of the trust money for the harbor during the hearings, Attorney Tony Smith stated:

It is our expectation that the $20 million will be used in other areas, not for the harbor. We have done a careful analysis of just maintaining the utilities on the island, and on St. Paul it is going to cost, as best we can determine, about $2.9 million a year during the transition to maintain the sewer, water, light, power, and essentially the airport, the roads, the infrastructure. Our analysis indicates $4.1 million on both islands * * * [The Bill] does not preclude it [use of the trust for harbor construction], but one of our concerns * * * is that the infrastructure and the harbor both need to proceed down parallel tracks. I am very concerned about an effort to take part of the $20 million to construct the harbor * * *

St. Paul's intention is to maintain the infrastructure and get the harbor completed, and we have figured out how to do that with a State appropriation and to have those two run parallel. And hopefully 3 to 4 years down the road we will have a viable, robust entrepreneurial endeavor.[19]

As pointed out by the State during the hearings, development of the harbors was decidedly in the best interests of the State. As stated by the Deputy Director of the Alaska's Division of Community Planning:

This is an internationally significant fishery, as you know, and studies done by the State Department of Commerce confirm that those two harbors could have the linchpin [sic] of a very successful fishing industry in the Bering Sea.[20]

As conceived by engineering firms hired by the islands to consult on the project, construction of the harbors was to be accomplished in three phases. Phase I consisted of the building of breakwaters and a wharf on each island. Phase II consisted of the development of on-shore processors. Phase III consisted of on-going harbor improvements. Estimates of the amount of time to complete the projects ranged from the conservative (8 years) to the optimistic (3–4 years).

As initially presented, the consultants' estimates for construction of the two harbors was in the range of $24 to $30 million. By the time of the hearings, the State had already appropriated and committed $7 million. That money was used to start construction of the Phase I breakwaters. In addition, the State, through the subsequent administration, had submitted a budget request for an additional $10.4 million.

During the hearings, it was the State's position that any shortfall between the money they were able to obtain and what was needed would have to be borne by Federal or private sources. Responding to the State's position, John Phillips, Special Assistant to Administrator Calio, stated that when the engineering firms learned of the State funding limit, their plans had been modified and that even at the $17 million level, harbor completion to Phase I was obtainable. The harbor consultants also expressed their opinion that once the Phase I breakwaters were built, private investors would be drawn to the islands and would prove to be a ready source of private funding for Phase II and Phase III on-shore development and improvements. In support of this assumption, they cited private willingness to invest in the development of fisheries resources which had been achieved at Dutch Harbor and Akutan, areas considerably more limited in terms of resource proximity.

Satisfied that the State's initial commitment and emerging private investment would support harbor development, and that the one-time federally funded trust would be used for infrastructure, the Fur Seal Act Amendments of 1983 (''the 1983 Act'')[21] was enacted. Under the 1983 Act, the Department of Commerce's responsibilities with regard to the Islands were limited to (1) Establishing the one-time trust (''the Trust'') to be administered by a non-government trustee in order to promote the development of a stable, self-sufficient, enduring and diversified economy not dependent on sealing (section 1166); (2) transferring formerly withheld Federal property to Island entities under a Transfer of Property Agreement (''TOPA'') (section 1165); (3) continuing to administer retirement benefits (section 1168), and (4) continuing management of the rookeries to ensure compliance with the Fur Seal Convention (Title I and section 1161). The State was given responsibility for providing standard educational needs (section 1163) and the Secretary of Health and Human Services was given

[16] *Hearings Before the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Committee on Merchant Marine and Fisheries—Pribilof Islands, H.R. 2840,* 98th Congress, House of Representatives, May 19, 1983, pp. 260–263.

[17] *Ibid*. At 290.

[18] *Ibid*. at 273.

[19] *Ibid*. at 335.

[20] *Ibid*. at 299.

[21] 16 U.S.C. 1161 *et seq.*

responsibility for providing medical and dental services (section 1164).

A Master Trust Agreement under the 1983 Act was signed on November 21, 1983. Separate trusts for St. Paul and St. George were established on March 14, 1984 and March 27, 1984, respectively. In accordance with his authority, and at the request of people of St. George, the Trust was divided into two portions. Using a formula devised by the Secretary, $12 million was allotted St. Paul, $8 million to St. George.

Faced with declining oil revenues in 1985, the Sheffield administration was ultimately unable to secure the requested $10.4 million it sought to finish the harbors. As a result, despite previous commitments, no more than the original $7 million was invested by the State in harbor development in the first five critical years of the final phase-out.

(2) Harbor Development and Emerging Economies

(a) St. Paul. Using a significant portion of the $7 million appropriated by the State, St. Paul was able to complete their Phase I project. The result was construction of a 750 foot breakwater and 200 foot dock by 1986. Over time, the breakwater was susceptible to damage from overtopping during winter storms. With no available State funding for harbor improvements, the City turned to the Army Corps of Engineers. Taking advantage of the newly enacted Water Resources Development Act (WRDA),[22] the City in 1986 applied for authorization to construct a larger harbor. Their request relied on a 1979 Corps navigability feasibility study that recommended an 1800 foot breakwater, a 900 foot dock, and a channel dredged to 23 feet below mean low water. Once completed, the harbor would accommodate nine to ten 100-foot crab vessels.

The City's request for the harbor was approved under section 204(e) of WRDA in June of 1988. Following minor modifications to the General Design Memorandum, the total Federal share for the project in 1989 was $19,635,200. The City of St. Paul was able to secure matching funds through State appropriations and local investment. Meanwhile, in 1986, St. Paul's trustee had begun Phase II processing initiatives by contacting major seafood processors and seeking their investment in a diversified fish processing capability. As a result of the trustee's efforts, St. Paul had drawn four seafood processors to its shores by 1994.

In addition to ensuring the harbor project under WRDA, the City undertook maintenance of infrastructure needs of St. Paul as envisioned by the 1983 Act. They also assumed responsibility for a number of other, non-traditional municipal roles including providing utilities, selling bulk and marine fuel, and operating a snack and gift shop. In the late eighties, as a result of committing trust funds to harbor development following the State's inability to appropriate monies, St. Paul requested supplemental trust appropriations totaling approximately $3 million. These funds were used to support City infrastructure needs.

While the City solidified its responsibilities for trust-related municipal ventures, TDX was able to expand their investments with outside companies. As a result, TDX built their own 300 foot dock, leased facilities and land to the processors, and developed a crab-pot storage facility. They also pursued numerous off-island ventures including development of hotels in Anchorage and Seattle.

The Corps of Engineers Harbor project was completed in 1990. By 1995, St. Paul had grown to become the number two fishing port in Alaska. As reflected in shared fisheries and fisheries landing taxes and fees in the State, St. Paul is second only to Unalaska in generating revenues. It is also the primary crab processing location in the Bering Sea.

(b) St. George. With ANCSA and the 1983 Act bolstering their intent to sustain a foothold in the Bering Sea, the City of St. George incorporated as a second class city on September 13, 1983. Acting expeditiously, they obtained State approval and initial funding to construct a State harbor in 1984. Despite their ambition, they ultimately received little State support. In 1985, their State grant of $3 million for harbor development was reduced to $1 million as a result of budget cuts. To meet ongoing dredging demands, the City of St. George followed St. Paul's lead and immediately requested assistance from the Army Corps of Engineers. Because the City of St. George was unable to raise local or state matching funds, no Army Corps projects could commence. In 1986, unanticipated site conditions led to the default of a State recommended harbor contractor and the City had to take over as general contractor. By 1987, the breakwaters were still not complete and winter storms threatened much of the existing structure. That same year the State notified the City that no further State funding would be appropriated before 1989.

In 1988, Army Corps of Engineers dredging assistance of $4 million was finally approved. To raise matching funds, the City issued general obligation bonds in the amount of $3 million, sold $1.2 million of municipal and construction equipment and borrowed $700,000 from the Tanaq Corporation. In 1989, with dredging underway, All Alaska Seafoods Company committed to process on a floating fish-processing plant in the harbor when dredging was completed. Ultimately, dredging delays in the narrow channel prevented startup. Meanwhile, local fisheries-related businesses failed as a result of limited markets and lack of fisheries infrastructure.

With its Trust nearly depleted, the City of St. George in 1988 requested a $3.7 million authorization from Congress for basic human needs assistance. They received $1.1 million. In 1990, they requested $2.6 million. As they requested the second appropriation, the City was contemplating permanent closure based on significant debt. Their request explained that their harbor was set to support self-sufficiency by 1992. Today, the inhospitable shoreline and inclement weather of the island continues to contribute to the inability of St. George to complete their harbor.

By 1990, the St. George Trust was nearly depleted. Efforts to attract private industry to the remote island had failed, and the City has since survived solely through ongoing funding through State and Federal construction projects. As stated by Peter Hocson, the trustee for the St. George trust, in his 1988 annual report to former Administrator Calio:

> The single obstacle standing in the way of a self-sustaining economy, as envisioned by the Fur Seal Amendment Act of 1983, is the lack of the State of Alaska's funding to complete the boat harbor.

In 1993, the Army Corps of Engineers contributed an additional $3 million to conduct in-blasting and dredging operations designed to secure the harbor. Together with the $8 million trust allocation, the $3 million supplemental needs trust appropriations, the initial Army Corps of Engineers investment of $4 million and a $1 million facilities upgrade appropriation, a conservative estimate of the Federal Government's contribution to St. George's economy since 1983 totals $19 million.

III. The Cities Today

(A) St. Paul

As the continued growth of the harbor brought increasing prosperity to St. Paul, it also made the resources required

[22] Public Law 99–662, enacted November 17, 1986.

for a sustained economy more scarce and valuable. The unfortunate result was that the relationship between the City of St. Paul and TDX Corporation grew increasingly adversarial. Having assumed responsibility for so many daily activities through administration of trust related activities, the City's need for land, particularly harbor-side, grew. Under ANCSA, ownership and control of available lands vested with TDX. Frustrated by their inability to obtain lands from TDX, the City brought a law suit against TDX in 1985 challenging the distribution of property under section 14(c) of ANCSA. Settlement was achieved in three years.[23]

Continually deadlocked in similar disputes over terms and conditions of land use, TDX and the City have historically blocked each other from or delayed each other's goals. Today, the continued and heightened inability of island leaders to share their island's resources and to work cooperatively has created an atmosphere of mistrust and divisiveness. During testimony taken on St. Paul in preparation for this Report, St. Paul citizens repeatedly informed Commerce personnel that the City's single-minded focus on harbor construction, TDX's unwillingness to make land and property available to its shareholders, and the two entities inability to get along as the source of much resentment and frustration.

In oral statements made for purposes of this Report, St. Paul citizens and shareholders of TDX referred to incidents of intimidation, bullying and coercion by TDX officers to influence land dispute settlement and shareholder proxy votes. Several local citizens and one TDX representative stated that TDX would not sell any land to local citizens, and that land use and business development was available only through leases with TDX. The leases set rental rates on par with those of industrial properties surrounding the Anchorage Airport. They also included provisions for mandatory building development and improvements to be relinquished without compensation at expiration of the lease. Faced with these terms, local entrepreneurs wait for more reasonable leases of limited government properties. As a result, the local, small business economy is effectively chilled by the citizen's own village corporation.

[23] The City filed suit on November 21, 1996 against the Secretary of Commerce and Under Secretary of NOAA to abrogate that agreement, as well as transfer decisions reached under the 1983 ACT TOPA. TDX joined the dispute in a parallel proceeding against the Secretary and Under Secretary filed December 20, 1996. Copies of the Complaints in each case are attached as Exhibits 5(a) and 5(b).

Without these opportunities, unemployment persists and the costs of goods and services from off-island remain high.[24]

Finally, St. Paul is also experiencing the effects of imported labor within its local infrastructure. Local residents allege that they were promised management positions and as a result have refused to work any front line positions. As a result, vacancies at the processing facilities have been filled by workers from Asia and the Phillipines. This foreign labor pool is housed and fed aboard the processors. Overall, they contribute relatively little to the economy.

Despite these difficulties, evidence of St. Paul's commercial success is readily apparent. The City's annual operating budget is roughly $18 million. According to 1990 Census Bureau information, the median income per family is $49,900.00. The average income as of 1994 was $34,000.00. In the words of St. Paul's former City Manager, success has outstripped all expectations. In a letter to Trustee Jay Gage at the termination of the St. Paul Trust, the City Manager and Trust Advisor wrote:

> * * * [W]e wish to * * * put in the record our acknowledgment and gratitude for your service to St. Paul. In retrospect, had it not been for your foresight and fortitude in administering the St. Paul Trust, we may not have the robust economy we have today. Through your wisdom, you directed most of the Trust funds towards establishing a port on St. Paul while assuring that our people did not endure undue economic hardship.
>
> In short, you have accomplished your mission to assist St. Paul Aleuts achieve [sic] economic independence and diversification away from seal harvesting above and beyond anyone's expectations. Indeed, what you have accomplished is nothing short of an economic miracle, considering that this was all done in less than half a generation under very adverse circumstances.

(A copy of the City Manager's letter is attached as Exhibit 7)

Increased activity in the harbor and the expanse of the Bering Sea fishery has prompted the City to explore additional international markets. They now seek to establish a Free Trade Zone, and look forward to continued harbor improvements through the Army Corp of Engineers. Toward this end, and as a result of unprecedented growth, a second Corps feasibility study was commissioned in 1995. That report caused Congress in September, 1996 to authorize an additional $18.9 million to modify and improve the harbor.

[24] Evidence of these attitudes is reflected in the TDX newsletter attached as Exhibit 6 which was distributed to all shareholders and ultimately dispersed across the small island.

Together with the previous $19 million commitment, the $12 million trust portion under the 1983 Act, the $1 million share of funding for facilities improvements in 1984, and the $3 million in supplemental needs appropriations granted the trust in the mid-eighties, a conservative estimate of the total Federal contribution to St. Paul's economy since 1983 totals nearly $55 million.

While the last five years have seen a growth in the economy of St. Paul, they have also seen a decline in fur seals, harbor seals, sea lions and several species of sea birds throughout the Pribilofs.[25] These declines are particularly alarming on St. Paul because of the possibility of cumulative effects brought to bear by rigorous weather conditions, increased opportunity for oil spills, general marine disturbance, rodent introduction, and effluent discharges of fish processing wastes. The fur seals are currently listed as a depleted species under the Marine Mammal Protection Act (''MMPA'') and the red-legged kittiwake, whose population has declined to 40–50 per cent of its 1970 level and is being considered for listing under the Endangered Species Act (''ESA''). Roughly 80 per cent of the world's population of each of these species make their home on the Pribilof Islands. Together with the myriad of other wildlife species that inhabit the Islands, they are the primary reason the Islands are referred to as ''the Galapagos of the North.''

(B) St. George

While St. Paul has grown and prospered, St. George has struggled. The Island's rugged topography and foggy climate have effectively frustrated the provision of goods and services since Russian occupation. Possessing no natural geography to accommodate a harbor, shipments by sea have traditionally been limited. Mail service by air proved equally confounding, and in the 50s and 60s was limited to air drops due to the risks associated with aircraft landing. Modern technology has brought only minor advances and treacherous island conditions continue to contribute to the difficulties of establishing an independent economy. In November, 1996, after a $6 million State investment in runway expansion, the FAA ruled the Island's airstrip too dangerous to permit any plane larger than a six-seater Piper Navajo to land.

[25] See *Final Conservation Plan for the northern fur seal (Callorhinus ursinus)*, prepared by the National Marine Mammal Laboratory/Alaska Fisheries Science Center for the National Marine Fisheries Service, 1993.

With no protective shoreline, St. George's harbor continuously requires major dredging and expansion to fend off the inhospitable and over-powering Bering Sea. Despite assurances that their harbor would reach sufficiency and provide a self-sustaining economy by 1992, the ongoing need for harbor dredging and improvement has instead compounded existing debt. To complete 1994 dredging and harbor improvements, the City sold revenue bonds in the amount of $865,000.00. In addition, the City was forced to draw down its surplus cash, thereby resulting in a working capital deficiency. To meet their debts, the City has budgeted reductions in its work force, deferred building maintenance, and reduced engineering, legal and travel expenses.[26]

Having significantly extended its debt, St. George faces an uncertain economic future. Faced with the need for substantial ongoing, sustained improvements the St. George harbor remains effectively unfinished and without significant draw to shore-side fish processors. As a result, the City continues to need supplemental infrastructure and human needs assistance.

At the close of 1994, the City's long-term debt was assessed at $3,081,039. By the start of the year 2000, it is estimated that $2,802,877 will still be required to clear the City's debt. As stated in an independent auditor's report dated May 18, 1995:

> * * * the City experienced significant costs in excess of grant revenues in the construction of its harbor dredging and improvement project in prior years causing a working capital deficiency, which raises substantial doubt about its ability to continue as a going concern.[27]

IV. The Claims Asserted

The Statements of the State of Alaska and the Department of Interior required under Public Law 104–91 are attached at Exhibit A. In addition, the Department of Interior has included its request for resolution of the Terms and Conditions of its agreement with the Islands under the Migratory Bird Treaty Act. That claim is included as part of Interior's submission at Exhibit A.

A copy of all local entity and resident statements of claims is attached as Exhibit B. The process for collecting the statements is described in section (I) below. The essence of the information submitted as claims by local entities and residents may not necessarily be rights that are enforceable in court but, in some instances can be more appropriately described as assertions that are inherently equitable and arise out of the past intergovernmental relationship. The claims are what the Pribilovians expect from the Federal Government to resolve alleged harms caused as a result of the United States history with the Pribilovian people.

We do not interpret P.L. 104–91 as raising a claims process of potential lawsuits against the United States. Nevertheless, this is the tenor that was created throughout the process based on the nature and form of claims submitted. Accordingly, what follows is a general outline of the types of claims raised by the Pribilovians and the Department's response. In some cases, the Department has determined that no further action is necessary and in others, the Department makes specific recommendations.

Given the magnitude and nature of submissions, an individual response to each of the over 85 claims was not possible. To focus and present the Report, local entity and resident claims have been categorized according to eight broad areas of concern. A summary of the statement of claims is attached as Exhibit 8. The categories of claims are: continued economic growth, failed transition, real property, trust issues, fisheries issues, retirement issues, seals/rookeries issues, environmental cleanup issues, and P.L.104–91 process issues. Submissions were also received regarding health care and the settlement reached under the Fair and Honorable Dealings Act case for past injustices. Because these areas are outside of the Secretary's authority, these issues are not addressed in this Report, but have been referred to the appropriate agency for their review.

Some of the claims submitted seek specific performance; the majority seek monetary damages. Conservative estimates of the total claims is roughly $500 million. During an October, 1996 public meeting to summarize the claims, Island spokespersons indicated that ''amount to be determined claims'' would likely bring the total to $1 billion.

In the sections below, each category of claim is generally described, followed by a description of federal activities related to the claims and the Secretary's response and recommendations. Where applicable, relevant and applicable laws and regulations are provided, together with a discussion of the Agency's implementation of the law.

(A) Continued Economic Growth

These claims relate to assertions that the U.S. Government has an ongoing obligation to ensure the sustained and economic growth of the Pribilovian people. They include claims for past expenses incurred as their economy grew (building renovations, upgrades and construction, housing repairs), as well claims for current costs of maintaining homes and the municipal infrastructure.

The Secretary has undertaken an analyses of his responsibilities under Title II of the 1983 Act and has concluded that no ongoing obligations of the Secretary exist which would direct the Secretary to seek appropriations for these collective claims. As discussed in Section III, the $20 million trust established under the 1983 Act was a one-time payment to ''promote,'' not guarantee, an independent economy on the Pribilof Islands. The trust funds were to be used to cover infrastructure expenses (income maintenance, human needs and municipal services) for approximately 5–7 years as harbor development was pursued by the State. Accordingly, it is the opinion of the Secretary that requests for reimbursement of costs associated with successful municipal growth are without merit.

Because housing repair and municipal infrastructure costs account for the majority of the ''Continued Economic Growth'' claims asserted, they are discussed in greater detail below.

(1) Housing

These claims raise the assertion that the U.S. Government promised to repair, or has an inherent obligation to repair, all homes conveyed to the Pribilovian people under ANCSA and the 1983 Act.

Under the 1966 Act, townsite properties on St. Paul were to be purchased by local residents according to a patent issued by the Secretary (see section III(E)). During discussions with the City of St. Paul regarding the transfers in 1971, NOAA stated its policy that it would be incumbent upon the Aleut residents purchasing the homes to provide for their continued repair and maintenance. NOAA's policy reflected the intent of Congress that the autonomy of the Pribilovian people include paying for goods and services previously provided by the government. The City's ''Community Development Plan of 1971'' prepared and distributed

[26] Additional liabilities associated with the harbor's development include delays from inclement weather and unforeseen site conditions. In the late eighties, the City was named a third party defendant in a law suit brought by a dredging contractor against the Army Corps for increased costs associated with unforeseen site conditions. The contractor prevailed and was granted a judgement of $1,095,187 for which the Corps now seeks contribution from the City.

[27] *Undependent Auditor's Report: City of St. George* prepared by *Mikunda, Cottrell & Co., C.P.A.*, May 18, 1995.

later that year includes a statement articulating NOAA's position.

Ultimately, the transfer of homes was accomplished under the terms of ANCSA. During negotiations with the TDX and Tanaq Corporations in 1974 regarding the transfer of property under ANCSA, NOAA agreed to make major repairs to five houses on St. Paul and three on St. George. Additionally, NOAA agreed to make minor repairs to all houses on both islands on a priority basis. The provisions for minor repair are contained in a December 22, 1976, Memorandum of Understanding (''MOU'') between TDX, Tanaq and the Department of Commerce/NOAA. (A copy of the MOU is attached as Exhibit 9).

Pursuant to the agreement, NOAA agreed to be responsible for exterior water leaks, storm windows, means of ingress and egress in the event of fire, broken or leaky fixtures, the satisfactory operation of heating units, ventilation, electrical outlets, structural integrity, cabinetry, and insulation. Areas outside NOAA's responsibility included remodeling, additions, floor coverings, painting, tile repair and the finishing of basements. Repair of houses pursuant to the MOU was completed in 1977.

The policy of Pribilovian responsibility for home repair and maintenance was announced again by NOAA in a letter to island leaders on April 22, 1976. (A copy of the letter is attached as Exhibit 10). Citing the MOU, the letter states that:

> The Government will not be responsible for repairs and maintenance on the houses and other quarters except as noted above after interim title is granted. In the future there will be a need and desire to repair, remodel and build homes. The Government does not intend to act as wholesale or retail supplier nor as contractor for construction and repair of private homes. We are suggesting that these functions would be better handled by some individuals or the Corporations who may wish to set up home construction and building-supply businesses such as are available in most other communities. We believe this would be the best way to meet this future need for both communities.

(2) Code Compliance and Facilities Upgrades

During the State, Federal and local working group meetings held in 1983 to formulate a plan for phase-out under the 1983 Act, NOAA and the State discussed the need to bring Federal facilities up to code prior to transfer. Based on requirements set out in a facilities report prepared by the State in 1982, NOAA spent 1983 Pribilof Island Program funds to correct minor fire and safety deficiencies which brought the facilities up to code.

On August 22, 1984, President Reagan signed H.R. 6040, the Supplemental Appropriations Bill for fiscal year 1984. The bill appropriated $2 million to NOAA to upgrade Federal property prior to transfer under the 1983 Act. In the interests of equity, Administrator Calio decided that the $2 million would be split equally between the two islands. During subsequent discussions with State and local entities regarding funding of future upgrades, all entities agreed that it was incumbent on the State and local government to seek additional funding to upgrade facilities. The State's commitment is reflected in a report to then Governor Sheffield summarizing discussions about use of the $2 million appropriation [28] Department of Transportation estimates of required funding to upgrade facilities on St. Paul and St. George at that time were $6.5 million and $4.8 million, respectively.

To make the best use of the immediately available Federal funds, the Cities of St. George and St. Paul were asked to prepare priority lists of upgrade projects. These lists were submitted to NOAA in early October, 1984. St. Paul's initial list reflected long-term capital improvements designed to accommodate the Cities impending growth. Its upgrades list included improvements to the airport and the expansion of existing sewer, electrical and water distribution systems. The accompanying report included an analysis of multiple funding sources including grants, loans and private investment. The City's estimate of total expenditures required approximated $50 million. St. George's original upgrades list reflected improvements to existing structures based on current needs. The St. George project list totaled approximately $2 million.

During meetings over the following two weeks, priority projects obligating $1million per island were chosen for funding through cooperative agreements. Financial assistance awards under the agreements were issued October 26, 1984.

It is the Secretary's position that the 1983 Act trust and transfer of property constituted the entirety of the Federal government's responsibility to promote and foster an enduring economy on the Pribilof Islands under the Fur Seal Act. The Secretary finds no additional law, regulation, agreement or implied duty to continue the repair and maintenance of homes or facilities on the Pribilof Islands.

(B) Failed Transition

These claims assert that the transition from a sealing-based economy to one independent of sealing has failed as a result of improper or insufficient government support during phase-out. Examples of claims include assertions that the Federal Government defaulted on harbor construction, that the government caused undue economic and social hardship by infringing on Pribilovian rights to engage in commercial harvest of seals during transition, that the government failed to provide income maintenance through the period of transition, and that the Department failed to properly administer the transition.

It is the opinion of the Secretary that the trust served its purpose to St. Paul most effectively. Accordingly, it is the opinion of the Secretary that the transition of the City of St. Paul to an independent economy has been successful and that any claims to the contrary are without sufficient basis.

Section 1166(d) of the 1983 Act provided that the trust authorized could be divided based on the goals and objectives of the Pribilovian people. That split was not mandatory, but was chosen by the people of St. George despite practical realities and evidence that a self-sustained existence was practically impossible given the island's harsh climate and inhospitable geography.

Evidence indicates that the establishment of a self-sustaining economy on St. George is an unrealistic venture. It is the Secretary's opinion that an in-depth evaluation of the possibility of achieving self-sufficiency is warranted with regard to the Island, but is beyond the scope of this Report. Accordingly, the Secretary recommends that an independent economic and cost analysis be undertaken to assess the viability of continued public support.

(C) Real Property Claims

These claims relate to the distribution of real property under ANCSA, the 1983 Act and accompanying TOPA and subsequent private agreements between entities redistributing their allotments. In sum, the claims collectively seek a complete redistribution of property amounting to a total abrogation of all that has been accomplished under pre-existing legislation and associated agreements. It is the Secretary's opinion that the real property transfers required have been, or are being, fulfilled in accordance with law and that the real property claims are without merit. The

[28] The report is attached as Exhibit 11.

history and status of land transfers on the Pribilof Islands by the federal government follows.

A Memorandum of Understanding (MOU) dated December 22, 1976, by and among NOAA, on behalf of the Department of Commerce, St. George Tanaq Corporation, and Tanadgusix Corporation, was instituted to resolve conflicts concerning land ownership on the Pribilof Islands, under ANCSA. The MOU identified 47 tracts of land to be retained in federal ownership by the Department on the islands of St. Paul and St. George. Page 3, paragraph (1) of the MOU identified these tracts as ''* * * land and any improvements thereon to be retained in fee simple by the Federal Government as the smallest practicable tracts enclosing land actually used in connection with the administration of a Federal installation, within the meaning of Sec. 3(e)(1) of ANCSA, 43 U.S.C. 1602(e)(1).'' The MOU thereby constituted a Section 3(e) determination of the Department of Interior, as defined by ANCSA, designating federal lands withdrawn from selection under ANCSA, to be retained by the Department of the Commerce.

Section 205(a) of the 1983 Act authorizes the Secretary of Commerce to transfer real and personal property held by the Department of Commerce on the Pribilof Islands, ''*[p]rovided,* [t]hat such property is specified in a document entitled 'Transfer of Property on the Pribilof Islands: Descriptions, Terms and Conditions,' . . . .'' (Emphasis in original.) Section 205(b) further sets forth the contents of the TOPA.

Under authority of the 1983 Act, negotiations were conducted and agreement was reached between the Department of Commerce, the Tanadgusix and St. George Tanaq Corporations, the City of St. Paul, the City of St. George, the Aleut Community of St. Paul, the Aleut Community of St. George and the State of Alaska on properties previously retained by the Department of Commerce under ANCSA to be transferred by the Secretary to the other parties. The TOPA was executed on February 10, 1984.

To date, nearly all of the transfers specified in the TOPA for properties on the Island of St. George have taken place. Actual transfer of title to the properties was performed through the Department of the Interior's Bureau of Land Management (BLM). The transfers were effected through BLM based on that agency's experience in conveying Federal lands under ANCSA and its resources, including surveying, available for the job.

Most of the parcels on the Island of St. Paul to be transferred under the TOPA were surveyed by the BLM in 1983. Additional survey work was conducted by BLM in 1993 and 1994. However, the legal descriptions of some of the properties are not yet adequate for transfer to occur and some additional survey work may be required in 1997 to complete the descriptions.

The Department will continue to work with the Alaska office of BLM in Anchorage in order to effect the conveyance of title to the native, municipal and state entities on St. Paul as expeditiously as possible, in fulfillment of the TOPA.

Section 205(d) of the 1983 Act requires that, within sixty (60) days of the transfer of property under TOPA, the Secretary transmit a report to the appropriate Senate and House committees stating the fair market value of the real and personal property conveyed, as of the date of conveyance. The Department will timely request that the General Services Administration, or a contractor qualified to provide property appraisals, perform a property valuation survey of the St. Paul property to be transferred, to ensure that the fair market value report will be ready for transmittal to the Congressional committees within the 60-day deadline.

(D) The Trust

These claims relate to assertions that the 1983 Act trust was insufficient, improperly administered, misused or generally misunderstood. It is the opinion of the Secretary that the trust responsibilities set forth in the 1983 Act were properly executed by NOAA, that the trust purposes were effectively met with the funds appropriated, and that all steps were taken to ensure that the trust was fully understood by the Pribilovian communities. Accordingly, it is the opinion of the Secretary that all allegations suggesting that the trust was misused or poorly administered by the government are without merit.

The 1983 Act created a $20 million trust (''the Trust'') to ''— promote the development of a stable, self-sufficient enduring and diversified economy'' on the Pribilof Islands. 16 USC section 1166(a)(1). The objective of the Trust, as stated throughout Congressional hearings on the topic, was to end Federal administration of the Pribilof Islands. It was a logical and sequential step following the 1966 Act which took the initial step toward Federal phase-out by promoting municipal self-governance by the Pribilovian people.

Under the 1983 Act, responsibility for establishing and administering the Trust was given to the Secretary of Commerce. 16 USC 1166(a). To effectuate trust responsibilities, Congress directed that at least one trust instrument be established by the Secretary to address matters relating to standards and procedures associated with the Trust. 16 USC 1166(c). Additionally, Congress provided that the trust appropriation could be divided between the two Islands and that two separate trust portions could be set up under the original trust instrument to reflect individual Island goals and objectives. 16 USC 1166(d). To effectuate St. George's desire for autonomy, the Trust was bifurcated and two additional documents were created, the St. Paul Trust Agreement and the St. George Trust Agreement. These documents governed the duties, obligations and rights of the Trustor, the St. Paul and St. George Trustees, and all beneficiaries under the respective trusts.

The primary trust instrument (hereinafter ''the Master Trust Agreement'') was signed on November 21, 1983. As stated in Article II, the purpose of the Master Trust was:

''__to promote and foster the transition on the Pribilof Islands of St. Paul and St. George from welfare and sealing economies to stable, self-sufficient, enduring and diversified economies. Such purpose includes but is not limited to the provision of basic and essential human services * * *''

The St. Paul Trust Agreement was signed March 14, 1984. The designated Trustee was Mr. Jay Gage. The St. George Trust Agreement was signed March 27, 1984. Peter D. Hocson was designated Trustee on July 18, 1984.

Varying only in minor detail, both Trust Agreements established the appointment of a Trust Advisor responsible for recommending distributions from the Trust. The Advisor was to be appointed by the Secretary and was to be an entity located and functioning on the Islands, which, in the opinion of the Trustor, was knowledgeable concerning the Islands' economies and needs, and which could adequately represent the interests of the Pribilovians. It was the duty of the Advisor to provide written recommendations to the Trustee specifying the projects or uses to which distributions from the trusts should be made.

Throughout the administration of the Trusts, both Islands had local representatives as Advisors. The Advisors chosen were, for St. Paul, the City Manager and for St. George, the Mayor and their respective staffs. These entities were chosen based on their status as City leaders and their understanding of the needs of their people.

The Trustee's obligations under both trust agreements were to invest the Trust and to direct disbursements. Unless the Trustee was qualified at investment functions, an Investment Advisor was to be consulted prior to Trust investments. With regard to disbursements, the Trustees were responsible for evaluating each Advisor's recommendations. The Trustees were to approve the Advisor's disbursement recommendations unless they determined that the projects or uses set forth in the Advisor's Recommendation were not consistent with the purposes of the Trust or would not best achieve the goal of furthering the trust purposes. In determining that the proposed use was not in the best interest of the purposes of the trust, the Trustees were granted sole discretion as the ultimate fiduciaries of the trusts. The Trustees were also responsible for providing annual reports to the Secretary and Congress regarding the use of the Trusts and progress being made.

As Trustor, the Secretary's roles and responsibilities were limited to establishment and oversight of the Trust, including the authority to remove the Trustee if warranted, and selection of the Trust Advisors.

Both the St. Paul and St. George Trust Agreements contained automatic termination clauses effective 10 years after initiation unless extended by consent of all parties. The St. George Trust was terminated in the Spring of 1994. At termination, the trust corpus had been fully distributed. The St. Paul Trust was terminated in the Spring of 1994, with the exception of the distribution of final assets from the sale of an interest in the fishing vessel Northern Eagle consummated in December 1996.

It is the opinion of the Secretary that the Federal Government's responsibilities under the 1983 Act to establish and oversee the Trust have been completed in accordance with law. Accordingly, it is the Secretary's opinion that the claims asserted regarding administration of the trust are without merit. With regard to the sufficiency of the Trust, it is the opinion of the Secretary that the success of St. Paul evidences that sufficiency.

(E) Fisheries Issues

The communities of St. George and St. Paul have expressed the opinion that the fishery resources surrounding the Pribilof Islands should be set aside for their exclusive use, and that NMFS inappropriately allocated fisheries resources surrounding the Pribilof Islands to offshore fleets through the Inshore-Offshore program and to other Community Development Quota ("CDQ") communities through the CDQ programs.

In a May 29, 1996 legal opinion, NOAA General Counsel concluded that the 1983 Act did not create any specific fishing privileges for the residents of St. George or St. Paul, and that the North Pacific Fishery Management Council ("the Council") and Secretary have provided fishing opportunities to the Pribilovians through the CDQ programs. The NOAA General Counsel legal opinion regarding these issues can be found at Exhibit 12. In essence, the CDQ programs have been administered by NOAA without privilege or prejudice to any native entity or tribe. The Pribilovians are no exception to this rule. The fisheries program in the Bering Sea is administered as follows.

The U.S. groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) in the exclusive economic zone (EEZ) are managed by the Secretary pursuant to the Fishery Management Plan (FMP) for groundfish in the BSAI. The FMP was prepared by the Council (Council) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) at 16 U.S.C. 1801, *et seq.*, and is implemented by Federal regulations at 50 CFR part 679. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620.

(1) Pollock CDQ Program

The pollock CDQ program was developed by the Council as part of Amendment 18 to the BSAI FMP (the Inshore-Offshore program). The final rule implementing Amendment 18 (57 FR 23321, June 3, 1992) allocated pollock for the CDQ program only for a temporary period from 1992 through 1995. The amendment allocated seven and one-half percent of the Bering Sea pollock Total Allowable Catch (TAC) to a Bering Sea pollock CDQ reserve, plus seven and one-half percent of the Aleutian Islands pollock TAC to an Aleutian Islands CDQ reserve. Eligible Western Alaska communities could apply for CDQ allocations from the pollock CDQ reserves by submitting a Community Development Plan (CDP) to NMFS. Regulations (57 FR 54936, November 23, 1992) implemented the pollock CDQ program for 1992 and 1993 by specifying the process for applying for a CDQ allocation and the required contents of the Community Development Plans (CDPs). A subsequent regulatory amendment (58 FR 32874, June 14, 1993) implemented the pollock CDQ program for 1994 and 1995.

The Council recommended re-authorizing the pollock CDQ program in the BSAI for an additional 3 years as part of Amendment 38 to the BSAI FMP, and NMFS approved this amendment on November 28, 1995. Regulations implementing the pollock CDQ program for 1996 through 1998, were published on December 12, 1995 (60 FR 63654, corrected 61 FR 20, January 2, 1996).

The CDQ program was developed to provide the eligible CDQ communities with a means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, commercial fisheries-related economy. Both St. George and St. Paul are eligible communities under the pollock CDQ program, and have participated and benefited from the CDQ program since its establishment in 1992. St. George is a member of a CDQ group named the Aleutian Pribilof Island Community Development Association (APICDA), which includes the communities of Atka, False Pass, Nelson Lagoon, Nikolski, and St. George. APICDA was allocated 18 percent of the pollock CDQ reserves for 1992 through 1998.

St. Paul is the sole member of the CDQ group named the Central Bering Sea Fishermen's Association (CBSFA). CBSFA was allocated ten percent of the pollock CDQ reserves for 1992 and 1993, eight percent of the reserves for 1994 and 1995, and four percent for 1996 through 1998. A description of the CDQ projects that benefit St. George and St. Paul through APICDA and CBSFA activities can be found at Exhibit 13.

(2) Halibut and Sablefish CDQ Program

St. George and St. Paul also participate in the halibut and sablefish CDQ program. However, the Council's authority to manage halibut is not derived from an FMP as is the case with pollock and sablefish. The domestic fishery for halibut in the BSAI is managed by the International Pacific Halibut Commission (IPHC) as provided by the Convention between the United States and Canada for the Preservation for the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention), and the Halibut Act. The Convention and the Halibut Act authorize the Council to develop regulations that are in addition to, but not in conflict with, regulations adopted by the IPHC affecting the U.S. halibut fishery. Under this authority, the Council may develop, for approval by the Secretary of Commerce, limited-access policies for the Pacific halibut fishery in the BSAI.

The Council proposed adding the halibut and fixed gear sablefish (H/S) fisheries to the CDQ program beginning in 1995, as part of the Individual Fishery Quota (IFQ) program. The IFQ final rule (58 FR 59375, November 9, 1993) implemented the H/S CDQ program with no expiration date. St. George and St. Paul are the sole participants in the CDQ group named Pribilof Island Fishermen (PIF), for the purpose of harvesting a halibut CDQ allocation. For 1995 through 1997, PIF has been allocated 50 percent of the halibut that is available in IPHC area 4C. For 1995, this amounted to 385,000 pounds of halibut. Halibut CDQ harvest in St. George and St. Paul is accomplished by the small local fishing fleet, and the halibut are sold to local shoreside processors. Therefore, the benefits from the halibut CDQ fishery in the Pribilof Islands accrues directly to the local residents.

The community of St. George participates in the sablefish CDQ program through APICDA. APICDA has been allocated 10 percent of the Aleutian Islands sablefish CDQ reserve for 1995 through 1997. The benefits to St. George resulting from participation in the sablefish CDQ program are described in APICDA's H/S CDP, which is available from the NMFS Alaska Regional Office (907–586–7228).

It is the opinion of the Secretary that no special or exclusive fisheries rights have been created for the Pribilovian people under the 1983 Act, the Magnuson-Stevens Act, or any other law or regulation. It is the further opinion of the Secretary that the Federal government has properly and legally implemented the requirements of the Magnuson-Stevens Act, the 1983 Act and all applicable and associated regulations. Accordingly, the Secretary finds the communities' requests for specific performance and monetary damages without merit.

(F) Seals and Rookeries

These claims involve complaints and requests regarding subsistence fur seal harvest and the continued management of the fur seal rookeries by NOAA, and suggestions from the St. Paul Stewardship Program for the overall protection of the ecosystems of the Pribilof Islands in a balanced and integrated fashion.

The Pribilof Islands are a world-class special reserve established to ensure the conservation and protection of the northern pacific fur seal and other wildlife species. Perhaps the single most important aspect of the Islands is their use as the primary breeding and pup rearing habitat of the northern fur seal. The Fur Seal Act (''the 1983 Act''), Marine Mammal Protection Act, (''MMPA'')[29] and the Endangered Species Act (''ESA''),[30] and their implementing regulations all require a significant commitment from NOAA for the protection, conservation and management of marine mammal species dependent on the Pribilof region.

On June 17, 1988, NMFS declared the Pribilof Island's stock of northern fur seals depleted under the MMPA. Amendments to the MMPA enacted November 23, 1988 (Public Law 100–711) directed the Secretary of Commerce to develop a conservation plan on northern fur seals ''conserving and restoring the species or stock to its optimum sustainable population'' (''the Plan''). The Plan was finalized and approved by the Assistant Administrator for Fisheries in June, 1993. It serves as the guide for those activities believed necessary to restore the northern fur seal to pre-depleted levels.

The broad-based objectives of the Plan in achieving pre-depletion goals are (1) to conduct extensive research on the health, mortality, physiology, sociology, and habits of the seals and the effects of disturbances to their habitat and the Pribilof ecosystem; (2) to assess and avoid or mitigate possible adverse effects of human-related activities on or near the Pribilof Islands and on other habitat, and (3) to enforce existing regulations.

Under the Plan, the efforts of the Agency must be coordinated with the Aleut communities and other resource management agencies and user groups on each island. Conversely, whenever any significant activity is proposed, planned or contemplated by the community or any other group, NMFS input should be obtained to ensure that the actions will not jeopardize the seals or damage their habitat.

Examples of NMFS coordinated efforts to prevent negative impacts on the Pribilof fur seal herd and the Bering Sea ecosystem include working with EPA to develop Clean Water Act Section 402 discharge permits that will reduce the impact of seafood processing wastes in local waters; working with the Coast Guard to promote their presence during heavy fishing seasons, and assisting the Department of Interior with its rat control program. With regard to coordination with the local community, NMFS has hired local residents to patrol the rookeries to minimize disturbance, encouraged the establishment of co-management bodies such as the Aleut Fur Seal Commission, and participated in St. Paul's Interagency Work Group established to coordinate economic growth and development and joint use of island property.

In the path of overwhelming growth on St. Paul Island resulting from the mandates of Title II of 1983 Act, NMFS' mission of protecting the Island's resources under Title I of the Act and the MMPA is growing increasingly difficult. With limited resources, the program faces the potential inability to effectively monitor and provide input and guidance on the multitude of plans for development on the Island. The difficulty that NMFS faces in carrying out the directives of the Plan are exacerbated by the demands of the local leadership to support continued growth under the alleged 1983 Act authorities of Title II. That the tenor of these requests is adversarial further restrains the Agency's goals of effective coordination among Island entities. Ironically, the insistence of the Pribilovian people for NOAA's ongoing commitment to provide economic growth ultimately stands to effectively impede and interfere with the Agency's statutory responsibilities to manage the fur seal reserves.

NOAA values the environmental knowledge of the indigenous people of the Islands and is committed to continued coordination and the sharing of experience that will help to achieve a balance in the use of the Islands' natural resources. Toward this end, the Agency appreciates the Stewardship Program's comments and supports many of the concepts presented. NOAA looks forward to resolution of the issues underlying this Report so that viable coordination amongst all entities can be achieved.

With regard to claims that the fur seal subsistence harvest is improperly or unfairly administered, it is the opinion of the Secretary that the program is being conducted properly and legally under the regulations implemented under section 105(a) of the 1983 Act.

(G) Retirement Benefits

The Pribilovian people have asserted that the Federal Government has failed to provide sufficient retirement benefits, has improperly credited those benefits, or has otherwise failed to inform the people of their benefits.

The first Federal retirement benefits were granted the Pribilovians in 1950 under the cash compensation and wage plan instituted by the Department of Interior. Under that system, full time Federal employees engaged in the commercial fur seal harvest or in support services received retirement

[29] 16 U.S.C. 1361 *et seq.*

[30] 16 U.S.C. 1531 *et seq.*

benefits for work conducted from 1950 forward. Under the Bartlett Act of 1966, the retirement benefits bestowed in 1950 were expanded to include compensation for work performed prior to 1950. Deposit requirements to accrue pre-1950 benefits were not required.

The provisions of the 1983 Act significantly enhanced and expanded retirement benefits to the Pribilovian people by extending benefits to all Pribilovians who had worked for the Federal Government, regardless of whether they had previous coverage under the Civil Service Retirement System (''CSRS'') (e.g., temporary or seasonal). These benefits were granted only to those employees who were on the rolls of the Federal government on October 28, 1983, and who transferred without a break in service to one of the six Island entities (The Cities of St. Paul and St. George, the village corporations, and the IRA councils). The intent of the Act was to provide continuity of retirement benefits to those Pribilovians who met this criteria.

For entity employees to be eligible for extended, full-time benefits, Pribilovian individuals only had to have worked one day in any calendar year to receive retirement credit for the entire year. This one day system is both unique and generous. To balance the inequities posed to pre-1983 retirees with part-time, seasonal, and temporary service, their benefits were recalculated to give them full-time credit to enhance their annuities.

In September, 1983, representatives from the NOAA's Western Administrative Support Center's Human Resources Division (''HRD''), the Pribilof Program Office of NMFS and participating island entities negotiated a memorandum of understanding (''MOU'') explaining the Act and establishing the process by which the program would be administered. (A copy of the MOU is attached as Exhibit 14.) Under the MOU, the entities agreed to maintain pay records of each employee entitled to the transfer of federal employee benefits and to forward this information to HRD together with a check for the amounts withheld from the employees' pay. The entities also agreed to provide matching funds for benefits. HRD agreed to maintain all records of the employees, to annually certify a master list of eligible employees, to serve as the liaison between the entities and the Office of Personnel Management (''OPM''), and to serve as the point of contact regarding all Federal personnel issues.

In October 1983, HRD and NMFS representatives spent several weeks on the Islands explaining the new provisions and their impacts to participating employers. They also assisted the entities in setting up their reporting systems to ensure that they would comply with and implement the Act.

In 1984 HRD staff and a retirement program manager from OPM returned to the Islands to explain the provisions of the Act and the process for implementing it to the general public. Meetings were held with residents on both islands. Teleconferences were conducted to inform off-island recipients.

At OPM's request, HRD returned to the Islands in 1985 to work with the entities to ensure that all annuity and survivor paperwork was correctly completed and submitted for recomputation purposes. Since that time, the MOU continues to work effectively as written.

During NOAA's visit to the Islands in June, 1996, many individuals questioned the Agency's calculation and crediting of benefits. A list of individual complaints was subsequently investigated by HRD. HRD found no instances of improper crediting of retirement service nor any errors in other benefits calculations. To alleviate specific concerns, HRD contacted all individuals with specific questions by telephone.

HRD is scheduling a trip to the Islands in the Spring of 1997 to re-explain the retirement benefits. In the meantime, HRD continues to resolve benefits issues on an individual, needs-based basis.

(H) Environmental Clean-up

Public Law 104–91 section 3(a) directs that the Secretary ''* * * cleanup landfills, wastes, dumps, debris, storage tanks, property, hazardous or unsafe conditions, and contaminants * * *'' on lands previously owned and administered by NOAA. In addition, the Secretary is responsible under section 120 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'') for the assessment and remediation of hazardous wastes on any property to be transferred.

In the summer of 1989, the Alaska Department of Environmental Conservation (''ADEC'') issued a Notice of Violation against NOAA as a result of a small oil spill at the Salt Lagoon on St. Paul Island. Investigations ensued, the site was boomed, and, over time, the seep was abated. As a result of the incident, TDX notified NOAA that it was concerned about potential environmental compliance issues on property being transferred to them under the TOPA. Initial concern surrounded the underground storage tanks at the gas station and at the power plant. General concern was later expressed about leaking drums and potentially contaminated soil. Although all property transfers had been completed on St. George, public leaders there voiced similar concerns about property on their island.

In 1992, the United States Environmental Protection Agency (''EPA'') undertook a preliminary investigation of St. Paul and St. George to assess potential contamination and liability under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'') and the Resource Conservation and Recovery Act (''RCRA''). EPA determined that site conditions on St. George warranted no further action and proceeded with an expanded site investigation on St. Paul. In November, 1994, EPA issued its finding that no contamination posing a risk to human health or the environment under Federal law existed on St. Paul. Accordingly, the Agency issued a second ''no further action'' determination.

Despite the EPA's findings, island entities continued to allege that the United States government had caused and created island-wide hazardous waste contamination. In response to these ongoing allegations, NOAA approached ADEC to negotiate a Two-Party Agreement which would address cleanup of all potential contamination on the island. The Two-Party Agreement was signed on January 26, 1996. (A copy of the Two-Party Agreement is attached as Exhibit 15.) Its four corners effectively establish the basic framework, cleanup objectives and time lines for NOAA's environmental cleanup of the islands. To date, no ongoing sampling has revealed contamination posing a threat to human health or the environment. The majority of work under the Agreement focuses on the removal of solid waste and debris, and on the closure of existing landfills.

P.L. 104–91 defines cleanup activities to be achieved under section 3(a) to mean the planning and execution of remediation actions for land described under the law and the redevelopment of landfills to meet statutory requirements.[31] With the exception of the sealing plant stabilization, the

[31] In the Department of Commerce and Related Agencies Appropriations Act, 1996, Public Law 104–134, a portion of the Department's 1996 $10 million appropriation for cleanup was intended for stabilization of the historic sealing plant on St. George (see H. Rep. No. 104–378, explanatory statement at p. 132).

cleanup obligations of section 3(a), including activities related to the landfills are being met under the terms of the Two-Party Agreement.

In response to the directives of section 3(d) of Public Law 104–91 requiring, to the maximum extent practicable, the use of local hire to effect cleanup, the Department published a notice of availability for Federal assistance in the **Federal Register** on May 22, 1996. The notice solicited applications from local entities and residents and explained the selection process.[32] Priority was given to those projects that were defined in the Two-Party Agreement. To assist the Pribilovians, the Department also held meetings on the Islands to explain the grants process. The Department also held a workshop in Anchorage, Alaska, to provide instruction to interested parties on preparing the required Federal forms.

As a result of the solicitation, two cooperative agreements were implemented with local entities to promote the use of local hire in achieving cleanup as directed by section 3(d) of PL–104–91. The agreements, totaling over $5 million, were executed between NOAA and Tanaq on St. George and the joint venture of Bering Sea Ecotech (a TDX subsidiary) and Bristol Environmental Corporation on St. Paul. Both agreements require the removal of surface debris (vehicle hulks and other assorted solid waste) and the excavation of abandoned underground fuel storage tanks (''USTs'') and associated petroleum contaminated soils. Work under the cooperative agreements is being conducted pursuant to the Two-Party Agreement and is expected to be completed by June, 1997 on St. George and September, 1997 on St. Paul. All field work under the Two-Party Agreement is expected to be completed by the close of FY 1998. The Department also intends to fund an award to stabilize the sealing plant on St. George Island upon receipt of an acceptable proposal from any local entity or resident of the Islands. Other cooperative agreements may also be executed for additional projects identified in the Two-Party Agreement and other projects authorized under P.L. 104–91, as the Secretary determines necessary.

The State of Alaska has agreed that satisfaction of the terms of the Two-Party Agreement will entitle NOAA to certification from ADEC that all necessary and required work to ensure compliance with environmental laws has been met. Moreover, completion of work associated with the landfills and stabilization of the sealing plant will result in satisfaction of the Secretary's obligations under P.L. 104–91.

Section 3(c)(2) of P.L. 104–91 requires the Secretary to include in this Report the estimated costs for conducting necessary actions to resolve Federal responsibility on the Islands. Congress has appropriated $20.1 million for Pribilof Island activities. Total project costs under the Two-Party Agreement are estimated to range from $21.1 to $25.5 million (which includes up to $3.4 million contingency to accommodate uncertainties associated with unforeseen site conditions during remediation, variable work seasons based on weather conditions, and the availability of skilled workers). The FY 1998 budget request includes no new funds for the Pribilof Islands cleanup. Any requirements above currently available funds would be accommodated with funds requested for NOAA in the President's FY 1998 budget.

Further, based on guidance provided by Congress, at least $2.7 million is needed for stabilization of the sealing plant and activities related to landfills under P.L. 104–91. Should additional projects be required under P.L. 104–91, or as a result of this Report, funds above $2.7 million will be required. Funding for P.L. 104–91 projects is not included in the $20.1 million appropriated for Pribilof Island activities to date.

With the exception of ongoing administrative costs associated with processing retirement benefits and completing property transfers under the TOPA, these costs constitute the entirety of funds required to finalize current Federal responsibilities on the Islands.

(I) Public Law 104–91 Process

Representatives of the Pribilovians have alleged that the process for input to this Report has been unfair in that inadequate notice and funding was provided to permit a timely response.

Section (3)(c) of Pub. Law 104–91 directs the Secretary of Commerce to prepare this Report proposing necessary final actions to resolve Federal responsibility on the islands and to include the ''statements of claims of local entities and residents.'' A description of the Report purpose and process were set forth in explicit detail, including an approved form for submission of statements, in the **Federal Register** on April 30, 1996. A copy of the **Federal Register** Notice together with a letter explaining the notice was sent to every resident of the islands on April 29, 1996. (The letter and **Federal Register** notice are included as Exhibits 15 and 16.)

As set forth in the **Federal Register** notice, local entities and residents were initially given three months to submit their statements. In April, 1996, local entities and residents sought and obtained an extension for preparation of the Report and for their submission of claims. As a result, the deadline for submission of statements was extended from July 6, 1996 to October 6, 1996 and final Report submission was moved to January 6, 1997. Notice of the extension was provided through a televised public meeting on the Islands in May, 1996. To accommodate an extremely tight turn around and the practical difficulties of coordinating the Report through several agencies over the holiday season, NOAA requested and obtained two additional 30 day extensions for the Report. Notice of these extensions were provided counsel to the local entities and in no way prejudiced the rights of local entities or residents.

In the course of preparing the Report, NOAA personnel conducted five public meetings on the Islands. In addition, NOAA personnel conducted informal meetings at the Community Elder Center and at the TDX annual shareholder's meeting. NOAA also conducted several impromptu meetings during their visits at the request of island leaders. Written notice of the formal meetings were provided to all residents. The first formal meetings, conducted in May, 1996, explained the Report purpose and process. The second formal meetings, in June, 1996, provided for the taking of oral statements of local residents. The final formal meeting in October, 1996, summarized the submissions made by local entities and residents.

It is the opinion of the Secretary that the Department provided timely notice and opportunity to submit statements and that the P.L. 104–91 process was executed in compliance with all applicable principles of due process.

V. Summary and Final Recommendations

The legislation directing this Report resulted from ongoing discussion between NOAA and representatives of the Islands regarding the responsibility of the Federal Government to continue to provide for and guarantee the future of the Pribilovian people. Unable to articulate specific legal claims or otherwise establish a basis for continued appropriations through negotiations with NOAA in 1996, this report mechanism was introduced by the Pribilovian representatives to give voice to those issues perceived to be

[32] 61 Fed. Reg. 25632 (May 22, 1996).

inhibiting the Pribilovians' ability to arrive at a self-sustaining economy.

It is the opinion of some of the Pribilovian people that the Federal Government has not concluded its obligations to the Pribilovian people. It is the Secretary's opinion that the Federal Government has fulfilled, or is in the final stages of fulfilling, all obligations to the Pribilovian people as directed by Congress through legislation enacted over the last 50 years.

At least one-third of the claims submitted for this Report express dissatisfaction with the way land or the 1983 Act trust has been controlled, used or distributed by a competing island entity. An equal number of claims allege the past or present failure or unwillingness of the Federal Government to act to resolve these disputes. As this Report is being written, both TDX and the City of St. Paul have initiated separate lawsuits against the Secretary of Commerce and the Under Secretary of NOAA to resolve a land dispute previously resolved in two distinct settlement agreements. (A copy of the complaints filed are attached as Exhibits 5(a) and 5(b)).

After several visits to the Islands by NOAA and Department personnel, including meetings for the taking of the statements of the local people, and as a result of an analysis of the claims submitted, it is the opinion of the Secretary that these claims are without adequate foundation in law, or under any existing policy or agreement.

The debate over administration of ongoing Federal obligations is also detracting from the Department's ability to meet its responsibilities under Title II of the 1983 Act. As the Federal agency responsible for protecting the welfare and habitat of the fur seal under Title I of the 1983 Act, a role as provider of indefinite and ongoing support for economic (e.g., commercial) development under Title II creates an internal paradox. Any interpretation that Title II of the 1983 Act guaranteed the Pribilovian people an unrestrained and indefinite economy administered through the Department is at odds with the clear intent of the Act and places the Department in an untenable and incommensurable position. The depleted status of the fur seal demands that the Department be permitted to pursue statutory obligations goals unfettered.

Conditions on St. George are widely divergent from those on St. Paul and the Secretary recognizes the difficulty of assessing the struggles of one entity in the shadow of another's success. To ensure that due consideration is given to the entirety of the Pribilovian question, the Secretary recommends that Congress authorize and direct an independent economic assessment of the practical realities facing the Island of St. George. The Secretary further suggests that such analysis be undertaken within the parameters of a clearly articulated economic objective. The Department is unable to estimate the costs of this analysis.

The Secretary also recognizes that the opinions and positions presented in this Report will not be widely accepted by those entities and residents who submitted statements. We do not believe that it was Congress' intent that the P.L. 104–91 process be used as a claims process representing potential lawsuits against the United States government. As set out in the **Federal Register** notice commencing this process (attached as Exhibit 17), it was not the intent of the Secretary that this Report serve as a claims process. Despite repeated attempts to dissuade the claims concept, the Pribilovian people adhered to it. It is the Secretary's view that section 3(c) is best understood as encompassing ''claims'' associated with Pribilof Island land transfers and grants and cooperative agreements to promote environmental cleanup. It seems clear that, regardless of Congressional intent, the larger, well-supported Island entities will persist in pursuing claims against the United States and the Department. To minimize the extensive and consuming administrative and transactional costs associated with the defense of these potential claims, the Secretary recommends that Congress establish a claims process to be administered through the United States Court of Federal Claims.

The Department is unable to predict how many of the 85 potential claims that have been raised under the P.L. 104–91 process will be actively pursued by Pribilovian representatives in a formal, adjudicative setting. The Department is therefore unable to estimate the costs of this recommendation.

This Report was signed by the Secretary of Commerce on March 17, 1997.

Dated: April 1, 1997.

Terry Garcia,

Assistant Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration.

[FR Doc. 97–9586 Filed 4–14–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Meeting of the Public Advisory Committee for Trademark Affairs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of meeting.

SUMMARY: The Patent and Trademark Office is announcing, in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), an open meeting of the Public Advisory Committee for Trademark Affairs.

DATES: The meeting will be held from 10:00 a.m. until 4:00 p.m. on Monday, May 19, 1997.

ADDRESSES: U.S. Patent and Trademark Office, 2121 Crystal Drive, Crystal Park 2, Room 912, Arlington, Virginia.

FOR MORE INFORMATION CONTACT: David E. Bucher, Deputy Assistant Commissioner for Trademark Policy and Projects, by mail marked to his attention and addressed to Office of the Assistant Commissioner for Trademarks, Patent and Trademark Office, 2900 Crystal Drive, South Tower Building, Suite 10B10, Arlington, VA 22202–3513; by telephone at (703) 308–9100, ext. 20; by fax at (703) 308–9099; or by e-mail to dave.bucher@uspto.gov.

SUPPLEMENTARY INFORMATION: The meeting will be open to public observation. Accordingly, seating will be available to members of the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request. The agenda for the meeting is as follows:

(1) Opening remarks
(2) Financial Report
(3) Trademark Trial and Appeal Board Report
(4) Business Process Reengineering Report
(5) Report on Service and Examination Activities
(6) Discussion of Policy Issues in Examination
(7) Legislation and International Affairs Report
(8) Discussion of Trademark/Domain name issues
(9) Discussion of prospective hearings on Intent-to-Use

Dated: April 10, 1997.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 97–9681 Filed 4–14–97; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: 62 FR 16563.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Monday, April 28, 1997.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has changed the time of the closed meeting to discuss Enforcement matters to 10:30 a.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–9869 Filed 4–11–97; 2:35 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: 62 F.R. 16563.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:30 a.m., Monday, April 28, 1997.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has changed the time of the closed meeting to discuss Enforcement Quarterly Objectives to 11:00 a.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–9870 Filed 4–11–97; 2:35 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—All-Terrain Vehicle Exposure Survey

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed survey to determine consumer exposure to the hazards associated with the use of All-Terrain Vehicles. All-Terrain Vehicles (''ATVs'') are three- and four-wheeled motorized vehicles, generally characterized by large, low-pressure tires, a seat designed to be straddled by the operator, and handlebars for steering, which are intended for off-road use by an individual rider on various types of non-paved terrain. (Three-wheeled ATVs were last made in the late 1980s.) If conducted, the survey would seek information such as the characteristics of ATV users, the types of ATVs in use, the amount of time ATVs are used and the various types of ATV usage. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than June 16, 1997.

ADDRESSES: Written comments should be captioned ''All-Terrain Vehicle Exposure Survey'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information, or to obtain a copy of the questionnaire to be used for this collection of information, call or write Gregory B. Rodgers, Ph.D., Directorate for Economic Analysis, Consumer Product Safety Commission, Washington, D.C. 20207; (301) 504–0962, Ext. 1330.

SUPPLEMENTARY INFORMATION:

A. BACKGROUND

In the mid-1980s, the Commission learned of a rapidly growing number of deaths and injuries—particularly to children under 16 years old—involving ATVs. ATV sales had increased dramatically during that time, including more than a tripling of sales between 1980 and 1985. Most of the ATVs produced during that period were three-wheeled vehicles.

After studying ATVs, the Commission issued an Advance Notice of Proposed Rulemaking (''ANPR'') in May 1985 (50 FR 23139). In December 1987, the Department of Justice, at the Commission's request, filed a lawsuit in federal district court under section 12 of the Consumer Product Safety Act against five major distributors of ATVs. (*United States* v. *American Honda Motor Co.*, et al., Civ. No. 87–3525 (D.D.C., filed Dec. 30, 1987).) The lawsuit, filed simultaneously with a Preliminary Consent Decree, sought a declaration by the court that ATVs constituted an ''imminent hazard'' and requested certain remedial relief. The matter was settled with the court's approval of a Final Consent Decree on April 28, 1988, and the Commission subsequently withdrew the ANPR (56 FR 47166).

The Consent Decree has been successful in a number of areas, including stopping the sale of three-wheel ATVs and requiring dealer compliance with rider age requirements at the point of sale. However, the overall success of this and other Commission actions is ultimately determined by their impact on consumer safety. While injuries and deaths associated with ATVs declined in the late 1980s, the annual figures have plateaued since then.

The Commission's most recent data show that, after gradually declining from an estimated 347 deaths in 1986, the number of deaths associated with ATVs has stabilized at an average of roughly 240 annually from 1990 to 1994. The risk of death per 10,000 four-wheeled ATVs in use has remained relatively constant at roughly .8 since 1991, after gradually dropping to that level from a previous high of 1.5 in 1985.

The estimated number of injuries has shown a similar trend. After gradually declining from an estimated 108,000 injuries in 1986, the number of injuries has stabilized at an average of about 62,000 from 1990 to 1995. Approximately 40% of all deaths and injuries occur to children under 16.

The Consent Decree expires in April 1998. Therefore, the Commission must decide what, if any, action should be taken to address the deaths and injuries associated with ATVs after that date.

An ATV exposure survey would provide information on the characteristics and use patterns of the general population of ATV riders, and the ATVs they use. This information would be compared to earlier ATV exposure surveys conducted in 1986 and 1989 to evaluate changes over the last decade. Additionally, in combination with a planned injury survey, the exposure survey would provide information to quantify ATV risk patterns.

B. Estimated Burden

The exposure survey would be conducted by a contractor by either a mail panel methodology or a probability sample using random-digit-dialing (''RDD'') methods. A mail panel would permit the Commission to obtain a sample size of approximately 1,000 completed interviews with ATV users. If

RDD methods were used, the sample size objective would be 500 completed interviews instead of 1,000 because of the small percentage of households that have ATVs (only two to three percent of households). This smaller sample for the RDD method would be done to keep the cost of the survey to a reasonable level and still provide reliable statistical results.

Thus, the Commission staff estimates that the number of interviews would range from about 500 (RDD) to 1,000 (mail panel). The length of each interview would be approximately 20 minutes. Therefore, the total burden hours for respondents would be about 165 hours (500 x .33 hrs.) for the RDD survey or about 330 hours (1000 × .33 hrs.) for the mail panel.

The Commission staff estimates the costs of the time to respond to this collection of information at $12 an hour. This is the average hourly wage for all private industry workers reported by the U.S. Bureau of the Census in the 1996 edition of the Statistical Abstract of the United States. At this valuation, the estimated cost of this survey to the public would be about $1,980 (165 hours X $12/hour) to $3,960 (330 hours × $12/hour).

The Commission staff estimates that this collection of information would require approximately 18 weeks of professional staff time. That estimate includes five weeks to negotiate contracts, and to prepare questionnaires, interviewer guidelines, and other instruments and instructions used to collect the information. After the information collection, an additional 13 weeks would be required to edit and analyze the data and write the reports. Based on the average professional level, the 18 weeks of staff time would be valued at approximately $30,000.

C. Requests for Comments

The Commission solicits written comments from all interested persons about the proposed survey. The Commission specifically solicits information about the hourly burden and monetary costs imposed by this collection of information. The Commission also seeks information relevant to the following topics:

- Whether the exposure survey described above is necessary for the proper performance of the Commission's functions;
- Whether the information would have practical utility for the Commission;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 10, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–9696 Filed 4–14–97; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff, Personnel; Human Resources Development Division (HQ USAF/DPCH).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Human Resources Development Division announces the proposed revision to AF Form 2800, Family Support Center Individual/Family Data Card; Family Support Center Interview and Follow Up Summary, AF Form 2801; Family Support Center Volunteer Data and Service Record, AF Form 2805. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 16, 1997.

ADDRESSES: Written comment and recommendations on the proposed information collection should be sent to HQ USAF/DPCH, 1040 Air Force Pentagon—5C238, Washington, DC 20330–1040, ATTN: Lt Col David Wolpert.

FOR FURTHER INFORMATION CONTACT: To request more information on this revised data collection instrument, please write to the above address, or call (703) 697–4720.

Title and Associated Form: Family Support Center Individual/Family Data Card, AF Form 2800; Family Support Center Interview and Follow Up Summary, AF Form 2801; Family Support Center Volunteer Data and Service Record, AF Form 2805 (OMB No. 0701–0070).

Needs and Uses: The information collection requirement is necessary to obtain demographic data about individuals and family members who utilize the services offered by the Family Support Center. It also is a mechanism for tracking the services provided so we can keep a history of services provided as well as gathering data about the services provided. It also maintains the demographic data on volunteers and tracks their volunteer efforts.

Affected Public: All those eligible for services provided by Family Support Centers (all Department of Defense personnel and their families) and those who volunteer in the Family Support Center.

Annual Burden Hours: 1000.

Number of Respondents: 10,000.

Responses Per Respondent: 3.

Average Burden Per Response: 5 Minutes.

Frequency: Once.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents could be all those eligible for services, i.e., all Department of Defense personnel and their families. The completed form is used to gather demographic data on those who use Family Support Centers, track what programs or services they use and how often. The data elements in this form are the basis for quarterly data gathering that is forwarded through Major Commands to the Air Staff. This form is essential for record keeping and data gathering.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–9597 Filed 4–14–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent to Prepare a Supplemental Environmental Impact Statement (SEIS) in Conjunction with Proposed Changes in Operation of Chicago Area Confined Disposal Facility at Chicago, Cook County, Illinois

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The Project involves changes in the operation of a confined disposal facility (CDF) built in 1984 to hold contaminated sediment dredged from the Chicago River, Chicago Harbor, and Calumet River and Harbor. The CDF was discussed in a Final Environmental Impact Statement released in May 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Ryder, 312/353–6400 ext. 2020; U.S. Army Corps of Engineers, Chicago District; 111 North Canal Street; Chicago, Illinois 60606–7206.

SUPPLEMENTARY INFORMATION: 1. The Supplement Environmental Impact Statement will document deviations (in construction and operation) from the project as it was discussed in the 1982 impact statement; proposed improvements to the project's operating plan (regarding water quality monitoring, vegetation control, sediment management, and endangered species); and interagency coordination during 1984–1996.

2. The SEIS is expected to be available to the public in June 1997.

Dated: March 26, 1997.

Roger A. Gerber,

Lieutenant Colonel, U.S. Army, District Engineer.

[FR Doc. 97–9652 Filed 4–14–97; 8:45 am]

BILLING CODE 3710–HN–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Draft Revised Final Supplement to the Environmental Impact Statement (DSEIS) for the St. Johns Bayou and New Madrid Floodway Project, East Prairie Phase

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The purpose of this reevaluation is to develop a plan that provides flood control in the St. Johns Bayou and New Madrid Floodway Basins, Missouri. This project was authorized for construction by the Water Resources Development Act of 1986 (P.L. 99–662), Section 401(a). The authorized project is based on the Report of the Chief of Engineers, dated January 4, 1983, which is part of the Phase I General Design Memorandum (GDM) documents prepared in response to Section 101(a) of the Water Resources Development Act of 1976 (P.L. 94–587). The Phase II GDM is based on the Phase I GDM project recommendations, and it was prepared under the Chief's authority for continuing planning and engineering studies on a viable project while awaiting project authorization.

Revisions were made in the Phase II GDM to indicate the non-Federal cost sharing requirements reflected in the authorizing Act PL 99–662. The original EIS was filed with the Council of Environmental Quality in 1976, and the supplement was filed in 1981. The purpose of this DSEIS is to revise and supplement previous environmental documentation. The recent designation of East Prairie, Missouri, as an Enterprise Community by the President has provided the momentum to move the East Prairie Phase of the overall project toward implementation.

FOR FURTHER INFORMATION CONTACT: Mr. Eddie Belk, telephone (901) 544–3798, CELMM–DD–PM, 167 North Main Street B–202, Memphis, TN 38103–1894. Questions regarding the DSEIS may be directed to Mr. John Rumancik, telephone (901) 544–3975, CELMM–PD–R.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The St. Johns Bayou Basin and New Madrid Floodway are located in southeast Missouri and include all or portions of New Madrid, Scott and Mississippi Counties. The basis are adjacent to the Mississippi River, extending from the vicinity of Commerce, Missouri, to New Madrid, Missouri. The recommended plan of improvement for the East Prairie Phase work, which this DSEIS will address, includes about 28 miles of channel modification, a 1,000 cfs pumping station for the St. Johns Bayou area, a 1,500 cfs pumping station for the New Madrid Floodway area, and a 1,500 foot closure levee at the southern end of the New Madrid Floodway.

2. Alternatives

Alternatives were evaluated in the previous EIS. The purpose of this DSEIS is to evaluate and provide updated documentation and coordination for the selected plan for flood control and compare it to the No Action alternative.

3. Scoping Process

An intensive public involvement program has been set up to (1) Solicit input from individuals and interested parties so that problems, needs, and opportunities within the project area can be properly identified and addressed and (2) provide status updates to concerned organizations and the public. Meetings with the local sponsor, public coordination meetings, interagency environmental meetings, and public project briefings/presentations have been conducted. A public scoping meeting will be scheduled for May 1997, and interagency environmental meetings will continue to be held as needed. Significant issues being analyzed include potential project impacts (negative and positive) to fisheries, water quality, wetlands, waterfowl, endangered species, and cultural resources. It is anticipated that the DSEIS will be available for public review early 1998. A public meeting will be held during the review period to receive comments and address questions concerning the DSEIS.

Dated: April 4, 1997.

Gregory G. Bean,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 97–9653 Filed 4–14–97; 8:45 am]

BILLING CODE 3710–KS–M

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education

ACTION: Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act

SUMMARY: Notice is hereby given that on November 20, 1996, an arbitration panel rendered a decision in the matter of *Chester Smalley* v. *New York State Commission for the Blind and Visually Handicapped (Docket No. R-S/95–7).* This panel was convened by the U. S. Department of Education pursuant to 20 U.S.C. 107d-1(a), upon receipt of a complaint filed by petitioner, Chester Smalley.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3230, Mary E. Switzer Building, Washington D.C. 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

Mr. Chester Smalley, complainant, has operated a vending facility at the Roswell Park Cancer Institute, Buffalo, New York, from January 1981 to the present. Until September 1993, complainant's vending facility operation at the hospital consisted of a dry stand in the main building and approximately 24 satellite vending machines located in other buildings throughout the hospital complex.

The machines were provided by a commercial vending company, and Mr. Smalley restocked some of the machines and received a monthly commission. In June 1993, the hospital undertook an extensive construction and renovation program resulting in the hospital administration requesting additional vending machines from the New York Commission for the Blind and Visually Handicapped, the State licensing agency (SLA). The SLA provided those machines at a new leased building located at Main and Virginia Streets. Previously when additional machines were provided, Mr. Smalley received commissions from the vending machines. However, with respect to the machines at the new leased building, Mr. Smalley did not receive commissions.

In September 1993, the Tower Building, which previously housed vending machines operated by the complainant, was demolished. Complainant alleged that he lost income from those machines.

In October 1993, vending machines were placed in the new leased building at Main and Virginia Streets. At that time, the SLA determined that the income from those machines would accrue directly to the SLA. The SLA determined that the new leased building was geographically separate from Mr. Smalley's vending facility. Consequently, Mr. Smalley would not be receiving the commissions from the machines since, in the opinion of the SLA, the machines in the new leased building were not in direct competition with his operation.

The complainant objected to this new arrangement. He made inquiries to the SLA regarding the matter and received a written explanation from the SLA on February 3, 1994, concerning the placement of the new machines at the leased building and the reassignment of the commissions. Mr. Smalley requested and received an administrative review of the matter. The SLA, in a decision dated April 29, 1994, affirmed its earlier determination. Subsequently, complainant requested and received a State fair hearing on June 30, 1994. By decision rendered August 4, 1994, the New York Department of Social Services upheld the Commission for the Blind and Visually Handicapped decision concerning the allocation of the vending machine income. Mr. Smalley requested the Secretary of Education to convene a Federal arbitration panel to hear this grievance. An arbitration hearing was held on August 13, 1996.

Arbitration Panel Decision

The issue heard by the arbitration panel as stipulated by the parties was as follows: Whether the determination of the New York State Department of Social Services confirming the action of the Commission for the Blind and Visually Handicapped with respect to the allocation of vending machine income at leased property on Main and Virginia Streets was arbitrary, capricious, or unlawful; and if so, what should the remedy be?

The majority of the panel ruled that the scope of Chester Smalley's vending operation on the Roswell Park property was defined in the license granted to him by the SLA in 1986. The complainant's vending facility at that time included the newsstand and vending machines in five ''free standing'' buildings. The panel noted that these properties continue to be within the scope of Mr. Smalley's facility and will also continue when the construction project has been completed and personnel returned from the leased property at Main and Virginia Streets to the Roswell Park complex.

The panel further ruled that the SLA erred in its interpretation of Federal regulations in 34 CFR 395.1(f) and (h) and 395.32 regarding the definition of ''individual location, installation or facility'' and the definition of ''direct competition.'' Specifically, the panel ruled that the SLA's interpretation of these definitions to determine that the leased space at Main and Virginia Streets was a separate individual location or facility and that the commissions from the vending machines should accrue to the SLA was arbitrary.

The panel stated that under the Federal regulations, in order for the revenues from the vending machines at the leased building to accrue to the SLA, the SLA would have to show that there was no blind vendor on that property. The panel ruled that Chester Smalley's original and longstanding license included the outlying buildings on Roswell Park property. Therefore, the panel found that the determination of the New York State Department of Social Services confirming the action of the SLA to allocate the vending machine income from the leased property at Main and Virginia Streets to the SLA was arbitrary.

Based upon the foregoing, the panel reversed the decision of the New York State Department of Social Services.

Additionally, the majority of the panel ordered the SLA to make complainant whole for the vending machine commissions from the leased site during the period of October 1, 1993, to the date of the decision and prospectively. The panel also directed the SLA to pay complainant the cost of bringing this action and attorney's fees. One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views of the Department of Education.

Dated: April 9, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–9650 Filed 4–14–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP–97–319–000]

ANR Pipeline Company; Notice of Application

April 9, 1997.

Take notice that on March 31, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP97–319–000 an application pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction and operation of a total of approximately 73 miles of mainline looping and additional compression, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that the proposed facilities are designed to increase its transmission capacity by up to 750,000 Mcf per day (Mcfd) to provide additional west to east transportation service on its mainline between the Chicago area and western Ohio. ANR further states that the proposed expansion is a companion to, and is filed concurrently with, the new pipeline system being proposed by Independence Pipeline (Independence) in Docket No. CP97–319–000 to provide additional new capacity to the eastern United States (from western Ohio to central Pennsylvania). It is stated that the additional capacity being proposed by ANR will link the Independence project with the recent pipeline expansion proposals designed to bring new pipeline capacity primarily from Canadian producing regions into the Midwest.

Specifically, ANR proposes to construct new pipeline looping facilities on two parts of its Mainline Area facilities referred to as the ''Michigan Leg South'' and the ''Tieline''. ANR proposes to extend its 42-inch Michigan Leg South loopline by adding: (1) 15.9 miles in a westerly direction from Milepost 820.2 near Joliet, Illinois; (2) 5.5 miles between Joliet, Illinois and its St. John, Indiana compressor station. Further, on its Tieline, ANR proposes to start a new 30-inch loopline which will parallel its existing 22-inch mainline and 24-inch loopline and consist of: (1) 16.0 miles immediately east of its Bridgman, Michigan compressor station and (2) 14.1 immediately west of its Defiance, Ohio compressor station.

In addition to these loopline facilities, ANR states that the proposed project requires: (1) The addition of 15,000 nominal horsepower at its Bridgman compressor station located in Berrien County, Michigan; (2) the modification of station yard piping at its Lagrange compressor station; (3) and the addition of aftercooling at its Defiance compressor station.

ANR requests a predetermination that the cost of these new facilities will be treated on a rolled-in basis in ANR's next rate case.

ANR is conducting an open season from April 2, 1997 through May 30, 1997. ANR intends to make the proposed expansion capacity available on a non-discriminatory basis to any shipper that has executed a transportation service agreement with ANR.

ANR estimates a construction cost of approximately $124.8 million, which it will finance from internally generated funds. ANR plans to commence construction of the project by June 1, 1989, in order to meet a proposed November, 1989 in-service date.

ANR has submitted a draft Request for Proposal (RFP) for the subject project and the companion Independence project in Docket No. CP97–315–000 to hire a third-party contractor to assist in the preparation of an Environmental Impact Statement (EIS).

With the exception of the RFP process, which may proceed, the Commission staff will defer all other processing of ANR's application until ANR advises the Commission of the results of the open season and demonstrates contract commitments in support of the project.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 30, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that approval for the proposed application is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9609 Filed 4–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Temporary Suspension of Minimum Flow and Reservoir Elevation Requirements

April 9, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Temporary Suspension of Minimum Flow and Reservoir Elevation Requirements.

b. Project No: 2466–017.

c. Dated Filed: March 26, 1997.

d. Applicant: Appalachian Power Company.

e. Name of Project: Niagara Hydroelectric Project.

f. Location: Roanoke River, Roanoke County, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Frank Simms, American Electric Power, One Riverside Plaza, Columbus, OH 43215, (614) 223–2918.

i. FERC Contact: Robert J. Fletcher, (202) 219–1206.

j. Comment Date: April 25, 1997.

k. Description of Proposed Action: Appalachian Power Company, licensee for the Niagara Project, requests approval to lower the reservoir surface elevation down six feet from its normal operating level of 885 feet NGVD and to suspend its 8 cfs minimum flow. The six-foot drawdown and suspension of the 8 cfs minimum flow would be for the duration of the construction period from July 1, 1997 through December 1997. Construction will encompass spillway stability improvements for the rehabilitation of the dam and spillway.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9612 Filed 4–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP91–151–001]

Arizona Corporation Commission, et al. v. El Paso Natural Gas Company, et al.; Notice of Technical/Settlement Conference

April 9, 1997.

Take notice that a technical/settlement conference will be convened in the above-captioned docket on May 7, 1997 at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 1st Street NE., Washington, DC 20426. Any party, as defined in 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend.

The purpose of the conference is to ascertain the current positions of the parties with respect to the issues in the above-captioned matters, and to discuss the severability of the civil penalty portion of the proceeding from the compliant proceeding. For additional information, contact Stuart Fischer or Robert Pease at (202) 208–1033.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9614 Filed 4–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OA97–261–000 and ER97–1082–000]

Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, PECO Energy Company, Potomac Electric Power Company and Public Service Electric and Gas Company; Notice of Filing

April 9, 1997.

Take notice that on April 1, 1997, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, PECO Energy Company, Pennsylvania Power & Light Company, Potomac Electric Company, and Public Service Electric and Gas Company filed the Operating agreement of the PJM Interconnection, L.L.C. to replace in its entirety the amended PJM Interconnection.

In addition, PJM Interconnection, L.L.C. tendered for filing on April 4, 1997, Schedule 9.03 forms stating that Citizens Lehman Power Sales, Electric Clearinghouse, Inc., North American Energy Conservation, Inc., PanEnergy Trading and Market Services, L.L.C. USGen Power Services, L.P., Virginia Electric and Power Company and Vitol Gas & Electric have become additional signatories to the Pennsylvania-New Jersey-Maryland Interconnection Agreement.

Waiver of the Commission's notice requirements has been requested to permit an effective date of March 31, 1997. Copies have been served on the regulatory commissions of Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania and Virginia, and on the parties to Docket Nos. OA97–261–000 and ER97–1082–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not served to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9616 Filed 4–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP97–315–000, CP97–320–000, and CP97–321–000]

Independence Pipeline Company; Notice of Application

April 9, 1997.

Take notice that on March 31, 1997, Independence Pipeline Company (Independence), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket Nos. CP97–315–000, CP97–320–000, and CP97–321–000 an application pursuant to Section 7(c) of the Natural Gas Act and Parts 284 and 157 of the Commission's regulations for a certificate of public convenience and necessity to construct, own, and operate natural gas pipeline facilities subject to the jurisdiction of the Commission, to provide open-access firm and interruptible transportation service through such facilities and to engage in certain routine activities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Independence states that it is a new company which seeks authorization to construct and operate a new large-diameter interstate pipeline to transport gas from western Ohio to central Pennsylvania. Independence is a partnership whose two general partners are ANR Independence Pipeline Company and Transco Independence Pipeline Company, affiliates of ANR Pipeline Company (ANR) and Transcontinental Gas Pipe Line Corporation (Transco), respectively. It is indicated that the purpose of the project is to provide access to eastern markets for gas supplies from Canada and the western United States which will be transported to the Chicago area via several proposed pipeline projects. It is anticipated that transportation from the Chicago area to western terminus of the Independence pipeline will be provided on ANR's system. It is explained that ANR has filed a companion application in Docket No. CP97–319–000 to expand portions of its existing system between Chicago and western Ohio.

In Docket No. CP97–315–000, Independence requests authority to construct and operate approximately 370 miles of 36-inch diameter pipeline extending from an interconnection with ANR near Defiance, Defiance County, Ohio to an interconnection with Transco's Leidy system at Leidy, Clinton County, Pennsylvania. The project will also include two 30,000 HP compressor stations located in Defiance

County, Ohio and Clarion County, Pennsylvania. Independence states it will be an open access pipeline. Independence's facilities are designed to provide a capacity of 943,300 Mcf per day (Mcfd) during the winter season and 838,000 Mcfd during the summer season. Independence estimates that the project will cost $629.6 million and intends to use project financing to fund the project.

Independence proposes to use cost based rates. It anticipates an underlying capital structure consisting of 70 percent debt and 30 percent equity and intends to use the straight fixed variable methodology for cost classification, allocation, and rate design.

Independence requests a preliminary determination by November 1, 1997, and a final certificate by July 1, 1998, in order to meet a target in-service date of November 1, 1999.

Independence is conducting an open season from April 2, 1997 through May 30, 1997 to solicit market interest in the project. Independence intends to make the proposed expansion capacity available on a non-discriminatory basis to any shipper that has executed a transportation service agreement with Independence.

ANR has submitted a draft Request for Proposal (RFP) for the subject project and the companion ANR expansion project in Docket No. CP97–319–000 to hire a third-party contractor to assist staff in the preparation of an Environmental Impact Statement (EIS).

With the exception of the RFP process, which may proceed, the Commission staff will defer all other processing of Independence's application until Independence advises the Commission of the results of the open season and demonstrates contract commitments in support of the project.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 30, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that approval for the proposed application is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Independence to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9608 Filed 4–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–126–000]

Iroquois Gas Transmission System, L.P.; Notice of Informal Settlement Conference

April 9, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, April 16, 1997, at 10:00 a.m., in accordance with the procedural schedule established by the Presiding Judge. The conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), may attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission regulations. See 18 CFR 385.214.

For additional information, please contact Paul B. Mohler at (202) 208–1240, or Carmen Gastilo at (202) 208–2182.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9613 Filed 4–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1514–000]

New York Electric & Gas Corporation; Notice of Filing

April 9, 1997.

Take notice that on March 26, 1997, the New York Electric & Gas Corporation tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9615 Filed 4–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OA97–261–000 and ER97–1082–000]

Pennsylvania-New Jersey-Maryland Interconnection; Notice of Technical Conference and Potential Broadcast of Technical Conference

April 9, 1997.

As previously announced in the Commission's order issued on February 28, 1997, *MidContinent Area Power Pool, et al.*, 78 FERC ¶ 61,203 (1997), the Commission will convene a technical conference concerning the Pennsylvania-New Jersey-Maryland Interconnection (PJM) congestion pricing proposals filed in the captioned proceedings. The technical conference will be held on May 9, 1997, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The technical conference will commence at 10:00 a.m.

and will be open to all interested persons.

The technical conference will be divided into two parts. The first part will consist of a panel focusing on technical aspects of the congestion pricing proposal submitted by the Supporting Companies Group. The first panel should be prepared to discuss, among other matters, the information filed in response to the March 28, 1997, letter from the Director, Division of Applications, of the Office of Electric Power Regulation, and the details of the Energy Accounting Example attached to the Supporting Companies Group December 31, 1996, compliance filing.

The second part will consist of a panel addressing conceptual and policy issues pertaining to the congestion pricing proposals of both the Supporting Companies Group and PECO Energy Company, including: (1) whether the proposals provide appropriate price signals; (2) whether the proposals will result in impermissible ''And'' pricing of transmission capacity; (3) whether the Supporting Companies Group locational energy pricing approach will be beneficial absent implementation of market-based pricing; and (4) whether the proposals provide appropriate incentives to expand transmission capacity in order to relieve transmission constraints.

Persons wishing to speak at the technical conference must submit a request to make a statement in Docket Nos. OA97–261–000 and ER97–1082–000. The request should clearly specify the name of the person desiring to speak and the party or parties the speaker represents. The request must also include a brief synopsis of the issue or issues the speaker wishes to address as well as the speaker's position on the issue or issues. All requests must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 on or before April 18, 1997. The Commission will issue a further notice listing the speakers and panels for the technical conference.

In addition, all interested persons are invited to submit written comments addressing topics discussed at the technical conference. (There is no need to reiterate comments that already have been made in pleadings filed in these dockets.) Comments must be received on or before April 25, 1997. The comments should be no longer than 25 pages in length, double spaced, on 8″×11″ paper, with standard margins. Parties submitting comments must submit fourteen (14) written copies of their comments and also must submit two copies of the file on a computer diskette, one in WordPerfect 6.1 format, and one in a DOS file in the ASCII format (with 1″ margins and 10 characters per inch). The two computer files should be labeled (--.WP and --.ACS) to avoid confusion. Comments must include a one page executive summary and must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and reference Docket Nos. OA97–261–000 and ER97–1082–000. All written comments will be placed in the Commission's public files and will be available for inspection or copying in the Commission's Public Reference Room during normal business hours. The Commission also will make all comments publicly available on its EBB.

Broadcast of Technical Conference

If there is sufficient interest, the Capitol Connection will broadcast the technical conference on May 9, 1997, to interested persons. Persons interested in receiving the broadcast for a fee should contact Shirley Al-Jarani at the Capitol Connection (703) 993–3100 no later than May 2, 1997.

In addition, National Narrowcast Network's Hearings-On-the-Line service covers all FERC meetings live by telephone so that anyone can listen at their desk, from their homes, or from any phone without special equipment. Call (202) 966–2211 for details. Billing is based on time on-line.

FOR FURTHER INFORMATION CONTACT:

Grace E. Goodman, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2296;

David E. Mead, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–1024;

Steven M. Kramer, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0647.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9647 Filed 4–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–328–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

April 9, 1997.

Take notice that on April 4, 1997, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP97–328–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization to construct and operate 4.88 miles of 36-inch diameter pipeline loop on its Leidy Line beginning at milepost 144.53 in Lycoming County and ending at milepost 149.41 in Lycoming County, Pennsylvania, in order to create an additional 35,000 Dth per day of firm transportation capacity (Pocono Expansion Project) to serve the firm market requirements of PG Energy, Inc. and Penn Fuel Gas, Inc., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco notes that the pipeline loop proposed herein was part of the Leidy Line loops that was proposed in Transco's SeaBoard 97 project, in Docket Nos. CP96–545–000 and CP96–545–001, and which was approved but not constructed in Transco's Steuben Storage Project in Docket No. CP90–685–000.[1] Transco states that, contemporaneously, with this filing, it is filing a letter withdrawing its application for the SeaBoard 97 project so that it can meet the firm 1997 market requirements of two of the SeaBoard 97 shippers (PG Energy, Inc. and Penn Fuel Gas, Inc.) by proposing to construct a portion of the Leidy Line loops proposed in SeaBoard 97 in the instant application.

Transco states that these shippers have committed to firm transportation service for contract terms of up to twenty years and that the service will be provided under Rate Schedule FT of Transco's FERC Gas Tariff, Volume No. 1 and Transco's blanket certificate under Part 284(G) of the Commission's regulations. Transco states that the proposed rate for the firm transportation service will be a separately incremental monthly reservation rate of $4.8502. Transco states that the proposed rate is based on a straight-fixed variable rate

[1] Transcontinental Gas Pipe Line Corporation, 52 FERC ¶ 61,287 (1990); reh'g, 53 FERC ¶ 61,102 (1990).

design methodology and an incremental cost of service. Transco states that it specifically reserves the right to file for approval of rolled-in rates for the Pocono Expansion Project in a future Section 4 rate proceeding and to demonstrate in such proceeding the significant system benefits resulting from this project.

Transco states that the proposed facilities will cost an estimated $9.8 million, as detailed in Exhibit K of the application. Transco states that the construction and operation of the proposed loop will not have a significant impact on the quality of the human health or on the environment. In order to meet the firm 1997 market requirements of the two Pocono Expansion Project shippers, Transco requests that the Commission grant all necessary final authorizations by July 1, 1997. It is stated that this schedule will enable Transco to meet the in-service date of November 1, 1997, requested by the shippers.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 30, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CAR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held with further notice before the Commission or its designee on this application if no motion to intervene is field within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9610 Filed 4–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1984–056 and 11162–002]

Wisconsin River Power Co. and Wisconsin Power & Light Co.; Notice Granting Extension of Time

April 9, 1997.

On December 31, 1996, the Notices of Application Ready for Environmental Analysis (NREA) for the Petenwell/Castle Rock and the Prairie du Sac Projects (Nos. 1984–056 and 11162–002) were issued in the **Federal Register** (62 FR 990 and 992, January 7, 1997). The NREA solicited all comments, recommendations, terms and conditions, and prescriptions concerning these two projects be filed with the Commission by February 28, 1997. All reply comments were to be filed with the Commission by April 14, 1997.

In a letter to the Commission dated February 14, 1997, the Wisconsin Department of Natural Resources (DNR) requested an extension of time to comment on the NREA for the Prairie du Sac Project. By letter dated February 27, 1997, the request was granted, and the comment period for the two license applications was extended to March 31, 1997.

The date to file reply comments with the Commission is extended until May 15, 1997.

If you have any questions about this matter, please contact Frank Karwoski at (202) 219–2782.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9611 Filed 4–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2239–000, et al.]

Kentucky Utilities Company, et al.; Electric Rate and Corporate Regulation Filings

April 9, 1997.

Take notice that the following filings have been made with the Commission:

1. Kentucky Utilities Company

[Docket No. ER97–2239–000]

Take notice that on March 24, 1997, Kentucky Utilities Company (KU) tendered for filing executed service agreements under KU's Transmission Services Tariff with ENRON Power Marketing and with Noram Energy Services.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Cinergy Services, Inc.

[Docket Nos. ER97–1675–000, ER97–1974–000, ER97–2020–000, ER97–2031–000, and ER97–2065–000]

Take notice that on March 18, 1997, Cinergy Services, Inc. tendered for filing an amendment in the above-referenced dockets.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Illinois Power Company

[Docket No. ER97–2264–000]

Take notice that on March 31, 1997, Illinois Power Company (IP), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a summary of its activity for the fourth quarter of 1996, under its Market Based Power Sales Tariff, FERC Electric Tariff, Original Volume No. 7.

Comment date: April 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. The Dayton Power and Light Company

[Docket No. ER97–2265–000]

Take notice that on March 26, 1997, The Dayton Power and Light Company (Dayton), submitted a service agreement and supplement to the service agreement establishing AIG Trading Corporation as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreement. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon AIG and the Public Utilities Commission of Ohio.

Comment date: April 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Company

[Docket No. ER97–2266–000]

Take notice that on March 26, 1997, Florida Power & Light Company (FPL) tendered for filing three proposed Exhibit As to the Aggregate Billing Partial Requirements Service Agreement

Between Florida Power & Light Company and Seminole Electric Cooperative, Inc. (ABPRSA).

FPL requests that of the three Exhibit As being filed, one of the proposed Exhibit As be permitted to become effective on March 26, 1997, another on March 27, 1997 and the last on September 9, 1996.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: April 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of Colorado

[Docket No. ER97–2267–000 of Colorado]

Take notice that on March 26, 1997, Public Service Company of Colorado (Public Service), tendered for filing a Service Agreement for Non-Firm Transmission Service between Public Service and MP Energy, Inc. Public Service states that the purpose of this filing is to provide Non-Firm Transmission Service in accordance with its Open Access Transmission Service Tariff. Public Service requests this Service Agreement be made effective on March 17, 1997.

Comment date: April 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of Colorado

[Docket No. ER97–2268–000]

Take notice that on March 26, 1997, Public Service Company of Colorado (Public Service), tendered for filing a Service Agreement for Non-Firm Transmission Service between Public Service and Electric Clearinghouse, Inc. Public Service states that the purpose of this filing is to provide Non-Firm Transmission Service in accordance with its Open Access Transmission Service Tariff. Public Service requests this Service Agreement be made effective on February 28, 1997.

Comment date: April 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. PECO Energy Company

[Docket No. ER97–2269–000]

Take notice that on March 26, 1997, PECO Energy Company (PECO), filed an executed Service Agreement dated February 26, 1997, with Utilities Commission, City of New Smyrna Beach (NEW SMYRNA) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement replaces an unexecuted Service Agreement accepted for filing in Docket No. ER97–316–000.

PECO requests an effective date of January 1, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to NEW SMYRNA and to the Pennsylvania Public Utility Commission.

Comment date: April 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Blackstone Valley Electric Company

[Docket No. ER97–2270–000]

Take notice that on March 26, 1997, Blackstone Valley Electric Company (Blackstone) tendered for filing (1) an agreement dated October 16, 1996 between Blackstone and Narragansett Electric Company (Narragansett) and (2) a notice of cancellation of Blackstone's Rate Schedule FERC No. 25 for support of Blackstone's Riverside Substation and 822 Line. The October 16, 1996, agreement modifies Rate Schedule FERC No. 25 as well as provides Blackstone's notice of termination effective November 1, 1998.

Blackstone requests waiver of the prior notice requirement to permit the October 16, 1996 agreement to become effective on October 16, 1996. The agreement does not affect rates.

Blackstone also requests waiver of the notice requirement to permit the cancellation to become effective November 1, 1998.

Comment date: April 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Public Service Company

[Docket No. ER97–2271–000]

Take notice that on March 26, 1997, Southwestern Public Service Company (Southwestern) submitted an executed service agreement under its open access transmission tariff with Union Electric Company, Inc. The service agreement is for umbrella non-firm point-to-point transmission service.

Comment date: April 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Duquesne Light Company

[Docket No. ER97–2272–000]

Take notice that on March 26, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated March 21, 1997 with Koch Energy Trading, Inc. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Koch Energy Trading, Inc. as a customer under the Tariff. DLC requests an effective date of March 21, 1997 for the Service Agreement.

Comment date: April 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corporation

[Docket No. ER97–2273–000]

Take notice that on March 26, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and USGen Power Services, L.P. This Transmission Service Agreement specifies that USGen Power Services, L.P. has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and USGen Power Services, L.P. to enter into separately scheduled transactions under which NMPC will provide transmission service for USGen Power Services, L.P. as the parties may mutually agree.

NMPC requests an effective date of March 19, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and USGen Power Services, L.P.

Comment date: April 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Carolina Power & Light Company

[Docket No. ER97–2274–000]

Take notice that on March 26, 1997, Carolina Power & Light Company (CP&L), tendered for filing separate Service Agreements for Non-Firm Point to Point Transmission Service executed between CP&L and the following Eligible Transmission Customers: CMS Marketing, Services and Trading Company; and WPS Energy Services, Inc. and a Service Agreement for Short-Term Firm Point to Point Transmission Service with CMS Marketing, Services and Trading Company. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: April 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER97–2275–000]

Take notice that on March 26, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing an unexecuted Service Agreement between USGen Power Services, L.P. and Virginia Power, dated January 22, 1997, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994, as revised on December 31, 1996. Under the tendered Service Agreement Virginia Power agrees to provide services to USGen Power Services, L.P. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff. In that filing, Virginia Power also submitted a refund report for revenues associated with transactions occurring before the effective date.

Copies of the filing were served upon USGen Power Services, L.P., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: April 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Oklahoma Gas and Electric Company

[Docket No. ER97–2276–000]

Take notice that on March 26, 1997, Oklahoma Gas and Electric Company (OG&E), tendered for filing a proposed Third Amendment to the Amended Power Sales Agreement (PSA); a proposed Third Amendment Appendix B Service Schedule LR Load Regulation to Second Amended Dispatch and Load Regulation Agreement and a proposed Fourth Amendment to Transmission Service Agreement between Oklahoma Municipal Power Authority (OMPA) and OG&E.

Copies of this filing have been sent to the OMPA, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: April 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9645 Filed 4–14–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2230–000, et al.]

Pennsylvania Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

April 8, 1997.

Take notice that the following filings have been made with the Commission:

1. Pennsylvania Power & Light Company

[Docket No. ER97–2230–000]

Take notice that on March 24, 1997, Pennsylvania Power & Light Company tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 137 with Enron Power Marketing, Inc.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Illinois Power Company

[Docket No. ER97–2233–000]

Take notice that on March 24, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing non-firm transmission agreements under which American Energy Solutions, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 15, 1997.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Ohio Valley Electric Corp. Indiana-Kentucky Electric Corp.

[Docket No. ER97–2235–000]

Take notice that on March 25, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation)(OVEC) tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated as of March 7, 1997 (the Service Agreement) between Vitol Gas and Electric LLC (Vitol) and OVEC. OVEC proposes an effective date of January 13, 1997, or in the alternative March 24, 1997, and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to Vitol.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000).

A copy of this filing was served upon Vitol.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Ohio Valley Electric Corp., Indiana-Kentucky Electric Corp.

[Docket No. ER97–2236–000]

Take notice that on March 25, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation)(OVEC) tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated March 11, 1997 (the Service Agreement) between WPS Energy Services, Inc. (WPS Energy) and OVEC. OVEC proposes an effective date of March 11, 1997 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to WPS Energy.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000).

Copies of this filing were served upon the Michigan Public Service Commission, the Wisconsin Public Service Commission and WPS Energy.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Ohio Valley Electric Corp., Indiana-Kentucky Electric Corp.

[Docket No. ER97–2237–000]

Take notice that on March 25, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC) tendered for filing a Service

Agreement for Non-Firm Point-To-Point Transmission Service, dated March 14, 1997 (the Service Agreement) between Louisville Gas and Electric Company (LG&E) and OVEC. OVEC proposes an effective date of March 14, 1997 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to LG&E.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000).

Copies of this filing were served upon the Kentucky Public Service Commission and LG&E.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Electric Power Company

[Docket No. ER97–2238–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on March 24, 1997, tendered for filing an Electric Service Agreement and a Transmission Service Agreement between itself and Southern Minnesota Municipal Power Agency (SMMPA). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff, FERC Electric Tariff, Original Volume No. 1. The Non-Firm Transmission Service Agreement provides for wheeling under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 7.

Wisconsin Electric requests an effective date coincident with the date of filing. Copies of this filing have been served on SMMPA, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Maine Public Service Company

[Docket No. ER97–2240–000]

Take notice that on March 24, 1997, Maine Public Service Company (Maine Public) filed an executed Service Agreement with Southern Energy Trading and Marketing, Inc.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Indiana Gas and Electric Company

[Docket No. ER97–2241–000]

Take notice that Southern Indiana Gas and Electric Company (SIGECO) on March 24, 1997, tendered for filing six (6) service agreements for market based rate power sales under its Market Based Rate Tariff with the following entities:

1. NIPSCO Energy Services, Inc.
2. VTECH Energy, Inc.
3. WPS Energy Services, Inc.
4. Electric Clearinghouse, Inc.
5. American Energy Solutions
6. Minnesota Power & Light Company

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Illinois Power Company

[Docket No. ER97–2242–000]

Take notice that on March 24, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which American Energy Solutions, Inc. will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 20, 1997.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Williams Energy Services Company

[Docket No. ER97–2244–000]

Take notice that on March 24, 1997, Williams Energy Services Company (WESCO) filed with the Federal Energy Regulatory Commission a change to its Rate Schedule FERC No. 1. The filed change would permit WESCO to make sales to affiliates which are not franchised utilities. WESCO requests that such change be made effective May 23, 1997.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Maine Public Service Company

[Docket No. ER97–2245–000]

Take notice that on March 24, 1997, Maine Public Service Company (Maine Public) filed an executed Service Agreement with Aquila Power Corporation.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER97–2246–000]

Take notice that on March 24, 1997, Cinergy Services, Inc. (Cinergy) tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and American Energy Solutions, Inc. (American Energy).

Cinergy and American Energy are requesting an effective date of March 1, 1997.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Interstate Power Company

[Docket No. ER97–2247–000]

Take notice that on March 24, 1997, Interstate Power Company (IPW) tendered for filing a Transmission Service Agreement between IPW and AIG Trading Corporation. Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to AIG Trading Corporation.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power & Light Company

[Docket No. ER97–2248–000]

On March 24, 1997, Florida Power & Light Company filed executed Service Agreements with Carolina Power & Light, Coral Power, L.L.C., East Kentucky Power Cooperative, Inc., Illinova Power Marketing, Inc., Midcon Power Services Corp., Morgan Stanley Capital Group Inc., Progress Power Marketing, Inc., Seminole Electric Cooperative, Inc., Utility Board of City of Key West, Florida and VTEC Energy for service pursuant to Tariff No. 1 for Sales of Power and Energy by Florida Power & Light. FPL requests that each Service Agreement be made effective on February 24, 1997.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Northeast Utilities Service Company

[Docket No. ER97–2250–000]

Take notice that on March 24, 1997, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company (including Holyoke Power and Electric Company) and Public Service Company of New Hampshire, tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's Regulations, a rate schedule change for sales of electric energy to Sterling Municipal Light Department.

NUSCO states that a copy of this filing has been mailed to Sterling Municipal

Light Department and the Massachusetts Department of Public Utilities.

NUSCO requests that the rate schedule change become effective on April 1, 1997.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. PacifiCorp

[Docket No. ER97–2251–000]

Take notice that PacifiCorp, on March 24, 1997, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Amendment No. 1 to the Long-Term Power Transaction Agreement and Asset Purchase Agreement between PacifiCorp and Arizona Public Service Company (''Arizona'') dated April 5, 1995.

Copies of this filing were supplied to Arizona, the Public Utility Commission of Oregon, Public Service Commission of Utah, and the Washington Utilities and Transportation Commission.

PacifiCorp requests an effective date of May 15, 1997 be assigned to the Agreement.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Ohio Edison Company, Pennsylvania Power Company

[Docket No. ER97–2252–000]

Take notice that on March 24, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Non-Firm Point-to-Point Transmission Service with The Cleveland Electric Illuminating Company and Ohio Edison Company pursuant to Ohio Edison's Open Access Tariff. This Service Agreement will enable the parties to obtain Non-Firm Point-to-Point Transmission Service in accordance with the terms of the Tariff.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Union Electric Company

[Docket No. ER97–2253–000]

Take notice that on March 25, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between UE and American Energy Solutions, Inc. and Enron Power Marketing, Inc. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Florida Power & Light Company

[Docket No. ER97–2254–000]

Take notice that on March 25, 1997, Florida Power & Light Company (''FPL''), tendered for filing proposed service agreements with The Power Company Of America, L.P. for Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on April 1, 1997.

FPL states that this filing is in accordance with Section 35 of the Commission's regulations.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Allegheny Power Service Corp., on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, (''Allegheny Power'')

[Docket No. ER97–2255–000]

Take notice that on March 25, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (''Allegheny Power'') filed an Amendment No. 2 to Supplement No. 12 to fulfill the Commission's unbundling requirements for Allegheny Power's Standard Generation Service Rate Schedule.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all affected parties.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Northern States Power Company (Minnesota Company)

[Docket No. ER97–2256–000]

Take notice that on March 26, 1997, Northern States Power Company (Minnesota) (''NSP''), tendered for filing a Firm Point-to-Point Transmission Service Agreement for NSP Wholesale (Point of Delivery: City of Madelia, MN) under the Northern States Power Company Transmission Tariff.

NSP requests that the Commission accept the agreement effective March 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Northern Indiana Public Service Company

[Docket No. ER97–2257–000]

Take Notice that on March 25, 1997, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Sonat Power Marketing L.P.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Sonat Power Marketing L.P. pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission, and as amended in Docket No. OA96–47–000. *Northern Indiana Public Service Company*, 75 FERC ¶61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of April 15, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Northern Indiana Public Service Company

[Docket No. ER97–2258–000]

Take Notice that on March 25, 1997, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Wisconsin Electric Power Company.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Wisconsin Electric Power Company under Northern Indiana Public Service Company's Power Sales Tariff. Northern Indiana Public Service Company and Wisconsin Electric Power Company request waiver of the Commission's sixty-day notice requirement to permit an effective date of April 1, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Northern Indiana Public Service Company

[Docket No. ER97–2259–000]

Take Notice that on March 25, 1997, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Rainbow Energy Marketing Corporation.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Rainbow Energy Marketing Corporation under Northern Indiana Public Service Company's Power Sales Tariff. Northern Indiana Public Service Company and Rainbow Energy Marketing Corporation request waiver of the Commission's sixty-day notice requirement to permit an effective date of March 1, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Northern Indiana Public Service Company

[Docket No. ER97–2260–000]

Take Notice that on March 25, 1997, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Sonat Power Marketing L.P.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Sonat Power Marketing L.P. under Northern Indiana Public Service Company's Power Sales Tariff. Northern Indiana Public Service Company and Sonat Power Marketing L.P. request waiver of the Commission's sixty-day notice requirement to permit an effective date of April 15, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Constellation Power Source, Inc.

[Docket No. ER97–2261–000]

Take notice that on March 25, 1997, Constellation Power Source, Inc. (CPS), filed with the Federal Energy Regulatory Commission an application for authority to charge market-based rates and for certain waivers and blanket approvals. CPS has requested waiver of notice to permit its proposed rate schedule to become effective on March 26, 1997, one day after the date of filing.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Boston Edison Company

[Docket No. ER97–2262–000]

Take notice that on March 25, 1997, Boston Edison Company (Edison), tendered for filing for information purposes the 1995 true-up to actual for the Substation 402 Agreement (FPC Rate No. 149) between Edison and Cambridge Electric Light Company (Cambridge). This filing is made pursuant to the terms of the 1987 Settlement Agreement between Edison, Cambridge and the Town of Belmont, Massachusetts in Docket No. ER86–517–000.

Edison states that it has served the filing on Cambridge, Belmont and the Massachusetts Department of Public Utilities.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Boston Edison Company

[Docket No. ER97–2263–000]

Take notice that on March 25, 1997, Boston Edison Company (Boston Edison) tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Morgan Stanley Capital Group, Inc. (Morgan Stanley). Boston Edison requests that the Service Agreement become effective as of March 1, 1997.

Edison states that it has served a copy of this filing on Morgan Stanley and the Massachusetts Department of Public Utilities.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Southern Indiana Gas and Electric Company

[Docket No. ER97–2249–000]

Take notice that Southern Indiana Gas and Electric Company (SIGECO) on March 24, 1997, tendered for filing two service agreements for non-firm transmission service under Part II of its Transmission Services Tariff with the following entities:

1. WPS Energy Services
2. VTECH Energy, Inc.
3. Citizens Lehman Power Sales

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: April 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9648 Filed 4–14–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5812–1]

Tier 2 (Phase 2) Study To Assess Further Reduction in Light-Duty Vehicle and Light-Duty Truck Tailpipe Emission Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and notice of public workshop.

SUMMARY: This notice announces the availability of an EPA White Paper and the scheduling of a public workshop regarding Tier 2 exhaust emission standards for motor vehicles.

DATES: The public workshop will be held on April 23, 1997, from 9:30 a.m. until 5:00 p.m. The White Paper has been released and is currently available to the public.

ADDRESSES: Materials relevant to this notice have been placed in Docket No. A–97–10. The docket is located at the Air Docket Room, Room M–1500, Waterside Mall, 401 M Street SW, Washington, DC 20460, and may be inspected weekdays between 8:00 a.m. and 5:30 p.m. A reasonable fee may be charged by EPA for copying docket materials. Some materials are also available on the Internet at the Tier 2 Study home page, at http://www.epa.gov/OMSWWW/tr2home.htm.

The public workshop will be held at the U.S. EPA Judiciary Square Office, 1st Floor Conference Room, 501 3rd Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jim Markey, Vehicle Programs and Compliance Division, U.S. Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. Telephone: (313) 668–4534. Fax: (313) 741–7869. E-mail: Markey.James@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments (CAAA) of 1990 added subsections 202(g) and 202(h) to the Clean Air Act which required Phase I (or Tier 1) emission standards for light-duty vehicles and light-duty trucks, effective with a phase-in starting in 1994. The Amendments added subsection 202(i), which requires a *Phase II Study* (hereafter referred to as the *Tier 2 Study*) to consider, ''whether or not further reductions in emissions from light-duty vehicles and light-duty trucks should be required pursuant to this title.''

The CAAA also outlined the critical elements which EPA is to consider in the course of the Tier 2 study:

• *Air quality need.* EPA ''shall examine the need for further reductions in emissions in order to attain or maintain the national ambient air quality standards * * *''

• *Technology assessment.* EPA is to examine ''the availability of technology (including the costs thereof), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for meeting more stringent emission standards than those provided in subsections (g) and (h) for model years commencing not earlier than after January 1, 2003, and not later than model year 2006, including the lead time and safety and energy impacts of meeting more stringent emission standards.''

• *Cost effectiveness assessment.* EPA is to examine ''the need for, and cost effectiveness of, obtaining further reductions in emissions from such light-duty vehicles and light-duty trucks, taking into consideration alternative means of attaining or maintaining the national primary ambient air quality standards pursuant to State implementation plans and other requirements of this Act, including their feasibility and cost effectiveness.''

With this Notice, the Agency has at this time completed and released a White Paper designed to outline the scope and timing of the Tier 2 Study and present issues identified by EPA as having potential importance to the Tier 2 Study. This paper also discusses the approach the Agency intends to take in conducting the air quality, technology, and cost effectiveness assessments required by the CAAA. This document is available to the public and may be inspected at the public docket, No. A–97–10, at the address provided in **ADDRESSES,** above. It is available electronically on the Internet at the Tier 2 Study home page at http://www.epa.gov/OMSWWW/tr2home.htm, and copies may also be obtained by contacting the contact person listed above.

The Agency seeks to involve stakeholders early in the process through the public workshop. The White Paper will serve as the basis for the public workshop and EPA welcomes comment, in writing or at the workshop, on the specific issues raised in the White Paper, as well as comments on additional issues not captured by this initial review. It is important to note that EPA has not made any determination regarding elements in the Tier 2 Study, and EPA is particularly interested in receiving feedback from all parties as to the scope of the study.

Anyone wishing to make a presentation at the public workshop (see **DATES**) should, if possible, notify the contact person listed above at least seven days prior to the day of the workshop. The contact person should be given an estimate of the time required for the presentation and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the workshop for scheduling those who have not notified the contact earlier. These presentations will be scheduled on a first-come, first-served basis, and will follow the presentations that have been arranged in advance.

The Agency recommends that multiple copies of the material to be presented be brought to the workshop for distribution to EPA and members of the audience.

Dated: April 9, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97–9691 Filed 4–14–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5811–5]

Clean Air Act Advisory Committee: Accident Prevention Subcommittee Meeting—May 9, 1997, 8:30–4:30 EDT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Clean Air Act section 112(r) required EPA to publish regulations to prevent accidental releases of chemicals and to reduce the severity of those releases that do occur. These accidental release prevention requirements build on the chemical safety work begun by the Emergency Planning and Community Right-to-Know Act (EPCRA) which sets forth requirements for industry, State and local governments. On June 20, 1996, EPA published the final rule for risk management programs to address prevention of accidental releases.

An estimated 66,000 facilities are subject to this regulation based on the quantity of regulated substances they have on-site. Facilities that are subject will be required to implement a risk management program at their facility, and submit a summary of this information to a central location specified by EPA. This information will be helpful to State and local government entities responsible for chemical emergency preparedness and prevention. It will also be useful to environmental and community organizations, and the public in understanding the chemical risks in their communities. In addition, we hope the availability of this information will stimulate a dialogue between industry and the public to improve accident prevention and emergency response practices.

The Accident Prevention Subcommittee was created in September 1996 to advise EPA's Chemical Emergency Preparedness and Prevention Office (CEPPO) on these chemical accident prevention issues, specifically, section 112(r) of the Clean Air Act.

DATES: Pursuant to the Federal Advisory Committee Act, 5 USC App. 2, notice is hereby given that the Accident Prevention Subcommittee of the Clean Air Act Advisory Committee will hold a public meeting on May 9, 1997, from 8:30 p.m. to 4:30 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held at the Hall of States (Room 333) located at 444 North Capitol St., NW, Washington D.C., near Union Station. Members of the public are welcome to attend in person.

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information about these meeting, should contact Karen Shanahan, Designated Federal Official, US EPA (5104), 401 M. St., SW, Washington DC 20460, via the Internet at: shanahan.karen@epamail.epa.gov., by telephone at (202) 260–2711 or FAX at (202) 260–7906.

SUPPLEMENTARY INFORMATION:

Agenda

I. Opening Remarks—Jim Makris (8:30–9:00).

II. Electronic Submission Workgroup Discussion of Issues (9:00–11:45).

III. Comments from the public on Electronic Submission (11:45–12:00) Lunch on your own (12:00–1:30).

IV. How to expand public outreach and understanding in the risk management program (1:30–3:00) Break (3:00–3:15).

V. Other Business (3:15–4:15).

VI. Comments from the public (4:15–4:30).

Members of the public who wish to make a brief oral presentation in person in Washington D.C. to the Subcommittee at the May 9 meeting, must contact Karen Shanahan in writing (by letter, fax, or email—see previously stated information) no later than 12 noon Eastern Time, May 2, 1997 in order to be included on the agenda. Written comments may be submitted to the Accident Prevention Subcommittee or the Electronic Submission Workgroup up through the date of the meeting. Please address such material to Karen Shanahan at the above address.

The Accident Prevention Subcommittee expects that public statements presented at its meetings will not be repetitive or previously submitted oral or written statements. In general, opportunities for oral comment will be limited to no more than three minutes per speaker and no more than thirty minutes total. Written comments (twelve copies) received sufficiently prior to a meeting date (usually one week prior to a meeting or teleconference), may be mailed to the Subcommittee prior to its meeting.

Additional information on the Accident Prevention Subcommittee and Electronic Submission Workgroup are available on the Internet at: http://www.epa.gov/swercepp/rmp-wg.html

If you would like to automatically receive future information on the Accident Prevention Subcommittee and the Electronic Submission Workgroup by email, please send an email to Karen Shanahan at: shanahan.karen@epamail.epa.gov requesting to be put on the email list for these groups.

Dated: April 7, 1997.

Karen Shanahan,

Designated Federal Official.

[FR Doc. 97–9693 Filed 4–14–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5811–8]

EPA's National Drinking Water Contaminant Occurrence Data Base

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of a stakeholder meeting on the National Drinking Water Contaminant Occurrence Data Base.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has scheduled a two-day public meeting on EPA's development of a National Drinking Water Contaminant Occurrence Data Base. The purpose of this meeting is to have a dialogue with stakeholders and the public at large on the process of assembling and maintaining a national drinking water contaminant occurrence data base. In recent months, EPA has been working on a Conceptual Approach for the National Drinking Water Contaminant Occurrence Data Base. At the upcoming meeting, EPA is seeking input from key national, State, individual stakeholders and other interested parties concerning the development and maintenance of the national drinking water contaminant occurrence data base, including such issues as the structure and design of the data base, data input parameters and requirements, and the use and interpretation of data. EPA encourages the full participation of stakeholders throughout this process.

DATES: The stakeholder meeting on the National Drinking Water Contaminant Occurrence Data Base will be held on May 21–22, 1997 from 1:00–5:00 p.m. EST on May 21 and 9:00 a.m. to 4:00 p.m. EST on May 22.

ADDRESSES: The meeting will be held in the Large Conference Room 6228 at USEPA Ariel Rios, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20044. For additional information, please contact the Safe Drinking Water Hotline, at phone: (800) 426–4791, fax: (703) 285–1101, or by e-mail at hotline-sdwa@epamail.epa.gov. Members of the public wishing to attend the meeting may register by phone by contacting the Safe Drinking Water Hotline by May 5, 1997. Those registered for the meeting will receive background materials prior to the meeting.

FOR FURTHER INFORMATION CONTACT: For general information about the meeting logistics, please contact the Safe Drinking Water Hotline, at phone: (800) 426–4791, fax: (703) 285–1101, or by e-mail at: hotline-sdwa@epamail.epa.gov. For other information on the National Drinking Water Contaminant Occurrence Data Base please contact Charles Job, at the U.S. Environmental Protection Agency, Phone: 202–260–7084, Fax: 202–260–3762.

SUPPLEMENTARY INFORMATION:

A. Background

Background on the National Drinking Water Contaminant Occurrence Data Base

The SDWA, as amended in 1996, states that: Not later than three years after the date of enactment of the Safe Drinking Water Act Amendments of 1996, the Administrator shall assemble and maintain a national drinking water contaminant occurrence data base using information on the occurrence of both regulated and unregulated contaminants in public water systems obtained under section 1445(a)(1)(A) or section 1445(a)(2) and reliable information from other public and private sources. The National Drinking Water Contaminant Occurrence Data Base is required to be developed and maintained by August 1, 1999.

B. Request for Stakeholder Involvement

The upcoming meeting deals specifically with EPA's efforts to develop the National Drinking Water Contaminant Occurrence Data Base. EPA's goal is to use the data to support ongoing evaluations of currently regulated contaminants as well as in making determinations of which contaminants to regulate in the future under section 1412(b)(1) with respect to the occurrence of a contaminant in drinking water at a level of public health concern. The National Contaminant Occurrence Data Base will be considered in the listing of contaminants on the Drinking Water Contaminant Candidate List which will be used as a first step in identifying contaminants to regulate. The prioritization of contaminants for drinking water regulation (and for development of health advisories, research or monitoring efforts) would ensure that EPA uses its limited resources in an efficient manner. The data base will be used to assist in establishing these priorities.

The meeting will be divided into two parts. On May 21, an overview of the conceptual approach and data bases which may contribute data to the National Occurrence Data Base will be presented. This time will also be used for stakeholder comments. On May 22, a structured technical session is planned to elicit responses on specific interest in data base design and structure, data input and requirements, and use and interpretation; as well as which contaminants should be included in the data base.

EPA is working on a Conceptual Approach for the National Drinking Water Contaminant Occurrence Data Base. This approach considers factors such as what data are needed in the data base, how is the database going to be used, what information is available for the database, how can databases be merged, and how to address data uncertainty with quality assurance and quality control. Both chemical contaminants and microbes will be considered in the National Drinking Water Contaminant Occurrence Data Base development process. Background material on the Conceptual Approach and the process to develop and implement the National Drinking Water Contaminant Occurrence Data Base will be sent to all registered participants in advance of the meeting. The specific issues for discussion at the meeting will be based on this material and will include (but may not be limited to) the following:

1. What type of information does the National Occurrence Data Base have to contain for EPA to make determinations on what contaminants need further action?

2. What standard methodologies/analytical techniques and units of measure will be acceptable to populate the National Occurrence Data Base?

3. What should be the quality assurance/quality control procedures for accepting data into the National Occurrence Data Base and for determining its usefulness for a specific end-use?

4. What should be the criteria for accepting data from external and internal data sources? What type of data should be required for data quality? Should there be different levels of data quality for different uses?

5. What are the sources of data that can be used to populate the National Occurrence Data Base and are they available in a form that can be used by the EPA and be accessible to the public?

6. How should linkages to other databases be accommodated?

7. Are there certain data fields that EPA should structure its query functions around?

8. In what forms should the data in the National Occurrence Data Base be made readily accessible to the public?

9. In making the National Occurrence Data Base publicly accessible should the information be available electronically? What kind of user interface is important?

10. Should the National Occurrence Data Base information be able to be graphically displayed?

11. What data does your organization possess that is relevant to the National Occurrence Data Base?

12. What specific data fields should be included in the National Occurrence Data Base?

13. What historical data should be included in the data base?

EPA has convened this public meeting to hear the views of stakeholders on the Conceptual Approach, concerning the development and maintenance of a National Drinking Water Contaminant Occurrence Data Base. The public is invited to provide comments on the issues listed above or other issues related to the National Drinking Water Contaminant Occurrence Data Base during the May 21–22, 1997 meeting.

Dated: March 25, 1997.

Cynthia Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–9694 Filed 4–14–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5811–9]

Science Advisory Board Notification of Public Advisory Committee Meeting; Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Human Exposure and Health Subcommittee (HEHS) of the Science Advisory Board's (SAB) Integrated Risk Project will meet on May 5–6, 1997, at the Environmental Protection Agency's Waterside Mall Complex, 401 M Street, SW, Washington, DC 20460 in Room 17 of the Washington Information Center. For convenient access, members of the public should use the public entrances to the Waterside Mall commercial area on either the ''I'' or ''M'' street side of the complex. The meeting will begin at 9:00 a.m. and end no later than 5:00 p.m. on each day. All times noted are Eastern Time. All meetings are open to the public. Due to limited space, seating at meetings will be on a first-come basis.

The main purpose of the meeting is to discuss human exposure (and their consequences) to various pollutants and to consider the potential for risk reduction. The Subcommittee's activities are part of an SAB project to update the 1990 SAB report, Reducing Risk: Setting Priorities and Strategies for Environmental Protection. In a letter dated October 25, 1995, to Dr. Matanoski, Chair of the SAB Executive Committee, Deputy Administrator Fred Hansen charged the SAB to: (1) Develop an updated ranking of the relative risk of different environmental problems based upon explicit scientific criteria; (2) provide an assessment of techniques and criteria that could be used to discriminate among emerging environmental risks and identify those that merit serious, near-term Agency attention; (3) assess the potential for risk reduction and propose alternative technical risk reduction strategies for the environmental problems identified; and (4) identify the uncertainties and data quality issues associated with the relative rankings. The project will be conducted by several SAB panels, including HEHS, working at the direction of an ad hoc Steering Committee established by the Executive Committee.

Single copies of *Reducing Risk* can be obtained by contacting the SAB's Committee Evaluation and Support Staff (1400), 401 M Street, SW, Washington, DC 20460, telephone (202) 260–8414, or fax (202) 260–1889. Members of the public desiring additional information about the meeting, including an agenda, should contact Ms. Mary Winston, Staff Secretary, Science Advisory Board (1400), US EPA, 401 M Street, SW, Washington DC 20460, by telephone at (202) 260–8414, fax at (202) 260–7118, or via the INTERNET at: winston.mary@epamail.epa.gov.

Anyone wishing to make an oral presentation at the meeting must contact Mr. Samuel Rondberg, Designated Federal Official for the HEHS, in writing, no later than 4:00 p.m., April 28, 1997, bay fax at (202) 260–7118, or via the INTERNET at rondberg.sam@epamail.epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Rondberg no later than the time of the presentation for distribution to the Committee and the interested public. See below for additional information on providing comments to the SAB.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: April 3, 1997.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 97–9692 Filed 4–14–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–44639; FRL–5600–7]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on tertiary amyl methyl ether (TAME) (CAS No. 994–05–8). These data were submitted pursuant to an enforceable testing consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for TAME were submitted by The American Petroleum Institute (API), on behalf of the Tertiary Amyl Methyl Ether (TAME) Consortium, pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000. EPA received the data on March 6, 1997. The submission includes two final reports entitled 1) ''Developmental Toxicity Evaluation of Inhaled Tertiary Amyl Methyl Ether (TAME) in CD (Sprague-Dawley) Rats'' and 2) ''Developmental Toxicity Evaluation of Inhaled Tertiary Amyl Methyl Ether (TAME) in CD-1 Mice.'' This chemical has potentially wide use as a gasoline additive.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44639). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460, e-mail address: oppt.ncic@epamail.epa.gov.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: April 7, 1997.

Frank Kover,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–9687 Filed 4-14-97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–211043; FRL–5578–1]

Lead Azide; Response to Citizen's Petition Under TSCA Section 21

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Denial of TSCA Section 21 Petition.

SUMMARY: EPA received a petition under section 21 of the Toxic Substances Control Act (TSCA) on May 2, 1996, from a citizen requesting that the Agency promulgate a regulation under TSCA section 6 that would prohibit the manufacturing, processing, or distribution in commerce of lead azide. The petitioner claims that she suffered injuries through the use of lead azide to produce a ''special effect'' in filmmaking and that manufacture of such substance should be prohibited to prevent future human injury. EPA has evaluated the petition and upon further consideration, denied it on July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-260-1404, TDD: (202-554-0551), e-mail: TSCA-Hotline@epa.mail.epa.gov.

I. Background

A. Statutory Requirements

1. *TSCA section 21*. Section 21 of TSCA, 15 U.S.C. 2620, provides that any person may petition EPA to initiate proceedings for the issuance, amendment, or repeal of a rule or order under section 4, 5, 6, or 8 of TSCA, 15 U.S.C. 2603, 2604, 2605, or 2607. As required by section 21(b), the petition must set forth the facts that the petitioner claims establish the need for the Agency to issue, amend, or repeal a rule or order under those sections of TSCA. (See also Guidance for Petitioning the Environmental Protection Agency under Section 21 of the Toxic Substances Control Act (50 FR 46827, November 13 , 1985). Section 21(b) also directs EPA to decide either to grant or deny the petition within 90 days after the petition is filed. If EPA denies a petition, the Agency must publish the reason(s) for the denial in the **Federal Register**. If the Agency grants the petition, EPA must promptly commence an appropriate proceeding in accordance with section 4, 5, 6, or 8 of TSCA.

If EPA denies a petition, or fails to make a decision within the 90-day review period, the petitioner may, within 60 days from the date of the decision or from the end of the review period, commence a civil action in a U.S. district court to compel initiation of the requested rulemaking. For a petition for a new rule or order, the court must provide opportunity for the petition to be considered *de novo*. Section 21(b)(4) identifies petitioners' rights and the procedures to be followed under such civil action. Relief available under section 21 is limited to initiation of a proceeding to issue, amend, or appeal a rule under section 4, 6, or 8, or an order under section 5(e) or 6(b)(2).

2. *TSCA section 6*. Under section 6 of TSCA, 15 U.S.C. 2605(a), EPA may issue rules to limit or prohibit the manufacture, processing, or distribution

in commerce of a chemical substance. To issue a section 6 rule on a chemical substance, EPA must find that a reasonable basis exists to conclude that the manufacture, processing, distribution in commerce, use or disposal of a chemical substance or mixture, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment. TSCA section 6 requires EPA to apply the least burdensome requirement to protect adequately against the risk. This finding of unreasonable risk is a judgement by EPA that the risk of health or environmental injury from a chemical substance or mixture outweighs the burden to society for potential regulation.

B. Description of Petition and Related Events

EPA received three copies of similar petitions from the same petitioner under section 21 of TSCA on March 29, April 30, and May 2, 1996, requesting that the Agency promulgate a regulation under TSCA section 6 that would prohibit the manufacturing, processing, or distribution in commerce of lead azide. The petitioner claims that she suffered injuries from the use of lead azide in special effects in filmmaking and that, therefore, manufacture of such substance should be prohibited to prevent future human injury. The petition claims that lead azide is an explosive, carcinogen, a skin and eye irritant, toxic to the lungs, kidneys, nervous system, blood and reproductive systems. Further, it claims that the decomposition products are fatal if inhaled or ingested. Supporting information included files from previous litigation activity, references to State and Federal regulations on lead azide and use of explosives, and the manufacturer material safety data sheets. Additionally, the petition requests that EPA subpoena transcripts of earlier Federal and State court proceedings relating to the alleged injury.

Following a May 20 telephone conversation with EPA staff, the petitioner agreed that the May 2 petition would be appropriate for response. Subsequently, on June 9, 1996, EPA's Office of General Counsel received additional litigation files accompanied by a request to extend EPA's time to consider the petition, pending a court decision on disclosure of information from the petitioner's employer.

II. Disposition of Petition

EPA denied the requested relief because the petition did not include sufficient information to provide a basis for the Agency to conclude that an unreasonable risk may exist and that a TSCA section 6 rule is necessary. Moreover, EPA's review of supplemental information did not indicate that a section 6 rule was appropriate. The petition was forwarded to the Occupational Safety and Health Administration (OSHA) for consideration under Federal labor laws. EPA has notified the petitioner of the disposition of the petition by letter dated July 31, 1996.

A. Issuance of Section 6 Rule

EPA has reviewed the supporting information included with the petition and litigation files, as well as other available information on lead azide. The health effects of lead and lead azide are well documented in the scientific literature. Lead azide is a skin and eye irritant, explosive, a carcinogen, and toxic to the lungs, kidneys, nervous system, blood and reproductive systems. Acute exposure to extremely high levels of lead can cause encephalopathy which may lead to vomiting, seizures, coma, or even death. OSHA has set the Permissible Exposure Limit (PEL) for lead at 50ug/m^3 of air averaged over an 8–hour period (29 CFR 1910.1025). OSHA requires protective work clothing for workers exposed to lead compounds such as lead arsenate or lead azide, which can cause skin and eye irritation (29 CFR 1910.1025, App. B (g)).

In order to grant a citizen's petition to initiate a TSCA section 6 action, however, EPA must find ''a reasonable basis to conclude that the issuance of such a rule or order is necessary to protect health or the environment against an unreasonable risk of injury.'' An important factor in determining whether TSCA action is necessary is whether the concern is addressed by other federal regulations. The section 21 petition should include sufficient information to provide a basis for the Agency to conclude that an unreasonable risk may exist and that a TSCA section 6 rule is necessary to address that risk (50 FR 46827, November 13, 1985). This may include data on the nature and severity of harm (toxicity) to humans or the environment from the chemical substance of concern; exposure data, such as amount of the substance released and estimates of magnitude, frequency, duration and route (i.e. inhalation, ingestion, or skin absorption) of contact; extent of harm the chemical substance of concern presents or may present, and possible methods of risk reduction. This data facilitates the Agency's efforts in determining whether an unreasonable risk exists, and if there is an unreasonable risk posed, arriving at a remedy which imposes the smallest social and economic burden possible.

EPA denied the petition because the petition and litigation files do not provide the necessary information, nor does the Agency have an independent basis for concluding that TSCA section 6 action is necessary to address an unreasonable risk of injury from worker exposure to lead azide beyond the protections which may be provided by OSHA.

B. Issuance of TSCA Subpoenas

Under section 11(c) of TSCA, 15 U.S.C. 2610, EPA may issue subpoenas to require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions and other information necessary to carry out TSCA. However, in the case at hand, EPA does not believe that the petitioner's request for subpoena of court transcripts and oral proceedings will provide information relevant to determining a basis for unreasonable risk, and is therefore, an inappropriate action. In addition, section 21 of TSCA does not prescribe EPA's use of subpoena authority as a form of relief available to petitioners.

C. OSHA Transmittal

Currently, occupational exposure to lead azide is regulated by OSHA under 29 CFR 1910.1025. Under appendix B (g), workers exposed to lead above the OSHA PEL, or workers exposed to lead compounds such as lead azide, which can cause skin and eye irritation, must be provided with protective work clothing and equipment appropriate for the hazard at no cost to the employee. The employer is required to provide information and training programs for all employees who may be exposed to lead above the action level or who may suffer skin or eye irritation from lead. In addition the employer must make readily available to all employees including those exposed below the action level, a copy of the standard and its appendices and must distribute to all employees any materials provided to the employer by OSHA.

EPA has not determined that the use of lead azide described in the petition poses an unreasonable risk, after consideration of all relevant factors. However, the Agency does believes that the situation raises sufficient issues to warrant OSHA notification. After thorough examination of OSHA's standards and discussions with OSHA staff, EPA believes that as a worker in the film industry, the petitioner is protected by OSHA standards and that the petitioner's concerns about the use of lead azide in the workplace are appropriately addressed by OSHA regulations. The Agency has no information to indicate that further regulation is necessary beyond the protections provided by OSHA.

D. Extension of 90–Day Review

EPA denied the petitioner's request to extend EPA's time to consider the petition. The Agency has no reason to believe that the information held by the petitioner's employer will supply the necessary data on the nature and severity of harm (toxicity) to humans or the environment, exposure data, extent of harm, or possible methods of risk reduction necessary to change the Agency's assessment that this is an issue appropriately addressed by OSHA.

III. Public Record

EPA established a public record of its response to this petition under docket control number OPPTS–211043. The public record contains the petition, response and the basic information considered by EPA in reaching its decision in this matter. All documents, including the index of the docket, are available to the public in EPA's TSCA Nonconfidential Information Center (NCIC) from noon to 4 p.m., Monday through Friday, excluding legal holidays. The NCIC is located at EPA Headquarters, Rm. B607, 401 M St., SW., Washington, DC 20460.

List of Subjects

Environmental protection.

Dated: April 4, 1997.

Lynn R. Goldmann,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–9690 Filed 4-14-97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by FCC For Extension Under Delegated Authority; Comments Requested

April 9, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before June 16, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0427.

Title: Section 73.3523 Dismissal of applications in renewal proceedings.

Form Number: None.

Type of Review: Extension of existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 1.

Estimated time per response: 8 hours (1 hour licensee, 7 hours attorney).

Total annual burden: 1 hour.

Needs and Uses: On April 12, 1996, the Commission adopted an Order (In the Matter of Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast Renewal Procedures)) which implemented Sections 204(a) and (c) of the Telecommunications Act of 1996 and eliminated comparative renewal hearings for broadcast applications filed after May 1, 1995, in accordance with the Act. All pending comparative renewal proceedings involving applications filed on or before May 1, 1995, will be concluded in accordance with the procedural provisions of Section 73.3523.

Section 73.3523 requires an applicant for a construction permit to obtain approval from the FCC to dismiss or withdraw its application when that application is mutually exclusive with a renewal application. This request for approval must contain a copy of any written agreement and an affidavit, stating that it has not received any consideration (pre-Initial Decision) or it has not received any consideration in excess of legitimate and prudent expenses (post-Initial Decision) for the dismissal/withdrawal of its application. In addition, within 5 days of the applicant's request for approval, each remaining competing applicant and the renewal applicant must submit an affidavit certifying that it has not paid any consideration (pre-Initial Decision), or that it has not paid consideration in excess of legitimate and prudent expenses (post-Initial Decision) for the dismissal/withdrawal of a competing application. The data is used by FCC staff to ensure that an application was filed under appropriate circumstances and not to extract payments prohibited by the Commission.

OMB Approval Number: 3060–0342.

Title: Section 74.1284 Rebroadcasts.

Form Number: None.

Type of Review: Extension of existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 100.

Estimated time per response: 1 hour.

Total annual burden: 100 hours.

Needs and Uses: Section 74.1284 requires that the licensee of an FM Translator station obtain prior consent from the primary FM broadcast station or other FM translator before rebroadcasting their programs. In addition, the licensee must notify the Commission of the call letters of each station rebroadcast and must certify that written consent has been received from the licensee of that station. The data is used by FCC staff to update records and to assure compliance with FCC rules and regulations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–9626 Filed 4–14–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2187]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

April 10, 1997.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these document are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed April 30, 1997. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services. (CC Docket No. 96–152)

Number of Petitions Filed: 2.

Subject: Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996. (CC Docket No. 96–237)

Number of Petitions Filed: 5.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–9636 Filed 4–14–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

Announcing an Open Meeting of the Board

TIME AND DATE: 10:30 a.m., Wednesday, April 23, 1997.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTER TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Community Support Revisions—Final Rule.
- Community Investment—Cash Advance Proposed Rulemaking.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Bruce A. Morrison,

Chairman.

[FR Doc. 97–9833 Filed 4–11–97; 2:34 pm]

BILLING CODE 6725–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 62 FR 16578.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:00 p.m.—April 10, 1997.

CHANGE IN THE MEETING: Addition of Item 2: docket No. 96–20—Port Restrictions and Requirements in the United States/Japan Trade.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 97–9832 Filed 4–11–97; 2:33 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission to OMB Under Delegated Authority

Background

Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860)

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

1. Report title: Report of Medium-Term Note Issuance

Agency form number: FR 2600m, q, and s

OMB Control number: 7100-0245

Frequency: monthly (m), quarterly (q), and semiannually (s)

Reporters: U.S. corporations

Annual reporting hours: 94

Estimated average hours per response: 0.083

Number of respondents: 424

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. sections 225a and 353 et seq.) and the data collected will no longer be treated as confidential.

Abstract: This report collects information on the monthly volume of medium-term notes issued by corporations. The Board staff obtains the data from the universe of issuers. Individual respondents are surveyed monthly, quarterly, or semiannually, depending on the level and frequency of the respondent's issuance activity. In addition, once a year, all respondents report the amount of medium-term notes outstanding. The information collected on this report is used to estimate the volume of new securities issuance by U.S. corporations that is published in the *Federal Reserve Bulletin* and to construct estimates of corporate securities outstanding that are used in the flow of funds accounts.

Board of Governors of the Federal Reserve System, April 9, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–9635 Filed 4-14-97; 8:45AM]

Billing Code 6210-01-F

FEDERAL RESERVE SYSTEM

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 April 30, 1997.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Thomas E. Criswell, as co-trustee*, Ada, Oklahoma; to acquire an additional 67.9 percent, for a total of 74.3 percent; Bill J. Horne, Sr., as co-trustee, Ada, Oklahoma, to acquire an additional 63.2 percent, for a total of 74.3 percent; C.B. Howard, as co-trustee, Ada, Oklahoma, to acquire an additional 69.8 percent, for a total of 74.3 percent; Richard J. Thompson, as co-trustee, Oklahoma City, Oklahoma, to acquire an additional 59.3 percent, for a total of 74.3 percent; and James N. Wall, as co-trustee, Shawnee, Oklahoma, to acquire an additional 67.9 percent, for a total of 74.3 percent, of the voting shares of First Ada Bancshares, Inc., Ada, Oklahoma, and thereby indirectly acquire First National Bank and Trust Company, Ada, Oklahoma.

Board of Governors of the Federal Reserve System, April 9, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–9605 Filed 4-14-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. 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 standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 10, 1997.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. *First National Community Bancorp, Inc.*, Dunmore, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of First National Community Bank, Dunmore, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. *Union Illinois 1995 Investment Limited Partnership*, Swansea, Illinois; to become a bank holding company by retaining 17.41 percent of the voting shares of Union Illinois Company, Swansea, Illinois, and thereby indirectly acquire Union Bank of Illinois, Swansea, Illinois, and State Bank of Jerseyville, Jerseyville, Illinois.

Board of Governors of the Federal Reserve System, April 8, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–9604 Filed 4–94–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Public Information Collection Requirement Submitted to the Office of Management and Budget for Clearance

AGENCY: Administration on Aging.

The Administration on Aging, Department of Health and Human Services, is submitting the following proposal for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511); Title VI Program Performance Reports.

Type of Request: ''Reinstatement, without change.''

Use: To continue an existing information collection, Title VI Program Performance Report, from Title VI grantees to use in reporting information on programs funded by Title VI as required under Section 202(a)(19), Section 614(a)(2), and Section 614(a)(3) of the Older Americans Act, as amended.

Frequency: Semiannually.

Respondent: Tribal organizations and nonprofit organizations representing Native Hawaiians.

Estimated number of responses: 222.

Estimated Burden Hours: 648.

Additional Information or Comments: The reporting system would become effective in fiscal year 1997. The reporting form would include the following elements:

- Total number services provided;
- Unduplicated number of persons receiving services;
- Staffing, including volunteers;
- Number of meal sites operated during budget period; and
- Total number of resources used to support the Title VI programs.

Written comments and recommendations for the proposed information collection should be sent to the following address within 30 days of the publication of this notice: Administration on Aging, Wilbur J. Cohen Federal Building, 330 independence Avenue, SW, Washington, DC 20201, Attn: Reginald A. Newsome.

William F. Benson,

Deputy Assistant Secretary for Aging.

[FR Doc. 97–9591 Filed 4–14–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–5–97]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. Survey to Evaluate the 1989 Revisions of the U.S. Standard Certificates of Live Birth and Death and the U.S. Standard Report of Fetal Death—New—OMB approved the information collections for the evaluation of the 1978 revisions of the U.S. standard certificates and reports under OMB No. 0937–0114. The standard certificates are used by state vital statistics offices as models in developing their own birth, death, and fetal death reporting forms. Data obtained from these reporting forms in each individual state are used to compile national vital statistics. The standard certificates are the principle means of achieving uniformity of information upon which national vital statistics are based. To ensure that the standard certificates meet the various needs for which they are designed, it is essential that they be evaluated and revised periodically. This information collection will be used to evaluate the items on the 1989 revisions of the standard certificates and to determine if there is other information that should be included on the standards that is needed for relevant public health research. Respondents will include individuals and organizations who are involved in the completion of vital records or who utilize vital statistics data and have an interest in the content of the standard certificates. The information collected will be used by a group of consultants to determine what changes may be needed in the 1989 standard certificates. The annual total burden hours are 3,000.

Respondents	No. of respondents	No. of responses/respondents	Avg. burden/response (in hrs.)
Live Birth Questionnaire	2000	1	0.5
Fetal Death Questionnaire	2000	1	0.5
Death Questionnaire	2000	1	0.5

Dated: April 9, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–9622 Filed 4–14–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Fernald Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Fernald Health Effects Subcommittee.

Times and Dates: 1 p.m.–9 p.m., May 7, 1997; 8:30 a.m.–5 p.m., May 8, 1997.

Place: The Plantation, 9660 Dry Fork Road, Harrison, Ohio 45020, telephone 513/367–5610.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include: presentations from the National Center for Environmental Health (NCEH) regarding current activities; the National Institute for Occupational Safety and Health and ATSDR will provide updates on the progress of current studies.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Steven A. Adams, or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health, NCEH, CDC, 4770 Buford Highway, NE, (M/S F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: April 7, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–9623 Filed 4–14–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 62 FR 3900, January 27, 1997, and redesignated from Part HN as Part N at 60 FR 56606, November 9, 1995), is amended as set forth below to reflect the reorganization of the National Institute of Dental Research as follows: Abolishment of the Division of Epidemiology and Oral Disease Prevention (NP5, formerly HNP5) and the transfer of its functions to the Division of Intramural Research (NP2, formerly HNP2).

Section N–B Organization and Functions, under the heading *National Institute of Dental Research (NP, formerly HNP)*, is amended as follows: (1) the title and functional statement for the *Division of Epidemiology and Oral Disease Prevention (NP5, formerly*

HNP5) are deleted in their entirety; and (2) the functional statement for the *Division of Intramural Research (NP2, formerly HNP2)* is deleted in its entirety and the following new statement is inserted:

Division of Intramural Research (NP2, formerly HNP2). (1) Plans and conducts basic and clinical research programs directed toward increasing the fundamental knowledge of craniofacial/oral health and disease, including the development, structure, function and dysfunction of craniofacial/oral structures and tissues, the role of microorganisms and host immune responses in oral and systemic infectious and inflammatory diseases, craniofacial genetic disorders, oral and pharyngeal cancer, and acute and chronic pain and neurosensory mechanisms; (2) plans and conducts a translational, patient-oriented and community-based research and assessment program aimed at translating new knowledge into immediate gains in the diagnosis, prevention, and treatment of diseases and disorders and in the promotion of craniofacial/oral and general health; (3) develops, directs, and performs epidemiologic investigations of craniofacial/oral health and disease, as well as oral manifestations of systemic disorders; identifies and tests risk factors, disease markers, and clinical indices for craniofacial/oral diseases and conditions; (4) performs research in the areas of disease diagnosis, etiology, prognosis, and treatment; prevention and health promotion; delivery of care, utilization of services, risk-benefit assessment, and decision systems; (5) provides dental care and consults for selected inpatients and ambulatory patients from NIH Institutes conducting clinical research in the Warren Grant Magnuson Clinical Center; (6) evaluates research efforts and establishes program priorities; (7) allocates funds, space, and personnel ceilings to ensure maximum utilization of available resources in the attainment of Institute objectives and integrates new research activities into the program structure; (8) collaborates with other NIH Institutes and external research institutions and maintains an awareness of national research efforts in program areas; and (9) provides advice on intramural research and science in general to the Institute Director.

Dated: April 1, 1997.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 97–9596 Filed 4–14–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[WO–600–1820–00 1A]

Gila Box Riparian National Conservation Area Advisory Committee Iditarod National Historic Trail Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Gila Box Riparian National Conservation Area Advisory Committee Iditarod National Historic Trail Advisory Committee—Notice of Renewal.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 2–463). Notice is hereby given that the Secretary of the Interior has renewed the Bureau of Land Management's (BLM) Gila Box Riparian National Conservation Area Advisory Committee and the Iditarod National Historic Trail Advisory Committee.

The purpose of these Committees is to provide advice to the Secretary of the Interior, through the Director, BLM with respect to the preparation and implementation of the comprehensive plan for the long-range management and protection of the Gila Box Riparian National Conservation Area and the Iditarod National Historic Trail.

FOR FURTHER INFORMATION CONTACT: Melanie Wilson, Intergovernmental Affairs (640), Bureau of Land Management, 1620 L Street, 4th Floor, Washington, D.C. 20240, telephone (202) 452–0377.

Date signed: March 18, 1997.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 97–9629 Filed 4–14–97; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

San Pedro Riparian National Conservation Area Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: San Pedro Riparian National Conservation Area Advisory Committee notice of renewal.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Public Law 92–463). Notice is hereby given that the Secretary of the Interior has renewed the Bureau of Land Management's (BLM) San Pedro Riparian National Conservation Area Advisory Committee.

The purpose of the Committee is to provide advice to the Secretary of the Interior, through the Director, BLM with respect to the preparation and implementation of the comprehensive plan for the long-range management and protection of the San Pedro Riparian National Conservation Area.

FOR FURTHER INFORMATION CONTACT: Melanie Wilson, Intergovernmental Affairs, (640), Bureau of Land Management, 1620 L Street, 4th Floor, Washington, D.C. 20240, telephone (202) 452–0377.

Dated: February 18, 1997.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 97–9628 Filed 4–14–97; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

PRT–827365

Applicant: Kathleen A. McKeown, Department of Plant and Soil Sciences, University of Massachusetts, Amherst

The applicant requests a permit to take (collect mature achenes for deposition into the National Plant Germplasm System and for research) the endangered Tennessee purple coneflower, *Echinacea tennesseensis,* and smooth cone flower, *Echinacea laevigata,* from Federal properties throughout these species' ranges in North Carolina, South Carolina, Georgia, Tennessee, and Virginia for the purpose of enhancement of survival of the species.

Written data or comments on these applications should be submitted to: Regional Permit Biologist, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received by May 15, 1997.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: April 4, 1997.

Noreen K. Clough,

Regional Director.

[FR Doc. 97–9601 Filed 4–14–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Adaptive Harvest Management Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Fish and Wildlife Service (hereinafter Service) will conduct an open meeting on April 22, 1997, to discuss potential regulatory alternatives for setting duck-hunting seasons.

DATES: April 22, 1997.

ADDRESSES: The Adaptive Harvest Management Meeting will be held at the National Rural Electric Cooperative Association Building, 4301 Wilson Boulevard, Room CC2, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION: Representatives from the Service, the Service's Migratory Bird Regulations Committee, Flyway Council Chairmen, and Flyway Council Consultants will meet on April 22, 1997, at 9:00 a.m. to discuss issues involving potential regulatory alternatives for setting duck-hunting seasons. Topics scheduled for discussion include recent Flyway Council recommendations that have broad-scale implications on harvest management and harvest distribution and the implications of possible regulatory solutions.

In accordance with Departmental policy, these meetings are open to public observation. Members of the public may submit written comments on the matters discussed to the Director.

Dated: April 7, 1997.

Gary Edwards,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–9606 Filed 4–14–97; 8:45 am]

Billing Code 4310–55–F

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the

Powhatan Renape Nation

Rankokus Indian Reservation, P.O. Box 225, Rancocas, New Jersey 08073–0225

has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on April 12, 1996, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.9(a) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 3427–MIB, 1849 C Street, N.W., Washington, D.C. 20240, Phone: (202) 208–3592.

Dated: April 7, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–9607 Filed 4–14–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal State Gaming Compact between Choctaw Nation and the State of Oklahoma, which was executed on December 6, 1996.

DATES: This action is effective April 15, 1997.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: April 3, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–9592 Filed 4–14–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–07–1220–00]

Notice of Intent To Amend a Resource Management Plan

SUMMARY: The Bureau of Land Management (BLM) is preparing an Environmental Assessment (EA), to consider a proposed amendment to the Box Elder Resource Management Plan (RMP). The proposed amendment would consider alternatives for Off-Highway Vehicle use in Box Elder County.

DATES: The comment period for identification of issues for the proposed plan amendment will commence April 15, 1997. Comments must be submitted on or before May 30, 1997.

FOR FURTHER INFORMATION CONTACT:

Leon Berggren, Resource Advisor, Bureau of Land Management, Salt Lake District, 2370 South 2300 West, Salt Lake City, UT 84119, telephone (801) 977–4350. Existing planning documents and information are available at the above address or telephone number. Comments on the proposed plan amendment should be sent to the above address.

SUPPLEMENTARY INFORMATION: The Salt Lake District, BLM, is proposing to amend the Box Elder RMP management prescriptions for Off-Highway Vehicle (OHV) use in Box Elder County. The BLM is in partnership with the county and a citizen's group to determine OHV usage in the county. An environmental assessment (EA) will be prepared to analyze the impacts of this proposal and alternatives. Public participation is being sought at this initial stage in the planning process to ensure the RMP amendment addresses all issues, problems and concerns from those interested in the management of lands within the Salt Lake District.

Douglas M. Koza,

Acting State Director.

[FR Doc. 97–9664 Filed 4–14–97; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–030–07–1430–01; WIES–047060]

Notice of Realty Action: Sale of Public Land in Bayfield County, Wisconsin; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This notice corrects the information published beginning on page 53236 in the issue of Thursday, October 10, 1996, (Vol. 61, No. 198). On page 53237, the first column should read as follows:

The following land has been found suitable for sale under authority of the Act of August 24, 1954 (68 Stat. 789) as a claim to omitted lands resurveyed in 1980. The land will not be offered for sale until at least 60 days after the date of this notice.

Fourth Principal Meridian,

T.43N., R.7W.
Sec. 17, Lot #7

Containing 22.00 acres.

The remainder of the notice is correct as printed.

FOR FURTHER INFORMATION CONTACT: Larry Johnson, Realty Specialist, Milwaukee District, (414) 297–4413.

Dated: April 9, 1997.

Judy A. Patterson,

Acting District Manager.

[FR Doc. 97–9621 Filed 4–14–97; 8:45 am]

BILLING CODE 4310–PN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–1020–04-WEED]

Proposed Supplementary Rules for Use of Certified Noxious Weed-Free Forage, Straw, and Mulch in the Rawlins District, WY

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of proposed supplementary rules to require the use of certified noxious weed-free forage, straw, and mulch on Bureau of Land Management (BLM) administered lands in the Rawlins District, Wyoming.

SUMMARY: The District Manager of the Rawlins District BLM in Wyoming is proposing a requirement that all BLM visitors and permittees in the Rawlins District use certified noxious weed-free hay, straw, or mulch when visiting BLM administered lands in the District. This requirement will affect visitors who use hay or straw on the BLM administered lands in the Rawlins District such as: recreationists using pack and saddle stock, ranchers with grazing permits, outfitters, and contractors who use straw or other mulch for reseeding purposes. These individuals or groups would be required to purchase certified noxious weed-free forage products, or use other approved products such as processed grains and pellets while on BLM administered lands in the District.

DATES: Comments concerning the proposal should be received on or before May 15, 1997.

ADDRESSES: Send written comments concerning the Wyoming requirement to: District Manager, Bureau of Land Management, 1300 North Third Street, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Rawlins District Office, Attn: Susan Foley, 1300 North Third Street, Rawlins, WY 82301, or telephone 307–328–4200.

SUPPLEMENTARY INFORMATION: Noxious weeds are a serious problem in the western United States. Estimates of the rapid spread of weeds in the west include 2,300 acres per day on BLM administered lands and 4,600 acres per day on all western public lands. Species like Leafy Spurge, Spotted Knapweed, Russian Knapweed, Musk Thistle, Dalmatian Toadflax, Purple Loosestrife, and many others are alien to the United States and have no natural enemies to keep their populations in balance. Consequently, these undesirable weeds invade healthy ecosystems, displace native vegetation, reduce species diversity, and destroy wildlife habitat. Widespread infestations lead to soil erosion and stream sedimentation. Furthermore, noxious weed invasions weaken reforestation efforts, reduce domestic and wild ungulates' grazing capacity, occasionally irritate public land users by aggravating allergies and other ailments, and threaten Federally protected plants and animals.

To curb the spread of noxious weeds, a growing number of Western States have jointly developed noxious weed-free forage certification standards, and, in cooperation with various Federal, State, and County agencies, passed weed management laws. Because hay and other forage products containing noxious weed seed are part of the infestation problem, Wyoming has developed a State hay inspection-certification-identification process, participates in a regional inspection-certification-identification process, and encourages forage producers in Wyoming to grow noxious weed-free products. The Weed and Pest Districts of Albany, Carbon, Fremont, and Laramie Counties have documented that, in 1996, 74 growers in these counties produced approximately 15,000 acres of certified forage for sale including grass hay, alfalfa hay, a mixture of grass and alfalfa hay, as well as straw.

Region Two of the United States Forest Service, Department of Agriculture, implemented a similar policy for National Forest lands in Wyoming and surrounding States in 1994. The BLM in Wyoming implemented a standard stipulation on all Special Recreation Permits in 1992 requiring holders of those permits to use certified weed-free products. This proposal will provide a standard regulation for all users of BLM lands in Wyoming and will provide for coordinated management with National Forest lands across jurisdictional lines.

In cooperation with the State of Wyoming and the U.S. Forest Service, the BLM is proposing, for all BLM administered lands within the Rawlins District, a ban on hay, straw, or mulch that has not been certified. This proposal includes a public information plan to ensure that:

1. This ban is well publicized and understood; and

2. BLM visitors and land users will know where they can purchase State-certified hay or other products.

These supplementary rules will not appear in the Code of Federal regulations. The principal author of these proposed supplementary rules is Susan Foley, Soil Scientist, Rawlins District, Wyoming BLM.

For the reasons stated above, under the authority of 43 CFR 8365.1–6, the Rawlins District Office, BLM, proposes supplementary rules to read as follows:

Supplementary Rules to Require the Use of Certified Noxious Weed-Free Forage on Bureau of Land Management-Administered Lands in the Rawlins District are—

1. To prevent the spread of weeds on BLM-administered lands in the District, effective August 1, 1997, all BLM lands within the Rawlins District, at all times of the year, shall be closed to possessing or storing hay, straw, or mulch that has not been certified as free of prohibited noxious weed seed.

2. Certification will comply with ''Regional Standards'' jointly developed by the states of Colorado, Idaho, Montana, Utah, Wyoming, and Nebraska for noxious weed seed free and noxious weed free forage.

3. The following persons are exempt from this order: anyone with a permit signed by BLM's authorized officer at the Resource Area Office specifically authorizing the prohibited act or omission within that Resource Area.

4. Any person who knowingly and willfully violates the provisions of these supplemental rules regarding the use of noncertified noxious weed-free hay, straw, or mulch when visiting Bureau of Land Management administered lands in the Rawlins District, without authorization required, may be commanded to appear before a designated United States Magistrate and may be subject to a fine of not more than $1,000 or imprisonment of not more than 12 months, or both, as defined in 43 U.S.C. 1733(a).

Dated: April 9, 1997.

Alan R. Pierson,

State Director.

[FR Doc. 97–9625 Filed 4–14–97; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico, Oil and Gas Lease Sale 168

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of the proposed notice of sale.

Gulf of Mexico Outer Continental Shelf (OCS); Notice of Availability of the Proposed Notice of Sale for proposed Oil and Gas Lease Sale 168 in the Western Gulf of Mexico. This Notice of Availability is published pursuant to 30 CFR 256.29(c), as a matter of information to the public.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale.

The proposed Notice of Sale for proposed Sale 168 may be obtained by written request to the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, or by telephone at (504) 736–2519.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is scheduled for August 1997.

Dated: April 9, 1997.

Cynthia Quarterman,

Director, Minerals Management Service.

[FR Doc. 97–9651 Filed 4–14–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 5, 1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by April 30, 1997.

Carol D. Shull,

Keeper of the National Register.

CALIFORNIA

Los Angeles County

Glendale Southern Pacific Railroad Depot, Gardena Ave., jct. with W. Cerritos Ave., Glendale, 97000376

COLORADO

Jefferson County

Rocky Flats Plant, Approximately 2 mi. SE of jct. of CO 93 and CO 198, Golden vicinity, 97000377

Montezuma County

Cannonball Ruins Great Pueblo Period of the McElmo Drainage Unit MPS) Address Restricted, Cortez vicinity, 97000378

FLORIDA

Flagler County

Cherokee Grove, W of FL A1A and E of I–95, on Pellicer Cr., approximately .25 mi. S of the St. Johns—Flagler county line, Bunnell vicinity, 97000379

ILLINOIS

Clark County

Dulaney, Robert L., House, 602 N. 7th St., Marshall, 97000382

Cook County

Thorne, George R., House, 7 Cottage Row, Midlothian, 97000381

McLean County

Camelback Bridge, Virginia Ave., across the Constitution Trail, Normal, 97000383

Mercer County

Mercer County Fairgrounds, 12th Ave., SW., .5 mi. S of jct. with IL 17, Aledo, 97000380

IOWA

Black Hawk County

Cedar Falls Independent Order of Odd Fellows, 401–403 Main St., Cedar Falls, 97000384

Lange, August H. J. and Justena, Farmstead Historic District, 8214 Spring Creek Rd., La Porte City vicinity, 97000385

Boone County

Stoll Building Works, 824 Allen St., Boone, 97000390

Cerro Gordo County

First National Bank of Mason City, 5–7 N. Federal Ave., Mason City, 97000392

Clinton County

Saint Boniface Church, 2500 N. Pershing Blvd., Clinton, 97000386

Henry County

Cooper, George and Margaret, House, 400 W. Monroe St., Mount Pleasant, 97000393

Johnson County

Oxford Commercial Historic District, Roughly, Augusta Ave. between Wilson St. and Center St. alley, Oxford, 97000389

Lee County

Moyce—Steffens House, 1615 Avenue H, Fort Madison, 97000394

Muscatine County

Ward, George H. and Loretta, House, 719 N. Calhoun St., West Liberty, 97000388

Story County

Municipal Building, 420 Kellogg Ave., Ames, 97000391

Woodbury County

Morningside College Historic District, Roughly bounded by Vine, Morningside, Garretson, Peters, and S. Paxton Aves., and Sioux Trail, Sioux City, 97000387

KANSAS

Allen County

Northrup House, 318 East St., Iola, 97000395

MICHIGAN

St. Clair County

Edison, Thomas A., Boyhood Homesite, Address Restricted, Port Huron vicinity, 97000397

Wayne County

Park Avenue Historic District, Park Ave., between W. Adams Ave. and W. Fisher Freeway, Detroit, 97000396

MISSOURI

Cole County

Haar, Herman, House, 110 Bolivar St., Jefferson City, 97000398

NEW HAMPSHIRE

Cheshire County

Fitzwilliam Common Historic District, jct. of NH 119, Richmond Rd., and Templeton Hwy., Fitzwilliam, 97000399

[FR Doc. 97–9686 Filed 4–14–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the title described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: Comments must be submitted on or before April 15, 1997, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew its approval of the collection of information found at 30 CFR Part 795, Small operator assistant. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is listed in 30 CFR Part 795, which is 1029–0061.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on January 17, 1997 (62 FR 2683). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Small Operator Assistance.

OMB Control Number: 1029–0061.

Summary: This information collection requirement is needed to provide assistance to qualified small mine operator sunder section 507(c) of P.L. 96–87. The information requested will provide the regulatory authority with data to determine the eligibility of the applicant and the capability and expertise of laboratories to perform required tasks.

Bureau Form Number: FS–6.

Frequency of Collection: On Occasion.

Description of Respondents: Small operators and State regulatory authorities.

Total Annual Responses: 300.

Total Annual Burden Hours: 12,140 hours.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503.

Dated: April 9, 1997.

Richard G. Bryson,

Acting Chief, Division of Regulatory Support.

[FR Doc. 97–9704 Filed 4–14–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: New Collection; Comment Request

ACTION: Notice of information collection under review; report of mail order transactions.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 4, 1997 at 62 FR 6012, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments until May 15, 1997. This process is published in accordance with 5 CFR 1230.10.

Written 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 Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of the information collection:

1. *Type of Information Collection:* New collection.

2. *Title of the Form/Collection:* Report of Mail Order Transactions.

3. *Agency form number:* None, *if any, and the applicable component of the Department of Justice sponsoring the collection:* Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit.

''The Comprehensive Methamphetamine Control Act of 1996 (Public Law 104–237) (MCA) amended the Controlled Substances Act to require that each regulated person who engages in a transaction with a non-regulated person which involves ephedrine, pseudoephedrine, or phenylpropanolamine (including drug products containing these chemicals) and uses or attempts to use the Postal Service or any private or commercial carrier shall, on a monthly basis, submit a report of each such transaction conducted during the previous month to the Attorney General.''

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,500 respondents at 6 times per year at 1 hour per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* 9,000 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 10, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–9702 Filed 4–14–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of March and April, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–33,049; Washington Public Power Supply System, Richland, WA
TA–W–33,080; Kellogg Brush Manufacturing Co., Easthampton, MA
TA–W–33,273 & TA–W–33,274; Consolidated Contractor/Perfection Pad, Buffalo, NY
TA–W–33,162; Contact Technologies, Inc., St. Marys, PA
TA–W–33,223; Camp, Inc., Jackson, MI
TA–W–33,146; Federal Mogul Corp., Leiters Ford, IN
TA–W–33,113; Frigidaire Home Products, Div of White Consolidated Industries, Greenville, MI
TA–W–33,276; Square D Co./Schneider North America, Milwaukee WI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–33,311; Pacificorp, Portland, OR
TA–W–33,069; System One Amadeus, Miami, FL
TA–W–33,095; General Electric Co., Pittsfield, MA PA
TA–W–33,197; Mason Distributors, Inc., Hasbrouch Heights, NJ
TA–W–33,127; Character Suburbanwear, Inc., New York, NY
TA–W–33,058; Texaco Trading and Transporation, Inc., Cheyenne, WY & Operating in Various Other Locations: A; Gillette, WY, B; Casper, WY, C; Sidney, MT, D; Healdton, OK, E; Ness City, KS, F; Booker, TX
TA–W–33,312; Boise Cascade Corp., Portland, OR

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–33,251; Allied Signal Laminate Systems, Electronic Materials, Lacrosse, WI

Layoffs were caused by transferring production of the subject plant to other domestic facilities of Allied Signal.

TA–W–33,317; Vanguard Plastic, Inc., Paterson, NJ

Declines in employment at the subject plant are related to the company shifting their production of plastic containers to another domestic location in Allentown, PA.

TA–W–33,229; Avesta Sheffield East, Inc., Baltimore, MD
TA–W–33,335; 76 Products Co. Headquartered in Costa Mesa, CA & Operating at Various Locations in The State of California

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–33,232; Springfield Forest Products, Springfield, OR

Sales and production declines at the subject firm were due to a fire at the saw mill in August 1996.

TA–W–33,112; Hecla Mining Co., Grouse Creek Mine, Challis, ID

The US is a net exporter of gold, not a net importer. The US is currently the second largest producer of gold in the world.

TA–W–33,209; Parker Abex NML Aerospace, Kalamazoo, MI

Worker layoffs are associated with the transfer of production from Kalamazoo, MI to other plants located domestically.

TA–W–33,997; General Electric Co., Erie PA
TA–W–33,290; Elk Spinners, Hope Mills, NC
TA–W–33,195; Reynolds Metls Co., Fulton Can Plant, Fulton, NY
TA–W–33,337; Mitsubishi Consumer Electronics America, Santa Ana, CA;
TA–W–33,327; Elk Spinners, Fayetteville, TN
TA–W–33,336; Inland Paperboard & Packaging, Inc., Erie, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–33,183; Niagara Mohawk Power Corp., Headquartered in Syracuse, NY

The investigation revealed that criteria (1) and criteria (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–33,365; Anchor Glass Container, Houston, TX: February 26, 1996.
TA–W–33,368; In-Sink-Erator, Elkhorn Div., Elkhorn, WI: March 12, 1996.
TA–W–33,071; Laurel Engineering, Inc., San Diego, CA: December 9, 1995.
TA–W–33,269; Sun Apparel, Inc., Concepcion Plant, El Paso, TX: April 18, 1997.
TA–W–33,002; Ilissa Bridals, New York, NY: December 2, 1995.
TA–W–33,103; Dynafiber, Inc., Stevenson, WA: December 23, 1995.
TA–W–33,205; Burwood Products Co., Traverse City, MI: January 30, 1996.
TA–W–33,088; MRI Everite Knitting Mills, Lebanon, PA: December 12, 1995.
TA–W–33,283; Rodtri Co., Alberta, VA: February 21, 1996.
TA–W–33,013; Karen Tang Sewing, San Francisco, CA: November 18, 1995.
TA–W–33,134; Cott Distributors USA, Oakfield, NY: January 15, 1996.
TA–W–33,227; National Sportswear Co., Reedsburg, WI: February 11, 1996.
TA–W–33,352; Nantucket Industries, Cartersville, GA: March 10, 1996.
TA–W–33,252; Oshkosh B'Gosh, Inc., Oshkosh, WI: February 13, 1996.
TA–W–33,212; Getinge/Castle, Mercersburg, PA: February 6, 1996.
TA–W–33,012; Sunny Co., San Francisco, CA: November 18, 1995.
TA–W–33,119; Siemens Electromechanical Components, Inc., Marion, KY: December 6, 1995.
TA–W–33,342; Workers of Personnel Partners Employed at WCI/ Domestic, Inc., Mishawaka, IN: March 7, 1996.
TA–W–33,187 & A; J and J Group, Inc., Franklin, WV and Waynesboro, PA: January 28, 1996.
TA–W–33,330; Commemorative Brands, Inc., L.G. Balfour Co., North Attleboro, MA: February 24, 1996.
TA–W–33,191; Alsea Veneer, Inc., Newport, OR: January 23, 1996.
TA–W–33,286; Stevens International, Inc., Hamilton Div and Hamilton Machining Center, Hamilton, OH: February 26, 1996.
TA–W–33,266; Economy Color Card, Inc., Roselle, NJ: February 19, 1996.
TA–W–33,254; D & R Cedar Products, Inc., Forks, WA: February 12, 1996.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of March, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–01510; Square D Company, Scheider North America, Milwaukee, WI
NAFTA–TAA–01439; Mid-America Dairymen, Inc., Sabetha, KS
NAFTA–TAA–01486; Burwood Products Co., Traverse City, MI
NAFTA–TAA–01489; Allied Signal Laminate Systems, Electronic Materials, LaCrosse, WI
NAFTA–TAA–01571; Washington Public Power Supply System, Richland, WA
NAFTA–TAA–01527; Elk Spinners, Hope Mills, NC
NAFTA–TAA–01502; Merchants Fast Motor Lines, Odessa, TX
NAFTA–TAA–01541; Roseburg Forest Product Co., Dixonville Veneer Plant, Roseburg, OR
NAFTA–TAA–01458; Frigidaire Home Products, Div. of White Consolidated Industries, Greenville, MI
NAFTA–TAA–01518; Boise Cascade Corp., Portland, OR
NAFTA–TAA–01495; Oshkosh B'Gosh, Inc., Oshkosh, WI
NAFTA–TAA–01562; Lithonia Lighting, Conyers, GA
NAFTA–TAA–01423; Industrial Dynamics Co., LTD, Torrance, CA
NAFTA–TAA–01437; Lance Garment Corp., Red Bay, AL

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01459; Leer Mfg.—Southeast Div., Conyers, GA: January 20, 1996.
NAFTA–TAA–01483; Alsea Veneer, Inc., Newport, OR: January 27, 1996.
NAFTA–TAA–01456; American Fiber Resources, L.P., Fairmont, WV: January 15, 1996.
NAFTA–TAA–01559; Nantucket Industries, Catersville, GA: March 10, 1996.
NAFTA–TAA–01564; Design House, Stanwood, WA: March 13, 1996.
NAFTA–TAA–01578; Economy Color Card, Inc., Roselle, NJ: March 19, 1996.
NAFTA–TAA–01321; Sunny Co., San Francisco, CA: October 1, 1995.
NAFTA–TAA–01325; Karen Tang Sewing, San Francisco, CA: October 1, 1995.

NAFTA–TAA–01490; National Sportswear Co., Reedsburg, WI: February 11, 1996.

NAFTA–TAA–01560; Ametek/March Electric, Cambridge, OH: January 23, 1996.

NAFTA–TAA–01512; D & R Cedar Products, Inc., Forks, WA: February 12, 1996.

NAFTA–TAA–01537; Rodtri Co., Alberta, VA: February 21, 1996.

NAFTA–TAA–01514; Mitsubishi Consumer Electronics America, Inc., Santa Ana, CA: February 14, 1996.

NAFTA–TAA–01549; International Wire Corp (Formerly Wirekraft Industries), Burcliff Industries Div., Bucyrus, OH: February 26, 1996.

NAFTA–TAA–01496; Square D Company, Clearwater, FL: February 17, 1996.

NAFTA–TAA–01530 & A; Stride Rite Corp., Hamilton, MO & Tipton, MO: February 24, 1996.

NAFTA–TAA–01414; Laurel Engineering, Inc., San Diego, CA: January 7, 1996.

NAFTA–TAA–01552; Landonna Sportswear, Warren, AR: February 19, 1996.

NAFTA–TAA–01572; In-Sink-Erator, Elkhorn Div., Elkhorn, WI: March 19, 1996.

NAFTA–TAA–01509; Rockwell Automation/Allen-Bradley Co., Mauston, WI: February 8, 1996.

I hereby certify that the aforementioned determinations were issued during the month of March and April, 1997. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 4, 1997.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–9669 Filed 4–14–97; 8:45 am]

BILLING CODE 4570–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01341 and TA–W–33,029]

Willamette Industries, Incorporated, Dallas, OR, Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of February 4, 1997, the Oregon AFL–CIO together with the Western Council of Industrial Workers Local #2714, United Brotherhood of Carpenters and Joiners of America, requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance applicable to workers of the subject firm. The denial notice was signed on January 21, 1997, and published in the **Federal Register** on February 13, 1997 (62 FR 6804).

The petitioner presents evidence that the Department's survey of customers of Willamette Industries was incomplete.

On March 17, 1997, the Department issued a Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance applicable to the workers of Willamette Industries, Incorporated, Plywood Division, Dallas, Oregon. The notice will soon be published in the **Federal Register**. The Department has determined that in this case, the evidence presented in the request for reconsideration of the NAFTA petition is also applicable to the TAA petition. Therefore, this notice has been expanded to include the TAA petition.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 24th day of March 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–9672 Filed 4–14–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33, 158]

Ansewn Shoe Company, Bangor, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 18, 1997, applicable to all workers of Ansewn Shoe Company located in Bangor, Maine. The notice will soon be published in the **Federal Register.**

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that the Department incorrectly set the impact date at January 16, 1996. The workers at the subject firm were covered under an earlier certification, TA–W–30,230, which did not expire until October 27, 1996. To avoid a coverage overlap for the same group of workers at Ansewn Shoe, the Department is amending the current certification to insert the new impact date of October 27, 1996.

The amended notice applicable to TA–W–33,158 is hereby issued as follows:

All workers of Ansewn Shoe Company, Bangor, Maine, who became totally or partially separated from employment on or after October 27, 1996 are eligible to appy for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 28th day of March 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–9675 Filed 4–14–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,060 Cartersville, GA, and TA–W–33,060A Atlanta, GA]

Atlantic Steel Industries, Incorporated; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of

Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on February 21, 1997, applicable to workers of Atlantic Steel Industries, Incorporated located in Cartersville, Georgia. The notice was published in the **Federal Register** on March 21, 1997 (62 FR 13710).

The Department, on its own motion, reviewed the certification for workers of the subject firm. The workers produce steel billets, bars, rods, and flats. Findings on review show that workers separations have occurred at the subject firm's Atlanta, Georgia location.

The intent of the Department's certification is to include all workers of Atlantic Steel Industries, Incorporated, who were affected by increased imports. Accordingly, the Department is amending the worker certification to include the workers of Atlantic Steel Industries, Incorporated, Atlanta, Georgia.

The amended notice applicable to TA–W–33d,060 is hereby issued as follows:

''All workers of Atlantic Steel Industries, Inc., Cartersville, Georgia (TA–W–33,060) and Atlanta, Georgia (TA–W–33,060A), engaged in employment related to the production of steel billets, bars, rods and flats, who became totally or partially separated from employment on or after December 12, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 4th day of April 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–9679 Filed 4–14–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,325]

Burlington Industries, Incorporated Knitting Fabric Division/Denton Plant Denton, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 27, 1995 in response to a worker petition which was filed on behalf of workers at Burlington Industries, Incorporated, Knitting Fabric Division/Denton Plant, Denton, North Carolina.

All workers of the subject firm are covered under a certification on a revised determination on reopening (TA–W–32,588B). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 1st day of April, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–9667 Filed 4–14–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,324]

Chock Full o' Nuts, Linden, NJ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 17, 1997, in response to a petition filed by a company official on behalf of workers at Chock Full o' Nuts, Linden, New Jersey.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any workers whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 1st day of April, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–9668 Filed 4–14–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,129]

Dallas Manufacturing Company, Selma, AL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 27, 1997 in response to a worker petition which was filed on January 13, 1997 on behalf of workers at Dallas Manufacturing Company, Selma, Alabama.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 25th day of March, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–9674 Filed 4–14–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,214]

EOS Corp., Camarillo, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 24, 1997 in response to a worker petition which was filed on February 24, 1997 on behalf of workers at EOS Corporation, Camarillo, California.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 31st day of March, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–9671 Filed 4–14–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address show below, not later than April 25, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than April 25, 1997.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 24th day of March, 1997.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 03/24/97

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,339	M and R Coats (UNITE)	Hoboken, NJ	03/13/97	Ladies' Coats.
33,340	Palermo Fashions, Inc (UNITE)	Hoboken, NJ	03/13/97	Ladies' Coats.
33,341	Aetna Heavy Stamping (UAW)	Warren, MI	03/12/97	Meal Stamping and Assembly.
33,342	Personnel Partners (Wrks)	Mishawaka, IN	03/07/97	Awning Hardware for Recreational Vehicle.
33,343	Magruder Color Co., Inc (Comp)	Elizabeth, NJ	03/04/97	Flurorescent Pigments & Lakes for Plastic.
33,344	Magruder Color Co., Inc (Comp)	Bridgeview, IL	03/04/97	Fluorescent Pigments & Lakes for Plastic.
33,345	Magruder Color Co., Inc (Comp)	Richmond, CA	03/04/97	Fluorescent Pigments & Lakes for Plastic.
33,346	Asiachem Corp (Comp)	Orangeburg, SC	03/10/97	Rewind Tape on to Finished Rolls.
33,347	Northern Engraving (IAMAW)	Sparta, WI	02/25/97	Automotive Trim.
33,348	Gloria Lingerie, Inc (Wrks)	Mayaguez, PR	03/14/97	Ladies' & Girls' Swimwear.
33,349	Amelia Dress Co., Inc (UNITE)	Farmville, VA	03/06/97	Garment Cut & Sew Contractor.
33,350	Custom Welding Service (Comp)	Levelland, TX	03/14/97	Maintenance Work for Oil Companies.
33,351	Dienes Corp (Wrks)	Spencer, MA	03/17/97	Compressor Pumps.
33,352	Nantucket Industries (Comp)	Catersville, GA	03/10/97	Men's Undergarments.
33,353	TechnoTrim (Wrks)	Greencastle, IN	03/12/97	Seat Covers for Automobiles.
33,354	Idaho Pole Co (Wrks)	Bozeman, MT	03/12/97	Lodgepole Pine Utility Poles.
33,355	International Wire (Comp)	Manning, IA	03/11/97	Electrical Wiring Harnesses.
33,356	Glasscraft (Comp)	Hickory, NC	03/13/97	Glass Table Tops.
33,357	Allegiance Healthcare (Comp)	Johnson City, TN	03/06/97	Sterilization of Surgical Trays.

[FR Doc. 97–9670 Filed 4–14–97; 8:45 am]

BILLING CODE 4501–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,329]

Stride Rite Corporation Tipton, MO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 17, 1997 in response to a worker petition which was filed on March 17, 1997 on behalf of workers at the Stride Rite Corporation, Tipton, Missouri.

An active certification covering the petitioning group of workers is already in effect (TA–W–33,328 A). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 4th day of April, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–9676 Filed 4–14–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for Alaska

This notice announces a change in benefit period eligibility under the EP Program for Alaska.

Summary

The following change has occurred since the publication of the last notice regarding the State's EB status:

- *February 9, 1997:* Alaska triggered ''on'' EB. Alaska's 13-week insured unemployment rate rose above the 6.0 percent threshold necessary to be triggered ''on'' to EB for the week ending January 25, 1997.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the States by the U.S. Department of Labor. In the case of a State beginning an EB period, the State employment security agency will furnish a written notice of potential entitlement to each individual instructions issued to the States by the U.S. Department of Labor. In the case of a State beginning an EB period, the State employment security agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC, on April 7, 1997.

Raymond Uhalde,

Acting Assistant Secretary of Labor for Employment and Training.

[FR Doc. 97–9680 Filed 4–14–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01397 Cartersville, Georgia, and NAFTA–01397A Atlanta, Georgia]

Atlantic Steel Industries, Incorporated; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on February 11, 1997, applicable to all workers of Atlantic Steel Industries, Incorporated located in Cartersville, Georgia. The notice was published in the Federal Register on March 12, 1997 (62 FR 11473).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at the subject firm's Atlanta plant also in Georgia. The workers are engaged in employment related to the production of steel billets, bars, rods, and flats.

The intent of the Department's certification is to include all workers of Atlantic Steel Industries Incorporated who were affected by increased imports from Mexico or Canada. Accordingly, the Department is amending the worker certification to include the workers of Atlantic Steel Industries Incorporated, Atlanta, Georgia.

The amended notice applicable to NAFTA—01397 is hereby issued as follows:

All workers of Atlantic Steel Industries, Inc., Cartersville, Georgia (NAFTA—01397) and Atlanta, Georgia (NAFTA—01397A), who became totally or partially separated from employment on or after December 13, 1995 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of April 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–9678 Filed 4–14–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01436]

Binks Sames Corporation, Franklin Park, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA-Transitional Adjustment Assistance on March 12, 1997, applicable to workers of Binks Sames Corporation located in Franklin Park, Illinois. The notice was published in the **Federal Register** on March 31, 1997 (62 FR 15200).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of spray booths and other paint spraying equipment. Findings show that the Department incorrectly set the worker certification impact date at January 7, 1997. The impact date should be January 7, 1996, one year prior to the date of the petition. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to NAFTA–01436 is hereby issued as follows:

All workers of Binks Sames Corporation, Franklin Park, Illinois who were engaged in employment related to the production of spray booths who became totally or partially separated from employment on or after January 7, 1996, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 3d day of April, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–9677 Filed 4–14–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01334]

Wright-Bernet, Inc. Division of Ekco, Group Inc., Hamilton, OH; Notice of Termination of Certification

This notice terminates the Certification Regarding Eligibility To Apply for Worker Adjustment Assistance issued by the Department on December 16, 1996, for all workers of Wright-Bernet, Inc., Division of Ekco Group Inc. located in Hamilton, Ohio. The notice of certification was published in the **Federal Register** on December 31, 1996 (61 FR 69110).

At the request of the State agency, the Department reviewed the certification for workers of Wright-Bernet, Inc. Workers of the subject firm produced brooms, brushes, and mops. When the worker certification was issued it was determined that the requirements of (a)(1)(B) of section 250 were met. The company was shifting production of brushes, brooms, and mops from the workers' firm to Mexico.

New information provided by the company reveals that the Ekco Group will not shift production to Mexico as originally planned. Ekco Group will consolidate their Easthampton, Massachusetts production into the Hamilton, Ohio location. The consolidation will result in increased employment.

Since there are no adversely affected workers of the subject firm, the continuation of the certification would serve no purpose and the certification has been terminated.

Signed at Washington, D.C., this 24th day of March 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–9673 Filed 4–14–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Fire Protection (Underground Coal Mines)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments about the proposed reinstatement of the information collection related to program of instruction, location and use of fire fighting equipment, location of escapeways, exits and routes of travel, and evacuation procedures. MSHA is also soliciting comments about certain existing information collections which were determined to be certifications under the Paperwork Reduction Act of 1980 and were therefore not considered to be a paperwork burden under that statute. These collections are related to examinations of chemical fire extinguishers, fire drills, examinations and tests of automatic fire sensor and warning device systems, and tests of fire hydrants and fire hose. MSHA is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the For Further Information Contact section of this notice.

DATES: Submit comments on or before June 16, 1997.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: George M. Fesak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mr. Fesak can be reached at gfesak@msha.gov (Internet E-mail), (703) 235–8378 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Subpart L of 30 CFR 75 establishes minimum fire protection requirements for underground coal mines. This subpart contains provisions requiring that a program for the instruction of miners in fire fighting and evacuation procedures be adopted by the mine operator and approved by the MSHA district manager. Subpart L also contains provisions requiring fire extinguishers to be examined every 6 months, fire drills to be conducted every 90 days, automatic fire sensor and warning device systems to be examined weekly and tested annually, and fire hydrants and hose to be tested at least once a year. These provisions also require that the mine operator maintain a record or certification that the fire drills and examinations and tests were conducted.

II. Current Actions

MSHA believes that the requirement for distinct fire fighting and evacuation programs for coal mines promotes the objectives of the Federal Mine Safety and Health Act of 1977 by ensuring that miners are able to safely evacuate a mine in the event of a fire and that fires are extinguished as soon as possible. MSHA uses the programs and the fire drill and fire fighting equipment certifications to determine whether a mine operator has adequate procedures and equipment to protect miners in the event of a fire.

Type of Review: Reinstatement (without change) and approval of existing collections in use without an OMB control number.

Agency: Mine Safety and Health Administration.

Title: Fire Protection (Underground Coal Mines).

OMB Number: 1219–0054.

Affected Public: Business or other for-profit institutions.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (minutes)	Burden (hours)
75.1100–3	1,117	Semi-annually	47,560	2	1,585
75.1101–23(a)	1,117	On occasion	376	30	188
75.1101–23(c)	1,117	Quarterly	13,404	30	6,702
75.1103–8 (Inspection)	838	Weekly	174,304	15	43,576
75.1103–8 (Certification)	838	Weekly	43,576	10	7,263
75.1103–8 (Test)	838	Annually	3,352	15	838
75.1103–11	838	Annually	50,280	30	25,140
Totals	1,117		332,852	15	85,292

Estimated Total Burden Cost: $1,880.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 9, 1997.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 97–9665 Filed 4–14–97; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for the Ionizing Radiation Standard 29 CFR 1910.1096. A copy of the proposed information collection request (ICR) can be obtained by contacting the employee listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before June 16, 1997. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection technique or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 97–8, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Adrian Corsey, Directorate of Health Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3718, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 219–7075. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Vivian Allen at (202) 219–8076. For electronic copies of the Ionizing Radiation Information Collection Request contact OSHA's WebPage on the Internet at http://www.osha.gov/ under Standards.

SUPPLEMENTARY INFORMATION:

I. Background

The Ionizing Radiation Standard and its information collection is designed to provide protection for employees from the adverse health effects associated with occupational exposure to ionizing notify the Assistant Secretary of incidents of overexposure, to send written reports of overexposure in excess of the PEL to the Assistant Secretary of Labor and to the exposed employee, maintain records of radiation exposure of all employees, furnish reports of exposure to employees at his/her request, provide employees with a copy of standard and operating procedures.

II. Current Actions

This notice requests an extension of the current OMB approval of the paperwork requirements in the Ionizing Radiation Standard. Extension is necessary to provide continued protection to employees from the health hazards associated with occupational exposure to ionizing radiation.

Type of Review: Extension.

Agency: Occupational Safety and Health Administration.

Title: Ionizing Radiation.

OMB Number: 1218–0103.

Agency Number: Docket Number ICR 97–8.

Affected Public: Business and other for-profit, Federal and State government, Local or Tribal governments.

Total Respondents: 15,859.

Frequency: On Occasion.

Total Responses: 258,745.

Average Time per Response: Time per response ranges from 5 minutes to maintain records to 10 minutes to collect and mail badges.

Estimated Total Burden Hours: 42,491.

Estimated Capital, Operation/Maintenance Burden Cost: $17,508,336.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 4, 1997.

Adam M. Finkel,

Director, Directorate of Health Standards Programs.

[FR Doc. 97–9666 Filed 4–14–97; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.
2. *The title of the information collection:* 10 CFR Part 60—Disposal of High-Level Radioactive Wastes in Geologic Repositories.
3. *The form number if applicable:* Not applicable.
4. *How often the collection is required:* The information need only be submitted one time.
5. *Who will be required or asked to report:* States or Indian Tribes, or their representatives, requesting consultation with the NRC staff regarding review of a potential high-level waste geologic repository site, or wishing to participate in a license application review for a potential geologic repository.
6. *An estimate of the number of responses:* 6.

7. *The estimated number of annual respondents:* 2.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* An average of 40 hours per response for consultation requests, 80 hours per response for license application review participation proposals, and one hour per response for statements of representative authority. The total burden for all responses is estimated to be 242 hours.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR Part 60 requires States and Indian Tribes to submit certain information to the NRC if they request consultation with the NRC staff concerning the review of a potential repository site, or wish to participate in a license application review for a potential repository. Representatives of States or Indian Tribes must submit a statement of their authority to act in such a representative capacity. The information submitted by the States and Indian Tribes is used by the Director of the Office of Nuclear Material Safety and Safeguards as a basis for decisions about the commitment of NRC staff resources to the consultation and participation efforts.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by May 15, 1997: Edward Michlovich, Office of Information and Regulatory Affairs (3150–0127), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 7th day of April 1997.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 97–9660 Filed 4–14–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

The Cleveland Electric Illuminating Company; and Ohio Edison Company, et al.; Notice of Consideration of Approval of Application Regarding Corporate Restructuring

Notice is hereby given that the United States Nuclear Regulatory Commission (the Commission) is considering approval by issuance of an order under 10 CFR 50.80 of an application concerning the proposed merger between Centerior Energy Corporation (the parent corporation for The Cleveland Electric Illuminating Company (CEI), Toledo Edison Company, and Centerior Service Company (CSC); licensees for Perry Nuclear Power Plant, Unit No. 1) and Ohio Edison Company (Perry licensee). Ohio Edison Company is also the parent company for OES Nuclear, Inc., and Pennsylvania Power Company, which are also licensees for Perry. Perry is a nuclear-powered generating facility that is owned and operated in accordance with Facility Operating License No. NPF–58.

By letter dated December 13, 1996, CEI and CSC, on behalf of themselves and Toledo Edison Company, Ohio Edison Company, OES Nuclear Inc., and Pennsylvania Power Company, informed the Commission of, and are seeking consent regarding, a proposed merger of Centerior Energy Corporation and Ohio Edison Company resulting in the formation of a new single holding company, FirstEnergy Corp. Duquesne Light Company, which is also a licensed owner of the Perry plant, is not involved in the merger. Under the proposed merger, CEI, CSC, Toledo Edison Company, and Ohio Edison Company will become wholly-owned subsidiaries of FirstEnergy Corp. Pennsylvania Power Company and OES Nuclear, Inc., will remain wholly-owned subsidiaries of Ohio Edison Company. The current licensees will continue to hold the license, and no direct transfer of the license will result from the merger.

According to the application, the merger will have no adverse effect on either the technical management or operation of the Perry plant. The technical management and nuclear organization of the plant operators, CEI and CSC, will continue to remain responsible for plant operation and maintenance after the merger.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license after notice to interested persons. Such approval is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

For further details with respect to this proposed action, see the application from CEI and CSC dated December 13, 1996, and the supplemental letter dated February 14, 1997, which are 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 the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 9th day of April 1997.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–9662 Filed 4–14–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270 50–287, 50–413, 50–414, 50–369 and 50–370]

Duke Power Company, et al.; (Oconee Nuclear Station, Units 1, 2, and 3), (Catawba Nuclear Station Units 1 and 2), and (McGuire Nuclear Station Units 1 and 2)

Exemption

I

Duke Power Company, et al. (DPC or the licensee) is the holder of Facility Operating License Nos. DPR–38, DPR–47 and DPR–55 for the Oconee Nuclear Station, Units 1, 2, and 3; License Nos. NPF–35 and NPF–52 for the Catawba Nuclear Station, Units 1 and 2; and License Nos. NPF–9 and NPF–17 for the McGuire Nuclear Station, Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission in effect now and hereafter.

The Oconee Nuclear Station consists of three pressurized water reactors near Greenville in Oconee County, South Carolina. The Catawba Nuclear Station consists of two pressurized reactors near Rock Hill in York County, South Carolina. The McGuire Nuclear Station consists of two pressurized reactors near Charlotte in Mecklenburg County, North Carolina.

II

Section 73.55 of Title 10 of the *Code of Federal Regulations* (10 CFR 73.55), ''Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage,'' paragraph (a), in part, states that ''The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.''

Section 73.55(d), ''Access Requirements,'' paragraph (1), specifies that ''The licensee shall control all points of personnel and vehicle access into a protected area.'' Section 73.55(d)(5) requires that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' Section 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *.''

The licensee has proposed to implement an alternative unescorted access control system that would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badges when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow such individuals who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated August 23, 1996, the licensee requested an exemption from the requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have ''the same high assurance objective'' and meet ''the general performance requirements'' of the regulation, and ''the overall level of system performance provides protection against radiological sabotage equivalent'' to that which would be provided by the regulation.

Currently, unescorted access into the protected areas at the Oconee, Catawba, and McGuire units is controlled through the use of a photograph on a badge/keycard (hereafter, referred to as ''badge''). The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The licensee's employees and contractor personnel who have been granted unescorted access are issued badges upon entrance at each entrance/exit location and the badges are returned upon exit. The badges are stored and are retrievable at each entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractors are not allowed to take these badges offsite.

Under the proposed biometric system, each individual who is authorized unescorted entry into protected areas would have the physical characteristics of his/her hand (i.e., hand geometry) registered, along with his/her badge number, in the access control system. When a registered user enters his/her badge into the card reader and places his/her hand onto the measuring surface, the system detects that the hand is properly positioned, and records the image. The unique characteristics of the hand image are then compared with the previously stored template in the access control computer system corresponding to the badge to verify authorization for entry.

Individuals, including plant employees and contractors, would be allowed to keep their badges when they depart the site and, thus, eliminate the need to issue, retrieve, and store badges at the entrance stations to the plant. Badges do not carry any information other than a unique identification number. All other access processes, including search function capability, would remain the same. This system would not be used for persons requiring escorted access (i.e., visitors).

A Sandia report, ''A Performance Evaluation of Biometrics Identification Devices,'' SAND91–0276•UC–906, Unlimited Release, June 1991, concluded that hand geometry equipment possesses strong performance and high detection characteristics. Also, based on its own experience with the current photo identification system, the licensee determined that the proposed hand geometry system would provide the same high level of assurance as the current system that access is only granted to authorized individuals. The biometric system has been in use for a number of years at several sensitive Department of Energy facilities and, recently, at other nuclear power plants.

The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. When the changes are implemented, the respective Physical Security Plans will be revised to include implementation and testing of the hand geometry access control system and to allow plant employees and contractors to take their badges offsite.

When implemented, the licensee will control all points of personnel access into a protected area under the observation of security personnel through the use of both badge and a hand geometry verification system. The numbered picture badge identification system will continue to be used for all individuals who are authorized unescorted access to protected areas. Badges will continue to be displayed by all individuals while inside the protected areas.

Since both the badge and hand geometry would be necessary for access into the protected areas, the proposed system would provide a positive verification process. The potential loss of a badge by an individual as a result of taking the badge offsite would not enable an unauthorized entry into protected areas.

IV

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet ''the same high assurance objective,'' and ''the general performance requirements'' of the regulation and that ''the overall level of system performance provides protection against radiological sabotage equivalent'' to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, this exemption is authorized by law and will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption from the requirements of 10 CFR 73.55(d)(5) to allow individuals not employed by the licensee (e.g., contractors) to take their photo identification badges offsite, provided that the proposed hand geometry biometrics system is in effect to control access into protected areas at the Oconee, Catawba, and McGuire nuclear stations.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (62 FR 17221).

For further details with respect to this action, see the request for exemption dated August 23, 1996, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina, for the Oconee Nuclear Station; the York County Library, 138 East Black Street, Rock Hill, South Carolina, for the Catawba Nuclear Station; and the J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, North Carolina, for the McGuire Nuclear Station.

This exemption is granted for the Oconee, Catawba, and McGuire nuclear stations with the condition that the corresponding modifications, procedures, training, and revisions to the Physical Security Plans necessary for implementation of the hand geometry biometrics system at the facilities will be submitted to the NRC staff for review and approval.

Dated at Rockville, Maryland, this 9th day of April 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–9659 Filed 4–14–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority; Watts Bar Nuclear Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–90, issued to Tennessee Valley Authority, (the licensee), for operation of the Watts Bar Nuclear Plant, Unit 1, located in Rhea County, Tennessee.

Environmental Assessment

Identification of the Proposed Action

The current spent fuel pool storage capacity at the Watts Bar Nuclear Plant (WBN) is 1312 fuel assembly storage locations of which 484 are usable. The Tennessee Valley Authority (TVA) requested an amendment to the WBN Unit 1 operating license that would increase the storage capacity of the spent fuel pool to 1835 assemblies. The proposal consists of replacing the existing racks with spent fuel storage racks that were designed, manufactured, and used until 1995 in the Sequoyah Nuclear Plant, increasing the maximum initial enrichment of fuel to 5.0 weight percent (wt%) U–235, changing the spacing of stored fuel assemblies; adding limiting condition for operation (LCO) requirements for the combination of initial enrichment and burnup in an acceptable burnup domain, and requiring the boron concentration to be greater than or equal to 2000 parts per million (ppm) during fuel movement. The submittal also proposed surveillance requirements to verify the initial enrichment and burnup and require chemical analysis to verify boron concentration. The proposed action is in accordance with the licensee's application for amendment dated October 23, 1996, as supplemented by letters dated December 11, 1996, January 31, February 10 and 24, and March 11 and , 1997.

The Need for the Proposed Action

WBN is in its first operating cycle; therefore, the spent fuel pool is dry and no fuel assemblies are stored in it. Under current conditions, the spent fuel pool capacity will support three to four cycles of operation before losing the capacity for a full core offload (193 fuel assemblies). However, taking into account loading new fuel into the pool and component shuffling during an outage, the ability to accept a discharge of one full core off-load could be impacted as early as the year 2000. There are no commercial independent spent fuel storage facilities operating in the U.S., nor are there any domestic reprocessing facilities; therefore, the projected loss of storage capacity in the WBN pool would affect TVA's ability to operate WBN. The proposed amendment is needed to ensure the capability of full core offload is available for some time in the future.

Alternatives to the Proposed Action

The licensee considered several wet and dry storage alternatives to the proposed action. The following wet storage alternatives were considered by the licensee: reracking with new ultra high density racks, rod consolidation, and transshipment (pool-to-pool). The following dry storage alternatives were considered by the licensee: metal casks, concrete casks, concrete vaults, and multi-purpose canisters/overpacks. The licensee considered several factors when evaluating the options: effects on plant systems and operations; impacts on safety, including fuel handling; radiation exposure; industry experience; subsequent actions for further increasing onsite spent fuel storage capacity; flexibility for ultimate disposal of spent fuel; and overall costs. Based on these considerations, the licensee determined that reuse of the Sequoyah Nuclear Plant storage racks was the most viable option.

In 1975, the staff prepared a Generic Environmental Impact Statement (GEIS) on spent fuel storage. The findings were documented in NUREG–0575, ''Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel.'' The storage of spent fuel, as discussed in the NUREG, is considered to be an interim action, not a final solution to permanent disposal. The methods of expanding spent fuel storage capacity considered in the FGEIS identified negligible differences in the environmental impacts and costs of the different alternatives, with the exception that expansion of the spent fuel pool was less costly and did not involve transportation issues. The FGEIS noted that since there are variations in storage design and limitations caused by spent fuel already stored in the pools, licensing reviews should be performed on a case-by-case basis to resolve plant-specific concerns.

The staff evaluated the licensee's list of alternatives as well as other alternatives. The following alternatives were considered by the staff:

Shipment of Fuel to a Permanent Federal Fuel Storage/Disposal Facility

Shipment of spent fuel to a high-level radioactive storage facility is an alternative to increasing the onsite spent fuel storage capacity. However, the U.S. Department of Energy's (DOE's) high-level radioactive waste repository is not expected to begin receiving spent fuel until approximately 2010, at the earliest. In October 1996, the Administration did commit DOE to begin storing wastes at a centralized location by January 31, 1998. However, no location has been identified and an interim federal storage facility has yet to be identified in advance of a decision on a permanent repository. Therefore, shipping spent fuel to the DOE repository is not considered an alternative to increased onsite spent fuel storage capacity at this time.

Shipment of Fuel to a Reprocessing Facility

Reprocessing of spent fuel from the WBN facility is not a viable alternative since there are no operating commercial reprocessing facilities in the United States. Therefore, spent fuel would have to be shipped to an overseas facility for reprocessing. However, this approach has never been used and it would require approval by the Department of State as well as other entities. Additionally, the cost of spent fuel reprocessing is not offset by the salvage value of the residual uranium; reprocessing represents an added cost.

Shipment of Fuel to Another Utility or Site for Storage

The shipment of fuel to another utility for storage would provide short-term relief from the storage problem at WBN. The Nuclear Waste Policy Act and 10 CFR Part 53, however, clearly places the responsibility for the interim storage of spent fuel with each owner or operator of a nuclear plant. The shipment of fuel to another source is not an acceptable alternative because of increased fuel handling risks and additional occupational radiation exposure, as well as the fact that no additional storage capacity would be created.

Reduction of Spent Fuel Generation

Improved usage of fuel and/or operation at a reduced power level would decrease the amount of fuel being stored in the pool and thus increase the amount of time before full core off-load capacity is lost. With extended burnup of fuel assemblies, the fuel cycle would be extended and fewer offloads would be necessary. The licensee is planning on operating on an 18-month refueling cycle, and, as part of this proposed amendment, the licensee plans on increasing its fuel enrichment to 5 percent. Operating the plant at a reduced power level would not make effective use of available resources, and would cause unnecessary economic hardship on TVA and its customers. Therefore, reducing the amount of spent fuel generated by increasing burnup further or reducing power is not considered a practical alternative.

Development of Onsite Independent Storage Facility

An independent spent fuel storage installation (ISFSI) is licensed under 10 CFR Part 72. It is a passive storage system which stores spent fuel in dry casks on a concrete platform in a secured area. There are no commercial ISFSIs operating in the United States. Although use of an ISFSI provides many benefits, the site-specific development of an independent dry fuel storage facility at WBN was deemed undesirable by the licensee compared to the use of the already existing, licensed spent fuel racks. Furthermore, construction of such a facility would not use the existing expansion capacity of the existing pool, would not use the existing spent fuel racks taken out of the Sequoyah plant, and would have the potential to cause additional and different environmental impacts due to activities related to construction and operation. Development of a site-specific ISFSI at this time and in rsponse to TVA's current needs would waste available resources.

No Action Taken

If no action were taken, the storage capacity could be lost as early as 2000 and WBN would have to shut down. This alternative is considered a waste of available resources and is not considered viable.

Environmental Impacts of the Proposed Action:

Radiological Impact

The WBN has waste treatment systems designed to collect and process waste that may contain radioactive material. The radioactive waste treatment systems were evaluated in the Final Environmental Statement (FES) and its supplement. The Spent Fuel Pool Cooling and Cleaning System is designed to remove the decay heat generated by stored spent fuel assemblies and to clarify and purify the water to permit unrestricted access to the plant fuel storage area and maintain optical clarity of the spent fuel pool water. It is not expected that there will be an increase in the liquid release of radionuclides from the plant as a result of the spent fuel pool expansion. Although the amount of activity in the spent fuel pool cleanup system may increase due to the increased number of spent fuel assemblies and the enrichment, after processing by the liquid radioactive waste system, the amount of activity released to the environment as a result of the proposed change is expected to be negligible. The proposed amendment will not involve any change in the radioactive waste treatment systems or flowrates described in the FES and its supplement.

Because the racks are being removed from the WBN plant before any spent fuel has been stored in them, they are not contaminated and they will not contribute to the volume of solid radioactive waste. Additionally, the Sequoyah racks are being reused and are not classified as solid radioactive waste at this time. No additional low specific activity waste output is generated and less solid waste will be generated due to the reuse of the spent fuel racks and removal of the existing racks before they become contaminated.

In addition to the spent fuel assemblies themselves, the only other solid radioactive waste generated by the spent fuel pool is the spent fuel pool polisher resin which is used for water clarity. These resins are replaced approximately once per refueling cycle. No additional resins are expected to be generated by the pool cleanup system; therefore, no significant increase in the volume of solid radioactive waste is expected with the proposed amendment.

The proposed amendment is not expected to significantly affect the doses to the workers in the fuel storage area. The licensee stated that pressurized water reactor experience has shown that area radiation dose rates are approximately 1–3 millirem/hour. Dose rates on the pool bridge crane platform are approximately 4–5 mrem/hr. During refueling operations, these rates may increase slightly. During the reracking procedures, the occupational exposure to the workers will be much less if the amendment is granted at this time rather than if the racks are taken out in the future, after spent fuel is stored in them. No increases are expected to the concentration of airborne radioactivity as a result of expanded storage capacity.

The environmental impacts on the uranium fuel cycle and transportation resulting from the use of higher enrichment fuel and extended irradiation were published in NUREG/CR–5009, ''Assessment of the Use of Extended Burnup Fuels in Light Water Power Reactors,'' and discussed in the staff Environmental Assessment and Finding of No Significant Impact published in the **Federal Register** on February 29, 1988 (53 FR 6040). The staff concluded that no significant adverse effects will be generated by increasing the burnup levels as long as the maximum rod average burnup level of any fuel rod is no greater than 60 Gwd/MtU. The staff also stated that the environmental impacts summarized in

Table S–3 and S–4 for a burnup level of 33 Gwd/MtU are conservative and bound the corresponding impacts for burnup levels up to 60 Gwd/MtU and uranium-235 enrichments up to 5 wt%.

Based on the above, the staff concludes that there are no significant radiological environmental impacts associated with the proposal.

Non-Radiological Impact

The proposed amendment does not modify land use at the site; no new facilities or laydown areas are needed to support the rerack or operation after rerack; therefore, the proposal does not affect land use or land with historical or archeological sites.

As a result of the proposal, steady state pool bulk temperature remains within the limits prescribed for the spent fuel pool to satisfy pool structural strength constraints. The increased spent fuel inventory results in a maximum bulk pool temperature increase of less than 10 °F. This increase in temperature results in an increase in pool water evaporation rate. The original analysis was performed assuming two unit operation. The licensee reanalyzed the effects of the increased temperature and evaporation rate and found the increases were well within the capacity of the existing HVAC system and continued to be bounded by the original analysis. The total heat load for the unplanned emergency core off-load is less then 35 million BTU/hr, which is less than one percent of the total plant heat loss.

The proposal does not affect non-radiological plant effluents and no changes to the National Pollution Discharge Elimination System (NPDES) permit are needed. The proposal does not result in any significant changes to land use or water use, or result in any significant changes to the quantity or quality of effluents; no effects on endangered or threatened species or on their habitat are expected.

The proposal will not change the method of generating electricity nor the method of handling any influent from the environment or non-radiological effluents to the environment. Therefore, no changes or different types of non-radiological environmental impacts are expected as a result of the amendment.

Accident Considerations

In its application, the licensee evaluated the possible consequences of postulated accidents and described the means for mitigating these consequences should they occur. This evaluation included spent fuel handling accidents. A fuel handling accident may be viewed as a reasonably foreseeable design basis event which the pool and associated structure, systems, and components are designed and constructed to prevent. On the basis of its analysis, the licensee concluded that the effects of the proposed TS changes are small and that the calculated consequences are within regulatory requirements and staff guideline dose values.

The staff evaluated the consequences of operation at a bounding value of burnup (60,000 MWD/T) because of the licensee's reference to the use of more highly enriched fuel (up to 5.0 weight percent U-235). The staff concluded that the only potential increased radiological consequences resulting from a fuel handling accident associated with extended burnup and higher fuel enrichment are the thyroid doses; these doses remain well within the acceptance criteria given in NUREG–0800 and are, therefore, acceptable. The environmental impacts of the accident were found not to be significant.

The staff has considered accidents whose consequences might exceed a fuel handling accident that is beyond design basis events. The licensee and staff, as part of the operating license review, performed an analysis of installation of severe accident mitigation design alternatives (SAMDAs) in the environmental impact review. The staff concluded that none of the five design improvements warranted implementation at WBN.

The staff believes that the probability of severe structural damage occurring at WBN is extremely low. This belief is based on the Commission's requirements for the design and construction of the spent fuel pool and the contents and on the licensee's adherence to approved industry codes and standards. Therefore, the staff concludes that the potential for environmental impact from severe accidents is negligible.

Summary

The Commission has completed its evaluation of the proposed action. The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the FES for WBN Units 1 and 2, dated April 1995.

Agencies and Persons Consulted

In accordance with its stated policy, on March 24, 1997 the staff consulted with the Tennessee State official, Ms. E. Flanagan of the Division of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Findings of No Significant Impact

The staff has reviewed the proposed spent fuel pool modification to WBN Unit 1 relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff has concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to the proposed action, see the licensee's letter dated October 23, 1996, as supplemented by letters dated December 11, 1996, January 31, February 10 and 24, March 11 and April 4, 1997, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee.

Dated at Rockville, Maryland, this 7th day of April 1997.

For The Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–9661 Filed 4–14–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of April 14, 21, 28, May 5, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 14—Tentative

There are no meetings scheduled for the Week of April 14.

Week of April 21

Wednesday, April 23

10:00 a.m.—Briefing on Millstone (Public Meeting) (Contact: Gene Imbro, 301–415–1490)
11:30 a.m.—Affirmation Session (Public Meeting) (if needed)
1:30 p.m.—Briefing on Electric Grid Reliability (Public Meeting) (Contact: Ernie Rossi, 301–415–7499)

Thursday, April 24

9:00 a.m.—Briefing on Electric Utility Restructuring (Public Meeting) (Contact: Bob Wood, 301–415–1255)
1:30 p.m.—Briefing on Staff Response to Arthur Andersen Study Recommendations (Public Meeting) (Contact: Rich Barrett, 301–415–7482)

Friday, April 25

10:00 a.m.—Meeting with Commonwealth Edison on Response to 10 CFR 50.54 (F) Letter (Public Meeting) (Contact: Bob Capra, 301–415–1395)

Week of April 28—Tentative

Friday, May 2

9:00 a.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360)
10:30 a.m.—Meeting with Nuclear Safety Research Review Committee (NSRRC) (Public Meeting) (Contact: Jose Cortez, 301–415–6596)
Noon—Affirmation Session (Public Meeting) (if needed)

Week of May 5

Tuesday, May 6

2:00 p.m.—Briefing on PRA Implementation Plan (Public Meeting) (Contact: Gary Holahan, 301–415–2884)

Wednesday, May 7

2:00 p.m.—Briefing on IPE Insight Report (Public Meeting)
3:30 p.m.—Affirmation Session (Public Meeting) (if needed)

Thursday, May 8

9:00 a.m.—Meeting with Advisory Committee on Medical Uses of Isotopes (ACMUI) (Public Meeting) (Contact: Larry Camper, 301–415–7231)

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (RECORDING)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

William M. Hill, Jr.,
SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–9859 Filed 4–11–97; 2:34 pm]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's home page (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in April 1997. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occuring in May 1997. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the second quarter (April through June) of 1997.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is a specified percentage (currently 80 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in April 1997 (*i.e.*, 80 percent of the yield figure for March 1997) is 5.54 percent. The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between May 1996 and April 1997.

For premium payment years beginning in:	The required interest rate is:
May 1996	5.43
June 1996	5.54
July 1996	5.65
Aug. 1996	5.62
Sept. 1996	5.47
Oct. 1996	5.62

For premium payment years beginning in:	The required interest rate is:
Nov. 1996	5.45
Dec. 1996	5.18
Jan. 1997	5.24
Feb. 1997	5.46
Mar. 1997	5.35
Apr. 1997	5.54

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the second quarter (April through June) of 1997, as announced by the IRS, is 9 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From	Through	Interest rate (percent)
4/1/91	12/31/91	10
1/1/92	3/31/92	9
4/1/92	9/30/92	8
10/1/92	6/30/94	7
7/1/94	9/30/94	8
10/1/94	3/31/95	9
4/1/95	6/30/95	10
7/1/95	3/31/96	9
4/1/96	6/30/96	8
7/1/96	12/31/96	9
1/1/97	3/31/97	9
4/1/97	6/30/97	9

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 (''Selected Interest Rates''). The rate for the second quarter (April through June) of 1997 (*i.e.*, the rate reported for March 17, 1997) is 8.25 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Rate (percent)
4/1/91	16/30/91	9.00
7/1/91	9/30/91	8.50
10/1/91	12/31/91	8.00
1/1/92	3/31/92	7.50
4/1/92	9/30/92	6.50
10/1/92	6/30/94	6.00
7/1/94	9/30/94	7.25
10/1/94	12/31/94	7.75
1/1/95	3/31/95	8.50
4/1/95	9/30/95	9.00
10/1/95	3/31/96	8.75
4/1/96	12/31/96	8.25
1/1/97	3/31/97	8.25
4/1/97	6/30/97	8.25

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in May 1997 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of April 1997.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–9595 Filed 4–14–97; 8:45 am]

BILLING CODE 7708–01–P

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Notice of new system of records.

SUMMARY: This document publishes notice of a new Privacy Act system of records, Collection and Delivery Records—Customer Public Key Certificate Records, USPS 010.090. The new system consists of an electronic database containing limited information about postal customers who have been authorized public key certificates by the Postal Service. A public key certificate is a digital document that can be used to validate the authenticity of a digitally signed document sent by way of the Internet, a service provider, or a value-added network from one customer to another. The Postal Service acts as the certifying authority that assigns and holds public key certificates for participating customers, the records subjects covered by this system.

DATES: Any interested party may submit written comments on the proposed new system of records. This proposal will become effective without further notice on May 27, 1997, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to Payroll Accounting and Records, United States Postal Service, 475 L'Enfant Plaza SW, Room 8650, Washington, DC 20260–5243. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff, (202) 268–2608.

SUPPLEMENTARY INFORMATION: The Postal Service is conducting a pilot program with several federal agencies. The Postal Service's role is to act as the certifying authority by using and managing X.509 public key certificates containing a person's distinguished name, public key, and other identifying information. Under the program a customer applies to a Registrar (a Postal Service authority) to receive a Postal Service public key certificate. Information collected through the application process is limited to the customer name, address, phone number, electronic mail address, signature, and payment information.

The Registrar then creates a key pair consisting of a public key and a private key. Keys are long, random, bit strings that are unique to the user. That application information, as well as a distinguished name for the user, is transmitted to the Postal Service database covered by this system. The database returns a signed certificate to the Registrar, who enters it onto a disk along with the distinguished name, public key, and private key. The disk is given to the customer who uses special software, along with the private key, to send and digitally sign documents. The public key and certificate are public data, but the customer is instructed not to disclose the private key and personal identification number (PIN) associated with the private key to a third party.

Maintenance of these records is not expected to affect individual privacy rights because, to the extent that the system covers individuals, limited information about them is kept. A large segment of the population covered by the system is businesses, which are not covered by the Privacy Act. Other than digital components for public key certification, the information kept about a customer is name, distinguished name, public key(s), account, phone number, postal and electronic mail address, and payment information.

Information kept within the database is protected by several layers. The computer housing the database is located in a building with access controlled by guards and a room with access controlled by the use of card keys. Other components of the security architecture are an asynchronous gateway, a network firewall, LAN connection, operating system, database management system, application software, database software security architecture, application software security architecture, and key generation and maintenance. Each of these levels has been subjected to an external audit to ensure security of the system. In addition, internal access to the database is limited to the system administrator, database administrator, and designated support personnel. Key pairs are protected against cryptanalysis by encrypting the private key and by using a shared secret algorithm to protect the encryption key, and the certificate authority key is stored in a separate, tamperproof hardware device. Finally, activities are audited and archived information is protected from corruption, deletion, and modification.

With the above security controls the information will be protected from unauthorized access unless a customer does not heed a warning to keep the private key and PIN secret. If a private key is compromised, the Postal Service will immediately revoke upon notification from the certificate holder the related certificate.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments regarding this proposal. A report of the following proposed system has been sent to Congress and to the Office of Management and Budget for their evaluation.

USPS 010.090

SYSTEM NAME:

Collection and Delivery Records—Customer Public Key Certificate Records, USPS 010.090.

SYSTEM LOCATIONS:

Marketing, Headquarters, and Information Systems Service Center, San Mateo, CA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Business and individual postal customers who apply to receive a public key certificate.

CATEGORIES OF RECORDS IN THE SYSTEM:

The following information is kept with regard to customers who have applied for public key certificates from the Postal Service: Name, address, phone number, electronic mail address, payment information, customer's public key(s), certificate serial numbers, customer's distinguished name, effective dates of authorized certificates, certificate algorithm, date of revocation or expiration of certificate, Postal Service-authorized digital signature, and information supplied by the customer to identify who may have access to public key data related to that customer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 403 and 404.

PURPOSE(S):

Information within this system is used to issue and manage public key certificates.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements a, b, c, d, e, f, g, h, and j listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses follow:

1. The X.509 certificate and public key associated with a records subject may be disclosed to persons who provide the associated certificate number or distinguished name and who have not been denied access by the records subject.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, automated database, and computer storage media.

RETRIEVABILITY:

Customer name, distinguished name, certificate serial number, and public key.

SAFEGUARDS:

Hard copy records and computers containing information within this system of records are located in a building with entrance access controlled by guards and room access controlled by card readers. Information within the database is protected by a security architecture of several layers that includes an asynchronous gateway, network firewall, operating security system, and database software security architecture. Internal access to the database is limited to the system administrator, database administrator, and designated support personnel. Key pairs are protected against cryptanalysis by encrypting the private key and by using a shared secret algorithm to protect the encryption key, and the certificate authority key is stored in a separate, tamperproof, hardware device. Activities are audited and archived information is protected from corruption, deletion, and modification.

RETENTION AND DISPOSAL:

a. *Pending Public Key Certificate Application Files.* These records are added as received to an electronic database. Move to authorized certificate file when they are updated with the required data. Destroy records not updated within 90 days from the date of receipt.

b. *Public Key Certificate Directory.* These records are maintained in an electronic database and are constantly updated. Destroy records as they are superseded or deleted.

c. *Authorized Public Key Certificate Master File.* These records are maintained in an electronic database for the life of the authorized certificate. Move to the certificate revocation file when certificate is revoked or expired.

d. *Public Key Certificate Revocation List.* Cut off this file at the end of each calendar year. Destroy these records 30 years from the date of cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President, Technology Applications, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–2403

NOTIFICATION PROCEDURE:

Individuals wanting to know whether information about them is maintained in this system of records must address inquiries in writing to the system manager. Inquiries must contain name and certificate serial number.

RECORD ACCESS PROCEDURES:

Access must be requested in accordance with the Notification Procedure above and the Postal Service

Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–9590 Filed 4–15–97; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission held a closed meeting on Tuesday, April 8, 1997.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries attended the closed meeting. Certain staff members with an interest in the matters were also present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting held on Tuesday, April 8, 1997, at 11:15 a.m., was:

Matter involving confidential privileged commercial or financial information.
Institution of injunctive action.
Formal order of investigation.

Commissioner Johnson, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: April 11, 1997.

Johathan G. Katz,

Secretary.

[FR Doc. 97–9888 Filed 4–11–97; 3:54 pm]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 2530]

Defense Trade Advisory Group; Notice of Upcoming Meeting

The Defense Trade Advisory Group (DTAG) will meet beginning at 8:30 a.m. on Friday, May 16, 1997, in the East Auditorium, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. This advisory committee consists of private sector defense trade specialists who advise the Department on policies, regulations, and technical issues affecting defense trade.

The open session will include presentations by representatives of the Department of State and the Department of Defense. Reports on DTAG Working Group progress, accomplishments, and future projects will also be presented.

Members of the public may attend the open session as seating capacity allows, and will be permitted to participate in the discussion in accordance with the Chairman's instructions.

As access to the Department of State is controlled, persons wishing to attend the meeting must notify the DTAG Executive Secretariat by COB Monday, May 12, 1997. If you notify the DTAG Secretariat after this date, the DTAG Secretariat cannot guarantee that State's Bureau of Diplomatic Security can complete the necessary background checks required for you to attend the May 16 plenary.

Each person should provide his/her name, company or organizational affiliation, date of birth, and social security number to the DTAG Secretariat at telephone number (202) 647–4231 or fax number (202) 647–4232 (Attention: Catherine Shelton). A list will be made up for Diplomatic Security and the Reception Desk at the C-Street diplomatic entrance. Attendees must carry a valid photo ID with them. They should enter the building through the C-Street diplomatic entrance (22nd and C Streets, NW.) where Department personnel will direct them to the East auditorium.

A working lunch will be held at the Department. Limits on available seating may require that only DTAG members may attend.

For further information, contact Catherine Shelton of the DTAG Secretariat, U.S. Department of State, Office of Arms Transfer and Export Control Policy (PM/ATEC), Room 2422 Main State, Washington, DC 20520–2422. She may be reached at telephone number (202) 647–4231 or fax number (202) 647–4232.

Dated: April 9, 1997.

Martha C. Harris,

Deputy Assistant Secretary for Export Controls, Bureau of Political-Military Affairs.

[FR Doc. 97–9654 Filed 4–14–97; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. OST–95–141 (50125)]

Department of Transportation (DOT) Order To Address Environmental Justice in Minority Populations and Low-Income Populations

AGENCY: Departmental Office of Civil Rights and Office of the Assistant Secretary for Transportation Policy, DOT.

ACTION: Notice of final DOT Order on environmental justice.

SUMMARY: The Department of Transportation is issuing its final DOT Order, which will be used by DOT to comply with Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.* The Order generally describes the process that the Office of the Secretary and each Operating Administration will use to incorporate environmental justice principles (as embodied in the Executive Order) into existing programs, policies, and activities. The Order provides that the Office of the Secretary and each Operating Administration within DOT will develop specific procedures to incorporate the goals of the DOT Order and the Executive Order with the programs, policies and activities which they administer or implement.

FOR FURTHER INFORMATION CONTACT: Ira Laster Jr., Office of Environment, Energy, and Safety, Office of the Assistant Secretary for Transportation Policy, (202) 366–4859, or Marc Brenman, Departmental Office of Civil Rights, (202) 366–1119, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Executive Order 12898, as well as the President's February 11, 1994 Memorandum on Environmental Justice (sent to the heads of all departments and agencies), are intended to ensure that Federal departments and agencies identify and address disproportionately high and adverse human health or environmental effects of their policies, programs and activities on minority populations and low-income populations.

The DOT Environmental Justice Order is a key component of DOT's June 21, 1995 Environmental Justice Strategy (60 FR 33896). The Order sets forth a process by which DOT and its Operating Administrations will integrate the goals of the Executive Order into their operations. This is to be done through a process developed within the framework of existing requirements, primarily the National Environmental Policy Act (NEPA), Title VI of the Civil Rights Act of 1964 (Title VI), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), and other DOT applicable statutes, regulations and guidance that concern planning; social, economic, or environmental matters; public health or welfare; and public involvement. The Order is an internal directive to the various components of DOT and does not create any right to judicial review for compliance or noncompliance with its provisions.

In order to provide an opportunity for public input, a proposed version of this Order was published for comment on June 29, 1995 (60 FR 33899). A total of 30 written comments were received. Fifteen comments were received from state transportation or highway agencies, representing 20 state agencies (one letter was signed by ten state agencies, but four of those also sent individual comments). The other 15 comments included four from transit agencies, four from national organizations, two each from local governments, metropolitan planning organizations, and citizens objecting to one particular project, and one from a professional association.

Most of the comments from the state agencies suggested that the proposed Order would duplicate existing processes and impose additional burdens on the state agencies, and urged that greater flexibility be granted to states.

The DOT Order reinforces considerations already embodied in NEPA and Title VI, and the final version has been revised to make this clearer. It is intended to insure that a process for the assessment of environmental justice factors becomes common practice in the application of those, and related, statutes.

Many other comments suggested ways in which the Order might be clarified or simplified, or addressed specific details of individual agency implementation. As this Order is only intended to provide general guidance to all DOT components, detailed comments on each agency's implementation are premature, and should be made during opportunities for public input on agency implementation (para. 5 of the Order).

Several commenters suggested greater reliance on existing procedures, particularly those implementing NEPA.

One commenter noted, ''Over the past number of years we have seen rules and laws initiated with laudable intent, only to be slowly transformed into bureaucratic mazes only dimly related to their original purpose.''

The Department does not intend that this Order be the first step in creating a new set of requirements. The objective of this Order is the development of a process that integrates the existing statutory and regulatory requirements in a manner that helps ensure that the interests and well being of minority populations and low-income populations are considered and addressed during transportation decision making.

To further advance this objective, explanatory information has been provided in this preamble and several changes have been made in the Order. Most notably:

—Further clarification has been provided concerning the use of existing NEPA, Title VI, URA and ISTEA planning requirements and procedures to satisfy the objectives of Executive Order 12898.
—The application of the Order to ongoing activities is discussed in this preamble.
—The Order has been modified to further clarify the relationship and use of NEPA and Title VI in implementing the Executive Order.

Further, in developing and reviewing implementing procedures, described in paragraph 5a to comply with Executive Order 12898, the emphasis continues to be on the actual implementation of NEPA, Title VI, the URA and ISTEA planning requirements so as to prevent disproportionately high and adverse human health or environmental effects of DOT's programs, policies and activities on minority populations and low-income populations.

One of the primary issues raised in the proposed Order concerned the actions that would be taken if a disproportionately high and adverse human health or environmental effect on minority populations or low-income populations is identified. The proposed Order set forth three options. A variety of comments were received on this issue, both for and against the various options.

The final Order adopts a modified version of Option B from the proposed Order. While Option B implements a new process for addressing disproportionately high and adverse effects, the Department believes that Option B is consistent with existing law and best accomplishes the objectives of the Executive Order. Option B (now incorporated in paragraphs 8a, 8b and 8c of the final Order) provides that disproportionate impacts on low-income and minority populations are to be avoided, if practicable, that is, unless avoiding such disproportionate impacts would result in significant adverse impacts on other important social, economic, or environmental resources. Further, populations protected by Title VI are covered by the additional provisions of paragraph 8b. Three commenters expressed concern and uncertainty as to the implementation of paragraph 6b(1) of Option B as proposed, that provided for an agreement with populations protected by Title VI. DOT agreed with the comments and, accordingly, that paragraph has been deleted from the final Order.

Several commenters asked about the effective date of this Order. In particular they wanted to know whether it applies to ongoing projects. The effective date of the Order is the date of its issuance. However, to the extent that the Order clarifies existing requirements that ensure environmental justice principles are considered and addressed before final transportation decisions are made, its purposes already should be reflected in actions relating to ongoing projects.

Several commenters recommended that insignificant or *de minimis* actions not be covered by this Order. It is noted that the definition of ''programs, policies and/or activities'' in Section 1f of the Appendix does not apply to those actions that do not affect human health or the environment. Other actions that have insignificant effects on human health or the environment can be excluded from coverage by a DOT component.

One commenter suggested that this Order might be inconsistent with the Supreme Court's decision in *Adarand Constructors* v. *Peña*. DOT has concluded that, since the purpose of this Order is unrelated to the types of programs which were the subject of *Adarand*, this Order is not affected by the *Adarand* decision.

Dated: February 3, 1997.

Federico F. Peña,

Secretary of Transportation.

Department of Transportation, Office of the Secretary, Washington, D.C.

Order

Subject: Department of Transportation Actions To Address Environmental

Justice in Minority Populations and Low-Income Populations

1. Purpose and Authority

a. This Order establishes procedures for the Department of Transportation (DOT) to use in complying with Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, dated February 11, 1994. Relevant definitions are in the Appendix.

b. Executive Order 12898 requires each Federal agency, to the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, to achieve environmental justice as part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of its programs, policies, and activities on minority populations and low-income populations in the United States. Compliance with this DOT Order is a key element in the environmental justice strategy adopted by DOT to implement the Executive Order, and can be achieved within the framework of existing laws, regulations, and guidance.

c. Consistent with paragraph 6–609 of Executive Order 12898, this Order is limited to improving the internal management of the Department and is not intended to, nor does it, create any rights, benefits, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the Department, its operating administrations, its officers, or any person. Nor should this Order be construed to create any right to judicial review involving the compliance or noncompliance with this Order by the Department, its operating administrations, its officers or any other person.

2. Scope

This Order applies to the Office of the Secretary, the United States Coast Guard, DOT's operating administrations, and all other DOT components.

3. Effective Date

This Order is effective upon its date of issuance.

4. Policy

a. It is the policy of DOT to promote the principles of environmental justice (as embodied in the Executive Order) through the incorporation of those principles in all DOT programs, policies, and activities. This will be done by fully considering environmental justice principles throughout planning and decision-making processes in the development of programs, policies, and activities, using the principles of the National Environmental Policy Act of 1969 (NEPA), Title VI of the Civil Rights Act of 1964 (Title VI), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA), the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and other DOT statutes, regulations and guidance that address or affect infrastructure planning and decisionmaking; social, economic, or environmental matters; public health; and public involvement.

b. In complying with this Order, DOT will rely upon existing authority to collect data and conduct research associated with environmental justice concerns. To the extent permitted by existing law, and whenever practical and appropriate to assure that disproportionately high and adverse effects on minority or low income populations are identified and addressed, DOT shall collect, maintain, and analyze information on the race, color, national origin, and income level of persons adversely affected by DOT programs, policies, and activities, and use such information in complying with this Order.

5. Integration With Existing Operations

a. The Office of the Secretary and each operating administration shall determine the most effective and efficient way of integrating the processes and objectives of this Order with their existing regulations and guidance. Within six months of the date of this Order each operating administration will provide a report to the Assistant Secretary for Transportation Policy and the Director of the Departmental Office of Civil Rights describing the procedures it has developed to integrate, or how it is integrating, the processes and objectives set forth in this Order into its operations.

b. In undertaking the integration with existing operations described in paragraph 5a, DOT shall observe the following principles:

(1) Planning and programming activities that have the potential to have a disproportionately high and adverse effect on human health or the environment shall include explicit consideration of the effects on minority populations and low-income populations. Procedures shall be established or expanded, as necessary, to provide meaningful opportunities for public involvement by members of minority populations and low-income populations during the planning and development of programs, policies, and activities (including the identification of potential effects, alternatives, and mitigation measures).

(2) Steps shall be taken to provide the public, including members of minority populations and low-income populations, access to public information concerning the human health or environmental impacts of programs, policies, and activities, including information that will address the concerns of minority and low-income populations regarding the health and environmental impacts of the proposed action.

c. Future rulemaking activities undertaken pursuant to DOT Order 2100.5 (which governs all DOT rulemaking), and the development of any future guidance or procedures for DOT programs, policies, or activities that affect human health or the environment, shall address compliance with Executive Order 12898 and this Order, as appropriate.

d. The formulation of future DOT policy statements and proposals for legislation which may affect human health or the environment will include consideration of the provisions of Executive Order 12898 and this Order.

6. Ongoing DOT Responsibility

Compliance with Executive Order 12898 is an ongoing DOT responsibility. DOT will continuously monitor its programs, policies, and activities to ensure that disproportionately high and adverse effects on minority populations and low-income populations are avoided, minimized or mitigated in a manner consistent with this Order and Executive Order 12898. This Order does not alter existing assignments or delegations of authority to the Operating Administrations or other DOT components.

7. Preventing Disproportionately High and Adverse Effects

a. Under Title VI, each Federal agency is required to ensure that no person, on the ground of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. This statute affects every program area in DOT. Consequently, DOT managers and staff must administer their programs in a manner to assure that no person is excluded from participating in, denied the benefits of, or subjected to discrimination by any program or activity of DOT because of race, color, or national origin.

b. It is DOT policy to actively administer and monitor its operations and decision making to assure that nondiscrimination is an integral part of its programs, policies, and activities. DOT currently administers policies, programs, and activities which are subject to the requirements of NEPA, Title VI, URA, ISTEA and other statutes that involve human health or environmental matters, or interrelated social and economic impacts. These requirements will be administered so as to identify, early in the development of the program, policy or activity, the risk of discrimination so that positive corrective action can be taken. In implementing these requirements, the following information should be obtained where relevant, appropriate and practical:

—Population served and/or affected by race, color or national origin, and income level;
—Proposed steps to guard against disproportionately high and adverse effects on persons on the basis of race, color, or national origin;
—present and proposed membership by race, color, or national origin, in any planning or advisory body which is part of the program.

c. Statutes governing DOT operations will be administered so as to identify and avoid discrimination and avoid disproportionately high and adverse effects on minority populations and low-income populations by:

(1) identifying and evaluating environmental, public health, and interrelated social and economic effects of DOT programs, policies and activities,

(2) proposing measures to avoid, minimize and/or mitigate disproportionately high and adverse environmental and public health effects and interrelated social and economic effects, and providing offsetting benefits and opportunities to enhance communities, neighborhoods, and individuals affected by DOT programs, policies and activities, where permitted by law and consistent with the Executive Order,

(3) considering alternatives to proposed programs, policies, and activities, where such alternatives would result in avoiding and/or minimizing disproportionately high and adverse human health or environmental impacts, consistent with the Executive Order, and

(4) eliciting public involvement opportunities and considering the results thereof, including soliciting input from affected minority and low-income populations in considering alternatives.

8. Actions To Address Disproportionately High and Adverse Effects

a. Following the guidance set forth in this Order and its Appendix, the head of each Operating Administration and the responsible officials for other DOT components shall determine whether programs, policies, and activities for which they are responsible will have an adverse impact on minority and low-income populations and whether that adverse impact will be disproportionately high.

b. In making determinations regarding disproportionately high and adverse effects on minority and low-income populations, mitigation and enhancements measures that will be taken and all offsetting benefits to the affected minority and low-income populations may be taken into account, as well as the design, comparative impacts, and the relevant number of similar existing system elements in non-minority and non-low-income areas.

c. The Operating Administrators and other responsible DOT officials will ensure that any of their respective programs, policies or activities that will have a disproportionately high and adverse effect on minority populations or low-income populations will only be carried out if further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effect are not practicable. In determining whether a mitigation measure or an alternative is ''practicable,'' the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.

d. Operating Administrators and other responsible DOT officials will also ensure that any of their respective programs, policies or activities that will have a disproportionately high and adverse effect on populations protected by Title VI (''protected populations'') will only be carried out if:

(1) a substantial need for the program, policy or activity exists, based on the overall public interest; and

(2) alternatives that would have less adverse effects on protected populations (and that still satisfy the need identified in subparagraph (1) above), either (i) would have other adverse social, economic, environmental or human health impacts that are more severe, or (ii) would involve increased costs of extraordinary magnitude.

e. DOT's responsibilities under Title VI and related statutes and regulations are not limited by this paragraph, nor does this paragraph limit or preclude claims by individuals or groups of people with respect to any DOT programs, policies, or activities under these authorities. Nothing in this Order adds to or reduces existing Title VI due process mechanisms.

f. The findings, determinations and/or demonstration made in accordance with this section must be appropriately documented, normally in the environmental impact statement or other NEPA document prepared for the program, policy or activity, or in other appropriate planning or program documentation.

Appendix

1. Definitions

The following terms where used in this Order shall have the following meanings *:

a. *DOT* means the Office of the Secretary, DOT operating administrations, and all other DOT components.

b. *Low-Income* means a person whose median household income is at or below the Department of Health and Human Services poverty guidelines.

c. *Minority* means a person who is:

(1) Black (a person having origins in any of the black racial groups of Africa);

(2) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(3) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or

(4) American Indian and Alaskan Native (a person having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition).

d. *Low-Income Population* means any readily identifiable group of low-income persons who live in geographic proximity, and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed DOT program, policy or activity.

e. *Minority Population* means any readily identifiable groups of minority persons who live in geographic proximity, and if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed DOT program, policy or activity.

f. *Adverse effects* means the totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to: bodily impairment, infirmity, illness or death; air, noise, and water pollution and soil contamination; destruction or disruption of man-made or natural resources; destruction or diminution of aesthetic values; destruction or disruption of community cohesion or a community's economic vitality; destruction or disruption of the availability of public and private facilities and services; vibration; adverse employment effects; displacement of persons, businesses, farms, or nonprofit organizations; increased traffic congestion, isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community; and the denial of, reduction in, or significant delay in the receipt of, benefits of DOT programs, policies, or activities.

g. *Disproportionately high and adverse effect on minority and low-income populations* means an adverse effect that:

(1) is predominately borne by a minority population and/or a low-income population, or

(2) will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population.

h. *Programs, policies, and/or activities* means all projects, programs, policies, and activities that affect human health or the environment, and which are undertaken or approved by DOT. These include, but are not limited to, permits, licenses, and financial assistance provided by DOT. Interrelated projects within a system may be considered to be a single project, program, policy or activity for purposes of this Order.

i. *Regulations and guidance* means regulations, programs, policies, guidance, and procedures promulgated, issued, or approved by DOT.

* These definitions are intended to be consistent with the draft definitions for E.O. 12898 that have been issued by the Council on Environmental Quality and the Environmental Protection Agency. To the extent that these definitions vary from the CEQ and EPA draft definitions, they reflect further refinements deemed necessary to tailor the definitions to fit within the context of the DOT program.

Federico F. Peña,

Secretary of Transportation.

[FR Doc. 97–9684 Filed 4–14–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Special Committee 169, Aeronautical Data Link Applications

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–169 meeting to be held April 28–May 1, 1997, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will include: April 28–29 Working Group (WG)–2, Required Communications Performance; April 30–May 1, Plenary Session: (1) Plenary Administration: Chairman's Introductory Remarks; Review and Approval and Meeting Agenda; Review and Approval of Minutes from the Previous Meeting; Review of Outstanding Action Items; (2) Working Group Progress: WG–1, Air Traffic Services Data Link Communications; WG–2, Required Communications Performance; WG–3, Flight Information Services Communications; WG–4, Coordination of Communications Capability Implementation; WG–5, Ground/Ground Traffic Flow Management Applications; WG–6, Human Factors Guidelines; (3) Plenary Business: Final Review/Approval of *Minimum Aviation System Performance Standard (MASPS) for Air Traffic Management (ATM)— Aeronautical Operational Control (AOC) Ground-Ground Information Exchange,* RTCA Paper No. 440–96/SC169–273; Review and SARP Compliant Documents; Discussion of Future of SC–169 Work Efforts; (4) Other Business; (5) Date and Place of Next Meeting.

Attendants is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 8, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–9639 Filed 4–14–97; 8:45 am]

BILLING CODE 4810–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration Commercial Space Transportation Advisory Committee—Open Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Open Meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Wednesday, May 14, 1997, from 8:00 a.m. to 1:15 p.m. in Room 9230 of the Department of Transportation's Headquarters building at 400 Seventh Street, SW., in Washington, DC. This will be the twenty-fifth meeting of the COMSTAC.

The agenda for the meeting will include reports from the respective COMSTAC Working Groups; a legislative update on Congressional activities involving commercial space transportation; an activities report from FAA's Acting Associate Administrator for Commercial Space Transportation (formerly the Office of Commercial Space Transportation [60 FR 62762, December 7, 1995]); and other related topics.

The meeting is open to the public; however, space may be limited.

FOR FURTHER INFORMATION CONTACT: Brenda Parker, (AST–200), Office of the Associate Administrator for Commercial Space Transportation, 400 7th Street SW., Room 5415, Washington, DC 20590, telephone (202) 366–2932.

Dated: April 8, 1997.

Patricia G. Smith,

Acting Associate Administrator for Commercial Space Transportation.

[FR Doc. 97–9640 Filed 4–14–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In March 1997, there were six applications approved. Additionally, six approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of 49 U.S.C. 40117 (Pub. L. 103–272) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC applications approved

Public Agency: City of Morgantown, West Virginia.

Application Number: 97–04–U–00–MGW.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue To Be Used in This Decision: $50,850.

Charge Effective Date: December 1, 1994.

Estimated Charge Expiration Date: May 1, 2001.

Class of Air Carriers Not Required To Collect PFC's: No change from previous approval.

Brief Description of Project Approved for Use: Rehabilitation of taxiway A.

Decision Date: March 3, 1997.

FOR FURTHER INFORMATION CONTACT: Elonza Turner, Beckley Airports Field Office, (304) 252–6216.

Public Agency: Southeast Iowa Regional Airport Authority, Burlington, Iowa.

Application Number: 96–01–C–00–BRL.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total Net PFC Revenue Approved in This Application: $460,000.

Estimated Charge Effective Date: July 1, 1997.

Estimated Charge Expiration Date: April 1, 2003.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Security fence, Lighting, signage, and reflectors, Aircraft rescue and firefighting (ARFF) vehicle, Airport master plan update, Land acquisition (Tract 601), Land acquisition (Tract 602), Land acquisition (Tract 603), Runway 18/36 high intensity runway lights and airfield signage, Emergency generator, Runway 12/30 rehabilitation and narrowing (Phase 1), Runway 12/30 edge drains feasibility study, Snow removal equipment, Joint-use ARFF station design, Design rehabilitation of taxilane and service road, New terminal feasibility study, Rehabilitate taxilane and road (construction), Runway 12/30 rehabilitation and narrowing (Phase II), Joint-use ARFF station (construction).

Brief Description of Withdrawn Project: Runway 18/36 rehabilitation design.

Determination: This project was withdrawn by the public agency in its supplemental application dated November 1, 1996. Therefore, the FAA will not rule on this project in this decision.

Decision Date: March 4, 1997.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, Central Region Airports Division, (816) 426–4730.

Public Agency: Springfield Airport Authority, Springfield, Illinois.

Application Number: 97–08–C–00–SPI.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total Net PFC Revenue Approved in This Decision: $3,889,393.

Estimated Charge Effective Date: February 1, 2006.

Estimated Charge Expiration Date: May 1, 2007.

Class of Air Carriers Not Required To Collect PFC's: On-demand air taxis.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Capital Airport.

Brief Description of Projects Approved for Authority To Use PFC Revenue: Land acquisition-noise (parcels 9–4–EE, 9–4–FF, 9–4–HH, 9–4–II, 9–4–JJ, and 17–3–A), Land acquisition (parcels 9–4–J, 9–4–PP, and 9–4–P), Land acquisition (parcels 16–4–A, 16–4–B1, 16–4–B2, and 16–4–C), Land acquisition (parcels 16–2–B and 16–4–E), Rehabilitate runways 4/22 and 18/36, Rehabilitate runway 13/31, Widen taxiway A, Exhibit A, update master plan, Snow equipment (blower and snowplow), Terminal building expansion, Disabled passenger lift.

Brief Description of Project Approved for Collection and Use: Snow removal equipment (sweeper).

Decision Date: March 11, 1997.

FOR FURTHER INFORMATION CONTACT: Philip M. Smithmeyer, Chicago Airports District Office, (847) 294–7435.

Public Agency: New Orleans Airport Board, New Orleans, Louisiana.

Application Number: 96–03–C–00–MSY.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total Net PFC Revenue Approved in This Decision: $11,963,536.

Estimated Charge Effective Date: December 1, 2008.

Estimated Charge Expiration Date: August 1, 2009.

Class of Air Carriers Not Required To Collect PFC'S: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at New Orleans International Airport.

Brief Description of Projects Approved for Use: ARFF perimeter road, stage II, ARFF perimeter road, stage III, East air cargo apron, stage II.

Brief Description of Project Approved for Collection: Terminal improvements.

Brief Description of Withdrawn Project: East/west taxiway land acquisition.

Determination: This project was withdrawn by the public agency in its letter dated January 31, 1997. Therefore, the FAA will not rule on this project in this decision. In addition, the project no longer meets the requirements of § 158.33(c)(1) and has automatically expired.

Decision Date: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Horry County Department of Airports, Myrtle Beach, South Carolina.

Application Number: 97–02–C–00–MYR.

Application Type: Impose and use a PFC.

PFC LEVEL: $3.00.

Total Net PFC Revenue Approved in This Decision: $14,121,635.

Estimated Charge Effective Date: July 1, 2005.

Estimated Charge Expiration Date: July 1, 2010.

Class of Air Carriers Not Required To Collect PFC'S: Nonscheduled air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual emplanements at Myrtle Beach International Airport.

Brief Description of Project Approved for Collection and Use: Terminal A baggage claim expansion.

Brief Description of Project Partially Approved for Collection and Use: Preparation of PFC application.

Determination: Partially and conditionally approved. Documents submitted to the FAA in support of this project were insufficient to establish that project elements contained in the contract between the public agency and its consultant were necessary for the preparation of a PFC application. The approved amount was limited to the amount invoiced by the public agency's consultant for preparation of the PFC application.

Decision Date: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: D. Cameron Bryan, Atlanta Airports District Office, (404) 305–7144.

Public Agency: Spokane Airport Board, Spokane, Washington.

Application Number: 97–03–C–00–GEG.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total Net PFC Revenue Approved in This Decision: $17,606,000.

Estimated Charge Effective Date: May 1, 2000.

Estimated Charge Expiration Date: June 1, 2005.

Class of Air Carriers Not Required To Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use: Master plan update, Airport terminal signage, Fire life safety system, Taxiways D and H, Taxiway J relocation, Multiple use apron rehabilitation (identified as apron G), Multiple use apron construction, Regional terminal concourse expansion and associated apron, Terminal ticketing/baggage expansion.

Decision Date: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (206) 227–2660.

Amendments To PFC Approvals

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
92–01–C–03–BNA, Nashville, Tennessee	07/01/96	$75,480,900	$87,729,800	10/01/99	01/01/02
92–01–C–03–CLE, Cleveland, Ohio	03/25/96	38,343,640	37,343,640	02/01/97	02/01/97
93–01–C–01–MOT, Minot, North Dakota	06/19/96	1,569,483	646,047	11/01/98	04/01/97
95–03–C–01–CLE, Cleveland, Ohio	08/27/96	19,475,642	21,500,642	02/01/97	08/01/97
92–01–C–02–MHT, Manchester, New Hampshire	12/18/96	5,702,523,	5,679,523	09/01/97	09/01/97
93–01–C–03–RHI, Rhinelander, Wisconsin	01/21/97	188,951	183,301	10/01/00	10/01/00

Issued in Washington, D.C. on April 10, 1997.

Kendall Ball,

Acting Manager, Passenger Facility Charge Branch.

[FR Doc. 97–9638 Filed 4–14–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: City of Ogden, Weber County, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the City of Ogden, Weber County, Utah.

FOR FURTHER INFORMATION CONTACT: Thomas Allen, Project Development Engineer, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118, Telephone: (801) 963–0182; or Rod Terry, Preconstruction Engineer, Utah Department of Transportation, Region 1, P.O. Box 12580, Ogden, Utah 84412, Telephone (801) 399–5921 ext. 305.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Utah Department of Transportation, will prepare an environmental impact statement on a proposal to reconstruct approximately 2 miles of State Road (SR) 79 from the existing Interstate 15 interchange to Harrison Boulevard (SR–203), and to widen approximately 1.5 miles on Wall Avenue (SR–204) from approximately 22nd Street to 34th Street in the urban portion of Ogden, Utah. The proposed reconstruction of SR–79 would provide the necessary east-west arterial roadway capacity to meet urban infrastructure needs, and to meet existing and future transportation demand. The widening of SR–204 would provide a uniform roadway width for the north-south arterial roadway and an appropriate roadway capacity for the gateway entrance to the Central Business District of the City of Ogden.

The reconstruction of SR–79 is included in the current Long-Range Plan and the Transportation Improvement Plan for the Ogden Urbanized Area. The City of Ogden has stated the need for infrastructure improvements to facilitate access to the Central Business District. The proposed action would eliminate the current one-way couplet structure of SR–79 through the City of Ogden and replace it with a single arterial roadway of sufficient capacity to accommodate predicted traffic demand through the year 2020. The widening of SR–204 would provide continuity with the existing width on SR–204 both north and south of the proposed project, and would improve capacity of key instructions. It would also provide a proper shoulder and new curb and gutter along the roadway improving safety, maintenance, drainage, and access control.

Alternatives under consideration include: (1) Taking no action, (2) using transportation system management strategies that would provide for transportation efficiency within the existing transportation network, and (3) constructing a new arterial roadway on one or the several alignments for SR–79. Such a new arterial would widen existing roadways to the maximum extent possible, but would also require new right-of-way segments of the alignments. Design variations of grade and alignment will be incorporated into, and analyzed with, the various build alternatives. SR–204 would be widened on one or both sides of the existing alignment.

Information letters describing the proposed action and soliciting comments on the proposed project will be sent to appropriate Federal, State and local agencies, as well as to private organizations and individuals who have previously expressed interest, or who are expected to be interested, in the proposed project. An initial public scoping meeting is expected to be held in the City of Ogden during May 1997. Notice of additional public meetings to present information and solicit comments relative to alternatives for consideration and possible impacts will be given as the proposed project proceeds. In addition, a public hearing will be held. Upon release of the draft EIS, public notice will be given of the time and place for a public hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or UDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations impending Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 9, 1997.

Michael G. Ritchie,

Division Administrator, Salt Lake City, Utah.

[FR Doc. 97–9624 Filed 4–14–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Nos. 96–126, Notice 2; 96–131, Notice 2; 96–132, Notice 2; 97–003, Notice 2; 97–005, Notice 2; 97–006, Notice 2; 97–007, Notice 2; 97–008, Notice 2; 97–009, Notice 2; 97–010, Notice 2; 97–011, Notice 2; and 97–012, Notice 2]

Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

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

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/ or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective April 15, 1997.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 10, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

Annex A—Nonconforming Motor Vehicles Decided To Be Eligible for Importation

1. Docket No. 96–126
   Nonconforming Vehicle: 1986 Mazda RX–7
   Substantially similar U.S.-certified vehicle: 1986 Mazda RX–7
   Notice of Petition published at: 62 FR 1143 (January 8, 1997)
   Vehicle Eligibility Number: VSP–199
2. Docket No. 96–131
   Nonconforming Vehicles: 1992 through 1996 BMW 325i
   Substantially similar U.S.-certified vehicles: 1992 through 1996 BMW 325i
   Notice of Petition published at: 62 FR 1145 (January 8, 1997)
   Vehicle Eligibility Number: VSP–197
3. Docket No. 96–132
   Nonconforming Vehicle: 1984 Nissan 300ZX
   Substantially similar U.S.-certified vehicle: 1984 Nissan 300ZX
   Notice of Petition published at: 62 FR 1144 (January 8, 1997)
   Vehicle Eligibility Number: VSP–198
4. Docket No. 97–003
   Nonconforming Vehicles: 1987 and 1988 Toyota Vans
   Substantially similar U.S.-certified vehicles: 1987 and 1988 Toyota Vans

Notice of Petition published at: 62 FR 3940 (January 27, 1997)
Vehicle Eligibility Number: VSP–200

5. Docket No. 97–005
Nonconforming Vehicles: 1991–1996 Ducati 900SS Motorcycles
Substantially similar U.S.-certified vehicles: 1991–1996 Ducati 900SS Motorcycles
Notice of Petition published at: 62 FR 4829 (January 31, 1997)
Vehicle Eligibility Number: VSP–201

6. Docket No. 97–006
Nonconforming Vehicle: 1992 Mercedes-Benz 230CE
Substantially similar U.S.-certified vehicle: 1992 Mercedes-Benz 300CE
Notice of Petition published at: 62 FR 5067 (February 3, 1997)
Vehicle Eligibility Number: VSP–203

7. Docket No. 97–007
Nonconforming Vehicle: 1994 Mercedes-Benz C280
Substantially similar U.S.-certified vehicle: 1994 Mercedes-Benz C280
Notice of Petition published at: 62 FR 6611 (February 12, 1997)
Vehicle Eligibility Number: VSP–204

8. Docket No. 97–008
Nonconforming Vehicle: 1990 BMW 325iX
Substantially similar U.S.-certified vehicle: 1990 BMW 325iX
Notice of Petition published at: 62 FR 6609 (February 12, 1997)
Vehicle Eligibility Number: VSP–205

9. Docket No. 97–009
Nonconforming Vehicle: 1994 Mercedes-Benz E200
Substantially similar U.S.-certified vehicles: 1994 Mercedes-Benz E320
Notice of Petition published at: 62 FR 6613 (February 12, 1997)
Vehicle Eligibility Number: VSP–207

10. Docket No. 97–010
Nonconforming Vehicle: 1983 Suzuki GSX750 Motorcycle
Substantially similar U.S.-certified vehicles: 1983 Suzuki GS750 Motorcycle
Notice of Petition published at: 62 FR 6614 (February 12, 1997)
Vehicle Eligibility Number: VSP–208

11. Docket No. 97–011
Nonconforming Vehicles: 1972 through 1997 Harley Davidson FX, FL, and XL Series Motorcycles
Substantially similar U.S.-certified vehicles: 1972 through 1997 Harley Davidson FX, FL, and XL Series Motorcycles
Notice of Petition published at: 62 FR 6612 (February 12, 1997)
Vehicle Eligibility Number: VSP–202

12. Docket No. 97–012
Nonconforming Vehicle: 1974 MGB Roadster
Substantially similar U.S.-certified vehicle: 1974 MGB Roadster
Notice of Petition published at: 62 FR 6615 (February 12, 1997)
Vehicle Eligibility Number: VSP–206

[FR Doc. 97–9701 Filed 4–14–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 96–099; Notice 2]

Denial of Petition for Import Eligibility Decision

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under 49 U.S.C. 30141(a)(1)(A). The petition, which was submitted by LPC of New York, Inc. of Ronkonkoma, New York (''LPC''), a registered importer of motor vehicles, requested NHTSA to decide that 1995–1996 GMC and Chevrolet Suburban multipurpose passenger vehicles (MPVs) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. In the petition, LPC contended that these vehicle are eligible for importation on the basis that (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of 1995–1996 GMC and Chevrolet Suburbans), and (2) they are capable of being readily altered to conform to the standards.

NHTSA published a notice in the **Federal Register** on September 25, 1996 (61 FR 50371) that contained a thorough description of the petition, and solicited public comments upon it. One comment was received in response to the notice, from the North American Operations Division of General Motors Corporation (''GM''), the corporate parent of GM de Mexico, the manufacturer of the subject vehicles. In this comment, GM contended that non-U.S. certified 1995–1996 GMC and Chevrolet Suburban MPVs should not be eligible for importation because they may not be substantially similar to vehicles that were originally manufactured and certified for sale in the United States. Moreover, GM noted that extensive certification testing has not been conducted to determine whether these vehicles are capable of being readily altered to conform to the standards. GM stated that during the 1995 and 1996 model years, GM de Mexico produced only Chevrolet Suburbans for sale and use in that country, and that the company did not market any GMC Suburbans in Mexico. GM observed that these vehicles were not certified as meeting Federal motor vehicle safety standards (FMVSS).

GM noted that Chevrolet Suburbans manufactured for sale and use in Mexico contain approximately 750 parts that differ from those used on Suburbans manufactured for sale and use in the United States. The company stated that a substantial number of these parts are produced by Mexican suppliers and are not subject to the same warranty and approval process that is used by GM in purchasing parts that may affect compliance with applicable FMVSS. Parts that GM has purchased without following these procedures include ones that it describes as potentially affecting compliance with Standard Nos. 105 *Hydraulic Brake Systems,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 205 *Glazing Materials,* 207 *Seating Systems,* 208 *Occupant Crash Protection,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.* Although GM acknowledged that it was unable to state that a vehicle built with the parts in question would not meet these standards, the company reiterated that neither it nor GM de Mexico has undertaken the testing that would be necessary to establish such compliance.

GM further observed that Mexican standards contain requirements for glazing, tires, brake fluids, batteries, and safety belts that differ from those in the corresponding FMVSS. Additionally, the company asserted that Mexico has no requirements similar to those in Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 124 *Accelerator Control Sequence,* 208 *Occupant Crash Protection,* 214 *Side Impact Protection,* or 301 *Fuel System Integrity,* and to requirements in portions of Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment.* Citing examples, GM stated that vehicles manufactured for the Mexican market have no center high mounted stop lamps or air bags. Additionally, the company contended that these vehicles have engines that may not meet Standard Nos. 102 and 124.

In response to a follow-up inquiry from NHTSA, GM stated that the 750 parts in Mexican Suburbans that are not found in the U.S.-certified versions of the vehicle have different part numbers from their U.S. equivalents. GM asserted that the assignment of a different part number is due to some difference in product design specifications and not simply to a difference in supplier. The company acknowledged that it has not identified all design specification differences between these parts and the corresponding parts found on U.S.-certified vehicles. GM asserted, however, that the analysis it has performed reveals that interior trim, seat assemblies, glazing materials, tires, engines, manual transmissions, rear axles, front hub and knuckle assemblies, fuel lines, and fuel caps all have design specifications that differ in a number of areas from the specifications that apply to parts released for U.S. vehicles. GM also noted that even non-Mexican sourced parts used in Mexican Suburbans, such as automatic transmissions and fuel tank assemblies, have different design specifications from those found on U.S. certified vehicles.

NHTSA accorded LPC an opportunity to respond to GM's comments. In its response, LPC agreed with GM's assertion that components released for non-U.S. marketed Suburbans may not meet FMVSS requirements. LPC contended, however, that the specific vehicles it seeks to import were manufactured for the U.S. market with U.S.-model components, but that they lack the required certification label.

NHTSA accorded GM an opportunity to respond to LPC's comments. In its response, GM stated that it examined the vehicle identification numbers assigned to the vehicles that LPC wishes to import, and has concluded on the basis of that examination that these vehicles were not originally manufactured for sale in the United States.

NHTSA has fully considered the comments from both GM and LPC. In light of GM's claim that 1995–1996 Suburbans built for the Mexican market have 750 parts that differ from those found on U.S. certified versions of these vehicles, and that vehicles with these parts have not been tested for compliance with the FMVSS, LPC had the burden of producing information to demonstrate such compliance. Far from producing such information, LPC acknowledged agreement with GM's position. In light of this circumstance, NHTSA has concluded that the petition does not clearly demonstrate that non-U.S. certified 1995–1996 GMC and Chevrolet Suburban MPVs are eligible for importation. The petition must therefore be denied under 49 CFR 593.7(e).

In accordance with 49 U.S.C. 30141(b)(1), NHTSA will not consider a new import eligibility petition covering this vehicle until at least three months from the date of this notice.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.7; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 10, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–9698 Filed 4–14–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33364]

The Burlington Northern and Santa Fe Railway Company—Acquisition and Operation Exemption—Lac Qui Parle Regional Railroad Authority

The Burlington Northern and Santa Fe Railway Company (BNSF), a Class I rail carrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 35.43 miles of line owned by the Lac Que Parle Regional Railroad Authority (Lac Qui) [1] extending from milepost 0.00, at Hanley Falls, MN, to milepost 35.43, at Madison, MN.[2]

The transaction is expected to be consummated on the April 15, 1997 effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33364, must be filed with the Office of the Secretary, Surface Transportation Board, Case Control Unit, 1925 K Street NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael E. Roper, Esq., The Burlington Northern and Santa Fe Railway Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

Decided: April 8, 1997.

[1] Lac Qui Parle is a political subdivision of the State of Minnesota.

[2] BNSF currently provides common carrier rail service over 36.2 miles of Lac Qui's rail line pursuant to *Burlington Northern Railroad Company, Modified Rail Certificate*, Finance Docket No. 30323 (ICC served Nov. 7, 1983). Lac Qui will retain ownership of the .77 miles of track not purchased by BNSF, and BNSF will continue to operate over the .77-miles of line under various industrial track agreements. Pursuant to 49 CFR 1150.24, BNSF will provide 60 days' notice of its intent to terminate the service under the Modified Rail Certificate.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–9663 Filed 4–14–97; 8:45 am]

BILLING CODE 4915–00–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–7; OTS Nos. H–2854 and 6842]

Security Federal Savings Bank, Elizabethton, Tennessee; Approval of Conversion Application

Notice is hereby given that on April 4, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Security Federal Savings Bank, Elizabethton, Tennessee, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

By the Office of Thrift Supervision.

Dated: April 9, 1997.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–9603 Filed 4–14–97; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on April 16 in Room 600, 301 4th Street, S.W., Washington, D.C., from 10:00 a.m. To 12:00 noon.

At 10:00 a.m. The Commission will meet with Dr. Barry M. Blechman, Chairman, The Henry L. Stimson Center, and Mr. John A. Schall, Executive Director, Project on the Advocacy of U.S. Interests Abroad of The Henry L. Stimson Center, to discuss the Center's study of how to organize the U.S. government and representation abroad to conduct foreign affairs, and how to link resources to foreign policy needs.

At 11:00 a.m. The Commission will meet with Ms. Evelyn Lieberman, Director, Voice of America, to discuss VOA's programs and activities.

FOR FURTHER INFORMATION CONTACT: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: April 9, 1997.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 97–9642 Filed 4–14–97; 8:45 am]

BILLING CODE 8230–01–M

federal register

Tuesday
April 15, 1997

Part II

Department of Commerce

International Trade Administration

Antidumping Duty Administrative Reviews, Final Results; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–816]

Certain Cut-To-Length Carbon Steel Plate From Germany: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 4, 1996, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Germany. This review covers one manufacturer/exporter of the subject merchandise to the United States during the period of review (POR), August 1, 1994, through July 31, 1995. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Decker or Linda Ludwig, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1324 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1996, the Department published in the **Federal Register** (61 FR 51907) the preliminary results of the administrative review (*Preliminary Results*) of the antidumping duty order on certain cut-to-length carbon steel plate from Germany. *Antidumping Duty Order and Amendment of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate From Germany*, 58 FR 44170 (August 19, 1993). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Scope of this Review

The products covered by this administrative review constitute one ''class or kind'' of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The POR is August 1, 1994, through July 31, 1995. This review covers entries of certain cut-to-length carbon steel plate by AG der Dillinger Hüttenwerke (Dillinger).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from the respondent (Dillinger) and petitioners (Bethlehem Steel Corporation, U.S. Steel Company a Unit of USX Corporation, Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company). At the request of petitioners, a hearing was held on November 22, 1996. Based upon our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

Comment 1

The petitioners argue that the Department should have characterized Dillinger's U.S. sales as constructed export price (CEP) transactions rather than export price transactions (EP). Petitioners argue that despite the Department's prior characterization of Dillinger's sales as purchase price, the equivalent of EP sales under the amended statute, based on substantial new information on the record of this proceeding, these sales should be classified as CEP.

Petitioners claim first that Francosteel physically warehoused subject merchandise, citing references in Francosteel's financial statement to warehouse expenses. Petitioners note that prior to verification, they had requested that the Department tie references in Francosteel's financial statements regarding inventory at warehouses and processors in the U.S. to specific ledger entries. Petitioners argue that this was not done. Petitioners also argue that in the first administrative review the Department considered only physical inventory, effectively discounting other types of inventory such as financial. Petitioners claim that a physical inventory test limits CEP sales only to those made after the date of importation and is inconsistent with *PQ Corp*. v. *United States*, 652 F. Supp. 724, 731 (CIT 1987).

Petitioners state that each U.S. sale involves two shipments: one from Germany to the United States and the other from Francosteel to the unaffiliated U.S. customer. Petitioners allege that while subject merchandise entered the United States on July 29, 1995, it was not shipped to the unaffiliated customer until August 2, 1995, which they state is evidence that the steel was warehoused by Francosteel. With respect to financial inventory, petitioners note several references in Francosteel's financial statements. Petitioners argue that financial inventory is relevant to the Department's CEP test as it is indicative of the affiliated reseller's role in the U.S. sales transactions.

Petitioners next argue that Francosteel negotiates the price of subject merchandise sold to unaffiliated customers. Petitioners cite the Department's June 13, 1996, verification report which indicates that Francosteel ultimately sets the price the unaffiliated U.S. customer is charged, which petitioners argue is proof that Dillinger's sales are CEP. Petitioners state that their view is consistent with *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany,* 61 FR 38166, 38176 (July 23, 1996). Petitioners also distinguish the present review from *Independent Radionic Workers of America v. United States,* Slip op. 95–45 (CIT Mar. 15, 1995), in which petitioners state the Court of International Trade (CIT) held that the affiliate's substantial selling functions were not necessarily inconsistent with a finding of purchase price treatment. Petitioners contend that *Independent Radionic Workers* did not involve the power to negotiate U.S. price. Petitioners argue that Dillinger's approval of the price negotiated by Francosteel is completely irrelevant.

Petitioners argue that Francosteel performs numerous other functions, which, with the role of price setting, petitioners claim go beyond mere document processor or communications link. Petitioners argue that among other functions, Francosteel takes title, purchases subject merchandise from Dillinger and resells it; represents itself as the seller of the subject merchandise to its U.S. customers; acts as importer of record; and finances the sale. Petitioners add that Francosteel frequently remits payment for merchandise to Dillinger before Francosteel receives payment from its U.S. customers. They state that certain documentation (*e.g.,* pertaining to total U.S. sales value) is only available at Francosteel and that more sales activity takes place in the United States than in Germany with respect to U.S. sales.

Dillinger responds that the Department correctly characterized its single U.S. sale as export price. The sale was made before the date of importation and Dillinger claims that direct shipment is the customary commercial channel for sales of plate to the U.S. customer. Dillinger disputes petitioners' claim that there was a four-day lapse of time between entry and shipment to the customer and that this alleged lapse is evidence of warehousing. Dillinger states that customs entry was made on the day the vessel entered the waters of the Port of Houston, but that actual docking occurred several days later. Dillinger notes that the terms of sale were FOB on the customer's trucks, and that the merchandise was directly unloaded from the vessel onto the customer's truck. Respondent states that the Department verified that Francosteel's warehousing costs were for non-subject merchandise. Respondent also urges the Department to reject petitioners' "new theory of 'financial inventory'" as without support in the statute or the Department's regulations.

With respect to the negotiation of price, respondent quotes the Department's verification report which states that "Francosteel cannot confirm an order, including price, to the customer before Dillinger has approved the order" and "Dillinger makes all decisions with regard to price and quantities offered, specifications and delivery times * * *. Dillinger always approves the price for all sales." Thus, consistent with Francosteel's alleged role as a mere document processor and communications link, according to respondent, even if Francosteel thinks it can get better than Dillinger's minimum price guideline, the final price must still be approved by Dillinger. In response to a question at the hearing, Dillinger also argued that there is no evidence in this case that Francosteel got or attempted to get a price better than Dillinger's minimum price guideline for the sale subject to this review. *See* November 22, 1996, hearing transcript at 38.

Department's Position

We agree with petitioners and have determined that respondent's single U.S. sale should be characterized as a CEP rather than an EP sale. This determination reverses that reached in the preliminary results of review. It also differs from the determination reached in the previous final results of review. *See Certain Cut-To-Length Carbon Steel Plate From Germany: Final Results of Antidumping Duty Administrative Review,* 61 FR 13834, 13843 (March 28, 1996) (*Dillinger First Review*). However, we have reexamined the evidence on the record in this review and, for the following reasons, have determined that it is more appropriate to consider this a CEP sale.

Whenever sales are made prior to importation through a related sales agent in the United States, the Department typically determines whether to characterize the sales as EP based upon the following criteria: (1) Whether the merchandise was shipped directly to the unrelated buyer, without being introduced into the related selling agent's inventory; (2) whether this procedure is the customary sales channel between the parties; and (3) whether the related selling agent located in the United States acts only as a processor of documentation and a communication link between the foreign producer and the unrelated buyer. *See, e.g., Newspaper Printing Presses From Germany,* 61 FR at 38175; *Certain Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review,* 61 FR 18547, 18551 (April 26, 1996). This test has been approved by the CIT. *Independent Radionic Workers,* Slip Op. 95–45 at 2–3; *PQ Corp.,* 652 F. Supp. at 733–35.

Applying the first two criteria to the present review, we agree with respondent that the merchandise was shipped directly to the unrelated U.S. customer without being introduced into the inventory of Francosteel, Dillinger's related U.S. selling agent. The Department verified that the terms of sale were FOB on the customer's trucks, and that the merchandise was directly unloaded from the vessel onto the customer's trucks. In addition, FOB shipment to the customer's trucks, without Francosteel warehousing the subject merchandise, is the customary channel of distribution. The Department also verified that the warehousing costs which Francosteel did incur were for non-subject merchandise. There is no evidence indicating that the subject merchandise was warehoused as well.

Concerning the third criterion, however, the Department has determined that Francosteel did act as more than a processor of sales documents and a communications link between the unrelated U.S. customer and Dillinger, the producer in Germany. We find that Francosteel played a major role in negotiating and bringing about the sale, from the bidding stage through the final contract. *See Newspaper Printing Presses From Germany,* 61 FR at 38176. Pursuant to respondent's general practice, customers in the United States either contact Francosteel or Francosteel contacts them. The Department verified that Dillinger does not get involved in the sale until after Francosteel makes the initial arrangements. Customers place purchase orders with Francosteel. Prior to sending an order to the mill, Francosteel does a credit check on the customer. Moreover, even though Dillinger sets the minimum purchase price after considering the order information it receives from Francosteel, Francosteel negotiates the sale with the customer with an aim to obtaining the best price possible. *U.S. Sales*

Verification Report, June 13, 1996, at 4–5 (*U.S. Verif. Rep.*). Francosteel then invoices the sale, takes title to the merchandise, and acts as importer of record.

We recognize that, despite Francosteel's involvement in the sales process, ''Dillinger always approves the price for all sales,'' as the Department found at verification. *Dillinger Sales Verification Report,* June 12, 1996, at 4–5 (*Germany Verif. Rep.*). We consider Dillinger's role in the sales process in the United States to be minimal, however. Francosteel essentially negotiates all sales in accordance with Dillinger's limited guidelines and the sales take place in the United States, not in Germany. In the first administrative review, the Department's determination that Francosteel acted merely as a processor of sales-related documentation was based mainly upon the finding that Francosteel lacked ''the flexibility to set the price of the steel.'' *Dillinger First Review* at 13843; *see also Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rod From France,* 58 FR 68865, 68869 (1993) (finding that U.S. affiliate participating in negotiations lacked flexibility to set price). We have determined that this was not the case during the present review.

We agree with petitioners that this case is distinguishable from the situation in *Independent Radionic Workers.* In that case, the CIT upheld the Department's determination that the sales in question were purchase price sales (what are now export price sales) despite the fact that the U.S. subsidiary ''processed purchase orders, performed invoicing, collected payments, arranged U.S. transportation and was the importer of record.'' Slip Op. 95–45 at 3. We consider Francosteel's extensive involvement in negotiating respondent's U.S. sale during this review, along with Francosteel's other sales activities, to warrant classifying this sale as CEP. This review is also distinguishable from this issue in *E.I. DuPont de Nemours & Co.* v. *United States,* 841 F. Supp. 1237 (CIT 1993). In that case, in upholding the Department's determination that the sales in question were purchase price, the CIT found that the foreign producer, not the U.S. affiliate, ''negotiated price and basic sales terms directly with each U.S. customer for each U.S. sale.'' *Id.* at 1249. The related affiliate lacked the authority to set the U.S. customer's price. *Id.* Francosteel's sales role was much more significant.

For the foregoing reasons, we have revised the determination in the preliminary results and have recharacterized respondent's U.S. sale as CEP.

Comment 2

Petitioners claim that the Department must apply partial facts available to all theoretical-to-actual weight conversion factors reported by Dillinger for its home-market sales, because of what petitioners consider to be significant discrepancies discovered by the Department. Petitioners note that weight conversion factors were used in the calculation of multiple variables, and have an impact throughout the Department's calculations. Despite these significant and persistent irregularities with the data, in petitioners' words, the Department merely corrected certain specific conversion factors for the preliminary results. Petitioners argue that the Department should apply, as partial facts available, the lowest non-aberrant actual-to-theoretical weight conversion factor reported by Dillinger. Petitioners argue that in *Gray Portland Cement and Clinker from Mexico: Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 51676, 51677 (October 3, 1996), the respondent inappropriately included long-term loans in its interest rate calculation and the Department used facts available and relied upon a properly reported interest rate for one of respondents' affiliates. Similarly, in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan,* 61 FR 25200, 25202 (May 20, 1996), petitioners allege that the Department used partial best information available (BIA) rather than rely upon or correct respondent's erroneous further processing cost data.

Respondent counters that the Department acted properly in correcting the theoretical-to-actual weight conversion factors in the preliminary results. Dillinger notes that with one exception all sales with the incorrectly reported conversion factors were of beveled plate and that the corrected information provided by respondent at verification was found to be correct by the Department. Respondent claims that when the Department examined sales with less extreme weight conversion factors only one error was noted, and that the Department should not use a sample of ''outlier sales'' to draw inferences about the entire database.

Department's Position

We agree with respondent. The mistakes found at verification were not significant, persistent irregularities, as claimed by petitioners. Unlike *Cement and Clinker* and *Tapered Roller Bearings,* the incorrect data in this instance related to a small and discrete group of observations and was readily correctable. Rather, as Dillinger explains, the mistakes found primarily related to a small and discrete group of home-market sales (sales of beveled plate). The Department verified the weight conversion factors of various other sales, including all sales that were potential matches to the U.S. sales, and found no discrepancies. Consequently, correcting the limited number of errors was appropriate.

Comment 3

Petitioners argue that Dillinger's reported cost data should be revised in light of the Department's findings at verification. Petitioners argue that Dillinger failed to include in its COP calculation 13th month adjustments concerning certain receivables written off for Dillinger and Rogesa (Dillinger's affiliated pig iron supplier). Petitioners state that in the first administrative review, the Department properly determined that receivables written off constitute bad debt expenses, and that the write-offs for Saarstahl AG (SAG) (Dillinger's former sister company) and its subsidiaries were included in the indirect selling expense portion of Dillinger's COP and CV data. *See Dillinger First Review,* 61 FR at 13836–37. Petitioners argue that the receivables written off in the present review involve the same parties and arose under the same circumstances as those that the Department included in COP and CV in the first review. Petitioners conclude that the Department should treat these receivables in the same manner in this review.

Respondent states that in its preliminary results the Department properly rejected the adjustments to cost data proposed by petitioners. Respondent claims that the expenses related to SAG's bankruptcy settlement are not related to subject merchandise. Respondent agrees with the Department's finding in the preliminary results that these amounts cannot be included in COP and CV.

Department's Position

The Department correctly did not include these expenses in its calculation of cost or CV in the preliminary results. Petitioners are correct that write-offs of receivables which are part of a bankruptcy settlement may be considered bad debt expenses, which the Department considers to be ordinary expenses. *See, e.g., Dillinger First Review,* 61 FR at 13836. Contrary to petitioners' characterization, however, the receivables in question did not relate to the sale or production of subject merchandise, unlike other receivables written off during the previous review. For a more detailed discussion of these receivables, see the Analysis Memorandum to the File, April 2, 1997, and the *Cost Verification Report,* June 25, 1996, at 9, 16–17 (*Cost Verif. Rep.*). The Department did not include amounts related to the same accrual during the previous review in the calculation of COP or CV. *See Dillinger First Review* at 13837.

Comment 4

Petitioners argue that Dillinger's reported cost data must be revised in light of the Department's findings at verification with respect to expenses related to the depreciation of Rogesa's blast furnace. Petitioners state that the Department's cost verification report indicates that only a portion of certain Rogesa 13th month adjustments, including an amount for depreciation of expenses for a blast furnace, was included in Dillinger's COP and CV calculations. Petitioners cite the final results of the first review, and note that the full amount of the expenses related to the blast furnace should be recognized in calculating Rogesa's COM. *See Dillinger First Review,* 61 FR at 13,836.

Dillinger responds that since half of Rogesa's blast furnace output is contractually devoted to the production of non-subject merchandise for another company, it would be an error to allocate all of Rogesa's depreciation over only Dillinger's share of Rogesa's output. Dillinger argues that the Department could include as a cost either: (1) All of Rogesa's depreciation divided by Rogesa's total production to arrive at a per ton figure, or (2) the pro rata share of Rogesa's depreciation corresponding to Dillinger's pro rata share of Rogesa's output.

Department's Position

Dillinger is correct that it would be an error for the Department to divide the total blast furnace depreciation by the tonnage of Rogesa's sales to Dillinger (the tonnage amount used in the respondent's calculation), as this would overstate Rogesa's cost per ton of output. To include total blast furnace depreciation, we would have to divide that amount by Rogesa's total output or multiply it by Dillinger's pro rata portion of Rogesa's output. Both of these approaches would result in a lower per unit cost than the methodology used by Dillinger in its submissions. We have made no further adjustments.

Comment 5

Petitioners argue that the Department should determine that Dillinger, through Francosteel, has absorbed AD duties on behalf of its U.S. customer. Petitioners note that even if the Department determines that it is not required to conduct an absorption inquiry during this review, it retains the discretion to do so and should. Petitioners argue that record evidence demonstrates that the costs of AD and CVD duties, including cash deposits, are being absorbed by the affiliated importer and are not being borne by the ultimate U.S. customer. Petitioners argue that confining absorption inquiries to the second and fourth reviews under the URAA will encourage respondents to manipulate the administrative review process to avoid duty absorption findings. For example, petitioners note that Dillinger claims that it did not have any imports during the 1995/1996 review period, precluding a duty absorption inquiry with respect to the second review under the URAA. Petitioners claim that limiting duty absorption inquiries to the second and fourth reviews will encourage petitioners to request administrative reviews simply for the purpose of obtaining a duty absorption determination, creating additional burdens on the Department, petitioners, and respondents. Petitioners contend that the statute was not intended to force petitioners into choosing between incurring additional costs by requesting a review, when they might not otherwise choose to do so, or giving up their right to an absorption determination. Petitioners argue that only minimal additional work would be required for the Department to conduct a duty absorption inquiry and that doing so under these circumstances would be an efficient use of resources.

Respondent supports the Department's decision not to conduct a duty absorption inquiry in this review and also notes that there is no evidence on the record to support a finding of duty absorption. Respondent argues that the test of duty absorption is not whether AD and CVD duties are being absorbed by the affiliated importer, but whether these duties have been absorbed by the foreign producer or exporter. Dillinger argues that, contrary to petitioners' assertions, there is no verified evidence on the record that demonstrates that Dillinger has absorbed the duties through Francosteel.

Department's Position

We disagree with petitioners. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after publication of the order whether AD duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. As stated in the preliminary results, for transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.,* orders in effect as of January 1, 1995, the Department will make a duty absorption determination, if requested, in any administrative review initiated in 1996 or 1998. *See Preliminary Results,* 61 FR at 51980. This policy is in accordance with the statute as well as the approach adopted in the Department's proposed regulations. *See* 61 FR 7308, 7366 (February 27, 1996). Contrary to petitioners' argument, this approach does not impose an unnecessary burden upon parties. If domestic interested parties believe duty absorption is taking place, it is reasonable for them to request a review, during the review periods specified, in which duty absorption can be properly considered.

Comment 6

Petitioners claim that AD and CVD duties have been reimbursed by Dillinger, and must be deducted from U.S. price under § 353.26(a) of the Department's regulations. Petitioners note that the Department discovered at verification that Dillinger established a financial provision with respect to AD and CVD duties. Petitioners reject Dillinger's explanation of this provision—that it exists because German law requires Dillinger to establish such a provision even if there is but a remote possibility of a liability. Petitioners state that Dillinger has no legal obligation to pay AD duties under U.S. law, as Francosteel is the importer of record and is liable for duties owed. Petitioners argue that the only explanation for Dillinger establishing such a provision is that Dillinger voluntarily has accepted this liability and has reimbursed Francosteel for the duties it has absorbed.

Petitioners allege that a comparison of Dillinger's and Francosteel's chart of accounts demonstrates that duties have been reimbursed. Petitioners cite Dillinger's Section A response which indicates that it owed money to affiliated companies for ''taxes and duties.'' Petitioners claim that Dillinger had ''an agreement to reimburse antidumping duties'' with its affiliated party and also that ''inappropriate financial intermingling'' occurred, demonstrating that duties were in fact reimbursed under the Department's test in *Final Results of Administrative Review: Color Television Receivers From the Republic of Korea.* 61 FR 4408 (February 6, 1996). The petitioners also note that the above evidence further meets the test applied by the Court of International Trade in *Federal Mogul Corp.* v. *United States,* 918 F. Supp. 386, 394 (CIT 1996), which requires only the establishment of a link between intra corporate transfers and the reimbursement of antidumping duties. Petitioners cite *Cold-Rolled Carbon Steel Flat Products From the Netherlands; Final Results of Antidumping Duty Administrative Review,* 61 FR 48465, 48470–71 (September 13, 1996), in support of their argument that duties need not be assessed to make a finding of reimbursement. The petitioners note that the respondent in that case both agreed to reimburse duties to be assessed and has reimbursed for antidumping duty cash deposits made on entries during the POR.

Petitioners also argue that the Department should adjust U.S. price to reflect the full amount of duties reimbursed. Petitioners reference *Certain Corrosion-Resistant Carbon Steel Flat Products From Korea; Final Results of Antidumping Duty Administrative Review,* 61 FR 18547, 18564 (April 26, 1996), in which, petitioners claim, the Department indicated that respondents were entitled to an upward adjustment to U.S. price for countervailing duties offsetting export subsidies. The petitioners argue that the statute requires the Department to increase constructed export price by the amount of ''any countervailing duty imposed on the subject merchandise * * * to offset an export subsidy''. Petitioners state that the deduction of estimated duties is not prohibited by *PQ Corp.*

Respondent argues that Dillinger has not reimbursed Francosteel for AD/CVD duties. Respondent notes that at verification officials at Dillinger denied there was any agreement by Dillinger to reimburse AD/CVD duties to Francosteel and that officials at Francosteel denied there was any agreement to have Dillinger reimburse Francosteel for AD duties (although there may be future discussions with Dillinger regarding CVD duties). Respondent claims that Dillinger's general ledger provision relates to fees and expenses that could be incurred in connection with the AD proceeding. Respondent further notes that the Department verified that payments against this provision in 1994 and 1995 were for legal, data collection, consulting and translation fees, and that there is no evidence on the record showing that the subsequent amounts provisioned in that accrual were of a different nature. Respondent denies that there was any inappropriate financial intermingling between Dillinger, Sollac, and Francosteel. Finally, respondent notes that since there is no evidence on the record of reimbursement of AD/CVD duties, petitioners' request that U.S. price be adjusted to reflect the full amount of reimbursed duties is moot.

Department's Position

We disagree with petitioners. Section 353.26 of the Department's regulations requires the Department to deduct from United States price (now EP or CEP) the amount of any antidumping duty paid, or reimbursed, by the producer or exporter, thereby increasing the amount of the duty ultimately collected. 19 CFR § 353.26(a) (1996); *see Proposed Regulations,* 61 FR at 7382 (§ 351.402(f)). The Department has interpreted this regulation as applying regardless of whether the importer is affiliated to the producer or exporter. *See Steel From Netherlands,* 61 FR at 48470; *Color Television Receivers From Korea,* 61 FR at 4410–11.

As the Department stated in *Color Television Receivers From Korea,* however, ''[t]his does not imply that foreign exporters automatically will be assumed to have reimbursed related U.S. importers for antidumping duties by virtue of the relationship between them.'' 61 FR at 4411. The regulation requires ''evidence beyond mere allegation that the foreign manufacturer either paid the antidumping duty on behalf of the U.S. importer, or reimbursed the U.S. importer for its payment of the antidumping duty.'' *Federal-Mogul Corp.,* 918 F. Supp. at 393 (*citing Torrington Co.* v. *United States,* 881 F. Supp. 622, 631 (CIT 1995)).

In the present review, contrary to petitioners' assertions, we found no evidence of inappropriate financial intermingling between Dillinger and Francosteel, or of either an agreement to reimburse AD duties or the actual reimbursement of AD duties between the two affiliated parties. The Department verified that ''Francosteel is responsible for paying all cash deposits.'' *U.S. Verif. Rep.* at 13. The Department also found ''no intention that there will be any reimbursement of AD duties in the future between Dillinger and Francosteel.'' *Id.* Petitioners are correct that Dillinger had established a general ledger provision in its accounting records with respect to antidumping and countervailing duties. Dillinger explained that the provision relates to fees and expenses incurred in connection with the AD proceeding, and that such a provision is required under German law ''if there is even a remote possibility of a liability.'' *Germany Verif. Rep.* at 22. We consider this a reasonable explanation. Moreover, we verified that all payments against the provision in 1994 and 1995 were for legal, data collection, consulting and translation fees. *Cost Verif. Rep.* at 10.

Because we have rejected petitioners' arguments regarding reimbursement, it is unnecessary to address petitioners' additional arguments regarding the application of § 353.26 of the regulations to the reimbursement of cash deposits.

For the foregoing reasons, we have not adjusted Dillinger's CEP as provided for under § 353.26.

Comment 7

Petitioners argue that regardless of the Department's determination with respect to reimbursement, the Department must deduct actual AD/CVD duties from the price used to establish EP or CEP. Petitioners claim that the plain language and structure of the statute mandate that the Department make such an adjustment. Specifically, petitioners state that the phrase ''any * * * United States import duties,'' as used in section 772(c)(2)(A) of the Act, includes AD and CVD duties, as such duties are plainly ''incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.'' *See* 19 U.S.C. 1677a(c)(2)(A).

Petitioners note that the relevant provisions of section 772(c)(2)(A) date from the Antidumping Act of 1921. Petitioners argue that the legislative history of the 1921 Act is silent as to the definition of ''any * * * United States import duties'' and that the drafter's failure to provide a definition either in the 1921 Act or its history indicates that Congress intended no meaning other than the ordinary one for this term. The petitioners also note that section 772(c)(1)(C) provides that the price used to derive EP or CEP shall be increased by the amount of any countervailing duty imposed to offset an export subsidy. Petitioners argue that in the 1979 Trade Agreements Act, in addition to adding section 772(c)(1)(C), Congress added the phrase ''except as provided in paragraph 1(C)'' in section 1677a(c)(2)(A). This, the petitioners assert, demonstrates that Congress understood the subsection's reference to ''any * * * United States import duties'' as including AD and CVD duties; otherwise there would be no reason to exempt certain CVD duties from the provision.

While petitioners admit that the CIT has never explicitly held that the provision now included in section 772(c)(2)(A) covers CVD or AD duties, the Court has held so implicitly. Petitioners cite *Federal-Mogul Corp.* v. *United States*, 813 F. Supp. 856, 872 (CIT 1993). This case, according to petitioners, requires the Department to deduct any actual import duties, *i.e.*, duties that can be accurately determined at the time the Department is calculating the current dumping margins. Petitioners add that *Federal-Mogul's* holding that the Department was correct not to deduct cash deposits of estimated AD or CVD duties was premised on the fact that estimated duties may not bear any relationship to the actual AD or CVD duties owed. Petitioners argue that the clear implication of the Court's reasoning is that actual duties are in fact ''United States import duties'' subject to section 772(c)(2)(A) and these duties should be deducted from U.S. price.

Petitioners also argue that the Department must deduct the full amount of CVD duties paid by Francosteel for those entries covered by the second administrative review of the CVD order as those duties are determinable.

Petitioners also argue that the Department must deduct the full amount of the ''actual'' antidumping duties that Francosteel will be responsible for upon liquidation of the entries of subject merchandise. Petitioners note that once the final results of review are issued, Dillinger's antidumping duties will be actually determined.

Petitioners state that the Department has erroneously refrained from deducting AD and CVD duties from U.S. price on the grounds that such a deduction will result in double-counting. *See Certain Corrosion-Resistant Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review*, 61 FR 18547, 18,563–34 (April 26, 1996). Petitioners reject this argument, stating that the statute is not discretionary and that the Department's rationale is inconsistent with its treatment of other AD adjustments (*i.e.*, doubling antidumping margins to account for reimbursement in *Steel From the Netherlands*, 61 FR at 48470–71).

Respondent cites *Corrosion-Resistant Steel From Korea* and *Steel From the Netherlands* in response to petitioners' arguments with respect to treating AD/CVD duties as a cost. Respondent notes first that the issue is moot since there was no dumping margin. With respect to petitioners' argument regarding CVD cash deposits, respondent notes that the Department rejected a similar argument in *Corrosion-Resistant Steel From Korea* and should do so here for the same reasons.

Department's Position

It is the Department's longstanding position that AD and CVD duties are not a cost within the meaning of section 772(d). AD and CVD duties are unique. Unlike normal duties, which are an assessment against value, AD and CVD duties derive from the margin of dumping or the rate of subsidization found. Logically, AD and CVD duties cannot be part of the very calculation from which they are derived. This logical rationale for the Department's interpretation of the statute is consistent with prior decisions of the CIT. *See Federal-Mogul, supra*, 813 F. Supp. at 872 (deposits of antidumping duties should not be deducted from USP because such deposits are not analogous to deposits of ''normal import duties'').

In particular, petitioners have no basis to draw a distinction between actual, assessed duties and cash deposits in this context, based upon *Federal Mogul*. Petitioners' reasoning is circular rather than logical. According to petitioners, in calculating the dumping margin, the Department must take into account the dumping margin. This cannot be what the CIT intended in *Federal Mogul*. Such double counting, *i.e.*, including the same unfair trade practice twice in a single calculation, is unjustifiable. Only in the limited circumstances regarding reimbursement, as provided for in § 353.26 of the Department's regulations, is it appropriate to deduct any amount of antidumping duties. Thus, petitioners' reliance upon *Steel From the Netherlands*, which applied only to reimbursement, is unwarranted as well.

Moreover, the treatment of AD and CVD duties (already paid or to be assessed) as a cost to be deducted from the export price is an issue that was arduously debated during passage of the URAA and ultimately rejected by Congress. *See* H.R. 2528, 103rd Cong., 1st Sess. (1993). Alternatively, Congress directed the Department to investigate, in certain circumstances, whether AD duties were being absorbed by affiliated U.S. importers. 19 U.S.C. 1675(a)(4). Thus, Congress put to rest the issue of AD and CVD duties as a cost. SAA at 885 (''The duty absorption inquiry would not affect the calculation of margins in administrative reviews. This new provision of the law is not intended to provide for the treatment of antidumping duties as a cost.''). *See also* H. Rep. No. 103–826(I), 103rd Cong., 2nd Sess. 60 (1994).

Final Results of Review

As a result of our review, we have determined that the following margin exists:

Manufacturer/exporter	Time period	Margin (percent)
AG der Dillinger Hüttenwerke	8/1/94–7/31/95	3.00

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of plate from Germany entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed company will be the rate for that firm as stated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash rate will be 36.00 percent. This is the ''all others'' rate from the LTFV investigation. *See Antidumping Duty Order and Amendment of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate From Germany*, 58 FR 44170 (August 19, 1993). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under § 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with § 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are in accordance with § 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: April 2, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9113 Filed 4–14–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–805]

Certain Cut-to-Length Carbon Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 4, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Sweden. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period August 1, 1994 through July 31, 1995. We gave interested parties an opportunity to comment on our preliminary results. We have not changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Elizabeth Patience or Jean Kemp, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3793.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1996, the Department published in the **Federal Register** (61 FR 51898) the preliminary results of its administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Sweden (58 FR 44162). We gave interested parties an opportunity to comment on our preliminary results and held a public hearing on November 19, 1996. We received written comments from SSAB Svenskt Stål AB (SSAB), respondent, and from petitioners: Bethlehem Steel Corporation, U.S. Steel Group (a unit of USX Corporation), Inland Steel Industries Inc., Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, Geneva Steel, and Lukens Steel Company. At the request of respondent and petitioners, a public hearing was held on November 19, 1996. We have now completed the administrative review in accordance with section 751(a) of the Act.

Scope of Review

Certain cut-to-length plate includes hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling)—for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The period of review (POR) is August 1, 1994, through July 31, 1995.

Analysis of Comments Received

Comment 1—Reconciliation of Kalkyl System Costs

SSAB argues that it maintains two cost accounting systems, the normal cost accounting system and the kalkyl system. The company's normal cost accounting system is used for financial accounting purposes and records total costs for each major cost center. The kalkyl system, on the other hand, is a ''parallel system'' which is used to compute budgeted costs for each order item. Respondent contends that the kalkyl system is an alternate cost accounting system and not a ''sales estimating tool'' as stated in the Department's preliminary results. SSAB states that it uses the kalkyl system to ensure profitability of orders it accepts and that the kalkyl system has been used historically in the normal course of business. SSAB further notes that this system has been accepted by the Department in a past review. Respondent claims that the kalkyl system is the only costing system maintained by its Oxelösund facility (SSOX) that contains the cost detail required to meet the Department's demands for costs per control number (*i.e.*, per product).

SSAB argues that it notified the Department of the fact that the kalkyl system was not a formal part of SSOX's normal cost and financial accounting system but, rather a separate and distinct system relied upon by the company in the normal course of business. Despite this fact, according to SSAB, the Department, at verification, insisted that the kalkyl system be reconciled to costs recorded under the company's normal cost accounting system as presented in its audited financial statements. SSAB asserts that the Department has discretion as to whether to reconcile the submitted costs to audited financial statements and, since it did not do so in the last review, it abused its discretion by making reconciliation a requirement in this review. SSAB maintains that the SSOX kalkyl system provided an accurate, reliable, and fully verifiable cost database. SSAB argues that the Department would have rejected any new data base SSAB tried to create based on a revised accounting system and would have resorted to facts available. *See Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom: Final Determination of Sales at Less Than Fair Value,* 61 FR 51411, 51415 (October 2, 1996) (*Framing Stock*).

SSAB also argues that the Department's determination that it failed the cost verification because it could not reconcile its reported costs to the costs in the financial accounting system is arbitrary, capricious, and is contrary to law. According to SSAB, the Department's actual past practice demonstrates that reconciliation of reported costs to audited financial statements is not a mandatory test uniformly applied by the Department. SSAB contends that the Department determined in *Certain Pasta From Turkey: Final Determination of Sales at Less Than Fair Value,* 61 FR 30309, 30317 (June 14, 1996) that the refusal of the Turkish respondent to provide the financial statements to the Department did not warrant total adverse facts available as the Department was, through some unexplained means, ''able to substantiate much of the remaining information contained in its COP/CV data base.'' *See also, Framing Stock, Certain Pasta from Italy: Final Determination of Sales at Less Than Fair Value,* 61 FR 30326, 30358 (June 14, 1996), and *Welded Stainless Steel Pipe from Malaysia: Final Determination of Sales at Less Than Fair Value,* 59 FR 4023, 4027 (January 28, 1994).

Moreover, SSAB alleges that the cost verification methodology employed by the Department in this review is arbitrary, capricious, and contrary to law. SSAB contends that in this review, the Department verifiers applied a dramatically different verification methodology than the first review by demanding that SSOX first directly reconcile all submitted kalkyl-based cost data with SSOX's normal accounting system. Respondent argues that verifiers in this review pursued reconciliation of the reported kalkyl costs to SSOX's financials and therefore refused to, or had no time to, verify the accuracy of the kalkyl costs (and the reported SSOX costs) as a stand-alone system. Respondent maintains that it had no reason to believe, on the basis of section D of the Department's questionnaire or supplemental cost questionnaires, that the Department would, without notice, change its methodology in the second review cost verification and require SSOX to reconcile the kalkyl product-specific cost data directly to the cost data contained in SSOX's financial statements.

SSAB argues, citing *Shikoku Chemicals Corp.* v. *United States,* 795 F. Supp. 417 (CIT 1992), *National Corn Grower's Association* v. *Baker,* 840 F.2d 1547, 1555 (Fed. Cir. 1988), and *IPSCO, Inc.* v. *United States,* 687 F. Supp. 614, 631 n.27, that it was an abuse of discretion for the Department, in the second administrative review, to change, without prior notice to SSAB, the verification methodology used by the Department in the first review and relied upon by SSAB in reporting its cost data in the second administrative review. Respondent cites to *Calcium Hypochlorite from Japan,* 55 FR 41259 (October 10, 1990) as a case where the Department reversed its preliminary decision and made an adjustment consistent with previous reviews for the ''purposes of administrative equity.''

Respondent contends that in evaluating the kalkyl system and in establishing the verification outline, the Department ignored the fact that the kalkyl system is not a formal part of either SSOX's cost accounting system or SSOX's financial accounting system. Respondent argues that the statute requires the Department to consider all allocations of costs if they have been historically used by the producer and reasonably reflect costs associated with the production and sale of the merchandise. However, respondent argues that the statute does not mention normal accounting records, audited financials or the reconciliation of all reported product-specific costs to the audited financials or normal accounting systems of a respondent. Respondent argues that the Department's regulations do not require reconciliation to audited financials. Additionally, respondent maintains that neither the statute nor the regulations regarding verification discuss either a full reconciliation of all reported costs to audited financials or minimum thresholds a respondent must meet during a verification.

SSAB maintains that it advised the Department early in this proceeding that the SSOX normal accounting system does not track product-specific costs. Citing *American Permac, Inc.* v. *United States,* 703 F. Supp. 97 (CIT 1988), respondent claims there is nothing in the statute or regulations that requires a respondent, during verification, to ''precisely and conclusively'' tie its reported costs directly into a respondent's normal accounting system.

Respondent argues that SSOX was able to establish a link between the normal kalkyl system costs and the costs reported in the company's financial accounting system demonstrating that the total normal kalkyl system costs were completely consistent with the total costs in the accounting system. *See Silicon Metal from Brazil,* 61 FR 46763, 46767 (September 5, 1996). Respondent maintains that once this link was established, the verification team should have, but failed to, move on to verify the costs contained in the SSOX kalkyl system and to verify SSAB Tunnplåt's (SSTP) reported costs.

Petitioners argue that the cost data submitted by SSAB could not be verified to the Department's satisfaction. Additionally, petitioners contend that SSAB's submitted costs could not be reconciled to its audited financial records. Petitioners maintain that respondent's submitted costs were not demonstrated to be accurate and reliable. Petitioners claim that because the kalkyl system is a management reporting system and not an alternative cost accounting system, generally accepted accounting principles are not applicable. Moreover, petitioners maintain that SSAB's representation that the kalkyl system is maintained in the ordinary course of business does not demonstrate that the system reflects actual costs or is otherwise accurate and reliable.

Petitioners contend that the Department's request for a reconciliation between SSAB's submitted costs and the company's normal accounting system and its audited financial statements was reasonable, consistent with longstanding practice, supported by substantial evidence and in accordance with law. Petitioners argue that the Department's verification methodology is consistent with longstanding practice, supported by substantial evidence, and in accordance with law. Petitioners note that the Department is provided with wide discretion in determining the verification methodology it will employ and the Department's verification team properly determined not to accept new cost information at verification.

Department Position

We disagree with SSAB. The Department's practice with respect to calculating costs is directed by section 773(f)(1)(A) of the Act. This provision specifically requires that costs be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. Consistent with the statute, the Department will accept costs of the exporter or producer *if* they are based on the records which are kept in accordance with GAAP of the exporting country *and* reasonably reflect the costs associated with the production and sale of the merchandise. After establishing that the costs are based on the normal books and records, which are in conformity with GAAP, the Department is charged with determining if those costs reasonably reflect the costs associated with the production and sale of the merchandise, *i.e.*, have they been properly allocated to the products. In determining if the costs were properly allocated to products the Department will look at whether the allocation methods have been historically used.

In this case, SSAB has stated that it has two cost accounting systems, its normal financial accounting system and the kalkyl system. From the financial accounting system, the company prepares its audited financial statements. These financial statements reflect the company's actual costs, in accordance with GAAP. The basic accuracy of the statements and their consistency with GAAP is evidenced by the opinion of the independent auditors. With regard to its kalkyl system, SSAB explains that it is ''not a formal part of either the cost accounting system or the financial accounting system. Instead it is used as a tool in assessing the appropriate price for a given order.'' *See* SSAB's May 27, 1996 response to the Department's supplemental Section D questionnaire at 39. SSAB further explains that the two systems are ''designed around entirely different parameters, and are designed to serve completely different purposes.'' *See* respondent's case brief at 18. With regard to SSAB's argument that they had to report costs using the more specific kalkyl system or suffer the consequences of facts available, we disagree. We find the fact that the kalkyl system is capable of calculating more detailed product-specific costs to be without significance to proper cost reporting if such costs cannot be shown to be the actual costs incurred by the company as recorded in financial accounting records that are maintained following GAAP.

Further, we note that the system SSAB used to prepare its cost response for its SSOX facility was not the company's usual kalkyl system but, instead, was a ''modified'' version of the kalkyl system. Verification testing showed that the per unit costs from the ''modified'' kalkyl system (*i.e.*, the submitted cost data) were substantially less than the costs in the company's basic kalkyl system. SSAB was unable to reconcile these discrepancies during verification. Apart from the inconsistencies between the reported costs and the kalkyl system costs, the Department's verification also established that both the total production costs and the per unit costs from SSAB's kalkyl system differed from information in the company's financial accounting system (*i.e.*, the financial statements). SSAB was unable to reconcile these discrepancies. In short, the company was unable to demonstrate that the submitted data properly reflected the actual costs incurred by the company as recorded in its normal system, consistent with GAAP. (The cost verification report details the specific procedures performed and the results of this testing. *See* Memorandum from Theresa Caherty and Elizabeth Patience, September 20, 1996, the Cost Verification Report. *See also, Certain Cut-to-Length Carbon Steel Plate From Sweden: Preliminary Results of Antidumping Duty Administrative Review* 61 FR 51898, 51899, October 4, 1996.)

With regard to SSAB's claim that the Department changed its verification standard from the prior review period without providing notice of this change, we disagree and note that the Department's basic methodology (*i.e.*, the requirement that the submitted costs be reconciled to the company's normal accounting records maintained in accordance with GAAP) was unchanged. SSAB's statement that in the first review period it ''could not reconcile its kalkyl-based reported costs directly to SSOX's normal accounting system'' is not supported by the findings of that proceeding. *See* Memorandum from Paul McEnrue, August 3, 1995, Public Version of Cost Verification Report.

Consistent with the statute and legislative history, the Department has a long-standing practice of requiring a reconciliation of the reported data to the company's financial statements. This practice ensures that the reported costs are reflective of the company's actual experience as shown in its books and records. (*See* S. Rep. No. 412, 103rd Cong., 2nd Sess. 74–75 (1994) ''* * * costs that most accurately reflect the resources actually used on the production of the merchandise in question.'' *See also* H.R. Rep. No. 826, 103rd Cong. Sess., pt. 1, at 90–91 (1994), and the SAA at 164–165.)

SSAB's reliance on *Certain Pasta from Turkey* to support its contention that reconciliation of reported costs is discretionary is misplaced. A more careful reading of this notice reveals that the facts present in *Certain Pasta from Turkey* are not analogous to SSAB's situation in the instant proceeding. In *Certain Pasta from Turkey*, the respondent (Maktas) did not fail to reconcile its submitted costs to its own books and records, but rather Maktas did not provide the financial statements of its majority owner (Piyale-Besin). Because of the parent-subsidiary relationship, the Department generally relies on the consolidated financial expenses of such entities. Absent information for the parent company, Piyale-Besin, the Department relied on facts available to estimate the appropriate financial expenses of the consolidated entity in *Certain Pasta from Turkey*. Thus, that case does not address the issue of a respondent company's failure to reconcile its reported manufacturing costs to the actual production costs recorded in its normal books and records.

Likewise, we cannot agree with SSAB's reliance on *Silicon Metal from Brazil* in support of its belief that a minimal ''link'' to the financial statements is sufficient. In *Silicon Metal from Brazil* the respondent relied on its financial accounting system to prepare the actual costs submitted to the Department. Because of the limitations of its cost accounting system the respondent relied only on data maintained in the financial accounting system. At verification, the company was able to demonstrate that its reported costs reconciled to its financial statements. Thus, the Department was able to rely on the respondent's financial statements to support the reported costs. Accordingly, *Silicon Metal from Brazil* has no relevance to the instant proceeding where SSAB was unable to reconcile its reported costs to its own financial statements. We further note that SSAB was also unable to reconcile its reported costs to its normal kalkyl system.

SSAB's argument that the Department's verifiers erred by not proceeding beyond the overall reconciliation of submitted costs to actual financial statement costs fails to recognize the importance of this reconciliation as the starting point of the Department's cost verification procedures. The Department conducts antidumping inquiries of companies that operate in a wide variety of industries. In those cases involving COP and CV, the Department attempts to work within the limitations presented by the respondent's normal accounting systems for purposes of establishing a reasonable method for allocating costs to individual models of the subject merchandise. Before assessing the reasonableness of respondent's cost allocation methodology, however, the Department must ensure that the total amount of the reported costs account for all of the actual costs incurred by the respondent in producing the subject merchandise during the period under examination. This is done by performing a reconciliation of the respondent's submitted COP and CV data to the company's audited financial statements (when such statements are available). Because of the time constraints imposed on verifications, the Department must rely generally on the independent auditor's opinion that the respondent's financial statements present the actual costs incurred by the company as reported in accordance with GAAP in the exporting country. In situations where the respondent's total reported costs differ from amounts reported in its financial statements, the overall cost reconciliation helps the Department to identify and quantify the amount of those differences in order to determine whether it was reasonable for the respondent to depart from its normal GAAP accounting methods for purposes of reporting COP and CV.

Although the format of the reconciliation of submitted costs to actual financial statement costs depends greatly on the nature of the accounting records maintained by the respondent, the reconciliation represents the starting point of a cost verification because it assures the Department that the respondent has accounted for all costs before allocating those costs to individual products. Contrary to SSAB's assertion, it would be of little value for the Department to review respondent's cost allocation methods and individual elements of costs before determining that, in total, all actual production costs for the subject merchandise had been accounted for in the submitted costs. Verifying individual elements of cost and their allocation without ensuring that these elements represent actual costs incurred by the company provides no assurance with respect to the accuracy and reasonableness of the submitted COP and CV data. Moreover, in this specific instance, the Department verifiers could not proceed to verify SSAB's submitted COP and CV data based on the modified kalkyl system before understanding that the kalkyl system from which these costs were derived reconciled to SSAB's actual production costs as presented in the company's audited GAAP financial statements.

Respondent cites to *American Permac* with regard to the burden of proof on a respondent. In *American Permac,* the CIT found that Commerce had required, as the basis of a level of trade adjustment, that respondent trace ''precisely and conclusively the exact level of impact the difference in the levels of trade might have on (home market prices).'' The CIT found that this burden of proof was unreasonable, citing the fact that the statute contains a presumption that certain differences in commercial terms will distort the price comparison. Id. Thus, *American Permac* is irrelevant to the instant proceeding for two reasons. First, the issue here is not level of trade, but rather the Department's consistent practice of requiring that the respondent establish that the reported costs are based on the company's normal books and records kept in conformity with GAAP. This practice has been affirmed in *Nippon Pillow Block* v. *U.S.,* 820 F. Supp. 1444 (CIT 1993). Second, unlike circumstances of sale, there is not a presumption in the statute or regulations that reported costs will reconcile to the company's normal books and records. Indeed, the very purpose of verification, which is to confirm the accuracy of the data reported, reflects the absence of any such presumption.

Our verification testing and other evidence on the record regarding SSAB's use of a modified kalkyl system indicate that this system is not maintained in accordance with GAAP and had a significant distortive impact on SSAB's reported COP and CV data. SSAB's failure to reconcile its submitted costs to its normal books and records prevented us from quantifying the magnitude of the distortions which exist in its submitted data. Accordingly, the Department's determination that SSAB failed the cost verification was objective and consistent with our past practice to reject a respondent's COP and CV data when it cannot be shown that the costs reported to the Department are the respondent's actual costs for the subject merchandise. *See* e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Grain Oriented Electrical Steel from Italy,* 59 FR 33952 (July 1, 1994).

Comment 2—Verification Team

SSAB argues that the verification was systematically flawed. SSAB alleges that the Department ''prejudged'' the integrity of SSOX's cost data, such ''prejudgment'' evidenced by the Department's statements at the beginning of verification. For example, SSAB declares that the Department's verifiers in this review indicated an intent to pursue reconciliation of the reported kalkyl costs to SSOX's financial statement costs and, as a result, refused to, or had no time to, verify the accuracy of the kalkyl costs. SSAB also argues that the verification team's instructions that they would be unable to accept new information during verification demonstrates the fact that they had prejudged the integrity of the company's submitted cost data. In SSAB's view, this evidence shows a prejudicial ''mindset.''

Petitioners argue that the Department's verification team properly determined not to accept new cost information at verification. Petitioners maintain that verification is intended to test the accuracy of data already submitted rather than to provide the respondent the opportunity to submit a new response. Petitioners note that the Department's verification agenda in the present case, and nearly every verification agenda issued by the Department in recent years contains such a statement: ''Please note that *verification is not intended to be an opportunity for submitting new factual information*.'' *See* Cost Verification Agenda, August 1, 1996 at 2. Petitioners argue that a statement by the verifiers that new cost data would not be accepted at verification does not demonstrate any preconceived bias by the Department against SSAB. Petitioners maintain that the Department afforded SSAB more chances than is appropriate to prove the accuracy and reliability of its submissions.

Department Position

We find SSAB's comments with respect to the procedures applied by and ability of the Department's verification team to be unfounded. The Department's verification was conducted in accordance with the regulatory and statutory requirements and followed standard verification procedures. As discussed in our response to Comment 1, SSAB's cost verification failure was due to its inability to demonstrate that the costs submitted to the Department were reflective of the actual costs and reconciled to actual costs recorded in its normal books and records.

SSAB's assertions regarding the ''mindset'' of the verification team are unsupported by the record in this proceeding. Indeed, SSAB raised for the first time its claim of a particular ''mindset'' by the team in its case brief. This brief was submitted more than eleven weeks following the completion of the verification. Throughout the course of the on-site verification, SSAB's company officials, its counsel and consultants were informed of the discrepancies that the verification team had identified. In fact, the verification team discussed with SSAB company officials, its counsel and consultants the need to take breaks in the verification process in order to confer with Department officials in Washington concerning these discrepancies. At no time during the verification proceedings did SSAB contact Department officials in Washington to express concern that the verification team was prejudicial and not proceeding in an appropriate manner. Further, in the eleven weeks following the conclusion of the cost verification, SSAB did not contact the Department to express its concerns regarding the Department's assigned team. SSAB's current attempts to cast doubts on the fairness and competence of the verification team are not credible.

With regard to SSAB's claim that the verification team's improper approach to verification was demonstrated by the statement that they could not accept new information while at verification, we find this assertion to be without merit. The team's actions were consistent with the statutory and regulatory deadlines regarding submissions of new factual information. This requirement, which applies in every antidumping proceeding, was noted in the Department's verification agenda which was sent to SSAB prior to verification. *See* Verification Agenda, August 1, 1996.

Comment 3—Total Facts Available

SSAB contends that, pursuant to section 782(d) of the Act, the Department may not resort to facts available unless, upon determining that a response to a request for information does not comply with the request, the Department promptly informs the respondent submitting the response of the nature of the deficiency. Respondent maintains that the Department is required to provide the respondent with the opportunity to remedy or explain the deficiency subject to the time limits established for the completion of the review.

Respondent argues that the Department never informed SSAB that the SSOX kalkyl-based cost data submitted by the company did not comply with the Department's requests for COP and CV information for the subject merchandise. Respondent also argues that neither of the two supplemental cost questionnaires issued by the Department constitute notification that the company's cost response was deficient. Therefore, respondent concludes that the failure of prompt notification of the alleged deficiencies in SSAB's submitted costs prohibits the Department from relying on facts available in this review.

Additionally, respondent notes that, pursuant to section 776(b) of the Act, the Department may use *adverse* facts available only if substantial evidence on the record permits the Department to find that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. SSAB maintains that it cooperated fully with the Department, acting to the best of its ability to comply with the Department's requests for information.

Respondent notes that the Department's determination that SSAB had not acted to the best of its ability in meeting the Department's requirements is based on the following assertions: (1) SSAB failed the cost verification, *i.e.*, failed to report cost information that could be reconciled to its financial statements, and (2) failed to give the Department fair notice of this alleged defect. Respondent argues that neither of these assertions are supported by substantial evidence in the record, and therefore cannot provide the foundation to rely on adverse facts available required by statute. SSAB maintains that by relying on the very same basis to claim the right to apply adverse facts available, the Department is taking the position that the basis for deciding to rely on total facts available is also automatically grounds to rely upon adverse facts available. Respondent contends that this interpretation of the statute renders section 776(b) null and void as such an interpretation ignores that, in addition to the basis for deciding to rely on facts available, the Department must also find a separate and distinct basis for relying on adverse facts available. Respondent maintains that a verification failure cannot trigger the use of adverse facts available under section 776(b), otherwise that statutory provision is meaningless.

Respondent argues that it is inherently unreasonable to expect that a respondent will give fair notice of a defect it has no reason to believe exists. Respondent maintains that it is for the Department, not a respondent, to first determine whether a questionnaire response is deficient or defective or whether a respondent will be able to pass a verification. Respondent argues that failure by the Department to give fair notice of a defect cannot be viewed as a failure of a respondent to act to the best of its ability to comply with a request for information. Respondent maintains that the Department never requested that SSAB notify the Department of any defects in its submission. Respondent, citing *Olympic Adhesives Inc.* v. *United States,* 899 F.2d 1565, 1574 (Fed. Cir. 1990), maintains that the Department cannot resort to facts available if the Department never requested that a respondent supply the information, the absence of which is the basis for facts available.

Respondent further notes that under the amendments to the antidumping laws by the URAA, the Department no longer has the discretion to return to an original investigation and apply adverse facts available rate based upon the highest previously determined margin, which, in turn, was calculated on the basis of BIA. Respondent notes that the Department is not permitted to automatically equate facts available with the most adverse information available. SSAB claims that the adverse facts available rate applied in this review by the Department is clearly intended to punish SSAB for circumstances outside of its control and is contrary to law. Respondent maintains that the Department is obligated, to the extent possible, to use actual data submitted for the record. *See e.g.,* section 776(b) (3) and (4). Furthermore, respondent contends that the Department is now, by statute, clearly encouraged to rely upon actual data submitted in previous reviews.

Respondent maintains that reconciling the kalkyl system cost data directly to the costs reported in SSOX's financial accounting system is a demand impossible for the company to meet. The demand that SSOX perform a function that was impossible for the company to perform is inherently unreasonable, arbitrary, capricious and contrary to law. Citing *Böwe Passat Reinigungs-und Wäschereitechnik* v. *United States,* 962 F. Supp 1138 (CIT 1996) and *NEC Home Electronics, Ltd.* v. *United States,* 54 F. 3d 736 (Fed. Cir.

1995), respondent contends the Department cannot make demands on respondent that the respondent could not meet under any practical circumstances.

Petitioners argue that the Department's determination to employ total facts available was reasonable, supported by substantial evidence and in accordance with law. Petitioners also maintain that the Department has adhered to the statutory elements for the application of total facts available, including the notice requirement. Petitioners also contend that the Department's determination to employ adverse facts available is reasonable, based on substantial evidence and in accordance with law. Moreover, petitioners argue that the Department properly applied total adverse facts available.

Department Position

We disagree with SSAB. We find that our determination to rely on adverse facts available is reasonable, supported by evidence on this record and is otherwise in accordance with the law. Consistent with section 776(b) of the Act, we have applied total adverse facts available in reaching these final results of review.

We believe that SSAB has misconstrued the notice provisions of section 782(d) of the Act. Specifically, we find SSAB's arguments that the Department was required to notify it and provide an opportunity to remedy its verification failure are unsupported. The provisions of section 782(d) apply to instances where ''a response to a request for information'' does not comply with the request. Thus, after reviewing a questionnaire response, the Department will provide a respondent with a notice of deficiencies in that response. However, after the Department's verifiers find that a response cannot be verified, the statute does not require, nor even suggest, that the Department provide the respondent with an opportunity to submit another response.

With regard to SSAB's claims that a respondent cannot be found to be uncooperative for failing to comply with a request that is impossible to satisfy, the facts of this case do not support SSAB's claims for two reasons. First, pursuant to section 782(c)(1) of the Act, the Department will consider a party's ability to submit the information in the form requested if the respondent promptly after receiving the request notifies the Department that it is unable to supply the requested information together with a full explanation and suggested alternative forms so that the Department can consider modification of the requirements. In this case, respondent never notified the Department of its inability to provide the requested information. Second, if SSAB knew that SSOX's modified kalkyl system could not be reconciled to SSOX's normal financial accounting system, it should not have used this system for reporting the submitted cost data.

Additionally, we disagree with respondent's claim that the Department treated its basis for total facts available as automatic grounds for adverse facts available. In our preliminary results, we clearly distinguish between the two concepts. The Department's bases for relying on total facts available were: SSAB's inability to demonstrate that the costs submitted to the Department were reflective of actual costs accrued to produce the subject merchandise and reconcilable to information recorded in the normal books and records; and our inability to use partial facts available to fill in for the unverified information. On the other hand, the Department's basis for relying on an adverse inference in selecting the appropriate facts available was SSAB's failure to act to the best of its ability in complying with our information requests, specifically, submitting cost data for the record which could not be verified, failing to prepare the requested reconciliations, and failing to inform the Department that the cost data could not be tied to actual costs as reflected in the financial accounting system. While the standards under the statute for total facts available and adverse inferences are different, there is no reason why some of the facts adduced to support findings under the two provisions cannot be the same. *See,* for example, *Certain Pasta from Turkey* at 30312 (adverse facts available as to Filiz).

With regard to SSAB's claim that it did cooperate to the best of its ability, we note that SSAB now dismisses the specific guidance provided by the Department that the submitted costs must reconcile to the actual costs as reflected in the company's financial accounting system. SSAB asserts that these instructions were mere ''boilerplate'' instructions which did not apply to its submitted data. We disagree with this interpretation. The fact that the Department explains the same cost reconciliation requirements in every proceeding does not render them less significant; rather, the Department's consistent approach provides evidence of the paramount importance of these requirements in ensuring the accuracy of the submitted data.

Further, we disagree with respondent's claim that the Department is required to use other data submitted by SSAB in this review. For reasons stated in the preliminary results of review, the submitted sales data is not usable. As part of those results, we noted that because of the flawed nature of the cost data, home market sales could not be tested to determine whether they were made at prices above production cost. We further explained that we could not rely upon SSAB's home market sales data due to the absence of reliable difference in merchandise figures which are based on the unverified cost information from the company's section D response. Additionally, the preliminary results stated that, in the absence of home market sales data (*i.e.,* when the home market is viable but there are insufficient sales above COP to compare with U.S. sales), the Department would normally resort to the use of constructed value as normal value. However, the constructed value information reported by SSAB includes the discredited cost data. Therefore, the use of facts available for cost of production data precludes the use of the submitted constructed value information. We continue to find that the absence of reliable cost data renders SSAB's entire response unusable.

SSAB's claim, citing *Olympic Adhesives,* that we ''cannot resort to facts available if the Department never requested that a respondent supply the information'' is not relevant to this case. In this case, the Department requested from SSAB certain cost information regarding the company's actual production costs during the POR. As previously noted, we find that, by failing to provide verifiable information responsive to this request SSAB did not comply with the Department's request.

With regard to the appropriate total facts available, section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. See also SAA at 200. There is nothing ''automatic'' about the choice of adverse facts available, as the CIT has noted with respect to ''best information available'' (the predecessor to adverse facts available), Congress ''explicitly left a gap for the agency to fill.'' *Allied Signal Aerospace Co.* v. *United States,* 996 F.2d 1185, 1191 Fed. Cir. 1993) (quoting *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 843–44 (1984)). We note, however, that our preliminary results specifically stated that, in the instant proceeding, we did *not* apply the most adverse facts available to SSAB.

We also disagree with SSAB's suggestion that we are not permitted to use petition data as total facts available. Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination in the investigation, a previous administrative review, or other information placed on the record. The statute provides no ''clear obligation'' or preference for relying on a particular source in determining adverse facts available. As to respondent's suggestion that we cannot rely on the final determination in the LTFV proceeding because it was based on best information available, we find no support for this claim. In fact, the SAA specifically states that facts available may include such sources as ''the petition, other information placed on the record, or determinations in a prior proceeding.'' (*See,* SAA at 200.)

Comment 4—Alternatives for Determining Facts Available

Respondent argues that the Department should select, as facts available, an alternative cost methodology and calculate a dumping margin in this review on the basis of price-to-price comparisons or, in the alternative, apply the margin calculated for SSAB in the most recently completed review. As alternative cost methodologies, respondent suggests using (1) SSAB costs reported in the first administrative review, or (2) the costs reported in this review by SSTP. Respondent argues that the cost data reported by SSAB in the first review were fully verified by the Department and relied upon in calculating a margin for SSAB in that review. Alternatively, respondent maintains that SSTP's reported costs in both the first and second reviews were based upon that company's normal accounting records and were verified in the first review. Respondent argues that SSTP did not rely upon the kalkyl system in reporting control number specific costs in either the first or second review. Citing *Certain Pasta from Turkey,* 61 FR 30309, 30312 (June 14, 1996), respondent argues that the Department should use the cost data submitted by SSTP either in the first review or this review. Respondent argues that SSAB was entitled to believe that had SSOX failed the cost verification, that verified SSTP cost data would be relied upon as facts otherwise available.

SSAB argues that its total cost database consisted of two separate cost databases, one for SSOX and the other for SSTP. These two data bases were merged into a single cost database for purposes of reporting COP and CV to the Department. SSAB contends that the Department erred in rejecting SSAB's entire cost database because SSOX was unable to reconcile its reported costs, based on the kalkyl system, to its normal accounting system. Respondent maintains that the Department's planned verification of SSTP reported costs was extensive and exhaustive. Respondent claims that had the Department wanted to complete the cost verification of SSTP, all SSTP resources necessary were available to the Department during the cost verification at SSOX to enable the Department to do so. Respondent therefore concludes that if the Department determines SSAB did fail verification, it should use SSTP's costs as the most appropriate facts available.

Alternatively, respondent argues that the Department should apply the antidumping margin from the first administrative review as alternative facts available. Respondent contends that in that review, the Department relied upon actual cost data, fully verified, in determining SSAB's control number specific costs of production. Respondent maintains that based on that data, the Department conducted its sales below cost test and calculated an antidumping margin using price-to-price comparisons. *See Certain Cut-to-Length Carbon Steel Plate from Sweden,* 61 FR 15772 (April 9, 1996). Respondent argues that a BIA margin rate, by definition, is not based on actual costs and cannot be viewed as a reliable or more accurate indicator of an antidumping duty margin which was calculated on the basis of actual, verified data, in a more recent review.

Petitioners argue that the Department properly used a total adverse facts available rate based on SSAB's less than fair value investigation margin. Petitioners maintain that cost data from the first review are not part of the administrative record and have not been determined to be related to the connum-specific costs in the present review. Additionally, petitioners contend that SSTP's reported costs are not appropriate as alternative facts available because SSTP's cost data was not merged with SSOX's cost data. To substantiate this claim, petitioners point to SSAB's response where SSAB stated that no control number was produced at both SSOX and SSTP and therefore the reported cost for each control number was the COP and CV from the plant where the product was produced. Furthermore, petitioners refer to SSAB's response which states that only SSOX products were sold in the U.S. and that there were no U.S. or home market comparison products sold at SSTP. Moreover, petitioners assert that because the Department was unable to verify SSTP's cost data due to problems encountered at the SSOX cost verification, it would be inappropriate to use the SSTP cost data as a substitute for the flawed SSOX cost data. Finally, petitioners argue that the margin from the first administrative review inappropriately rewards SSAB for failing to provide responsive information and may allow SSAB to control the results by refusing to provide responsive information resulting in margins in excess of the previous review rate.

Department Position

We disagree with respondent. None of the alternatives suggested by SSAB would appropriately serve as adverse facts available in this review because none of them is adverse. First, we note that actual costs from a previous review period are by definition not adverse. If the Department were to rely on such data, a respondent would have no incentive to report its costs once it was satisfied with the verified costs from a particular review period. Second, as to the use of SSTP's cost data, we have no reason to regard these costs as adverse with respect to SSOX's cost experience in producing the subject merchandise. Moreover, it is not clear that SSTP's cost data has any relation to SSOX's cost experience as SSTP's products are significantly different in terms of product characteristics from SSOX's (as respondent has repeatedly acknowledged).

Finally, we note that the rate from the first administrative review is not appropriate because it does not capture the decision to assign an adverse facts available rate to SSAB. We agree with petitioners that the margin from the first review inappropriately rewards SSAB for failing to provide responsive information and may allow SSAB to control the results by refusing to provide responsive information resulting in margins in excess of the previous review rate.

Comment 5—Other Issues

Petitioners argue that SSAB's sales data could not be verified. Petitioners contend that SSAB's assignment of plate specification codes is so flawed that proper product comparisons are not possible. Specifically, petitioners argue that SSAB miscoded its plate specifications resulting in inaccurate matches and SSAB has impeded the Department's ability to make appropriate comparisons by failing to provide industry standards. Petitioners also argue that numerous other deficiencies in sales completeness, date of sale reporting, product characteristics and inaccurate, incomplete and unreported sales information render SSAB's sales responses unusable.

Respondent argues that its specification codes provide a reliable and reasonable basis for model matches by the Department. Respondent maintains that the deficiencies alleged by petitioners do not render SSAB's sales data unusable. SSAB maintains that it disclosed the primary deficiencies alleged by petitioners to the Department in corrections submitted to the Department on the opening day of SSAB sales verifications. Respondent argues that it provided a complete reporting of home market and U.S. sales, as appropriate.

Department Position

These issues are moot since the Department is using an assigned facts available margin in this review.

Comment 6—Duty Absorption

Petitioners argue that the Department should determine that SSAB has absorbed antidumping duties on behalf of its U.S. customers. Petitioners maintain that the Department has the discretion to conduct such an inquiry even if it is not required to do so. Moreover, petitioners argue that the Department should exercise this discretion to conduct an absorption inquiry because they argue absorption is obvious on the record of this review and such an inquiry in this review would promote the efficient use of Departmental and interested party resources. Petitioners contend that SSAB and its U.S. subsidiary, Swedish Steel Inc., have absorbed antidumping and countervailing duties. Additionally, petitioners argue that confining absorption to the second and fourth reviews will encourage respondents to manipulate the administrative review process to avoid duty absorption findings.

Respondent argues that the Department should reject petitioners' request to initiate a duty absorption investigation in this review. Respondent argues that the request for the duty absorption investigation is untimely. Respondent maintains that the Department's proposed timetable for conducting duty absorption investigations for transition reviews does not provide for a duty absorption investigation in this review. Moreover, respondent contends that the Department has established precedent in a parallel review that it will not undertake a duty absorption investigation. *See Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products From Korea: Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 51882 (October 4, 1996). Respondents also maintain that initiating a duty absorption investigation in this administrative review would not promote the efficient use of Departmental and interested party resources. Respondent argues that it would require the Department to consider additional documentation, review all record information, and allow both parties the opportunity to comment on the results of the Department's analysis, in order to determine whether duty absorption has actually taken place.

Department Position

For transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect as of January 1, 1995, § 351.213(j)(2) of the Department's proposed regulations provides that the Department will make a duty absorption determination, if requested, for any administrative review initiated in 1996 or 1998. *See Notice of Proposed Rulemaking and Request for Public Comments,* 61 FR 7308, 7366 (February 27, 1996) (''Proposed Regulations''). The commentary to the proposed regulations explains that reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year. *Id.* at 7317. Although these proposed regulations are not yet binding upon the Department, they constitute a public statement of how the Department expects to proceed in construing section 751(a)(4) of the amended statute. This approach assures that interested parties will have the opportunity to request a duty absorption determination on entries for which the second and fourth years following an order have already passed, prior to the time for sunset review of the order under section 751(c). Because the order on cut-to-length carbon steel plate from Sweden has been in effect since 1993, these are transition orders. Therefore, based on the policy stated above, the Department will first consider a request for a duty absorption determination for reviews of these orders initiated in 1996. Because this review was initiated in 1995, we have not considered the issue of absorption in this review. However, if requested, we will do so in the next review.

Final Results of Review

As a result of our review, we determine the dumping margin (in percent) for the period August 1, 1994, through July 31, 1995 to be as follows:

Manufacturer/exporter	Margin (percent)
SSAB	24.23

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed company will be the rate stated above; (2) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate made effective by the final results of the 1993–1994 administrative review of this order. (See, *Certain Cut-to-Length Carbon Steel Plate From Sweden; Final Results of Antidumping Duty Administrative Review,* 61 FR 15772 (April 9, 1996).) As noted in these final results, this rate is the ''all others'' rate from the relevant LTFV investigation. (See, *Final Determination,* 58 FR 37213 (July 9, 1993).) These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act 19 U.S.C. 1675(a)(1) and 19 CFR 353.22(c)(5).

Dated: April 2, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9423 Filed 4–14–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815 & A–580–816]

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final results of antidumping duty administrative reviews.

SUMMARY: On October 4, 1996, the Department of Commerce (''the Department'') published the preliminary results of the administrative reviews of the antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea. These reviews cover three manufacturers/exporters of the subject merchandise to the United States and the period August 1, 1994, through July 31, 1995. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Rast (Dongbu), Steve Bezirganian (POSCO), Alain Letort (Union), or John Kugelman, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone 202/482–5811 (Rast), 202/482–1395 (Bezirganian), 202/482–4243 (Letort), or 202/482–0649 (Kugelman), fax 202/482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

The Department published antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea on August 19, 1993 (58 FR 44159). The Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty orders for the 1994/95 review period on August 1, 1995 (60 FR 39150). On August 31, 1995, respondents Dongbu Steel Co., Ltd. (''Dongbu''), Union Steel Manufacturing Co., Ltd. (''Union''), and Pohang Iron and Steel Co., Ltd. (''POSCO''), requested that the Department conduct administrative reviews of the antidumping duty orders on cold-rolled and corrosion-resistant carbon steel flat products from Korea. On the same day, the petitioners in the original less-than-fair-value (''LTFV'') investigations (Bethlehem Steel Corporation, U.S. Steel Group—a unit of USX Corporation, Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company, collectively referred to as ''petitioners'') filed a similar request. We initiated these reviews on September 5, 1995 (60 FR 46817—September 8, 1996).

Under the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On March 22, 1996, the Department extended the time limits for preliminary and final results in these reviews. *See Extension of Time Limit for Antidumping Duty Administrative Reviews,* 61 FR 14291 (April 1, 1996).

On October 4, 1996, the Department published in the **Federal Register** the preliminary results of the second administrative reviews of the antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea (61 FR 51882). The Department has now completed these administrative reviews in accordance with section 751 of the Act.

Scope of the Review

The review of ''certain cold-rolled carbon steel flat products'' covers cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (''HTS'') under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.,* aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of

0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

The review of ''certain corrosion-resistant carbon steel flat products'' covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

These HTS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

The period of review (''POR'') is August 1, 1994 through July 31, 1995. These reviews cover sales of certain cold-rolled and corrosion-resistant carbon steel flat products by Dongbu, POSCO, and Union.

Verification

As provided in section 776(b) of the Act, we verified information provided by Dongbu, POSCO, and Union using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from Dongbu, POSCO, and Union, exporters of the subject merchandise (''respondents''), and from petitioners. Petitioners requested a public hearing, which was held on December 16, 1996.

General Comments

Petitioners' Comments

Comment 1. Petitioners allege that the home market for such or similar merchandise in Korea is not a viable comparison market, and that the Department should base normal value (''NV'') on sales to third countries. Petitioners cite section 773(a)(1)(C)(iii) of the Act, which provides that the Department will use third-country sales as the basis for normal value if ''the particular market situation in the exporting country does not permit a proper comparison with the export price or the constructed export price.'' 19 U.S.C. 1677b(a)(1)(C)(iii). The Statement of Administrative Action (''SAA'') accompanying the URAA states that ''* * * Commerce may determine that home-market sales are inappropriate as a basis for determining normal value if the particular market situation would not permit a proper comparison. The Agreement [on Implementation of Article VI] does not define 'particular market situation,' but such a situation might exist where a single sale in the home market constitutes five percent of sales to the United States or where there is government control over pricing to such an extent that home-market prices cannot be considered to be competitively set.'' H.R. Doc. No. 316, 103rd Cong., 2nd Sess. 822 (1994). Petitioners argue that steel prices in Korea are controlled *de facto* by the government of Korea to such an extent that home-market prices cannot be considered to be competitively set, making the Korean market non-viable.

Petitioners provide several lines of argument in support of their contention that the Korean market is not viable. In their first line of argument, petitioners contend that statements by numerous sources—both the interested parties themselves and widely acknowledged independent authorities—demonstrate the Korean government's control over the price at which both subject merchandise and other non-steel products are sold. These sources are:

(1) Circumstantial evidence, in the form of data submitted by the respondents themselves, which allegedly demonstrates that prices for subject merchandise in Korea remained flat and coincident from 1991 through 1995, even though all formal, *de jure* government price controls had ended by February 7, 1994.

(2) Petitioners claim that independent, third party sources confirm the existence of government control over steel prices and that no credible, independent source has ever denied the existence of price controls. Petitioners cite numerous articles and financial reports, published in reputable financial dailies and by major financial institutions in which the existence of government control over steel prices is discussed. In particular, petitioners cite the following sources in support of their allegations:

- ''Domestic steel prices in Korea do not necessarily move directly with international prices or the domestic supply and demand due to government price controls.'' Barclays de Zoete Wedd (Asia) Limited, *POSCO: The Price Is Right* at 4 (Jan. 29, 1996) (''*BZW Report*'').
- ''[T]he government allowed 4.2 percent domestic price increases in April for the first time since 1991 to induce cold-rolled steel makers to supply more volume to the domestic market.'' *Id.* at 11.
- ''POSCO needs government approval to raise domestic prices and domestic prices rarely fluctuate due to the government's anti-inflationary pricing policy.'' *Id.* at 17, in the section entitled ''Domestic Prices Are Under Government Control.''

- ''Prices, however, continued to fall due to the government's tight pricing policy on * * * steel and cement.'' Hoare Govett Securities, Ltd., *Korean Steel Companies—Industry Report* at 6 (Nov. 1, 1994) (''HGS Report'').
- ''With the Government as its largest shareholder, [POSCO] has supported many domestic steel companies with stable prices.'' Young-Kyun Ryu, ''Steel: Imported Hot-coil Price is Lower Than POSCO's Local Price,'' *Investment Newsletter* (June 27, 1996).
- ''About 75 percent of POSCO's products are sold in Korea where a controlled market and strong domestic demand have smoothed the traditional volatility of international steel markets.'' Investext, *POSCO—Company Report* (June 12, 1996).
- ''The balanced market conditions have helped the government establish a stable pricing policy on steel that protects POSCO against cyclical downturns in the global steel industry.'' (*BZW Report*)
- ''Domestic steel prices in Korea do not necessarily move directly with international prices or domestic supply and demand due to government price controls.'' John Burton, ''POSCO moves to pre-empt challenge from Hyundai,'' *Financial Times,* Mar. 15, 1996.
- ''Domestic steel prices are under government control * * *'' John Burton, ''Strong export prices boost POSCO 119 percent,'' *Financial Times,* Feb. 8, 1996.
- ''Last September, *Metal Bulletin* reported that '[d]omestic Korean prices of CR and surface-treated sheet are closely monitored by the Korean government * * *' '' Russ McCulloch, ''Pocos proposes expansion into a growing market,'' *Metal Bulletin,* Sep. 1995, at 67.
- ''Though it denies it, POSCO is widely believed to 'consult' with the government about its business plans and its pricing.'' ''South Korean Industry: The war goes on,'' *The Economist,* Mar. 2, 1996, at 62.

As recognized by the Court of Appeals for the Federal Circuit (''CAFC'') in *Matsushita Elec. Indus. Co.* v. *United States,* 750 F.2d 927, 934 (Fed. Cir. 1984), even circumstantial evidence is ''always relevant and, indeed, may be more reliable than self-serving declarations'' provided by respondents. Petitioners argue that these articles and reports are so numerous, and emanate from such credible and neutral third parties, as to give them the weight of authority. The authors of the reports in question depend upon their knowledge of the Korean steel market and their credibility for their very livelihoods, claim petitioners.

(3) Petitioners assert that Union has previously admitted to the existence of government price controls during the POR, and that Union's subsequent retraction cannot be given any weight. In the verification report issued as part of the first administrative review of this proceeding, a Union official was quoted as volunteering that his company was subject to government price controls and that ''the Korean government sets the price levels for domestic sales * * *.'' Although Union later ''clarified'' this statement by explaining that the Korean government simply ''reviews and approves the price lists for domestic sales,'' petitioners claim that this ''non-denial denial'' actually substantiates their own claims. Petitioners argue that a year later, after they had filed their allegation that the home market is not viable and the full import of such a statement became clear, Union retracted its ''non-denial denial'' and attempted to explain away its admission by confusion over the date on which formal price controls had been eliminated. Petitioners contend that the idea that a Union executive could have so little idea of the company's pricing practices as to provide a totally erroneous explanation of the government's involvement in them is ludicrous. Petitioners point out that the record contains several such instances of misrepresentation, omission, and subsequent recantation by Union. Petitioners argue that admissions against interest are considered so inherently trustworthy and probative that they are an exception to the hearsay rule under the Federal Rules of Evidence, and are deemed by courts to carry a circumstantial guarantee of reliability that a party's neutral and favorable statements are deemed to lack. *See, e.g., Masson* v. *New Yorker Magazine, Inc.,* 501 U.S. 496, 512 (1991).

(4) Petitioners contend that the Korean Iron and Steel Association (''KOSA'') itself has acknowledged the existence of government price controls. Petitioners quote KOSA's 1995 yearbook, which states in pertinent part that ''the domestic price of the cold-rolled steel has been maintained lower than the international price,'' and that the ''price management system can cause a shortage of domestic supply if the difference of international and domestic prices becomes bigger.'' Petitioners add that when two independent professional translators, neither of whom was apprised of the nature of the document or for what purpose it would be used, were asked to translate this passage, they both used ''price control'' rather than ''price management system.'' Petitioners argue that these minor differences in translation do not detract from the evidence that the government controls steel prices in Korea.

(5) Petitioners also submit that the price reporting termination notices sent by the Korean government's Economic Planning Board to the respondents repeatedly request their cooperation in the price stabilization effort regardless of the reporting requirements. According to petitioners, these notices indicate that the Korean government controls the price at which subject merchandise is sold. Petitioners also cite an authority on the Korean economy, who wrote, in pertinent part, that ''[b]ecause of the acceptance of the government's control over business, Korean companies will nearly always respond to government directions even though they may not be legally binding. [* * *] Failing to comply with administrative guidance on the ground that it is not legally binding may result in disadvantageous treatment in future transactions for which government approval is required.'' See Trenholme J. Griffin, *Korea: The Tiger Economy,* 1988, *appended to* petitioners' October 15, 1996 letter at Exhibit 10.

(6) Petitioners contend that the Korean government itself recently announced price controls on flat-rolled steel products outside the scope of the instant review. On October 9, 1996, petitioners allege, the Korean Ministry of Finance and Economy issued a press release in which it stated that POSCO would reduce domestic prices of hot-rolled steel coil from its mini-mills at the end of that month. Petitioners argue that whether or not POSCO announced the price cut itself in an earlier press release is irrelevant, since that announcement was subsequent to the Korean government's ''September 3rd Countermeasures,'' whose explicit policy goal was the stabilization of prices. Petitioners cite a letter (dated October 22, 1996) from Korea's Ministry of Trade, Industry, and Energy to the United States Trade Representative (''USTR'') as further proof of their allegations.

Petitioners find it ''suspicious'' that the Korean government saw no need to ''clarify'' its statement until after the press release was entered on the record of these proceedings and the trade-related implications of the October 9 announcement became apparent. POSCO itself did not protest the Korean government's announcement of the price reduction as its own initiative until after the press release was entered onto the record of these proceedings.

Petitioners argue that if the official government press release announcing POSCO's price reductions was truly in error, then there is no reason to accept the veracity of statements contained in a self-serving, *post hoc* government letter of limited circulation. Petitioners also stress that the fact that the Korean government's letter to USTR bears the same date as POSCO's letter to the Department, to which it was appended, demonstrates the degree of cooperation between the Korean steel industry and the Korean government, a relationship which respondents insist does not exist.

(7) Petitioners assert that Hanbo Steel, whose products potentially are subject to the antidumping duty orders on subject merchandise, has previously admitted that price controls exist, and that its subsequent retraction cannot be given any weight. Petitioners cite a May 27, 1994 *Offering Circular* by Hanbo (four months after the date the Korean respondents claim all price controls ended), in which Hanbo stated that prices are ''determined by the Korean government'' and that its competitors charge the same prices for the same products. Although Hanbo later retracted this statement, petitioners point out that in the *Offering Circular,* Hanbo confirmed that the information contained in that document was true and accurate in all material respects. Said *Offering Circular,* petitioners point out, was subject to securities fraud laws in the United States and in other jurisdictions in which Hanbo's securities were offered or sold. Given the potential ramifications of an admission by Hanbo of the existence of price controls during the Department's verification in a dumping case, Hanbo had every reason to conceal their existence and to explain away its prior admission in the *Offering Circular.* Therefore, petitioners argue, Hanbo's recantation at verification should be ignored. Furthermore, petitioners argue, the Department's own Hanbo verification report actually supports the fact that the Korean government controls domestic steel prices. *See* the Memorandum from Richard O. Weible to the Files dated February 21, 1997.

(8) Finally, petitioners point to an article in Korea's leading English-language daily, the *Korea Herald,* according to which leading Korean steel makers, in a meeting with the Minister of Trade, Industry, and Energy, requested the lowering of domestic hot-coil prices. Petitioners affirm this belies statements by Korean government officials denying government intervention in steel pricing. In another article reporting on the same meeting and submitted by respondents Dongbu and Union, it was stated that ''the request embarrassed the Minister because that issue was not on the agenda of the meeting * * *.'' To petitioners, such language suggests that issue is sometimes included on the agenda of government-industry meetings.

In their second line of argument, petitioners claim that mechanisms remain by which the Korean government can control the price at which steel is sold in the domestic market, and which explain why respondent's prices remained flat after the purported end of price controls. Petitioners allege that the Korean government controls prices through administrative guidance and through monitoring of the respondents' prices and production costs under the ''Monopoly Regulation and Fair Trade Act'' (''MRFTA'').

Petitioners allege that the Department itself, in a 1995 commercial guide issued by the International Trade Administration, concluded that ''government intervention is extensive'' and that ''the prices of many products are *de facto* controlled.'' *See Korea: Economic Trends and Outlook* (USDOC, International Trade Administration, August 23, 1995). Petitioners also allege that in a May 1994 article, after the putative end of *de jure* price controls, the Korean president's senior economic adviser acknowledged that price controls should be liberalized ''so that prices may be determined normally in the market and thus administrative guidance on prices can be eliminated altogether.'' *See* Ed Paisley, ''The Morning After,'' in *Far Eastern Economic Review,* May 26, 1994, at 52. The legal authority for these price controls, petitioners allege, derives from the Price Stabilization and Fair Trade Act of 1992. Petitioners allege that the Korean government uses administrative means at its disposal to pressure businesses into complying with its price guidelines, in particular by means of tax audits or the threat thereof. In support of this contention, petitioners quote the English-language daily *The Korea Times* as saying, on October 12, 1996, that ''[t]he government must stop its long practice of mobilizing tax auditors, policemen, ward officials and fire fighters to bully businessmen not to increase prices.'' Petitioners affirm that POSCO's own ''Economic Policy Direction for 1995'' (sales verification exhibit 85–E) is further evidence of the Korean government's role in stabilizing domestic prices. Finally, petitioners note that the Korean government's status as POSCO's single largest shareholder enables it to control domestic steel prices. Petitioners contend that one of POSCO's competitors, Hanbo, admitted as much to a Department official during verification: ''POSCO does not raise prices because of the partial government control of POSCO.'' *See* Hanbo Viability Verification Report at 2.

According to petitioners, respondents admit, and verification confirmed, that the Korean government continues to collect certain data from respondents under the MRFTA. Petitioners contend that verification exhibits demonstrate that the data collected relates not only to market share, but also to liabilities, capital, and profit. In petitioners' view, this confirms the statements made in KOSA's 1994 and 1995 yearbooks that domestic steel prices ''do not reflect market conditions'' and ''are not flexible.'' *See* June 26, 1996 letter from Dewey Ballantine to the Secretary of Commerce, Exhibit 3 (at 233).

Petitioners contest respondents' assertions that the Korean government lifted price controls on February 7, 1994, stating that the respondents' own pricing data demonstrate the opposite. Indeed, petitioners affirm, prices of the subject merchandise in Korea remained flat and coincident from 1991 through 1995, well after the official lifting of price controls. No Korean steel company changed its prices or charged a price statistically different from its competitors after the formal lifting of price controls.

Petitioners argue that, once freed of government control, respondents would have been expected to alter pricing on the basis of market forces, especially in an environment of rapidly increasing demand and high capacity utilization. Because this did not happen, petitioners surmise that *de jure* price controls were replaced with *de facto* price controls. Petitioners state that the Department has used the lack of change in certain practices as evidence of the continuation of *de facto* government activity, notwithstanding the alleged termination of *de jure* government involvement. *See, e.g., Final Affirmative Countervailing Duty Determinations and Final Negative Determinations of Critical Circumstances: Certain Steel Products from Korea* (58 FR 37328, 37342–45—July 9, 1993), where the Department rejected respondents' claim that the Korean government was no longer engaged in credit allocation.

Petitioners find respondents' explanations for continued and coincident flat prices in the home market conflicting and, therefore, incredible. On the one hand, say petitioners, respondents claim that price stability was due to long-term market strategy and a concern for their customers' ''well-being,'' but on the other hand, they claim that transaction prices vary due to adjustments in sales and payment terms. Petitioners contend that respondents' explanations for their domestic pricing behavior are ''incredible'' for several reasons.

First, POSCO has admitted that its home-market prices did not change in a context of fluctuating economic indicators, such as world prices, capacity utilization, exchange rates, and domestic inflation. Since International Monetary Fund statistics show that domestic consumer prices in Korea rose 27.2 percent between 1991 and 1995, petitioners argue that Korean steel prices, unchanging in nominal terms, actually decreased by nearly a third during that period, at a time when demand for steel products in Korea was extremely strong.

Second, in response to respondents' claim that their pricing behavior is normal and expected in an oligopolistic market situation, petitioners retort that typical oligopolistic behavior conspires to keep prices high, not low as is the case here. Moreover, note petitioners, in an open market even oligopolies must respond to international price pressures. Petitioners contend that what is at work here is an oligopoly dominated by a government-owned entity (POSCO) and dedicated to imposing government-mandated price disciplines on much smaller entities (Dongbu and Union).

Third, argue petitioners, not only are respondents' claims that they were able to compensate for the stability of list prices in the 1991–1995 period by altering their ''effective'' prices unsupported by evidence on the record, these claims actually provide further evidence that respondents are not free to alter domestic prices in response to market conditions. After initially denying the existence of discounts, petitioners say, respondents subsequently claimed that effective prices were in fact altered by their discount policies. Petitioners find these claims irrelevant, since what they have alleged all along is a government-imposed ceiling, not a floor, on domestic steel prices. In addition, record evidence shows that such discounts as were granted were minimal and had no discernible effect on the stability of reported transaction prices. If record evidence is to be believed, say petitioners, many of the respondents' claimed ''discounts'' are in fact credits for returns of merchandise, set sales terms which do not vary with market conditions, or discounts for cash payments, which are not true discounts since they are merely an acknowledgment that the customer, not the respondent, is bearing the cost of financing the sales transaction.

Petitioners also dismiss as incredible respondents' claims that differences in credit terms have also been used to vary effective prices. If respondents' previous claims that they maintain open payment systems in which customers are invoiced and make payments on a revolving rather than a sale-specific basis are correct, then the terms of payment of any particular sales transaction are irrelevant, because respondents are unable to link payments to specific sales. Petitioners also contend that the questionnaire responses and verification exhibits belie the respondents' claims that differences in credit terms were used to alter effective prices selectively. In fact, the record shows remarkably little variance in credit terms, in particular, in the number of days for which credit was extended. Petitioners argue that whatever differences in credit terms existed were minor and statistically insignificant, as evidenced by the limited variation in respondents' domestic net prices.

Finally, petitioners characterize Dongbu's claim at verification that differences in freight terms were also used to vary effective prices as ''new'' and unconvincing. Although Dongbu claimed it changed the freight absorption for a selected customer twice in two years, petitioners argue that Dongbu did not demonstrate that it was reacting to market conditions, or that transaction prices to that customer were actually affected.

According to petitioners, all of the foregoing reasons lead to the inescapable conclusion that stable and coincident home-market prices are a result of Korean government control of domestic steel prices. Therefore, since the Korean home market is not viable and collection of third-country sales data is not feasible at this late stage in the proceedings, petitioners urge the Department to resort to constructed value (''CV'') for purposes of determining NV. Petitioners contend that if the Department bases NV on CV, it must calculate CV in a manner consistent with a finding that the home market is not viable. Specifically, petitioners say it would be inappropriate for the Department to calculate the profit component of CV based on the actual profit realized on sales in Korea, because those transactions did not reflect true market prices. Because Japan is the Korean steelmakers' largest third-country market, and because the Department normally uses sales to the largest third-country market to calculate NV when the home market is not viable, ideally the Department should base the profit component of CV on the respondents' experience in that market. The record, however, does not contain complete data on the respondents' sales to Japan. Petitioners therefore urge the Department to rely on the facts available, within the meaning of section 776(c) of the Act, in determining the profit component of CV.

Petitioners suggest that the most comprehensive and product-specific facts available to the Department at this point are official Korean trade statistics showing export prices of subject merchandise to Japan. Petitioners submit that a CV profit figure could be calculated based on the difference between export prices, as reported in these official statistics, and the respondents' costs of production (''COP'').

Respondents retort that the Korean home market is in fact viable. To support this contention, they set forth two affirmative arguments and one negative argument. The affirmative arguments are that the government does not set home-market prices and that home-market prices are based on free market competition. The negative argument is that petitioners have provided no evidence that suggests that there are government price controls of subject merchandise.

To support their affirmative argument that the government does not set home-market prices, Dongbu and Union first argue that any government controls on prices of the subject merchandise ended long before the POR. They deny petitioners' allegation that they had themselves acknowledged that price controls existed until February 1994. In fact, they argue, their responses to the Department's viability questionnaire and their statements at the verifications demonstrate that the government policy of ''prior approval'' of prices (*i.e.,* price controls) ended in 1981, and that applicable ''post-price change'' reporting requirements for cold-rolled products were terminated in 1990 and for galvanized products in 1986. Such requirements, Dongbu and Union argue, never applied to colored products or any other subject merchandise. Furthermore, they argue that even these previously terminated reporting requirements did not involve ''control'' or influence over their private pricing decisions, but actually went no further than the reporting and monitoring of price data. Similarly, POSCO argues that the only subject merchandise for which it was required to report prices were for cold-rolled sheet and hot-dipped galvanized (''GI'') coil, and that even the reporting requirement for these products was terminated in 1981.

Second, POSCO argues that there is ''substantial record proof'' to demonstrate that the government of Korea does not in fact control prices. POSCO cites in support the September 18, 1996, Memorandum from Steve Bezirganian and Robin Gray to the Files (''Korea sales verification report''). This report notes that the 1995–1996 Korean Government Economic Plans make no reference to any purported plans by the Korean government for steel prices. The verification report also discusses documentation from the Korean Ministry of Finance reviewing the history of price monitoring. That discussion, POSCO argues, indicates that there were no price controls on subject merchandise in place during the POR. POSCO argues that the Department's extensive verification of the issue must serve as the core of the Department's analysis of the issue.

Third, POSCO cites to the verification reports of Korean customers and of Hanbo Steel as evidence that the Korean government does not control steel prices. The Customer verification report, for instance, states, ''regarding government influences in the prices of steel products, company A stated it is not aware of any involvement by the government in prices set by domestic suppliers.'' Furthermore, according to the verification report, representatives from Hanbo Steel reported that, ''at one time they did report prices to the government for long products, but the prices were not subject to government approval.''

Fourth, POSCO cites to documentation written by the government of Korea and submitted to the record of this review as evidence that the government of Korea does not control prices. In submissions to USTR on June 23, 1995 and July 7, 1995, the Korean government stated that it had repealed all laws and regulations imposing any price reporting or monitoring requirements in the Korean market. More recently, the Korean Minister of Trade and Industry filed an official submission with USTR on October 22, 1996 which states that the government of Korea ''had no role or input in POSCO's pricing decisions,'' and that the government of Korea does not control prices for hot-rolled coil from mini-mills, or any other type of steel in the Korean market. According to POSCO, these statements alone, submitted in the context of the Section 301 consultation mechanism, should be the end of the matter.

Finally, POSCO cites an investment report concerning POSCO prepared by the Hannuri Salomon Securities Co., Ltd. According to POSCO, the Hannuri Salomon report conclusively states that ''the Korean government's direct control of domestic steel prices ended in March 1982. Thereafter, the government has not participated in POSCO's pricing decisions.''

To support their affirmative argument that home-market prices are based on free market competition, and are thus not subject to government control, all respondents first explain that their relatively stable home-market prices, which petitioners cite as a demonstration of government control, are actually a function of their long-term pricing strategies. Dongbu and Union explain that their strategy is to ensure long-term growth of their companies by maintaining a loyal and healthy domestic customer base and a consistently high volume of domestic sales. Similarly, POSCO states that its strategy is to maintain a stable, steady, and loyal customer base and high capacity utilization rates. Because of these pricing strategies, all three respondents state that they resist any major revisions to their price schedules.

Furthermore, all three respondents argue that, despite the stability of their home-market prices, there is free market competition in the Korean market, and that evidence of this competition is on the record of this review. To support this argument, respondents cite to their discounts, varying credit terms, and adjustments in freight terms. These variations in sales terms, they argue, are clear evidence of price competition. Therefore, based on the alleged evidence of price competition, Dongbu and Union ask, ''If, in fact, prices in the Korean market were repressed by the alleged government price controls, what incentive would there be for the Korean respondents to provide *any* discounts, much less [* * *], extended credit terms, and freight discounts?'' (Emphasis in original.) They argue that the existence of discounts and other concessions is compelling and dispositive evidence that prices in the Korean market are competitively set, and should be determinative of the issue.

In addition to seeking to establish that there is evidence of price competition on the record, respondents also seek to rebut petitioners' arguments purporting to show the contrary. First, respondents argue that petitioners are mistaken in stating that prices of the subject merchandise in Korea remained flat and coincident from 1991 through 1995. Dongbu and Union state that in fact they raised their domestic prices in March 1995 in response to market conditions; POSCO states that for the same reason (and because Dongbu and Union had raised their prices) it raised its domestic prices in April 1995. POSCO argues further that the Department verified through examination of internal POSCO documentation that POSCO raised its prices because of changing market conditions. POSCO theorizes that petitioners chose not to discuss this price increase because it contradicted their theories. Moreover, all respondents find it significant that there is no evidence on the record that the government of Korea was in any way involved in the price increase that occurred in March and April 1995, which was, they state, the first significant increase in list prices for the subject merchandise in four years.

Second, regarding petitioners' argument that their pricing policies are not consistent with oligopolistic behavior because their domestic prices are low, Dongbu and Union argue that the petitioners' argument ignores long-term trends, and that the Department verified that over the period 1991–1994 Dongbu and Union in fact maintained stable high domestic prices for subject merchandise relative to their export prices. Regarding petitioners' argument that what is at work here is an oligopoly dominated by a government-owned entity (POSCO) and dedicated to imposing government-mandated price disciplines on much smaller entities (Dongbu and Union), POSCO argues that government officials play no role in POSCO's pricing policies. It states that no government officials were on POSCO's board of directors, the government did not appoint the chairman of the board, and no government officials had access to POSCO's pricing data. POSCO, it argues, is managed and operated independently of the government. POSCO states too that the Department's verification report noted no discrepancies concerning any of these key issues.

Third, regarding petitioners' argument that the existence of discounts is irrelevant because the petitioners are alleging a government-imposed ceiling, and not floor, POSCO argues that if the government of Korea did control a ceiling on prices then, as profit maximizers, POSCO and other Korean respondents would bump right up against that price ceiling and would not discount off of it in order to meet competition and short-term market conditions. Regarding petitioners' argument that the effect of the discounts was minimal, Dongbu and Union argue that competition does not occur in the aggregate, but in terms of individual customers (for whom discounts clearly do matter), and that the discounts clearly contributed to the statistical variation in the Korean market.

Fourth, regarding petitioners' argument that the respondents' credit terms are irrelevant because the respondents maintain an open payment system and are unable to link payments to specific sales, Dongbu and Union argue that because customers usually pay by promissory note, they can easily adjust the payment period by reducing or increasing the number of days for which they will accept the promissory note. Thus, they argue, while payment occurs on a revolving basis, the average credit period can be and is altered, as the Department verified. With respect to the same argument, POSCO argues that the fact that it did not track payment terms in its accounting records on a transaction-specific basis during the POR does not mean that POSCO did not alter those same credit terms during the period 1991–1995. Rather, it means only that POSCO cannot track those changes and credit terms on specific sales after the fact from its computerized database.

Fifth, regarding petitioners' argument that the effect of the varying credit terms is statistically insignificant, Dongbu and Union argue that petitioners' argument misses the point. They argue that these varying credit terms are only one of several pieces of an overall policy that, when used together, have an appreciable effect on the companies' ability to engage in significant price competition.

Sixth, regarding petitioners' argument that varying freight terms did not establish varying effective prices, Dongbu argues that petitioners again miss the point. They argue that freight equalization exists solely because there is competition in the market. Customer-specific ''discounts'' would not exist in a market where prices are fixed and established at repressed levels because the suppliers would have no incentive to incur any freight expense.

To support their negative arguments that petitioners have provided no evidence that suggests that there are government price controls of subject merchandise, respondents attack individually the arguments that petitioners set forth that purportedly substantiate that there are government price controls of the subject merchandise.

First, respondents argue that petitioners are incorrect in stating that on February 7, 1994 the government of Korea decontrolled prices. They argue that what happened on February 7, 1994 was that the price reporting requirements for hot-rolled coil (which they allege is non-subject merchandise) were eliminated. Dongbu and Union argue that the elimination of this reporting requirement was a non-event for producers of the subject merchandise, and that this explains why prices did not change as a result of the elimination of the reporting requirement. POSCO argues that the fact that prices remained level after the lifting of the reporting requirements actually confirms that those reporting requirements had no impact on POSCO's or the other Korean respondents' prices in the first place.

Second, respondents attack the reliability of petitioners' many ''independent third-party sources.'' Dongbu and Union argue that this ''evidence'' has been superseded by the Department's findings at verification. These findings include, they argue, the termination of the price-monitoring system. Similarly, POSCO argues that for the Department to ignore its own verification findings (which, they argue, demonstrate that much of the information petitioners submitted on this issue is incorrect) and to instead rely on third-party press accounts would totally negate the integrity and importance of the Department's own verification process. Furthermore, Dongbu and Union argue that the petitioners have focused exclusively on those statements in the ''third-party sources'' which support their interpretation, and ignored statements contained therein that would permit an alternative interpretation. As an example, they cite petitioners' use of the *BZW Report.* Petitioners use this report to support their contention that there is government control of pricing in Korea. However, Dongbu and Union point out, petitioners ignore the statement in the report that ''POSCO does not keep its domestic prices and local export prices lower than international prices any more * * * . Indeed, domestic and local export prices exceeded international export prices in late 1991 and had remained at higher levels until mid 1994.'' Thus, Dongbu and Union argue, the *BZW Report* does not support petitioners' central contention that the alleged price controls have kept domestic prices low.

Additionally, POSCO argues that the ''third-party sources'' are speculative, outdated, and largely irrelevant. It argues that the bulk of the sources consist merely of third-hand references to outdated materials concerning non-subject merchandise or, more commonly, only the Korean economy generally and not the steel industry at all. These reports, POSCO argues, do not constitute evidence, much less ''convincing evidence,'' that the government of Korea controls prices for subject merchandise in the Korean market.

Third, POSCO argues that petitioners' argument with respect to the KOSA 1995 yearbook is invalid. It argues that the Department's translator determined that there was no reference to price controls in the KOSA report. The Dongbu verification report, POSCO argues, states that the quotes from the KOSA report upon which the petitioners rely were mistranslated.

Fourth, POSCO argues that the Economic Planning Board's requests for cooperation in the price stabilization effort are not evidence of government control, but merely hortatory language equivalent to the standard exhortations that governments make in nearly all countries.

Fifth, respondents argue that the government of Korea's October 9, 1996 press release does not provide evidence of government price controls on subject merchandise. They point out that the press release concerned hot-rolled coil, not subject merchandise. POSCO further argues that the press release concerns only hot-rolled coil produced at its mini-mill, and not hot-rolled coil produced at its integrated facilities. In light of the fact that the hot-rolled coil produced at the mini-mill represents a miniscule amount of total hot-rolled coil production, POSCO argues, the government would surely have required a reduction in prices of hot-rolled coil produced at the integrated facilities if it actually intended to control prices. Moreover, POSCO argues that the press release did not even say that the government had any role in POSCO's pricing decision regarding the merchandise in question; it simply said that the pricing decision was a positive development. If the government considered POSCO's decision to be an ''official act,'' respondents argue, this only reflects the fact that all governments seek to take credit for positive events in which they were not involved. Finally, respondents argue that at the POSCO verification the Department examined various internal documents concerning POSCO's pricing decision, and that none of those documents indicate any government involvement in the decision.

Sixth, respondents argue that petitioners' arguments regarding Hanbo's *Offering Circular* are invalid. They point out that at the Hanbo verification Department officials interviewed and discussed the *Offering Circular* at length with Hanbo officials, and that they informed Department officials that the statements in the *Offering Circular* were incorrect. Furthermore, respondents argue, the verification report does not discredit or undercut the validity of Hanbo's statements at the verification. Additionally, Dongbu and Union argue that the *Offering Circular* is irrelevant because Hanbo was not then and is not now a producer of the subject merchandise. Moreover, they argue that much more telling than the *Offering Circular* is information in the Hanbo verification report indicating that Hanbo's hot coil prices are based on competitive market conditions.

Seventh, POSCO argues that no weight should be given to the article in the Korea Herald according to which leading Korean steel makers, in a meeting with the Minister of Trade, Industry, and Energy requested the lowering of domestic hot-coil prices. It argues that at verification it presented to Department verifiers more current and more detailed documentation which demonstrates that newspaper accounts of that meeting relied on by petitioners were misplaced and inaccurate.

Eighth, POSCO argues that petitioners' speculations as to what possible indirect mechanisms could be used by the Korean government to possibly control prices do not constitute evidence of price control. In fact, POSCO argues, petitioners themselves acknowledge that they have not identified any mechanisms which are in fact used to control prices. Regarding petitioners' use of verification exhibit 85–E, POSCO states that petitioners have conveniently ignored the plain language of the Department's verification report, which states that, ''in reviewing the plans we found nothing that specifically referred to plans by the Korean government for steel prices.''

Finally, respondents argue that the evidentiary burden of proof placed upon the petitioners is extremely high. They must show, respondents argue, by ''convincing evidence'' that the home market is not viable because the government of Korea controlled the prices of subject merchandise in the Korean market ''to such an extent that home-market prices cannot be considered to be competitively set.'' SAA at 152. Respondents argue that, taken together, the ''evidence'' petitioners have produced does not come close to meeting that burden. Dongbu and Union argue that even if there were a ''price ceiling'' in the home market, the existence of that ceiling does not nearly meet the standard in the SAA for government control of prices to the extent that prices cannot be considered to be competitively set. Because petitioners have failed to meet their burden, respondents argue, their contention should be rejected.

DOC Position. We disagree with petitioners' contention that the particular market situation in the exporting country, Korea, does not permit a proper comparison with EP and CEP. Although petitioners have provided evidence indicative of a not insubstantial level of government interest, and even involvement, in the day-to-day operations of the Korean steel industry, including domestic price levels, the record nevertheless does not show that the Korean government controls domestic steel prices to such an extent that home-market prices cannot be considered to be competitively set.

Although petitioners have alleged that controls existed over domestic steel prices in Korea until February 7, 1994, information collected at verification shows that the Korean government's policy of ''prior approval'' over domestic steel prices ended in 1981. *See, e.g.,* Union sales verification exhibits 88 and 89. These exhibits also show that, after 1981, Union's price-reporting requirements were terminated for galvanized (*i.e,* corrosion-resistant) products in 1986 and for cold-rolled products in 1990. POSCO's general reporting requirements for cold-rolled products were eliminated in 1981, and Dongbu's reporting requirements for these products were eliminated in April 1993. Because home-market steel prices were flat both before and after the reporting requirements were terminated, we cannot conclude that those requirements had any impact on domestic prices. Furthermore, statements made in the supplemental verification reports on the issue of home-market viability by Hanbo and two other POSCO customers support the conclusion that government price controls do not exist. Additionally, the *Hannuri Salomon* report provided by POSCO at verification and cited by petitioners as providing evidence of Korean government control over domestic steel prices states that the Korean government's direct control of domestic steel prices ended in March 1982, and that since that date the government has not participated in POSCO's pricing decisions. *See* POSCO home-market sales verification exhibit 85E at 21.

The record also contains a number of official Korean government documents which deny the existence of government control over domestic steel prices during the POR. The sales verification report for POSCO notes that the 1995–1996 Korean Government Economic Plans make no reference to any plans by the Korean government with respect to steel prices. Documentation from the Korean Ministry of Finance indicated that there were no price controls on the subject merchandise during the POR. *See* POSCO sales verification report at 21. The Korean government, in formal submissions made to USTR on June 23, 1995, and to the Section 301 committee on July 7, 1995, stated that all laws and regulations requiring any price reporting or monitoring of domestic steel prices had been repealed in stages between 1981 and February 1994, *i.e.*, before the POR. More recently, on October 22, 1996, the Korean Ministry of Trade and Industry officially notified the USTR that the Korean government had no role or input in POSCO's pricing decisions, and that the Korean government does not control the prices of any type of steel in the Korean market.

With regard to the press articles, academic treatises, and reports from financial institutions submitted by petitioners, we believe that most of that documentation, while perhaps accurate at the time it was written, has become somewhat outdated. Further, petitioners omitted to cite passage in the *BZW Report* stating that ''POSCO does not keep its domestic prices and local export prices lower than international prices any more * * *. Indeed, domestic and local export prices exceeded international export prices in late 1991 and had remained at higher levels until mid 1994.''

With respect to the issue of whether the KOSA report confirms the existence of government ''price controls,'' as alleged by petitioners, our translator confirmed that this report mentioned no such controls. We stand by the *bona fides* and professional qualifications of its translators, who are hired through the auspices, and with the recommendation, of the United States Embassy in Korea. *See* Dongbu sales verification report at 52.

While petitioners have cited an article in the *Korea Herald* according to which leading Korean steelmakers ''requested government intervention in price adjustments,'' more current and detailed documentation submitted at verification casts doubt on the verisimilitude of this account. In particular, the industry periodical *Metal Bulletin,* published in the United Kingdom, noted on May 30, 1996 that the Korean Minister of Trade, Industry, and Energy ''maintained that the Korean government has no say in the pricing policies of private companies * * *. The Government has no right to decide prices.''

With respect to petitioners' allegation that the press release of October 9, 1996 by the Korean Ministry of Finance and Economy demonstrates government control over domestic steel prices, the Department agrees with POSCO that (1) the press release does not explicitly or even implicitly refer to government involvement in POSCO's price increase, but only reports a price increase and comments on it as a positive development; (2) the press release concerns not the subject merchandise, but hot-rolled coil (''HRC'), its major feedstock; and (3) the price increase in the press release in question concerns only HRC produced at POSCO's mini-mill, and not HRC produced at its integrated steel mills, which represents the vast majority of POSCO's HRC production.

Petitioners have claimed that a sentence in a February 1994 notice by the Economic Planning Board (''EPB'') terminating price reporting requirements, in which the EPB hopes that POSCO will cooperate in efforts to foster the country's general economic development and price stabilization, is evidence of continued government price controls. At verification we examined POSCO's submissions to the EPB and found no evidence of price controls during the POR, or evidence of price monitoring after February 1994. Governments, including our own, routinely exhort businesses to cooperate with their macroeconomic and public policy goals, which often include fighting inflation. We agree with respondents that hortatory language of this kind does not constitute evidence of formal price controls.

Petitioners have argued that Hanbo's *Offering Circular* states that the ex-factory prices of Hanbo's steel products ''are, in practice, determined by the Korean government, which approves manufacturers'' filed prices having regard to average costs in the Korean steel industry, but without reference to the prices of products in international markets.'' Hanbo, however, did not then, and does not now, manufacture the subject merchandise. Petitioners also ignore information in the Hanbo supplemental verification report that Hanbo's domestic HRC prices were competitively set. Thus, on the issue of government control, the record is somewhat mixed. Further, even if we assume that there is some level of government control, we must have substantial evidence that government control is so extensive that prices are not competitively set. In the absence of such evidence, we cannot find the Korean home market not to be viable.

By contrast, there is positive evidence on the record indicating that domestic Korean steel prices were competitively set during the POR. First, base (or list) prices were raised during the POR, in March 1995 by Dongbu and Union and in April 1995 by POSCO. During verification, we conducted a thorough and exhaustive examination of POSCO's internal records, including correspondence files, and ascertained from this review that POSCO had raised its list prices on account of changing market conditions; there was no evidence suggesting that there was any government interference or involvement in this price change. Second, record evidence shows that these list prices were subject to discounts and adjustments for credit and freight, which caused the effective price charged to customers to vary from customer to customer. Although petitioners have claimed that these discounts are statistically insignificant, we agree with respondents that discounts, credit adjustments, and freight equalization taken together appreciably affect the companies' ability to engage in significant price competition. Further, the fact that steel prices remained flat throughout the POR is not inconsistent with normal, expected price trends in an oligopolistic market such as the Korean steel market. Therefore, evidence of flat prices *per se* is insufficient to establish that prices are not competitively set.

Having reviewed and weighed the facts on the record, we find that, while there is some evidence of a substantial level of Korean government involvement in domestic steel pricing, there is not ''convincing evidence'' that the Korean government controlled domestic steel prices ''to such an extent that home market prices cannot be considered to be competitively set.'' SAA at 152. We determine, therefore, that the Korean home market is viable for purposes of the instant proceedings.

Comment 2. Petitioners allege that Dongbu and Union are affiliated with POSCO based on Dongbu and Union's dependence on POSCO as their primary supplier of HRC, the primary input for the subject merchandise. Petitioners also allege that Union and POSCO are affiliated based on certain corporate and sales relationships between the two companies.

Petitioners contest the Department's preliminary determination that Dongbu and Union are not affiliated with POSCO and suggest that the Department acted arbitrarily and unreasonably by avoiding the issue rather than addressing its merits. The Department, petitioners argue, interpreted much too narrowly the statutory term ''control.'' Petitioners contend that the Department, instead of focusing, as the statute requires, on whether POSCO was in a position to exercise restraint or direction over the activities of Dongbu and Union, looked instead for concrete evidence of actual dominance of POSCO over Dongbu and Union. In doing so, say petitioners, the Department effectively nullified the new definition of affiliated parties by ''administrative fiat.'' Petitioners also question the Department's finding in the preliminary results that the record at that point in time provided an inadequate basis to make an affirmative determination of affiliation and that it was too late in these proceedings to solicit additional factual information. Not only, petitioners claim, did they make their allegation of affiliation at an early stage in these proceedings (shortly after the initial questionnaire responses were submitted), but the Department explored this issue in great detail in supplemental questionnaires and during verification. Even more troubling, according to petitioners, is the fact that the Department, at the same time that it indicated it was too late to obtain additional information on affiliation, afforded the parties an opportunity to provide additional factual information concerning the viability of the Korean market. This, petitioners submit, demonstrates that the Department's preliminary finding on affiliation was an arbitrary ''ruse.''

If, however, the Department continues to adopt its exceedingly narrow interpretation of the statute's affiliation provision in the final review results, petitioners contend the Department must conclude that Pohang Coated Steel Co., Ltd. (''POCOS'') is unaffiliated with company AKO. In its response to Section A of the Department's antidumping questionnaire, POSCO initially indicated that it was affiliated with AKO and AKO's U.S. affiliate, company BUS. (AKO is located in Korea, and BUS is located in the United States; their identities are proprietary information. For an explanation of these acronyms, please refer to the memorandum from Alain Letort to the Files, dated April 2, 1997.) POSCO subsequently retracted and clarified this statement by pointing out it owns 50 percent of the equity in POCOS, 49.99 percent being owned by Dongkuk Steel Mill (''DSM'') and the remaining 0.01 percent by DSM's president personally. DSM is, in turn, affiliated with AKO and BUS through stock ownership. Therefore, using the Department's definition of affiliated parties, POSCO stated that POCOS was indirectly affiliated with AKO and BUS through stock ownership. Contesting POSCO's assertions, petitioners assert that, since POCOS holds no equity ownership in DSM and DSM has do direct equity holding in AKO, POCOS cannot be deemed to hold any equity ownership in AKO or BUS.

Petitioners cite Union, which asserted on the record that under Korean law, POSCO's 50 percent interest in POCOS puts it in control of the latter. POCOS is included in POSCO's consolidated financial statements, not DSM's. POSCO, not DSM, appoints the president of POCOS. Petitioners claim that POSCO never challenged Union's assertion. Besides, petitioners point out, POSCO and POCOS are collapsed for purposes of these proceedings, since the Department determined that the relationship between the two companies is so intimate as to present the strong possibility of price and/or production manipulation. While petitioners state their firm belief that DSM also ''controls'' POCOS as that term is defined in the statute, they also affirm that, if the Department retains its unreasonably narrow interpretation of that term, it should conclude that it is impossible for two entities (POSCO and DSM) simultaneously and separately to exercise actual ''control,'' *i.e.,* dominance, over POCOS. The Department should also rule that POCOS neither exercises actual ''control'' (*i.e.,* dominance) over AKO nor is affiliated with it, petitioners urge.

If the Department so finds, petitioners contend, it must base POCOS' U.S. price on the price at which it sells the subject merchandise to AKO. This is because POCOS' U.S. sales are made up of several ''back-to-back'' transactions: POCOS sells the merchandise to AKO, who resells it to BUS, who in turn sells the merchandise to the U.S. customer. According to petitioners, where a manufacturer makes export sales through an unaffiliated trading company, the Department's practice is to determine which transactions are U.S. sales for reporting purposes on the basis of whether the manufacturer knows the ultimate destination of the merchandise. If the manufacturer does *not* know the ultimate destination of the merchandise, the Department determines U.S. price on the basis of the unaffiliated trading company's sale to the United States. If the manufacturer *does* know the destination, then the manufacturer's sale to the unaffiliated trading company becomes the basis for the U.S. price.

Petitioners assert that record evidence shows POCOS is aware of the ultimate destination of the merchandise, since POCOS' order entry sheet shows the name and address of the U.S. customer at the time of the sale from POCOS to AKO. Consequently, petitioners say, if the Department rules that POCOS is unaffiliated with AKO, it must determine U.S. price on the basis of POCOS' selling price to AKO.

With regard to the issue of whether or not Dongbu and Union are affiliated with POSCO because of their supply relationships, petitioners contend that the critical point is whether the supplier-buyer relationship is such that the supplier is *in a position* to exercise restraint or direction over the other. Petitioners claim that, in its preliminary review results, the Department used a definition of ''control'' that is closer to the common meaning of that term (*i.e.*, actual dominance) than to the statutory definition of the term. In essence, petitioners affirm, the Department has adopted the interpretation, advocated by Dongbu and Union and contrary to the statute, that one party must control the commercial operations of the other.

According to petitioners, the following factors place POSCO in a position to exercise restraint or direction over Dongbu and Union and make them ''reliant'' upon POSCO: (1) The sheer weight of POSCO—in comparison with other sources of supply—as a supplier to Dongbu and Union; (2) the percentage of Dongbu's and Union's cost of manufacturing (''COM'') for which POSCO-sourced HRC accounts; and (3) the absence, due to comparatively higher prices of imported HRC, of realistic alternate sources of supply for Dongbu and Union. Clearly, say petitioners, if POSCO were unilaterally to curtail its shipments to Dongbu and Union, or increase its prices, it would disrupt their production schedules and commercial relationships and create hardship for Dongbu and Union. Indeed, petitioners claim, under generally accepted accounting principles (''GAAP'') in the United States, financial statement disclosure of a company's concentration with a particular supplier is required because it is assumed to create the risk of ''severe impact * * * from changes in the availability to the entity of a resource.'' *See* American Institute of Certified Public Accountants (''AICPA''), *Statement of Position 94–6, ''Disclosure of Certain Significant Risks and Uncertainties''* (December 30, 1994) (''AICPA 94–6'') at 8. Petitioners dismiss Union's contention that its purchases from POSCO would not meet the disclosure requirements of AICPA 94–6 because it purchases a standard grade of raw material that is readily available from a number of different suppliers, meaning that its purchases fall into the category described in AICPA's ''Illustrative Disclosure B'' (''ID–B''). Petitioners retort that Union's reference to ID–B is completely inapposite, because it discusses a commodity product (wheat), which is entirely fungible between various sources of supply, while HRC, Union's feedstock, has different specifications, grades, metallurgical and chemical contents, and properties; vendors of HRC must be located and qualified. Indeed, petitioners assert, respondents vigorously argued before the U.S. International Trade Commission (''ITC'') that steel products were not fungible or substitutable.

According to petitioners, the verification exhibits directly confirm the extent of POSCO's involvement with Dongbu and Union. The Department, they claim, is highly unlikely to encounter circumstances more demonstrative of ''control'' via a supply relationship than the present situation.

Petitioners characterize respondents' claim that POSCO is a strong competitor with Dongbu and Union in the same downstream market for the subject merchandise as ''blatant exaggeration.'' Record evidence, according to petitioners, suggests otherwise: one of the Department's two supplemental verification reports on home-market viability indicates that Dongbu and Union compete with POSCO for certain product applications only, since in Korea only POSCO manufactures the full spectrum of cold-rolled and corrosion-resistant carbon steel flat products.

Petitioners contradict respondents' contention that they have ''complete and unfettered access'' to alternative sources of supply. According to petitioners, Dongbu and Union statements on the record that they continued to buy HRC from POSCO even when cheaper alternative sources of supply were available ''because of the reliability of supply, the convenience and familiarity, and other similar factors'' further demonstrates their reliance on POSCO.

Petitioners assert further that the relative proportion of Dongbu's and Union's HRC purchases from POSCO and from sources other than POSCO is more proof of their ''reliance'' upon POSCO.

Petitioners also argue that Dongbu's and Union's contentions that there is no evidence of long-term supply contracts, joint ventures, or other agreements between them and POSCO, and that they have no direct or indirect involvement with POSCO's production, sales or distribution activities beyond the purchase of HRC, are irrelevant and immaterial, since neither the statute nor the SAA requires the existence of the same in order to establish affiliation on the basis of a supply relationship. Moreover, at least with respect to Union, not only does there exist a joint venture (POCOS) between POSCO and Union's controlling company (DSM), but Union and POCOS—POSCO's subsidiary—share common sales channels.

None of the above "facts" cited by the respondents, according to petitioners, alters the fact that POSCO was Dongbu's and Union's dominant supplier of HRC during the POR and that imported HRC was demonstrably dearer than the POSCO product during most of the POR.

Petitioners argue that the case cited by Dongbu and Union in support of their contention that the Department rejected a claim for affiliation on the basis of a close supply relationship—*Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Melamine Institutional Dinnerware Products from Indonesia* (61 FR 43333, 43335—August 22, 1996) ("*Melamine*")—is inapposite. In addition to the fact that the Department's position in that case is only preliminary, the supply relationship at issue in *Melamine* is easily distinguishable from, and not even remotely akin to, the facts at issue in the instant case. In *Melamine*, the Indonesian producer channeled 100 percent of its U.S. sales through a single, unrelated U.S. importer. The U.S. importer was just as free to purchase from other producers as the Indonesian producer was to find another U.S. importer. In the instant case, petitioners say, clearly Dongbu and Union had no realistic alternate sources of supply due to the higher prices of imported HRC and the absence of other sources within Korea.

Responding to Dongbu's and Union's assertions that, through the end of 1994, imported HRC was cheaper, rather than dearer, if only their highest-volume grade of HRC (*i.e.*, SAE 1008) is taken into consideration, petitioners claim that the aggregate figures in Dongbu's cost verification exhibit 20 and Union's cost verification exhibit 24 are more reliable because they are more comprehensive. Respondents' comparison of domestic and imported prices for grade SAE–1008 HRC is misleading and inaccurate, petitioners argue, because (1) it focuses on only one product out of many; (2) it compares home-market *base* prices to import prices, ignoring the *actual* costs associated with coil purchases; (3) it compares delivered domestic prices to import purchases made on a f.o.b. basis, significantly understating the import price (by the amount of ocean freight, brokerage and handling fees, import duties, etc.); and (4) it is unclear whether the quarterly prices cited by respondents are weight-averaged, as they ought to be.

Petitioners dismiss respondents' argument that historical trends show that, on average, during the 1991–1995 period, import prices for HRC were lower than POSCO's, and that disregarding historical trends would allow temporary market fluctuations to be a dispositive factor in any affiliation decision by the Department, contrary to the Department's proposed regulations. *See Notice of Proposed Rulemaking and Request for Public Comment*, 61 FR 7308, 7310 (February 27, 1996) ("*Proposed Regulations*"). Not only is historical data distortive because it is based on a comparison of base rather actual prices, petitioners contend, but the fact that import prices for HRC were lower in periods preceding the POR only demonstrates that Dongbu and Union did not turn to alternate suppliers when imports were cheaper. Petitioners contend that Dongbu's and Union's inability and/or reluctance to turn to alternative sources of supply when POSCO's HRC prices were higher than imported material signifies that the dependence and reliance of those companies on POSCO as a supplier is not driven by "temporary market power, created by variations in supply and demand conditions * * *" *Ibid*. at 7310. That Dongbu and Union did not turn to alternative sources means, according to petitioners, that their dependence on POSCO as a supplier is substantial and long-term, and that the supply relationship between POSCO on the one hand and Dongbu and Union on the other is significant and not easily replaced." *Ibid*. at 7310.

In addition to their affiliation as a result of their close supply relationship, petitioners claim that Union and POSCO are affiliated as a result of other corporate and sales relationships. Petitioners argue that the Department's preliminary finding that they failed to present "any evidence of stock ownership or control" between POSCO and Union or POSCO and DSM, Union's controlling company, is incorrect. The correct standard, according to petitioners, is not whether or not actual control or dominance exists, but rather whether one party is in a position to exercise restraint or direction over another party in order to "control" that party.

It is petitioners' contention that POSCO is in just that position vis-a-vis Union in view of the fact that:

- POSCO holds a 50 percent equity interest in POCOS;
- DSM owns a 49.99 percent equity interest in POCOS;
- The remaining 0.01 percent of POCOS'' equity is held by the son-in-law of Mr. Sang Tae Chang, chairman of the DSM group;
- The Department has determined DSM to have, through the Chang family, a controlling interest in Union;
- The Department has determined the relationship between Union and DSM to be so intimate that it collapsed Union with Dongkuk Industries, Ltd. ("DKI"), another subsidiary of the Chang family and DSM.

According to petitioners, the statute defines affiliated parties as "[t]wo or more persons directly or indirectly controlling * * * any person" and "[a]ny person who controls any other person and such other person." Therefore, say petitioners, POSCO and DSM clearly constitute affiliated parties inasmuch as they jointly "control" POCOS as a result of their joint venture. Petitioners contend further that, because DSM and Union are essentially one entity since Union and DKI were collapsed by virtue of their relationship with DSM, POSCO, through its joint venture with DSM, is clearly in a position to exercise restraint or direction over Union's activities.

Petitioners also argue that, because DSM and its president's son-in-law jointly hold 50 percent interest in POCOS (*i.e.*, as much as POSCO), DSM is clearly in a position to exercise restraint or direction over POCOS. Since Union and POCOS are "[t]wo or more persons directly or indirectly * * * controlled by * * * any person" (in this case, DSM), POCOS and Union are affiliated parties under the terms of the statute. If POCOS is affiliated with Union, petitioners contend, the realities of the marketplace dictate that POSCO must also be affiliated with Union. Furthermore, they say, because POSCO has acknowledged that POSCO, POCOS, and Pohang Steel Industries Co., Ltd. ("PSI") are a "single operating entity" and have been collapsed by the Department, any company affiliated with POCOS (*e.g.*, Union) must also be considered to be affiliated with POSCO. Petitioners contend that the implications of collapsing POSCO and POCOS on the issue of POSCO's affiliation with Union in no way alters the fact that POSCO and POCOS are affiliated parties; therefore, the statutory tests that follow therefrom, such as the "major-input" rule, continue to apply. Petitioners also contend that collapsing only bears on the level of affiliation and the unusual intimacy of the relationship between the parties. Petitioners allege that by ignoring the unique nature of the relationship between POSCO and POCOS and rigidly fixating on the corporate forms of the companies, the Department has ignored commercial reality.

Union, according to petitioners, has not provided any compelling evidence or argument to rebut the information on the record demonstrating affiliation between Union and POSCO through POCOS and DSM, and merely ''pointed out'' at verification that POCOS is not affiliated with Union. The fact that POSCO is in a position to exercise ''control'' over POCOS, petitioners say, does not necessarily entail that DSM, with a 50 percent direct and indirect interest in POCOS (through the son-in-law of DSM's president), is not also in a position to do so. Petitioners are not advocating that Union is in a position to control POCOS; rather, they are asserting that Union and POCOS are affiliated because they are in the common control of DSM. Petitioners agree that the mere affiliation of a party with another does not necessarily entail that party's affiliation with all parties affiliated with its affiliate. In this case, however, petitioners point out that POSCO is not merely affiliated with POCOS—its relationship with POCOS is so intimate that it is collapsed with POCOS and both companies are treated as a single entity by the Department.

In addition to the corporate relationships between POSCO and Union, petitioners allege that POSCO controls Union through shared U.S. sales channels. Petitioners point out that:

- BUS is the importer of record for Union in the United States, and AKO purchases subject merchandise from Union in Korea; and
- All of POCOS's (an entity collapsed with POSCO) U.S. sales are made through AKO and BUS.

Petitioners allege that AKO and BUS provide a conduit for sharing pricing and other sensitive information, which could be used to manipulate transactions and allocate U.S. sales for the purpose of reducing dumping margins. Petitioners aver that the fact that it is POCOS and not POSCO that shares sales channels with Union does not undermine POSCO's ability to exercise restraint or direction over Union, because POSCO has control over POCOS and they are collapsed. Petitioners contend that both POSCO and DSM have an incentive to minimize POCOS' dumping liability since POCOS' financial statements are fully consolidated with POSCO's and DSM is BUS's major shareholder. On this basis of shared sales channels alone, petitioners argue, the Department should conclude that POSCO and Union are affiliated.

In its preliminary results, the Department, according to petitioners, concluded that Union and POSCO are unaffiliated by considering separately each of the grounds presented by petitioners. While petitioners believe that each basis for affiliation they have argued demonstrates that POSCO and Union are affiliated, neither the statute nor the SAA, they claim, require that the Department consider each aspect of the relationship between Union and POSCO independently. When all of the indicia—the supply relationship between POSCO and Union, the joint venture relationship (*i.e.*, POCOS) between POSCO and DSM, the corporate relationships between Union and POSCO through POCOS and DSM, the shared U.S. sales channels—are considered jointly, petitioners believe the Department must find that POSCO is in a position to exercise restraint or direction over Union and therefore ''controls'' Union within the meaning of the statute.

If the Department determines, as petitioners say it ought to, that POSCO is affiliated with Dongbu and Union, in accordance with the principle, set forth in section 773(f)(2) of the Act, that transactions between affiliated parties must ''fairly reflect the amount usually reflected in sales * * * in the market'', and that the price between unaffiliated parties is the normal benchmark for market value, the Department must compare the value of HRC purchased by Dongbu and Union from POSCO with the value of HRC purchased from unaffiliated suppliers. *See* 19 U.S.C. 1677b(f)(2). Such a comparison, in petitioners' view, clearly indicates that Dongbu and Union do not purchase HRC from POSCO at prices that can be deemed ''arm's-length.'' Verification exhibits on the record show, according to petitioners, that HRC purchased by Dongbu and Union from unaffiliated parties are substantially dearer than that purchased from POSCO. Because the statute requires that input prices must reflect fair market value, it is petitioners' view that the Department, in calculating Dongbu's and Union's COM, must adjust upward the value of the HRC Dongbu and Union purchased from POSCO to reflect the value of HRC purchased from unaffiliated suppliers.

Respondents deny that either Dongbu or Union are affiliated with POSCO. POSCO argues that petitioners' arguments merely repeat arguments contained in their earlier submissions. Therefore, it argues, the Department's September 6, 1996 memorandum to the file in which it addressed the issue and determined that neither Dongbu nor Union were related to POSCO, must stand. Dongbu and Union argue that the conclusion contained in the September 6, 1996 memorandum was not, as petitioners allege, arbitrary or unreasonable, but was instead the only conclusion supported by evidence and the law.

In addition to citing the Department's prior determination on the issue, respondents set forth their own arguments which, they believe, demonstrate that the arguments petitioners set forth in their case brief do not support the conclusion that Dongbu and Union are affiliated with POSCO.

First, POSCO argues as a preliminary matter that the petitioners are in error in charging that the Department applied the wrong standard in the analysis reflected in the September 6, 1996 memorandum. It argues that the standard the petitioners want the Department to apply is at odds with the plain wording of the SAA. The petitioners, POSCO argues, want the Department to read the standard in the SAA to find only that two companies *might* be ''in a position'' to become reliant upon the other through a buyer or supplier relationship. POSCO argues that the SAA requires the Department to examine first if, through a buyer or supplier relationship, ''the supplier or buyer *becomes* reliant upon the other'' (emphasis added). Thus, POSCO argues, only if the Department makes the initial finding that Dongbu and Union are reliant upon POSCO could the Department conclude that the parties could be in a position to exercise restraint or direction over the other. However, POSCO argues, the record evidence here, as demonstrated by the Department's September 6, 1996 memorandum, does not demonstrate reliance.

Second, respondents argue that both Dongbu and Union purchase their hot-rolled products from numerous sources, thus demonstrating that they are not reliant upon POSCO. Dongbu and Union state that they have ''complete and unfettered'' access to numerous alternative supplies of hot-rolled coil. Further, POSCO argues that the preamble to the Proposed Regulation's definition of ''affiliated parties'' confirms that the Department must find significant and actual indicia of control. The preamble states that ''[b]usiness and economic reality suggest that these relationships must be significant and not easily replaced.'' See *Proposed Regulations* at 7310. Dongbu's and

Union's purchases from POSCO, POSCO argues, do not meet this standard.

Moreover, POSCO argues that petitioners' argument that Dongbu and Union must have access to essentially identically-priced imports in order not to be reliant on POSCO is incorrect. It argues that the Department's analysis here must focus on whether POSCO as a supplier can ''control'' Dongbu's and Union's activities. The fact that Dongbu and Union can and do purchase significant quantities of imported hot-rolled coil, POSCO argues, should end the analysis. Comparable pricing, POSCO argues, is irrelevant.

Furthermore, Dongbu and Union argue that the record does not support petitioners' claim that imports represent a prohibitively more expensive alternative to hot-rolled coil purchased from POSCO. They point out that the figures in Dongbu's cost verification exhibit 20 and Union's cost verification exhibit 24 (upon which petitioners rely to establish their argument) are aggregate purchase volumes and values, and therefore do not account for product mix, differences in specifications, grades, extras, and other similar factors. Furthermore, Dongbu and Union argue that exhibit 96 of Dongbu's home-market sales verification report and exhibit 99 of Union's sales verification report show that import prices were lower than POSCO's prices for hot-rolled steel in 15 out of 23 quarters from 1991 through the third quarter of 1996. Moreover, Dongbu and Union argue, price is only one criterion in making purchasing decisions. Other criteria include quality of the steel, long-standing relationships, lead-times, and technical support. If comparative purchase factors frequently have favored POSCO, the fact remains that there are literally dozens of alternative sources for the same material located outside of Korea.

Third, respondents argue that petitioners are in error in their allegations regarding the prices at which POSCO sells to Dongbu and Union. Dongbu and Union argue that there is no evidence on the record that POSCO charges Dongbu and Union any more or less for its hot-rolled coil than it charges other domestic customers. POSCO argues that petitioners are incorrect in stating that it sold to Dongbu and Union at less than the cost of production. It argues that the figures upon which petitioners relied in making this allegation are not indicative of the costs for the specific types of coil sold to Dongbu and Union. When the actual costs are used, POSCO argues, it becomes clear that its sales to Dongbu and Union were above cost. POSCO also notes that petitioners' calculation included general and administrative expenses (''G&A'') as revised by the Department, which POSCO believes to be an error.

Fourth, POSCO and Union argue that the Department's precedent confirms that the parties are not affiliated. As support for this argument, POSCO cites *Melamine*, in which the Department concluded that no buyer-supplier relationship existed so as to constitute affiliation even though the supplier made 100 percent of its U.S. sales through a sole U.S. importer. The Department, POSCO states, considered the following factors: (1) There was no corporate relationship between the two companies; (2) the buyer was free to purchase, and did purchase, from other suppliers; and (3) the supplier was free to sell to other buyers. POSCO argues that these three factors are all satisfied here. It also argues that the petitioners' attempt to distinguish this case (based on whether subject merchandise or an input was being bought) is irrelevant to the reliance issue facing the Department, and has no basis in either the SAA or the Department's precedent.

Furthermore, POSCO and Union argue that *Melamine* demonstrates that it is not enough to merely point out, as petitioners have, that a supplier relationship exists. For the parties to be considered affiliated, they argue, the evidence must show that the relationship is of a kind that can realistically be characterized as involving ''control'' of one party over the commercial operations of another.

With respect to the issue of whether Union and POSCO are affiliated through indirect stock ownership, respondents argue that petitioners' demonstration that Union is related to POSCO based on ''indirect corporate relationships'' is fallacious. POSCO bases this argument on two factors. First, there is no stock ownership between POSCO and DSM, or between POSCO and Union. They point out that the Department's September 6, 1996 memorandum made mention of this very fact. Second, POSCO and Union, as well as POSCO and DSM, are completely independent entities. POSCO operates independently from both DSM and Union. There is thus, POSCO argues, no ''control'' of any kind between POSCO and DSM, or between POSCO and Union.

Furthermore, Union argues that the petitioners, in referencing the affiliated persons definition, have incorrectly claimed that there is a specific statutory basis for finding POSCO and Union to be affiliated. Section 771(33)(E) of the Act states that an affiliated person is ''[a]ny person directly or indirectly owning, controlling, or holding with power to vote 5 percent or more of the outstanding voting stock or shares of any organization and such organization.'' It is uncontradicted, Union argues, that neither POSCO nor Union, directly or indirectly, own or control five percent or more of any of the other party's securities. Thus, they argue, the petitioners' claim under this provision fails. The second provision that the petitioners' have referenced, subsection (F), reads that an affiliated party is ''[t]wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person.'' According to Union, Union and POSCO do not directly or indirectly control, are not controlled by, and are not under common control with any party. The third provision that the petitioners have referenced, subsection (G), states that an affiliated party is ''[a]ny person who controls any other person and such other person.'' Union argues that nothing in the record indicates that either Union or POSCO is in a position to control, either legally or operationally, the other party. In fact, it shows the opposite. It shows, for instance, that POSCO and Union strongly compete in the sale of subject merchandise in both the home and U.S. markets.

Finally, POSCO argues that the Department should reject petitioners' argument that if the Department adopts a narrow reading of the statute's affiliation provision it should also determine that POCOS is not affiliated with AKO and BUS. It argues that under the statute POCOS and AKO/BUS are clearly affiliated through indirect stock ownership with DSM. It first explains that POCOS is jointly owned by POSCO and DSM, with POSCO holding a 50 percent ownership interest and DSM owning 49.99 percent. Under section 771(33)(F) of the Act, affiliated parties include ''[t]wo or more persons directly or indirectly controlled by * * * any person.'' Under this definition POCOS and AKO/BUS are clearly affiliated, POSCO argues. Neither the Department's precedent nor the plain language of the statute requires that DSM own more than 50 percent of POCOS or be the only party in a position to control POCOS for the statutory definition of affiliated parties to apply. Rather, POSCO argues, the statute requires only that DSM exercise ''control'' over POCOS. The fact that DSM can ''control'' POCOS, POSCO argues, is supported by the fact that a separate statutory definition of affiliation (in section 771(33)(E) of the Act) provides that two parties are affiliated where one party holds a five percent interest in the other. It argues that the fact that in a parallel provision of the statute a mere 5 percent ownership interest can constitute control confirms that an ownership interest of 50 percent can constitute ''control'' over two parties under subsection (G). Furthermore, POSCO points out that the Department, in current countervailing duty cases under the new law, explicitly states in its questionnaire that if party A holds at least a twenty percent interest in parties B and C, then parties B and C are deemed affiliated.

Moreover, POSCO argues that apart from the plain language of the statute and consistent Department practice, petitioners themselves have acknowledged that the fact that POCOS is collapsed with POSCO for dumping margin calculations purposes does not mean that DSM also cannot exercise sufficient control over POCOS such that POCOS and AKO can be deemed affiliated parties. To support this argument, POSCO points to petitioners' joint case brief as an example, where petitioners state explicitly (at 78) that ''petitioners firmly believe * * * that DSM also ''controls'' POCOS as that term is defined in the statute.'' POSCO also points to petitioners' statement in its joint case brief (at 104) where petitioners state that both DSM and POSCO can ''control'' POCOS for the purposes of the statute.

Finally, POSCO argues that in addition to the fact that AKO/BUS are affiliated through DSM, they are also affiliated through POCOS's operational control over AKO's selling activities. POSCO explains that AKO has no independent authority to negotiate or set sales prices for POCOS merchandise. Rather POCOS sets all of AKO's selling prices and terms of sale. AKO only acts as a communications link, and all sales and negotiation authority lie with POCOS. Under these circumstances, POSCO argues, POCOS is clearly exercising operational control over AKO's sales activities, and the parties are therefore affiliated.

DOC Position. We disagree with petitioners' contentions that Dongbu and Union are affiliated with POSCO based on their supply relationship, and that Union is affiliated with POSCO through indirect stock ownership.

With respect to the issue of affiliation through a supply relationship in which one party becomes reliant on the other, we agree with respondents that petitioners have applied a wrong standard. The standard is not, as petitioners claim, whether one company might be in a position to become reliant upon another by means of their supplier-buyer relationship; rather, the Department must find that a situation exists where the buyer has, in fact, become reliant on the seller, or vice versa. Only if we make such a finding can we address the issue of whether one of the parties is in a position to exercise restraint or direction over the other. When the preamble to our *Proposed Regulations,* in its definition of ''affiliated parties,'' states that ''business and economic reality suggest that these relationships must be significant and not easily replaced,'' it suggests that we must find significant indicia of control. *See Proposed Regulations* at 7310. For the following reasons, we believe that the record evidence does not support the existence of a supply relationship between POSCO on the one hand, and Dongbu and Union on the other, in which Dongbu and Union have become reliant upon POSCO.

The record shows that Dongbu and Union have alternate sources of supply for HRC, that they can and do purchase significant quantities of HRC from abroad. Petitioners have identifed no law, regulation, or directive, whether formal or informal, mandating Dongbu and Union to purchase HRC from POSCO, or to limit their purchases from non-POSCO sources. Nor is it true, as petitioners have alleged, that imports are consistently more expensive for Dongbu and Union than POSCO material. Record evidence shows that import prices were lower than POSCO's in 15 out of 23 quarters from 1991 through the third quarter of 1996. The record indicates that POSCO has a comparative advantage over imported steel for reasons of proximity, cost, reliability of supply, and differences in specifications, grade, and quality, which can explain POSCO's position as principal supplier to Dongbu and Union. That position, therefore, does not signify that Dongbu and Union have a relationship which is so significant that it could not be replaced.

Petitioners have alleged that POSCO sells HRC to Dongbu and Union at prices below its cost of production. Petitioners calculated POSCO's HRC production cost from POSCO's submitted cost data for cold-rolled finished products. But these estimated costs are averages of all possible types, grades, and dimensions of hot-rolled coil, and are not comparable to the costs of the specific products sold to Dongbu and Union for further manufacturing into cold-rolled and corrosion-resistant products. When the actual costs of the HRC sold to Dongbu and Union are used, POSCO's sales to Dongbu and Union are above cost of production.

For the above reasons, the Department determines that there is no supply relationship between POSCO on the one hand, and Dongbu and Union on the other, to the extent that Dongbu and Union have become reliant upon POSCO.

We also disagree with petitioners' argument that POSCO and Union are affiliated by virtue of their respective affiliations with DSM, Union's parent company. In support of their argument, petitioners cite sections 771(33)(E) through (G) of the Act, which, *inter alia,* define an affiliated person as ''[a]ny person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization,'' ''[t]wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person,'' and ''[a]ny person who controls any other person and such other person.''

With respect to subsection (E), there is no record evidence indicating that POSCO and Union directly or indirectly own or otherwise control five percent or more of each other's equity. While DSM and Union are affiliated through stock ownership, DSM and POSCO are not. As we stated in an internal memo shortly before the preliminary review results, ''we lack[ed] any evidence of stock ownership or control between POSCO and Union or POSCO and DSM, Union's controlling company.'' *See* memorandum from Richard O. Weible to Joseph A. Spetrini (September 6, 1996). No new evidence has come to light that would lead us to alter this statement.

With respect to subsection (F), Union and POSCO do not directly or indirectly control, are not controlled by, and are not under common control with, any party. Even though DSM controls Union through its 58.9 percent equity interest, and DSM and POSCO are affiliated with one another due to their common control of their joint venture, POCOS, it does not follow that POSCO controls either DSM or Union. As section 771(33) of the Act specifies, a finding of control hinges on whether a person ''is legally or operationally in a position to exercise restraint or direction over the other person.'' While POSCO and DSM are clearly able to restrain or direct POCOS, and therefore control it for purposes of the Act, this does not mean that POSCO and DSM control one another. Subsection (F)'s affiliation standard is met where two parties control a third, as here. But such a finding of affiliation does not mean that the two affiliated parties control one another. The alleged link between POSCO and Union is even more tenuous. Because POSCO does not control DSM, Union's parent company, DSM is not a vehicle through which POSCO can indirectly control Union, DSM's subsidiary. In other words, POSCO affiliation with DSM and DSM control of Union do not add up to POSCO control of Union. The affiliation standard set forth in subsection (F) is thus not satisfied.

With respect to subsection (G), nothing in the record indicates that either Union or POSCO is in a position to control, either legally or operationally, the other party. The Department verified that (1) POSCO and Union compete in both Korea and the United States for the sale of the subject merchandise; and (2) POSCO on the one hand and DSM/Union on the other are separate operational entities with no overlapping stock ownership. The fact that POSCO supplies Union with HRC does not alter this conclusion. As discussed above, this supplier relationship does not rise to the level of reliance on POSCO.

Using the same statutory provisions, we continue to find that POCOS is affiliated with AKO and BUS through indirect stock ownership, since POCOS is 49.99 percent-owned by DSM, and DSM is affiliated with AKO and BUS by virtue of its indirect stock ownership in those companies.

For the reasons stated above, the Department determines that POSCO and Union are not affiliated under the provisions of section 771(33)(E)–(G) of the Act.

Comment 3. Petitioners contest the Department's preliminary determination not to undertake a duty absorption inquiry despite their entreaties to do so. By not considering requests for an absorption inquiry until the 1996 administrative reviews, petitioners argue, the Department has adopted an overly restrictive interpretation of its authority to conduct such inquiries. Petitioners submit that, although the statute requires the Department to conduct an inquiry, if requested, during reviews initiated in the second and fourth years following publication of an order, it does not preclude the Department from conducting inquiries in reviews initiated during the first, third, or fifth year following publication of an order.

Petitioners advance four main reasons why the Department should use its discretion to conduct a duty absorption inquiry:

- There is no valid reason not to examine the issue of duty absorption when the record clearly indicates that respondents and their affiliated importers have absorbed antidumping duties during the POR.
- Confining absorption inquiries to the second and fourth reviews will encourage respondents to manipulate the administrative review process with a view to avoid duty absorption findings. As an example, petitioners have requested duty absorption inquiries in the 1995–1996 administrative reviews on cold-rolled carbon steel flat products from Korea (with respect to Union) and on cut-to-length carbon steel plate from Germany (with respect to A.G. der Dillinger Hüttenwerke—Dillinger). Dillinger and Union, however, claim not to have had any imports of these products during the POR. By not conducting duty absorption inquiries with respect to these companies, petitioners allege, the Department will permit Dillinger and Union to elude penalties despite clear evidence on the record that both companies absorb duties.
- By limiting itself to conducting duty absorption inquiries during the second and fourth administrative reviews, the Department is only creating additional burdens for itself, since petitioners will feel compelled to request complete administrative reviews for the sole purpose of obtaining a duty absorption determination. The Department's proposed policy effectively requires petitioners in certain circumstances to incur additional costs by requesting a review when they might not otherwise choose to do so. Petitioners argue that the statute was not intended to force petitioners into a position of choosing between incurring such additional costs or giving up their right to an absorption determination, and the Department should not establish a policy that would do so. Although it is conceivable that the Department could conduct mini-reviews in the second and fourth years focusing exclusively on the issue of duty absorption, the workload savings would be far exceeded by the workload of additional ''protective'' reviews requested by petitioners. Additionally, petitioners submit, if a respondent chose not to participate in such a ''mini-review,'' the Department would have to make an adverse assumption that the respondent did, in fact, absorb antidumping duties. As an example, petitioners cite the ongoing administrative review of cut-to-length carbon steel plate from Sweden, where respondent Svenskt Stål AB (''SSAB'') has withdrawn from the review and refuses to answer requests for information. Although the Department has the option of making an adverse assumption that SSAB absorbed antidumping duties, petitioners wonder whether, and to what extent, the ITC in its sunset review determination would give weight to a duty absorption determination based on adverse assumptions as opposed to actual record evidence.
- Because all the information needed to conduct a duty absorption inquiry is already on record and verified, and only a small amount of additional activity is necessary to determine whether antidumping duties have been absorbed, petitioners assert there is no reason why the Department should not exercise its discretion and conduct a duty absorption inquiry.

The record evidence cited by petitioners which, they allege, conclusively demonstrates that duty absorption has occurred are the following:

- Petitioners cite as an example a U.S. sale by Dongbu where the ultimate U.S. purchaser was invoiced less than what Dongbu Corporation (Korea) billed DBLA, its Los Angeles, California sales affiliate. *See* petitioners' common issues case brief, from Dewey Ballantine to the Secretary of Commerce (proprietary version), as resubmitted on February 27, 1997 (''CICB''), at 120–122.
- Petitioners allege that an analysis of the data submitted by POSCO clearly reveals that POSCO's U.S. prices do not reflect the full amount of antidumping duties. In their example, petitioners submit that the deduction from the reported gross unit price of the total of (a) per-unit transfer price, (b) direct and indirect selling expenses in the United States, (c) per-unit movement charges paid by BUS, and (d) antidumping and countervailing duty cash deposits, results in a negative margin. According to petitioners, this example demonstrates that, by not raising its U.S. prices sufficiently to cover the margin of dumping, BUS elected to pay the dumping duties rather than pass them on to the customer. *See* CICB at 122–124.
- Petitioners allege that an analysis of the data submitted by Union clearly reveals that Union's prices to unaffiliated U.S. purchasers do not reflect the full amount of antidumping duties. In their example, petitioners submit that the deduction from the reported gross unit price of the total of (a) per-unit transfer price, (b) direct and indirect selling expenses in the United States, (c) per-unit movement charges paid by Union America (''UA''), and (d) antidumping and countervailing duty cash deposits, results in a negative margin. According to petitioners, this example demonstrates that, by not raising its U.S. prices sufficiently to

cover the margin of dumping, UA elected to pay the dumping duties rather than pass them on to the customer. *See* CICB at 124–125.

Respondents retort that the Department should not conduct a duty absorption inquiry. First, they argue that the request is premature because in section 751(a)(4) of the Act, Congress authorized the Department to conduct duty absorption inquiries in ''transition reviews,'' (such as this one) only for reviews initiated in 1996 or 1998. For this same reason, Dongbu and Union argue, the Department, contrary to petitioners' assertions, does not have the discretion to conduct a duty absorption inquiry in this review.

Second, POSCO argues that according to the SAA, a duty absorption inquiry is relevant only in the context of a sunset review proceeding. The SAA (at 885) states that ''[t]he duty absorption inquiry would not affect the calculation of margins in administrative reviews.'' Thus, POSCO argues, not only is the request premature, but it is irrelevant to the calculation of the dumping margin in this proceeding.

Third, Dongbu and Union argue that there is no evidence of duty absorption on the record. The calculations the petitioners give in their brief that allegedly demonstrate duty absorption, Dongbu and Union argue, are incorrect. They argue that the petitioners' calculations treat the antidumping and countervailing duty deposit amounts as if they were the equivalent of a dumping margin. Doing so was incorrect, Dongbu and Union argue, because the plain language of the statute speaks of the absorption of ''antidumping duties,'' and not estimated antidumping duties.

Fourth, regarding petitioners' argument that confining reviews to the second and fourth reviews will encourage respondents to manipulate the administrative review process, Dongbu and Union argue that this argument is invalid. They argue that even if there were such a risk, it would not give the Department the right to disregard the statutory framework. Moreover, they argue that petitioners' suggestion that Union ceased its exports of cold-rolled steel to the United States during the 1995–96 period in order to avoid a duty absorption inquiry is sheer speculation and demonstrably incorrect. They argue that because Union has set its prices to the point where the dumping margins determined by the Department are insignificant, it is clear that it has not absorbed antidumping duties, and the motive for avoiding a duty absorption review therefore does not exist.

Fifth, regarding petitioners' argument that by limiting duty absorption inquiries to only the second and fourth administrative reviews the Department creates additional burdens for itself, Dongbu and Union argue that even this consideration does not give the Department the right to thwart the plain language of the law and Congressional will by conducting a duty absorption inquiry when it is not authorized to do so.

For these reasons, respondents argue that the Department should uphold its determination in the preliminary results of review that petitioners' request for a duty absorption inquiry is premature.

DOC Position. We agree with respondents that we are not required to conduct a duty absorption inquiry for this administrative review. Section 751(a)(4) of the Act provides that the Department, if requested, will determine during an administrative review initiated two years or four years after publication of the order whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) was added to the Act by the URAA.

Special rules, however, exist for transition orders, defined in section 751(c)(6)(C) of the Act as orders in effect as of January 1, 1995. Section 351.213(j)(2) of the Department's proposed regulations provides that the Department will make a duty absorption determination, if requested, for any administrative review initiated in 1996 or 1998. *See* Proposed Regulations at 7366. The commentary to the proposed regulations explains that reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year. *Ibid.* at 7317. Although these proposed regulations are not yet binding upon the Department, they do constitute a public statement of how the Department expects to proceed in construing section 751(a)(4) of the amended statute. This approach ensures that interested parties will have the opportunity to request a duty absorption determination on entries for which the second and fourth years following an order have already passed, prior to the time for sunset review of the order under section 751(c). *See, e.g., Certain Welded Stainless Steel Pipe From Taiwan; Preliminary Results of Administrative Review,* 62 FR 1435 (January 10, 1997) and *Fresh Cut Flowers From Mexico; Preliminary Results and Partial Termination of Antidumping Duty Administrative Review,* 62 FR 1318 (January 9, 1997).

Because the antidumping orders on corrosion-resistant and cold-rolled carbon steel flat products from Korea have been in place since 1993, they clearly constitute transition orders. Therefore, based on the policy articulated above, the Department will first consider a request for a duty absorption determination for reviews of these orders initiated in 1996. These reviews were initiated in 1995. Accordingly, we have not considered the issue of duty absorption in these reviews. *See also Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Preliminary Results of Antidumping Duty Administrative Reviews,* 61 FR 51891, 51892 (October 4, 1996).

Comment 4. Petitioners argue that, in calculating antidumping margins for the respondents, the Department must deduct from the price used to establish EP or CEP the actual countervailing and antidumping duties paid by respondents' affiliated U.S. importers.

Petitioners argue that the plain language and structure of the statute mandate that the Department make such a deduction, since it provides, in section 772(c)(2)(A) of the Act, that ''the price used to establish export price and constructed export price *shall be * * * reduced by * * * United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.*'' 19 U.S.C. § 1677a(c)(2)(A) (1995) (emphasis added by petitioners). Petitioners also contend that antidumping and countervailing duties are plainly ''incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.'' Nor, they insist, does the language of the statute mandate that antidumping and countervailing duties are to be distinguished or excluded from the phrase ''United States import duties.''

Petitioners state that the relevant provisions of section 772(c)(2)(A) of the Act, cited above, first entered U.S. law, verbatim, in the Antidumping Act of 1921 (''1921 Act''). Although Congress at the time omitted a definition of the phrase ''import duties,'' petitioners assert that the Court of Customs and Patent Appeals subsequently and specifically addressed the intentions of the drafters of the 1921 Act and noted that antidumping and countervailing duties were ''desired and intended (by Congress) to be considered as duties *for* *all purposes.'' See C.J. Tower & Sons v. United States*, 771 F.2d 438, 445 (C.C.P.A. 1934) (emphasis added by petitioners).

That antidumping and countervailing duties are to be included in the deduction, petitioners maintain, is confirmed when section 772(c)(2)(A) of the Act is read in conjunction with the later-added section 772(c)(1)(C), which provides that, to derive EP or CEP, the U.S. price shall be increased by the amount of any countervailing duty imposed to offset an export subsidy. That provision was added to U.S. law in 1979 to implement Article VI¶5 of the General Agreement on Tariffs and Trade, which prohibits the assessment of both antidumping and countervailing duties to compensate for the same cause of unfairly low-priced imports, whether by dumping or as a result of an export subsidy. *See Serampore Indus. Pvt. Ltd.* v. *United States,* 675 F. Supp. 1354, 1359 (CIT 1987) (*quoting* H.R. Doc. No. 96–153 at 412, *reprinted in* 1979 U.S.C.C.A.N. 683).

In the 1979 Trade Agreements Act, petitioners state, Congress, in addition to adding section 772(c)(1)(C), added the phrase ''except as provided in paragraph 1(C)'' to section 772(c)(2)(A). Petitioners argue it is a fundamental precept of statutory construction that a statute should be construed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another. They argue further that Congress' specific exemption of countervailing duties from section 772(c)(2)(A) demonstrates it clearly understood that subsection's reference to ''any * * * United States import duties'' as including antidumping and countervailing duties; otherwise, there would have been no reason to exempt certain countervailing duties from application of the provision. Had this exception not been inserted, petitioners maintain, an equal amount would be added by the operation of one subsection (*i.e.*, section 772(c)(1)(C)) and deducted as a result of the next subsection (i.e., section 772(c)(2)(A)).

Petitioners also argue that the Court of International Trade (''CIT'') has implicitly held that section 772(c)(2)(A) covers actual countervailing or antidumping duties. In *Federal-Mogul Corp.* v. *United States,* 813 F. Supp. 856, 872 (CIT 1993) (''*Federal-Mogul''*), the CIT did not adopt the Department's reasoning that section 1677a(c)(2)(A) applied only to the deduction of ''normal'' import duties, and that antidumping duties were not ''normal'' import duties. Rather, according to petitioners, the CIT based its refusal to deduct estimated antidumping duties on the fact that the duty deposits were only estimates—not actual duties—which might not have borne any relationship to the actual antidumping or countervailing duties owed. Petitioners also cite *PQ Corp.* v. *United States,* where the CIT noted approvingly that ''antidumping provisions in other jurisdictions explicitly list antidumping duties as one of the adjustments to be made in constructing prices.'' *See PQ Corp.* at 724.

Petitioners also put forward that in no way does the legislative history of the URAA suggest that Congress rejected their construction of section 772(c)(2)(A). Indeed, according to petitioners, the Senate Finance Committee, aware that the issue of whether to deduct antidumping duties from EP or CEP was being litigated, directed the Department to abide by the outcome of the litigation. *See* S. Rep. No. 103–412 at 64 (1994). Petitioners also maintain that the SAA explicitly states that no changes in the law were intended with respect to section 772(c)(2)(A). *See* SAA at 823. Petitioners deny that, as asserted elsewhere by the Department, Congress' rejection of a separate provision expressly allowing for the deduction of antidumping duties as a cost in the context of the passage of the URAA requires a different interpretation of section 772(c)(2)(A). See *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review,* 61 FR 48465, 48469 (September 13, 1996) (''*Netherlands Final*''). This rejection, petitioners assert, does not alter the Congressional intent with respect to a pre-existing statutory provision.

Petitioners dismiss as illegitimate the Department's repeated refusal to deduct antidumping and countervailing duties from U.S. price on the grounds that such a deduction would result in double-counting, for the following reasons.

- First, the statute is not discretionary when it states that the Department ''shall'' reduce U.S. price by the amount of United States import duties. No conflicting policy rationale, they maintain, can justify the Department's refusal to comply with a legal mandate.
- Second, petitioners affirm, in the *Netherlands Final* the Department did not consider doubling of antidumping margins to account for reimbursement of antidumping duties, as constituting double-counting. *See Netherlands Final* at 48470–71.
- Third, the Department has refrained from making the adjustment for antidumping duties because ''making an additional adjustment to USP for *the same* antidumping duties that correct this price discrimination between the U.S. and home markets would result in double-counting.'' *See Certain Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review,* 61 FR 18547, 18564 (April 26, 1996) (''*Corrosion-Resistant Final*'') (emphasis added by petitioners). This rationale, petitioners argue, cannot apply to countervailing duties, which offset subsidization, not price discrimination.

In the event that the Department determines that actual antidumping and countervailing duties do not fall within the general category of ''United States import duties,'' petitioners argue that antidumping and countervailing duties constitute ''additional costs, charges, or expenses * * * incident to bringing the subject merchandise from * * * the exporting country to * * * the United States' within the meaning of section 772(c)(2)(A) of the Act. These duties should therefore be deducted from EP or CEP, petitioners contend.

Petitioners contend that, because no party requested a review of the countervailing duty order on the subject merchandise at the time of the second anniversary of the order, countervailing duties are determinable and should be deducted in full from EP and CEP. Although the Department is currently enjoined by order of the CIT from liquidating the applicable entries pending a final resolution of the respondents' legal challenge of the Department's final affirmative countervailing duty determination, petitioners assert the presumption exists that the Department's determination is correct (*see* H.R. Rep. No. 96–317 at 182 (1979)) and the duties should be treated as final for purposes of section 772(c)(2)(A). Indeed, petitioners say, in the preliminary results of the instant reviews, the Department treated as final those countervailing duties imposed to offset subsidies, and stated that a respondent was entitled to an upward adjustment to U.S. price, even though liquidation was still enjoined as a result of litigation with respect to the entries in question. Petitioners contend that, in the event the Department incorrectly determines not to treat such duties as being final at this time, the actual amount to be collected will be known if the court reaches a decision before the final review results are issued, and the Department can make an adjustment at that time. At a minimum, petitioners argue, the Department should adjust the cash deposit rate upward by the amount of countervailing duties (other than those offsetting export subsidies) found in the original investigation.

Finally, petitioners request that the Department deduct the full amount of the ''actual'' antidumping duties that respondents' affiliated U.S. importers will be responsible for upon liquidation of the entries of the subject merchandise. If the Department determines that there exists a five percent dumping margin exclusive of the payment of estimated antidumping duties, petitioners contend the Department must deduct '' as per *Federal-Mogul*—an additional five percent, which is equal to the cost of the antidumping duties that Dongbu's, POSCO's, and Union's affiliated importers will be required to pay to U.S. Customs. In this case, petitioners say, once the final review results are issued, the exact amount of antidumping duties owed by Dongbu's, POSCO's, and Union's affiliated importers will actually be determined.

Respondents answer that the petitioners' argument is identical to the one the Department considered and properly rejected in the first administrative review of the order on corrosion-resistant products, and that the Department should reject here as well because the petitioners have not advanced any new arguments not set forth and rejected in the first review. Dongbu and Union argue that the Department's determination in the first review of corrosion-resistant products was strengthened further when Congress and the Administration, in enacting the URAA amendments under which this review is being conducted, very pointedly rebuffed the petitioners' persistent lobbying for a ''duties as a cost'' amendment. More recently, Dongbu and Union argue, the Department rejected the petitioner's position again in *Netherlands Final,* at 48469. Additionally, POSCO argues that the SAA (at 885) also states that the Department does not intend to treat antidumping duties as a cost in antidumping cases.

Furthermore, POSCO argues that petitioners' analogy with *Netherlands Final* (in which the Department did not consider doubling of antidumping margins, to account for reimbursement of antidumping duties, as constituting double-counting) is inapposite. In the duty reimbursement context, POSCO argues, the regulations require the Department to double-count antidumping duties as a punitive measure. The fact that antidumping duties are double-counted in that context, therefore, is not a policy decision over which the Department has any discretion. Because the Department's regulations do not require it to double-count antidumping and countervailing duties in its antidumping margin calculation, POSCO argues, the Department has the discretion to conclude that it would be unfair to double-count those expenses.

Moreover, POSCO argues that petitioners' reasoning is circular. The statute, POSCO argues, requires the Department to calculate the margin by comparing U.S. price with NV. If the margin must first be subtracted from U.S. prices, then, as a matter of simple mathematics, the ''correct'' margin could never be calculated.

In summary, Dongbu and Union argue, the petitioners' position is entirely without foundation, is either contradicted by or finds no support in the plain language of the law, the legislative history of the law, court precedent, Department practice, or the United States' legal obligations under the WTO Antidumping Agreement which prohibits signatories from deducting in excess of the actual margin of dumping.

DOC Position. We disagree with petitioners. The term ''United States import duties'' is not defined in the statute, and is therefore open to interpretation. Substantial deference is owed to an agency's interpretation of the statute it is charged with administering, as long as such interpretation is reasonable. *See Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 844 (1984).

The term ''United States import duties'' first appeared in section 203 of the 1921 Act (42 Stat. 12). However, neither the 1921 Act nor its legislative history defined the term. The Senate Report accompanying the legislation, however, uniformly refers to antidumping duties as ''special dumping dut[ies],'' and uniformly refers to ordinary customs duties as ''United States import duties.'' The rigorous use of these distinct terms indicates that the new ''special dumping duties'' (payable only to offset dumping) were considered to be distinct from the existing ''United States import duties'' (payable, *ad valorem,* upon importation).

This conclusion is reinforced by the fact that section 211 of the 1921 Act (42 Stat. 15), provided that, for the limited purpose of duty drawback, ''the special dumping dut[ies] * * * shall be treated in all respects as regular customs duties.'' *See* S. Rep. No. 16, 67th Cong., 1st Sess., at 4 (1921). If ''special dumping duties'' really were considered to be just one type of ''United States import duty,'' this special provision would have served no purpose. That ''special dumping duties'' are distinct from normal import duties also is apparent from the fact that section 202(a) of the 1921 Act (42 Stat. 11) provided that ''special dumping duties'' may be applied to ''duty-free'' merchandise. In this context, ''duty-free'' meant ''free from *ordinary* import duties.'' If ''duty-free'' meant ''free from *any* duties,'' that would include antidumping (''AD'') duties and countervailing duties (''CVDs''). Plainly, however, ''duty-free'' was understood to mean ''free from ordinary customs duties.'' Although the Congress in 1921 did not explicitly stipulate that the new ''special dumping duty'' should not be calculated so as to include itself, the most reasonable explanation is that Congress would have considered it absurd to spell out such a self-evident proposition.

When the AD law was amended in 1979, the provision requiring the deduction of ''United States import duties'' from the starting price in the United States was amended by adding the words ''except as provided in paragraph (1)(D).'' Because paragraph (1)(D) provides for the addition to the starting price of CVDs to offset export subsidies on the subject merchandise, petitioners argue that this indicates that Congress in 1979 considered ''United States import duties'' to include countervailing duties. However, the only intent of Congress that is clear is that the addition of export-subsidy CVDs to the price in the United States should not be robbed of its logical effect by an offsetting deduction. *See Trade Agreements Act of 1979,* Report of the Committee on Finance on H.R. 4537, S. Rep. No. 249, 96th Cong., 1st Sess., at 94 (1979). There is absolutely nothing in the legislative history to indicate that Congress intended to change the standard practice of not deducting either AD duties or CVDs from the starting price in the United States as ''United States import duties.''

Furthermore, the SAA explicitly states that AD duties are not to be treated as ''a cost'' to be deducted from the starting price in the United States, and notes that Article 2.4 of the Antidumping Agreement (at footnote 7) ''admonishes national authorities not to double count adjustments'' in calculating dumping margins. *See* SAA at 139. In the hundreds of antidumping duty administrative reviews that Commerce has conducted since 1980, the Department has never deducted AD duties or CVDs from the starting price in the United States, and the courts have never directed the Department to change this practice. Congress has been well aware of this situation, and, despite numerous revisions of the antidumping law since 1921, has never amended the law to change this result.

Petitioners' argument that the Department should deduct ''actual'' CVDs from U.S. price overlooks the distinction made by Congress in section 772(c)(1)(C) of the Act between domestic and export subsidies. Domestic subsidies presumably lower the price of the subject merchandise both in the home and U.S. markets, and therefore have no effect on the measurement of any dumping that might also occur. Export subsidies, by contrast, benefit only exported merchandise. Accordingly, an export subsidy brings about a lower U.S. price which could be ascribed to either dumping or export subsidization, as well as the potential for double remedies. Imposing both an export-subsidy CVD and an AD duty, calculated with no adjustment for that CVD, would impose a double remedy specifically prohibited by Article VI¶5 of the GATT. Thus, the only reasonable explanation for Congress' decision to provide for the deduction from U.S. price of export-subsidy CVDs is protection against double remedies.

Finally, the Department rejects petitioners' argument that the AD duties and CVDs should be deducted as ''additional costs, charges, and expenses * * * incident to importation'' because the Department's rationale for refusing to deduct AD duties and CVDs from the United States price (that it double-counts the dumping margin) applies equally whether the AD duties and CVDs are described as ''import duties'' or ''costs of importation.''

Company-Specific Comments

Petitioners' Comments

Comment 5. Petitioners argue that CV profit must be calculated in a manner consistent with the calculation of the CV base cost. Petitioners state the Department calculated CV profit as a percentage of total profit on above-cost sales over the corresponding sum of COM, G&A, interest, commissions, selling expenses, and packing (''COPVALUE''). Petitioners allege that in calculating the absolute amount of profit for CV, the Department multiplied the CV profit rate by a different base value representing the COM, G&A, and interest expenses, but excluded selling expenses and packing. Petitioners propose that the Department calculate CV profit as the total home-market sales value, minus the total COP, and divided by the COP.

POSCO disagrees with petitioners' proposed correction. POSCO asserts the home-market sales and total COP used as the numerator and denominator in the calculation of the profit rate are extended values, whereas the COP used as the denominator in petitioners' proposed correction is a per-unit value. POSCO suggests that for the equation to be correct mathematically the COP would have to be a total figure.

DOC Position. We agree that we incorrectly calculated CV profit in the preliminary results. We calculated the profit rate including packing and selling expenses and applied it to the CV base cost that excluded packing and selling expenses. We have corrected the programming language for the final results to include selling and packing expenses in the CV base cost consistent with the components of the profit rate (*i.e.*, the numerator includes selling and packing expenses and the denominator includes selling and packing expenses).

Comment 6. Petitioners note that Dongbu's CV financial expense factor must be revised. According to petitioners, Dongbu incorrectly offset CV financial expense with an adjustment based on the ratio of accounts receivable and finished goods inventory to assets.

Dongbu acknowledges it inappropriately reduced its CV financial expense rate with imputed accounts receivable and inventory carrying expenses. Dongbu states that the company agrees to the use of the COP financial expense factor for calculating CV.

DOC Position. We agree with both petitioners and Dongbu. The Act directs the Department to exclude the imputed accounts receivable and inventory carrying expense offsets. *See, e.g., Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30361 (June 14, 1996) (''*Pasta*''). Therefore, we revised Dongbu's CV financial expense rate for these final results, and used the company's submitted COP financial expense factor to calculate the financial expense factor used for CV, because this factor appropriately excluded imputed offsets.

Comment 7. Petitioners argue that Dongbu's reported U.S. sales are CEP transactions. They maintain that the record demonstrates that Dongbu's U.S. sales are made through ''back-to-back'' transactions, in which Dongbu USA, Dongbu's affiliated importer, engages in all selling functions in the United States. Petitioners claim that new factual information available to the Department in this review demonstrates that Dongbu's sales are properly characterized as CEP transactions.

According to petitioners, the criteria typically used by the Department for classifying sales as CEP or EP lead to the conclusion that Dongbu's sales are CEP transactions. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany*, 61 FR 38166, 38175 (July 23, 1996) (''*Presses from Germany*''); *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from France*, 56 FR 56380, 56384 (November 4, 1991); *Final Determination of Sales at Less Than Fair Value: New Minivans from Japan*, 57 FR 21937, 21945 (May 26, 1992); and *Brass Sheet and Strip from Sweden; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 2706, 2708 (January 23, 1992). They maintain that the Department also recently determined that a U.S. sale is properly classified as a CEP transaction when the U.S. affiliate plays an active role in the sales negotiation process, and when it performs significant additional functions in support of U.S. sales. *See Presses from Germany* at 38171. Petitioners claim that all selling expenses related to Dongbu's U.S. sales are incurred in the United States, that Dongbu USA engages in substantial selling activities in the United States, and that the sale itself occurs in the United States. Petitioners further argue that the record supports these activities since Dongbu USA acts as the importer of record, issues sales contracts for all U.S. sales, borrows to finance accounts receivable, handles all billing and accounting functions related to U.S. sales, and is involved in other selling functions consistent with CEP sales.

Petitioners contend that Dongbu's selling functions exceed those of a mere communications link or processor of documents. They argue that evidence on the record demonstrates that for every reported U.S. transaction, two sales take place, one from Dongbu to Dongbu USA and the other from Dongbu USA to the unaffiliated U.S. customer. Petitioners note that Dongbu describes its U.S. sales as involving ''back-to-back'' transactions, a characterization which appears to be at odds with Dongbu's portrayal of its U.S. sales as direct sales to unaffiliated customers. Petitioners maintain that separate transactions indicate that Dongbu USA acts as more than a mere processor of documents or communications link, and that the presence of multiple transactions with CEP sales is consistent with the amendments made under the URAA, as indirect selling expenses would typically be incurred on the second sales transaction, as they were in the present case.

Petitioners argue that Dongbu's own information makes it clear that significantly greater sales activity occurs in the United States for U.S. sales than occurs in the home market, and the amount of Dongbu's U.S. indirect selling expenses incurred in Korea is an insignificant percentage of sales price. From this evidence, according to petitioners, it is clear that Dongbu USA's sales activity in the United States is far more significant than that which takes place in Korea for equivalent sales. Petitioners note that despite the evidence demonstrating that Dongbu USA sells subject merchandise to the U.S. customer, Dongbu claims that the U.S. sale is made by Dongbu, because Dongbu approves the customer's purchase order. They contend that Dongbu has failed to present evidence or documentation indicating that Dongbu negotiated the price or quantity of the U.S. sales, or played any other role in the sales process other than giving *pro forma* approval.

Dongbu asserts that the Department has already thoroughly considered and rejected the arguments raised by petitioners in the first administrative review and the preliminary review results. Dongbu argues that there is no new factual information that the Department has overlooked. The nature and scope of Dongbu USA's selling activities in the United States have not changed for this review. According to Dongbu, petitioners' contention that all selling functions related to Dongbu's U.S. sales are incurred in the United States and that Dongbu USA is involved in substantial selling activities is easily disproved by evidence on the record supporting the fact that sales negotiations are undertaken by Dongbu's export department in Seoul and that Dongbu USA merely acts as a communications link in this process. Dongbu argues further that it is a matter of record that the most significant selling activities related to U.S. sales occur in Korea, including sales negotiation, production scheduling, shipping scheduling, Korean brokerage, handling, and loading expenses, Korean inland freight to the port, and ocean freight. Respondent claims that Dongbu USA simply facilitates the sale by ensuring delivery of the merchandise to the customer after clearance through Customs and by invoicing the customer and receiving payment.

Dongbu also contends that, contrary to petitioners' arguments, the issue is not the relative quantity of the selling activities that are undertaken in the United States and Korea, but the nature of those selling activities; these selling activities are consistent with those associated with acting as a communications link and document processor. Dongbu points out that the CIT has upheld the classification of sales as purchase price (now EP) sales in circumstances where the related U.S. company undertook activities similar to, or even more extensive than, those in this instance. *See, e.g., Outokumpu Copper Rolled Products* v. *United States*, 829 F. Supp. 1371, 1379–1380 (CIT 1993), *appeal after remand dismissed*, 850 F. Supp. 16 (CIT 1994); *E.I. du Pont de Nemours & Co., Inc.* v. *United States*, 841 F. Supp. 1237, 1248–50 (CIT 1993); *Zenith Electronics Corp.* v. *United States*, Consol. Ct. No. 88–07–00488, Slip Op. 94–146 (CIT) (''*Zenith*'').

Dongbu argues that there is no factual evidence to support petitioners' claim that the sale itself occurs in the United States. The record itself, including the Department's verifications findings, confirms that Dongbu USA has no authority to accept or reject U.S. sales offers and that the approval of sales comes from Dongbu's export department in Seoul. Dongbu also argues that there is no support for petitioners' claim, either in past administrative practice or in the URAA, that the use of intracorporate invoicing to facilitate shipment of sales indicates that sales are CEP transactions. *See* SAA at 153. Respondent contends that back-to-back invoicing is a common method by which related parties are able to geographically transfer routine selling functions to the United States, and that such invoicing is consistent with EP classification.

DOC Position. We disagree with petitioners that the selling functions of Dongbu USA exceed those of a mere communications link or processor of documents. As discussed in our position on this matter during the first administrative reviews, whenever sales are made prior to the date of importation through an affiliated sales entity in the United States, we determine whether EP is the most appropriate determinant of the U.S. price based upon the following considerations: (1) The subject merchandise was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related shipping agent; (2) direct shipment from the manufacturer to the unrelated buyer was the customary channel for sales of this merchandise between the parties involved; and (3) the related selling agent in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer. *See, e.g., Certain Stainless Steel Wire Rods from France: Final Determination of Sales at Less than Fair Value*, 58 FR 68865, 68868–9 (December 29, 1993) (''*Wire Rod*''); *Granular Polytetrafluoroethylene Resin from Japan: Final Results of Antidumping Duty Administrative Review*, 58 FR 50343–4 (September 27, 1993) (''*PTF Resin*''). This test was first developed in response to the CIT's decision in *PQ Corp.* at 733–35. It has also been used to uphold indirect purchase price transactions involving exporters and their U.S. affiliates. *See, e.g., Zenith*. We agree with respondent that neither the nature nor the scope of Dongbu USA's selling activities with regard to these activities in the United States have changed in these reviews.

Furthermore, we agree with respondent that, when the criteria described above are met, we consider the exporter's selling functions to have been relocated geographically from the country of exportation to the United States, where the sales agent performs them. We determine that Dongbu USA's selling functions are of a kind that would normally be undertaken by the exporter in connection with these sales. Dongbu USA's role in the payment of cash deposits of antidumping and countervailing duties, extension of credit to U.S. customers, the processing of certain warranty claims, and project development are consistent with EP classification and are a relocation of routine selling functions from Korea to the United States.

Comment 8. Petitioners contend that Dongbu's reported credit expenses should be revised to reflect the date of shipment from the factory. Petitioners claim that Dongbu improperly computes the number of credit days based on the date of the bill of lading at the port, rather than on the date of shipment from the factory. Accordingly, the Department should increase the credit period for all U.S. sales on the basis of facts available. Petitioners argue that the Department requires respondents to calculate credit expenses based on the number of days between date of shipment to the customer and date of payment, and that these instructions are consistent with the Department's long-standing practice. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe from the Republic of Korea*, 57 FR 53693, 53700 (November 12, 1992) (''*Stainless Pipe from Korea*''); *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty*

Administrative Reviews and Notice of Revocation in Part, 61 FR 35177, 35181 (July 5, 1996) (''*PET Film*''); and *PTF Resin* at 50344.

However, according to petitioners, Dongbu used as the date of shipment the date of lading on board the ship as indicated on the bill of lading. In doing so, they claim, Dongbu improperly shortened the credit expense period in the U.S. market. *See, e.g., Final Determination of Sales at Less Than Fair Value: Welded Stainless Steel Pipe from Malaysia*, 59 FR 4023, 4029 (January 28, 1994); and *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 58 FR 6207, 6212 (January 27, 1993).

Petitioners support their argument by stating that sales documentation examined by the Department at verification demonstrated time differences between shipment of merchandise from the factory and its lading at the port. They argue that Dongbu claims, *post hoc*, that the source of this information was issued directly after production was completed and prior to commencement of shipment, and does not indicate the date of shipment from the factory. In noting this, petitioners assert that Dongbu offers no evidence for its claim, which is contradicted by its earlier responses and discredited by the document itself. Petitioners contend that Dongbu's position is further weakened by its unsupported claim that shipment from the factory does not occur until an export permit has been issued by the Korean government. Petitioners state that the claim is undermined by Dongbu's own calculation of the number of days between the date of export and the bill of lading date (as opposed to the date of shipment from the factory), and the fact that Dongbu has admitted that subject merchandise is warehoused between shipment from the factory and later export.

Dongbu counters these arguments by noting that its use of the bill of lading as the date of shipment is consistent with the methodology accepted by the Department in the first review of corrosion-resistant-products and in the preliminary results of the present reviews. Dongbu argues that the issue is not whether a minimum number of consecutive reviews were conducted prior to the change in practice—as in *Shikoku Chemicals Corporation* v. *United States*, 795 F. Supp. 417, 421–22 (CIT 1992) (''*Shikoku*''), where the calculation methodology was changed without notice after four consecutive reviews rather than just after one—but whether there was reasonable reliance on the Department's prior acceptance of the methodology, whether the fact pattern is unchanged, and whether there is evidence of a ''significant error.'' Dongbu states that in the present case, it reasonably relied on the Department's prior examination and acceptance of the reported date of shipment, the fact pattern is unchanged, and there is no evidence of error in using shipment date as the date of sale.

Dongbu maintains that petitioners' argument is based on their incorrect identification of a verification document as a shipping invoice. The document in question, according to Dongbu, is not a shipping invoice, but a document which is generated prior to shipment. Dongbu states that actual shipment from the factory does not occur until later in the process, following the transmission of vessel arrangements to the factory and export clearance being obtained from the broker. Therefore, according to respondent, the invoice petitioners question is not the same invoice that is generated at the time of shipment from Dongbu's factory and which is the basis for recording the date of sale in Dongbu's accounting records. Dongbu also notes that the export permit, and other documents singled out by petitioners as suspect, are documents that are prepared in advance of shipment from the factory, while others, including the bill of lading, are issued at approximately the time of shipment from the factory. Accordingly, these facts explain the short time differences between the export permit date and the shipment date questioned by petitioners.

DOC Position. Although we disagree with petitioners' interpretation of the shipping documents, we agree with them that the Department's general practice is to calculate credit expenses based on the number of days between date of shipment to the customer and date of payment. *See, e.g., Stainless Pipe from Korea* at 53700, *PET Film* at 35181, and *PTF Resin* at 50344. However, we agree with respondent that Dongbu's use of the bill of lading date as the date of shipment is consistent with the methodology reviewed and accepted by the Department in both the first review of corrosion-resistant products and the preliminary results of these reviews; in this instance, the fact pattern is unchanged, and there is no evidence that using the bill of lading date as the shipment date would be in error. *See Shikoku* at 421–22.

While both petitioners and respondent argue at length over the identification and characteristics of certain sales verification documentation, we refer to our review and analysis of the documents in question in our sales verification report for Dongbu. In that report, and upon our review of the documents used to support the corresponding sales data, we noted that ''no discrepancies were noted for this transaction.'' Accordingly, we have continued to use this methodology for these final review results.

Comment 9. Petitioners assert that Dongbu's warehousing expenses must be deducted from U.S. price. They argue that Dongbu's warehousing expenses should be treated as movement charges since Dongbu has stated that subject merchandise is warehoused post-production and after shipment from the factory. Petitioners maintain that while Dongbu claimed in its questionnaire response that it does not introduce subject merchandise into a distribution warehouse in the United States, Dongbu later admitted that subject merchandise is warehoused after shipment from the factory. According to petitioners, Dongbu's argument shifted to the position that its warehousing expenses are more similar to pre-shipment manufacturing overhead expenses.

Petitioners argue that Dongbu's revised claim is based on the incorrect view that its warehousing expenses are incurred prior to shipment to its U.S. customers. Petitioners state that in contrast to this, Dongbu previously admitted that it transports unpainted cold-rolled merchandise from the Seoul factory to its Inchon warehouse to await exportation. Accordingly, the Department, consistent with the statute, its proposed regulations, and the SAA, may deduct post-sale warehousing expenses from U.S. price. *See Proposed Regulations* at 7330 and SAA at 823, 827.

Petitioners also take issue with Dongbu's claim that its warehousing expenses are correctly characterized as overhead expenses since they are associated with the temporary storing of semi-finished products between product lines. Petitioners state that Dongbu itself admitted to warehousing finished products after production is completed and after shipment from the production facility. According to petitioners, post-production warehousing expenses incurred after shipment are not attributable to manufacturing, but instead constitute movement charges and should be deducted from U.S. price. *See, e.g., Erasable Programmable Read Only Memories from Japan; Final Determination of Sales at Less Than Fair Value*, 51 FR 39680, 39691 (October 30, 1986).

Petitioners contend that the Department should resort to facts available in this instance because Dongbu failed to provide the requested information regarding warehousing expenses, and because it originally claimed that no such warehousing actually occurred. Petitioners assert that, at a minimum, the Department should deduct from U.S. price, as facts available, the amount calculated by Dongbu for warehousing expenses. Alternatively, and only if the Department incorrectly concludes that Dongbu's admitted post-warehousing expenses are not movement charges, state petitioners, the amount calculated by Dongbu for these charges should be deducted as a direct expense, since this amount is directly linked to individual sales.

Dongbu argues that the pre-shipment expenses questioned by petitioners are recorded as manufacturing overhead expenses in its normal accounting records and have been reported properly as such in its COP and CV data. Respondent states that the cost of such pre-shipment overhead is no different from overhead expenses associated with temporarily storing semi-finished products between production lines, and that the Department has never treated pre-shipment manufacturing costs as selling expenses.

Contrary to petitioners' claim that Dongbu shifted its position and only characterized these expenses as manufacturing overhead following petitioners' argument that they be treated as movement expenses, respondent notes that it pointed this out three months earlier in its Section D cost response to the Department. Respondent argues that petitioners continue to miss the important point, which is that Dongbu records these expenses as factory overhead, rather than selling expenses in its normal course of business. Furthermore, Dongbu argues that there is no legal basis to treat these expenses as movement expenses pursuant to section 771(c)(2) of the Act since they are incurred before shipment to the U.S. customer. Respondent argues that the Department most recently stated in the *Proposed Regulations* that the deduction for movement expenses only ''includes a deduction for all warehousing expenses incurred after the merchandise leaves the producers factory * * * ,'' a position which the Department notes is ''[c]onsistent with the SAA, at 823 and 827.'' *See Proposed Regulations* at 7330 (preamble to proposed section 351.401(e)).

DOC Position. We disagree with petitioners' characterization of the expenses in question as post-production warehousing expenses which Dongbu has incurred after shipment, and that they should be treated as movement charges and deducted from U.S. price. As we noted in our sales verification report for Dongbu, the respondent indicated that the warehousing expenses in question are not treated as selling expenses, but rather as cost of manufacturing expenses. We noted in the same report that, as such, the amounts reported in Dongbu's questionnaire response of May 24, 1996, and the method of allocating these expenses, were shown during Dongbu's cost verification to tie directly to audited financial statements. Therefore, as in the preliminary results of these reviews, we have continued to treat these expenses as manufacturing overhead expenses, and we have not deducted them from U.S. price for the final review results.

Comment 10. Petitioners argue that the Department should treat the markup charged by Dongbu USA for transportation services in the U.S. market consistently with the Department's treatment of similar charges by Dongbu Express in the Korean market by deducting them as movement expenses from the U.S. price. Petitioners note that in the first review of corrosion-resistant products, and in the preliminary results of the present reviews, the Department included the markups paid by Dongbu to Dongbu's home-market subsidiary, Dongbu Express, in the adjustment made to NV for movement charges. Petitioners contend that Dongbu's transactions with Dongbu USA are identical in substance to those between Dongbu and Dongbu Express, and the Department must analyze them in the same way. In doing so, U.S. brokerage and handling expenses, ocean freight, and the U.S. customs duty, which are arranged and/ or paid for Dongbu USA, should therefore be increased by the corresponding value of the services performed by Dongbu USA relative to these services.

Respondent argues that the actual expenses of the kind referred to by petitioners (*i.e.,* the costs of arranging for U.S. brokerage and handling, U.S. customs clearance, and, as importer of record, the payment of customs duties), are already completely accounted for. According to Dongbu, Dongbu USA does not directly arrange for these services, but instead employs Customs brokers for the brokerage service, handling, customs clearance, and payment of customs duties. Dongbu states that the full costs associated with these expenses were fully reported on a sale-by-sale basis in the computer field USOTREU. Dongbu maintains that even though it agrees with petitioners that the markups charged by Dongbu Express for inland freight services constitute deductible movement charges, the services at issue are separate from the reported fees paid by Dongbu USA. Dongbu states further that there is no legal basis for deducting an amount for Dongbu USA's profit on these sales, because U.S. profit deductions such as those suggested by petitioners are allowed only in connection with CEP sales, and not EP sales.

DOC Position. We agree with petitioners and Dongbu that the actual expenses charged by Dongbu Express for inland freight services in the Korean home market consist of movement charges deductible from net price and NV. We differ, however, with petitioners' argument that Dongbu's transactions with Dongbu USA are identical in substance to those between Dongbu and Dongbu Express. We agree with respondent that the costs of arranging for U.S. brokerage and handling, U.S. customs clearance, and, as the importer of record, the payment of customs duties, are reflected in the brokerage fees paid by Dongbu USA and are accounted for on a sale-by-sale basis in the reported field USOTREU, which we verified during the sales verification. Accordingly, our treatment of these expenses has not changed in these final review results.

Comment 11. According to petitioners, the Department must apply partial facts available to account for Dongbu's failure to report all U.S. brokerage expenses. Petitioners state that the Department's verification report indicates that the company did not report any U.S. brokerage expenses for one observation number. As a result, the Department should use partial facts available for this adjustment in its U.S. price calculations. Respondent conceded this reporting error and did not contest this issue.

DOC Position. We agree with petitioners and have corrected this error by deducting from U.S. price the amount of U.S. brokerage fee which we verified should have been allocated to this transaction.

Comment 12. Petitioners maintain that the Department must use facts available to account for Dongbu's failure to report partial returns in the home market. They argue that in its questionnaire responses, Dongbu implied that it had reported all credit invoices as requested; however, at verification the Department discovered that partial returns were not reported. Petitioners state that while Dongbu initially claimed as its excuse for omitting partial returns that it had over-reported sales, Dongbu now claims that it failed to account for partial returns because it could not do so. Petitioners argue that the explanation for Dongbu's failure to report partial returns was a simple unilateral decision not to do so, and that this omission may result in its understatement of home-market monthly weighted prices to be compared to U.S. price (*i.e.*, if the original sale involving the returned merchandise had a lower price than other sales during the month). Petitioners state that in similar situations the Department has resorted to facts available. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Japan, Singapore, Sweden, Thailand and the United Kingdom*, 60 FR 10900, 10908 (February 28, 1995) (Final Results of Antidumping Duty Administrative Reviews). Petitioners contend that any uncertainty regarding the total effect of the partial returns is attributable to Dongbu's misstatement of the relevant facts and its failure to account for partial returns. They further note that had Dongbu not misled the Department in stating that returns had been traced to original invoices, the effect of partial returns on specific products or CONNUMs could have been reviewed during the course of the review. However, given Dongbu's misstatement of the facts and its failure to account for partial returns, the Department must resort to facts available.

Dongbu argues that there is no reason to revise its home-market sales data because its methodology used in accounting for partial returns is reasonable given its reporting capabilities, and that the approach it adopted had no significant impact on the margin. According to Dongbu, petitioners ignore the fact that the reason it did not offset the reported sales quantities to account for partial returns is because it could not do so, and that this was verified by the Department. Dongbu excluded these credits from its reporting database, but accounted for the universe of such credits during the quantity and value reconciliation of the home-market sales verification. Respondent argues that petitioners' claim that the exclusion of these partial returns might distort monthly weighted-average prices is unfounded since documents examined during verification demonstrate that the total volume of such adjustments is so small as to have no discernible effect on weighted-average prices. According to Dongbu, even if the quantities at issue were significant, for petitioners' claim to have merit would require that the original sales prices for partially returned merchandise on average would have to have been consistently higher or lower than prices for comparable merchandise in the same period. Respondent contends, however, that given the random nature of returns, there is no reason for such a pattern to occur. Also, Dongbu asserts that there is no basis for petitioners' claim that it misled the Department or misstated the facts, and that the methodology it used to account for partial returns is consistent with that which the Department verified in the first reviews.

DOC Position. We agree with Dongbu that its reporting methodology was reasonable and consistent with the approach we verified and accepted in the first review of corrosion-resistant products. As we noted in the home-market section of the Dongbu sales verification report, Dongbu did not report its partial returns because it could not do so. We agree that it was not possible for the Department's verifiers to trace partial return credit invoices to original sales transactions. Although Dongbu excluded these credits from its home-market database, we sampled and tested a complete listing of all such partial-return credits during the quantity and value reconciliation process of the sales verification, and found that Dongbu adequately accounted for the universe of such credits. We also agree with Dongbu that the total volume of the adjustments at issue is not significant and that, due to the random nature of the returns, there is no conclusive way of knowing that the original sales prices for partially returned products was consistently higher or lower than prices of comparable products in the same period. Accordingly, for the final results of this review we have not adjusted home-market prices to account for partial returns.

Comment 13. Petitioners argue that Dongbu's home-market credit expenses are improperly inflated because the calculation includes value-added tax (''VAT'') in the numerator and excludes VAT from the denominator. Petitioners further contend that it is the Department's long-standing practice to calculate credit expenses exclusive of VAT. Petitioners explain that Dongbu calculated the credit period for home-market sales based on the average credit days outstanding, and thereby improperly included VAT in the customer's accounts receivable. They state this represents a practice not permitted under the Department's precedent. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese from Venezuela*, 59 FR 55436, 55438–39 (November 7, 1994) (''*Silicomanganese*''); *Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 60 FR 63499, 63504 (December 11, 1995) (''*Wire Rope*''); and *Final Determinations of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France*, 59 FR 14136, 14139, 14146 (March 25, 1994).

According to petitioners, the VAT portion of the customer's accounts receivable relates to taxes which Dongbu collects from the customer and pays the government of Korea, and not to the price which Dongbu charges for the sale of the product under review. Petitioners contend that the Department should revise Dongbu's credit expense calculation such that the VAT is excluded from both receivables and sales in determining the credit period, since the applicable credit period concerns the period between shipment and payment for the merchandise, and not the customer's payment of VAT. Petitioners further argue that in *Silicomanganese* and *Wire Rope*, respondent attempted to improperly inflate its credit expense by including VAT in the numerator (*i.e.*, the average daily receivables), and excluding VAT from the denominator (*i.e.*, the average daily sales) of the credit period ratio, as Dongbu has done in the present review. Petitioners maintain that prior to the Department's discovery at verification, Dongbu did not accurately disclose its home-market credit methodology.

Dongbu argues that its home-market credit period was accurately calculated, and that petitioners' comment regarding this issue is based on a manifest error in the Department's sales verification report for the home-market transaction cited. Dongbu states that the report incorrectly reports that the accounts receivable amount used in determining customer-specific credit periods is inclusive of VAT, whereas the sales amount was not. Respondent argues that the verification documentation in question demonstrates that the monthly sales total for the customer reported is in fact inclusive of VAT, rather than exclusive. Dongbu maintains that since both sides of the equation used in determining the customer-specific credit period are inclusive of VAT, there is no error in the reporting methodology. Respondent notes that a potential problem could only arise if both sides of the equation were not reported on the same basis.

DOC Position. We disagree with petitioners. While petitioners are correct that it is the Department's practice to calculate credit expenses exclusive of VAT, we disagree with petitioners' cites to *Silicomanganese* and *Wire Rope* in support of their argument that Dongbu incorrectly calculated the average receivable turnover rate based on an average trade receivables inclusive of VAT. Unlike the respondent in the present review, the respondents in these cases sought an adjustment for the costs associated with carrying additional uncertain liabilities for VAT.

Also, upon review of the sales verification documents cited by respondent as the basis for petitioners' incorrect analysis of credit periods, we agree that the Department's analysis incorrectly states that the accounts receivable amount used in determining customer-specific credit periods is in fact inclusive of VAT, while reported sales values were not. The documents referred to by the respondent demonstrate that the total monthly sales used in the credit period calculation included—not excluded—VAT. Consequently, because both sides of the equation used to determine the customer-specific credits are inclusive of VAT, we agree with respondent that Dongbu's reporting methodology for credit periods is not in error.

Comment 14. Petitioners claim that the markup charged by Dongbu Express is not a permissible freight deduction, and that the Department must adjust Dongbu's home-market movement expenses in the final results. Petitioners contend that Dongbu has failed to demonstrate that the freight-related markup charged to Dongbu by its affiliated service provider, Dongbu Express, was at arm's length. Accordingly, the Department should use facts available to ensure that these movement charges reflect actual movement expenses, and not merely an intra-corporate transfer. Petitioners argue that Dongbu reported the majority of its home-market inland freight expenses as the amount it is charged by Dongbu Express. They state that since Dongbu Express is an affiliated concern, the amount charged by it must be shown to be arm's-length before the data reported can be determined reliable. *See, e.g., Final Results of Antidumping Duty Administrative Review; Color Picture Tubes from Japan,* 55 FR 37915, 37922–23 (September 14, 1990).

Petitioners claim that in the current reviews the record demonstrates that Dongbu Express' home-market freight charges to Dongbu are artificially inflated in excess of unaffiliated-party charges, and that Dongbu has provided ''no credible information or evidence'' to show that the markup charged by Dongbu Express for freight-related charges reflects market value, and is not simply a price constructed for internal bookkeeping purposes. As a result, according to petitioners, the Department must revise Dongbu's claimed freight adjustment by reducing the reported freight expenses by Dongbu Express for merchandise delivered by unaffiliated truckers by the maximum reported amount of Dongbu Express' markup. Petitioners further argue that if Dongbu is entitled to the freight adjustment, a similar adjustment must be made to account for the markup charged by Dongbu USA for transportation-related services in the U.S. market.

Dongbu argues that the markup charged by Dongbu Express is reasonable and at arm's length. Dongbu contends that, with respect to the markup charged by Dongbu Express on shipments using unaffiliated truckers, petitioners made exactly the same argument here as in the first administrative reviews; those arguments were rejected by the Department. Respondent states that petitioners have mischaracterized the markup in question as an intra-corporate transfer or ''internal bookkeeping entry'' rather than a real movement expense. Dongbu maintains that it has demonstrated on the record of this review that the markups at issue are reasonable in magnitude by comparing them to Dongbu Express' company-wide overhead and profit, and that while the comparison expenses and profit data relate to company-wide operations rather than only steel-related trucking services, the test is reasonable and accurate for the purpose of demonstrating that the markup is commercially reasonable. Dongbu also takes issue with petitioners' suggestion that it may be manipulating the markup in question in order to ''reduce artificially the margin of dumping calculated'' by referencing the data submitted by Dongbu and verified by the Department during the home-market sales verification.

Respondent also points out that the Department verified in Korea that Dongbu makes ex-factory sales where Dongbu Express provides the freight services and the customer pays Dongbu Express directly for the service. In these cases the amount paid is based on the same fee schedule charged by Dongbu Express; therefore, the customer is charged the same amounts by Dongbu Express that Dongbu Express charges Dongbu for the same services.

DOC Position. We agree with respondent that the amount charged by Dongbu Express is reasonable and at arm's length. As indicated by Dongbu, it demonstrated during its home-market verification that the prices charged by Dongbu Express to Dongbu were commercially reasonable charges for the services provided by Dongbu Express. In the present reviews, as was the case during the first administrative reviews, Dongbu has demonstrated that, on average, the percentage of Dongbu Express' general expenses to cost of sales is equal, on average, to the profit Dongbu Express earns. The sum of these two items is equal to Dongbu Express' markup to unrelated freight company charges, and, therefore, the prices charged to Dongbu by Dongbu Express accurately reflect market rates.

Comment 15. Petitioners argue that the Department must use facts available to determine the freight adjustment for deliveries where Dongbu Express' vehicles were used. Petitioners contend that Dongbu refused to answer the Department's repeated inquiries on the matter. According to petitioners, Dongbu confirmed in its supplemental questionnaire response that Dongbu Express occasionally uses its own trucks to transport subject merchandise for Dongbu Steel, but indicated that such instances were very rare and involved no greater than an estimated 10% of reported shipments. Petitioners state that while Dongbu eventually identified those sales which were transported using Dongbu Express' trucks, it did not provide the actual costs of the services. The Department needs this information, assert petitioners, to calculate the freight adjustment based upon actual costs. *See, e.g., Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results,* 55 FR 47093, 47099 (November 9, 1990). Therefore, as a result of Dongbu's refusal to provide requested information, the Department should deny Dongbu any freight deduction for those deliveries identified as having been made using Dongbu Express' personnel or vehicles.

Respondent argues that the reported amounts for transportation where Dongbu Express vehicles were used were at arm's length. Dongbu notes that while it pays a discrete amount for freight to an affiliated party in accordance with an established fee schedule, petitioners have erroneously claimed that it is the Department's practice to require that adjustments for services provided by affiliated parties should in all circumstances be reported on the basis of actual costs. Dongbu argues that in such instances where respondents pay a fee for such a service, the Department's practice is to accept the payment as the basis for the reported adjustment so long as it can be demonstrated to be at arm's length. If this cannot be demonstrated, the Department requires respondents to calculate a cost build-up based on the supplier's accounting records. Respondent asserts that it has demonstrated in the present review that the amounts paid to Dongbu Express for freight services provided using its own trucks were reasonable and reflected arm's-length rates when compared to a benchmark that is at arm's length. Furthermore, according to Dongbu, the benchmark at issue is the arm's-length amount that Dongbu Express was charged by unaffiliated trucking companies. Dongbu claims it has demonstrated that the amounts charged to Dongbu were equal to those third party charges plus a reasonable markup for Dongbu Express' expenses and profit incurred in arranging for the freight services.

DOC Position. We agree with Dongbu that the amounts reported for transportation expenses when Dongbu Express vehicles were used were demonstrated to be at arm's length. We agree that it has been the Department's practice to accept the payment made by a respondent for a service as the basis for reported adjustments so long as it can be demonstrated to be at arm's length. If this cannot be demonstrated, we require the respondent to calculate a cost build-up based on suppliers' accounting records. *See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Internal Combustion, Industrial Forklift Trucks from Japan*, 53 FR 12552 (April 15, 1988). In the present case, however, Dongbu has demonstrated that the amounts paid to Dongbu Express for freight services provided when using its own trucks were reasonable and accurately reflect arm's-length rates. Dongbu did this by demonstrating that the amounts charged to Dongbu are equal to those charged by unaffiliated trucking companies (that provide trucking services) plus a reasonable markup for Dongbu Express' expenses and profit incurred in arranging for the freight services.

Comment 16. Petitioners claim that the POSCO group's method of reporting COP and CV data is seriously flawed and warrants the use of partial facts available. Petitioners claim that it is unclear whether POSCO accurately assigned internal product codes known internally as ''representative product groups'' (''RPG's'') to control numbers (''CONNUM's'') based on the physical characteristics of the CONNUM. An RPG is a product having certain industrial specifications. POSCO created CONNUMs using the Department's matching criteria by assigning RPGs with similar physical characteristics to the CONNUM. Petitioners note that in some instances POSCO combined RPGs with different physical characteristics into one CONNUM. Petitioners argue that combining disparate RPGs to create a single CONNUM and then calculating a single cost for this CONNUM results in a severe distortion of costs. Petitioners believe that it would be very easy for POSCO to manipulate the cost of CONNUMs by combining disparate RPGs into a single CONNUM to obtain an artificially low cost for the CONNUM. Petitioners state that it would be difficult for the Department to discover this type of manipulation due to the large number of RPGs and CONNUMs in the database. Consequently, petitioners conclude it is impossible for the Department to determine precisely which CONNUMs consist of multiple RPGs with disparate physical characteristics and therefore costs which are unreasonable. Petitioners continue that because there is no way for the Department to assess the extent of these problems, the Department should declare the RPG system unreliable and resort to facts available. As facts available, petitioners suggest adjusting all of POSCO's submitted cost data by assigning to each CONNUM the highest cost of manufacturing reported for any particular RPG within that CONNUM.

POSCO responds that it has accurately assigned RPGs to CONNUMs in accordance with the Department's model-match hierarchy. POSCO claims that the product characteristics captured at the RPG level are in some instances more detailed than the Department's CONNUM characteristics and in other instances less detailed. POSCO states that for critical characteristics such as width and thickness, POSCO's RPG characteristics closely mirror the Department's specifications, although the exact ranges are not identical. POSCO asserts the RPG system matches the Department's requirements in the vast majority of cases and characterizes petitioners' examples of severe systemic defects as aberrant examples which were not portrayed as major exceptions in the Department's cost verification report.

DOC Position. We agree with the POSCO group. For these final results we have accepted POSCO's reported CONNUM-specific costs. We found that POSCO's cost data were allocated to a sufficient level of product detail following the model-match instructions. To derive the submitted cost data, POSCO assigned and weight-averaged individual RPGs based on characteristics that corresponded to our model-match instructions. We examined the component RPGs within selected CONNUMs and noted, in some instances, that the RPG characteristics were not exactly identical to the Department's characteristics, and that POSCO's combining of RPGs caused the cost of certain characteristics in the CONNUM to be averaged. However, we have determined there is no indication of a pervasive problem in how RPGs were assigned to particular CONNUMs and that, with certain adjustments, the reported CONNUM costs are reliable. We have determined that POSCO's reported costs for CONNUMs reasonably reflected the production cost of the merchandise during the POR. We made a similar determination in the *Corrosion-Resistant Final*, where we accepted a respondent's CONNUM-specific costs and found that the cost data were allocated to a sufficient level of product detail following our model-match instructions. *See Corrosion-Resistant Final* at 18560.

Comment 17. Petitioners argue that the POSCO group's use of the cost during the POR of the most similar CONNUM for products which were not produced but which were sold during the POR warrants the use of partial facts available. Petitioners contend that product costs can vary substantially from one period to the next. Accordingly, assigning a surrogate value from a production period during the POR for a different product produced outside the POR may result in a substantial distortion of the reported costs. Petitioners state that the POSCO group provided no information regarding the method it used in selecting the most similar product for use as a surrogate. This practice did not allow the Department to assess whether the reported most similar CONNUM is, in fact, the most similar. Petitioners contend that all CONNUMs with identical costs are surrogates. As partial facts available, petitioners suggest using the highest reported cost from this group for all the CONNUMs within the group.

The POSCO group retorts that the number of products which were sold during the POR but which were not produced in this period is trivial. The POSCO group criticizes petitioners' estimate of the number of surrogate sales, stating that petitioners have inaccurately and unreasonably summed the volume of all CONNUMs which share the same total cost of manufacturing with another CONNUM. The POSCO group contends that this calculation grossly overstates the use of surrogate values because it is the POSCO group's inability to account for all of the characteristics in the model match that is the reason for the majority of CONNUMs sharing the same total cost of manufacturing.

DOC Position. We have accepted the POSCO group's surrogate CONNUMs for merchandise produced outside this POR. For subject merchandise which was sold but was not produced during this POR, the POSCO group used as a surrogate the COM of a similar CONNUM produced during this POR. We compared the physical characteristics of POSCO's surrogate CONNUMs with the product which was produced outside the POR (*see* cost verification exhibit 27). This comparison indicates that the physical characteristics of the surrogate closely resembled those of the actual product. With regard to petitioners' concern that this method could distort costs because manufacturing costs differ among time periods, we note that the small amount of sales in question renders this concern insignificant when considering the margin analysis as a whole. Furthermore, our verification findings indicate that the POSCO group reported CONNUMs with identical costs primarily because it weight-averaged the cost of certain characteristics (*see* comments 16 and 20 for further discussion).

Comment 18. Petitioners argue that the POSCO group entities' reported costs are less than those recorded in each company's financial statement. Petitioners state that the Department must adjust the submitted data to account for this unreconciled difference as partial facts available. To support their position, petitioners cite Pasta, in which the Department made this type of adjustment.

The POSCO group counters that petitioners' analysis of information on the record is groundless because it relies on the ''total COM valuation'' (*i.e.*, a summation of reported per-unit COM values) as the basis to prove that there is an understatement of reported costs. The POSCO group first claims that petitioner's analysis relies on a reconciliation worksheet (cost verification exhibit 26) that requires further explanation to avoid misinterpretation of the data. The POSCO group explains that this reconciliation did not result in a perfect matching of the reported costs to the financial-statement COM because the reconciliation relied on sales quantities and not production quantities for the period of August 1, 1994 through July 20, 1995. The POSCO group then used these sales quantities to extend the per-unit COM values. However, the POSCO group states that the COM values reflect manufacturing costs from July 1, 1994 through June 30, 1995. Therefore, the total costs which were used to derive the unit costs in petitioners' analysis reflect a different period of time than did the quantity used to derive the sales. Second, the POSCO group explains that the data for third-country costs had to be estimated because the POSCO group entities do not keep cost records precisely in accordance with the Department's requested reconciliation format. In order to complete the reconciliation, the POSCO group states that it made the simplifying assumption that the distribution of products sold in third countries was identical on a CONNUM-by-CONNUM basis to the distribution of those sold in the home market. The POSCO group asserts that this mismatch does not indicate that the submitted costs do not tie to POSCO's, POCOS'', or PSI's audited financial statements, but rather it simply indicates that the Department's requested format for the analysis did not fit exactly the CONNUM-specific cost reporting when applied to third-country sales.

DOC Position. We agree with the POSCO group. We are satisfied that the reconciliation provided by the POSCO group establishes that the reported costs are not understated. We also agree with the POSCO group that the format of the reconciliation necessarily would not result in a perfect match of reported costs to the financial statement, but we have determined that the reconciliation did indicate that all costs are captured. We disagree with petitioners that this situation is analogous to that found in Pasta. In that case, the respondent refused to provide a reconciliation and therefore we adjusted for the differences between the reported costs and the total costs reported in the financial statement based on our reconciliation. In this case, each of the POSCO group entities provided the requested reconciliation based on certain assumptions that we determined were not significant enough to affect the reliability of the data.

Comment 19. Petitioners submit that the Department should make a number of adjustments in determining the appropriate fair value and COP for purchases of substrates by POSCO's affiliates. Petitioners allege that prices in Korea are not set by market forces and therefore the Department should not rely on domestic sales prices of cold-rolled or corrosion-resistant products for purposes of determining whether the affiliated party transaction prices reflect fair value. Petitioners suggest the Department should use export prices to third countries to assess whether affiliated party transaction prices reflect fair value.

If the Department determines that the Korean market is viable, petitioners suggest that the Department should calculate the difference in profitability between sales to POCOS, PSI, and other customers in Korea for sales of subject merchandise only as the measure of fair value. Petitioners argue that this company-specific and product-specific comparison more accurately portrays the difference in the level of profitability of sales to affiliates and unaffiliated companies.

Petitioners contend that the Department erroneously compared transfer prices of substrates to the COM (as opposed to the COP) of substrates. Petitioners argue the statute explicitly requires that this test be a comparison of transfer price to COP, not COM.

The POSCO group argues that the Department erroneously failed to treat POSCO, POCOS, PSI, and PCC as a single producer when calculating the value of steel substrate that was subsequently painted, coated, slit, or sheared by various segments of the collapsed entity. The POSCO group states that because the Department is treating POSCO, POCOS, PSI, and PCC as a single producer for antidumping duty rate purposes, the substrate transferred between them should be valued at cost rather than at the higher of cost, transfer price, or fair value.

The POSCO group challenges the Department's application of the ''fair-value'' and ''major-input'' provisions in this case. The POSCO group argues that the fair-value provision and the major-input rule apply only when reviewing transactions between affiliated entities. The POSCO group contends that neither subsections (2) nor (3) of section 773(f) of the Act apply in this case, where the reviewed transactions are between segments of a single collapsed entity. The POSCO group states that the Department created a single producer for purposes of calculating the COP when the Department instructed the POSCO group to calculate a single, weighted cost for each unique control number when reporting the costs of products manufactured at POSCO, POCOS, PSI, or PCC. The POSCO group cites the *Final Results of Antidumping Duty Administrative Review: Certain Iron Construction Castings from Canada,* 59 FR 25603, 25604 (May 17, 1994) (''*Iron Castings*'') to support its case that the Department treats collapsed respondents as a single entity. The POSCO group also states the Department tested sales of a single control number, without regard to the identity of the producer, to see if the control number was sold below cost. The POSCO group argues that by applying the major-input rule and the fair-value test to the collapsed entity, the Department failed to fulfill its own stated intention to treat POSCO, POCOS, PSI and PCC as a single producer.

The POSCO group cites the *Final Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts from the United Kingdom*, 61 FR 54613, 54614 (October 21, 1996) (''*Crankshafts*'') to support its position that the Department does not apply the fair-value provision or the major-input rule to transfers of steel substrate between divisions of a single company. The POSCO group also states that it is logically inconsistent and contrary to law for the Department to treat two or more entities as a single unit for some areas of dumping analysis such as inter-company transfers under the CEP methodology and subject merchandise purchased for resale and not disregard transfer prices in this instance. The POSCO group cites examples such as technical services, warranty, and advertising expenses that are routinely valued at the entity's cost, not at a rate charged by one entity to its parent, subsidiary, or sister division. The POSCO group sets forth that unaffiliated resellers have argued that, for purposes of the sales below cost test, the Department should value subject merchandise purchased from unaffiliated suppliers based on the acquisition price rather than on the supplier's production costs. POSCO states the Department has rejected this argument, explaining that COP means actual production costs of the producer—plus selling, general and administrative expenses (''SG&A'')—and not the acquisition price, in the *Final Results of Antidumping Duty Administrative Review: Elemental Sulphur from Canada*, 61 FR 8239, 8251 (March 4, 1996) (''*Sulphur*'').

The POSCO group argues that the Department's fair-value adjustment inappropriately double counts expenses and erroneously introduces profit into the calculated COP for the sales-below-cost analysis. The POSCO group asserts using the transfer price to value POCOS'' substrate purchases includes POSCO's profit nominally earned on the substrate transaction as well as elements of POSCO's SG&A. This, the POSCO group avers, violates the Department's own definition of the COM, which consists of materials, labor, fixed and variable overhead.

The POSCO group argues if the Department erroneously applies the fair-value test, fundamental errors in the preliminary methodology should be corrected for the final results. The POSCO group states the statute directs that the amount of the element under consideration, in this case the substrate, should fairly reflect the amount usually represented in sales of that merchandise in the market under consideration. The POSCO group states that it had sales of comparable merchandise both to members of the combined entity and to unaffiliated customers. The POSCO group contends the Department therefore should have compared these two sets of prices when performing the fair-value test. The POSCO group criticizes the Department's methodology as too broad and inaccurate because the Department did not attempt to compare profitability across sales of the same product sold in the same relative volume to affiliated and unaffiliated customers.

Petitioners retort that the statute explicitly requires that the major-input rule and fair-value provisions be applied to transactions involving transfers of substrate between POSCO, POCOS, PSI, and PCC. Petitioners argue that regardless of whether these entities have been collapsed, they are clearly and undeniably ''affiliated persons'' under the statutory definition. Accordingly, major inputs should be valued using the major-input rule and the fair-value provision. Petitioners contend the collapsing of entities merely goes to the level of affiliation between the separate corporations and the unusual intimacy of the relationship between the parties. If collapsed, entities are treated as a single firm for the limited purpose of sales reporting and calculation of a single margin. Petitioners argue that collapsing, however, does not extinguish corporate forms per se. Petitioners state that the collapsing of POSCO, POCOS, PSI, and PCC for sales reporting and margin calculation does not in any way extinguish, or even diminish, the fact that these entities are separate legal businesses. Petitioners assert that, to the contrary, the collapsing of these entities merely evidences the extremely high degree of affiliation and intimate nature of their relationship demonstrated on the record between these separate corporate entities. Petitioners cite the *Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany* 61 FR 38166, 38187 (July 23, 1996) to support their position that the major-input rule and fair-value provisions apply regardless of whether the entities are collapsed for sales purposes.

Petitioners state that the POSCO group's argument regarding the Department's valuation of merchandise purchased for resale is incorrect since the statutory provision on which the POSCO group relies relates to subject merchandise, not inputs. Petitioners also disagree with the POSCO group's contention that the application of the major-input rule results in the inappropriate inclusion of profit and certain expenses because the major-input rule goes exclusively to material costs; accordingly, profit earned on sales or purchases of the subject merchandise never enters into the major-input rule and cannot be infused into the COM as a result of that rule. Petitioners continue that, for example, the cost to POCOS of the substrate naturally includes a markup charged by POSCO and that the price with the markup represents the true cost to POCOS of the input.

DOC Position. As indicated in the preliminary results of this review, we have treated POSCO, POCOS, and PSI as a collapsed, single entity, the POSCO group, for purposes of our antidumping analysis. *See, e.g., Preliminary Results of Antidumping Duty Administrative Review: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 61 FR 51882, 51884 (October 4, 1996). We have determined that the POSCO group represents one producer of certain cold-rolled steel flat products and certain corrosion-resistant carbon steel flat products. We note that the POSCO group has also been treated as a single entity in prior segments of these proceedings. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea*, 58 FR 37176 (July 9, 1993).

We have reconsidered our position with respect to those companies which the Department determined are properly treated as a single entity in performing an antidumping analysis. We find that our prior practice of collapsing entities while continuing to apply the fair-value provision and the major-input rule is improper. We have determined that a decision to treat affiliated parties as a single entity necessitates that transactions among the parties also be valued based on the group as a whole. As such, we find that among collapsed entities, the fair-value and major-input provisions are not controlling. Thus, for both sales and cost reporting purposes, we consider the POSCO group to be one producer. With regard to transfers of inputs among the POSCO group companies we have valued transfers of substrate between the companies at the cost of manufacturing of the substrate plus the cost of inter-company transportation and packing. We find the facts of this case analogous to those found in *Crankshafts* where we did not apply the fair-value provision or the major-input rule to transfers of steel substrate between divisions of a single company. In *Crankshafts*, we sated that ''[a]lthough respondent describes UEF and UES as ''related'' in various sections of their questionnaire response, the weight of record evidence (*e.g.*, corporate structure charts and audited financial statements) indicate that they are divisions of the same corporation. The Department has determined that section 773(e) (2) and (4) does not apply in such situations.'' *Crankshafts* at 54614. *See also Final Determination of Sales at Less Than Fair Value: Offshore Platform Jackets and Piles from Japan*, 51 FR 11788, 11791 (April 7, 1986), where the Department stated that because NSC's steel was manufactured internally by another division of the same company, section 773(e) of the Act—in relevant part now sections 773(f) (2) and (3)—is inapplicable. Section 773(f)(2) directs the Department to disregard, in certain instances, transactions directly or indirectly between two persons. Since we have determined that the POSCO group is one entity for these final results, sections 773(f) (2) and (3) of the Act cannot apply because there are no transactions between affiliated persons.

We disagree with petitioners' reliance on *Presses from Germany* which they argue supports their position that the major-input rule and fair-value provisions apply regardless of whether the entities are collapsed for sales purposes. In that case, the companies at issue were not collapsed for sales reporting. However, respondents argued for combining certain elements of cost between two affiliated companies because the combination of these companies met, in their view, the sales collapsing criteria set forth by the Department in *Iron Castings*. We did not combine the companies for cost purposes in that case because the two companies made different models and the respondent selectively averaged certain costs between the companies but not other costs. This is not consistent with the facts in the current case where we combined companies for sales reporting purposes and are now combining the same companies which produce the same models for cost purposes. Additionally, in the current case, we are combining all elements of cost, not selected elements of cost as respondent's suggested in *Presses from Germany*.

Petitioners' comments regarding the comparison of affiliated transactions to sales to third countries are moot since we have determined that the Korean market is viable. The comments received from petitioners and respondent concerning the application in these cases of the fair-value and major-input provisions are irrelevant to these final results, since the Department has determined that sections 773(f) (2) and (3) of the Act do not apply here.

Comment 20. Petitioners argue the Department should apply partial facts available for the POSCO group's submitted costs because costs for certain physical characteristics were not appropriately accounted for. *See* proprietary version of the Department's cost analysis memo, dated April 2, 1997, for an explanation of these physical characteristics. Petitioners state RPGs are unreliable as evidenced by the fact that some RPGs with similar characteristics have different costs.

The POSCO group retorts that the Department may not apply adverse facts available simply because POSCO did not maintain costs in the level of detail contemplated by the Department. The POSCO group states in cases where a company has been unable to provide costs at the level of detail requested by the Department, the Department has accepted the reported costs where it was satisfied that those costs nonetheless reasonably reflected the actual costs of producing the subject merchandise during the POR. The POSCO group cites the *Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*, 61 FR 13815, 13817 (March 28, 1996) (''*Canadian Plate*''), where the Department accepted submitted costs despite the fact that the respondent had reported costs for one of two producing mills. The POSCO group states the Department concluded that the respondent's methodology was reasonable, given (1) the nature of its cost accounting system, (2) its verified inability to determine specific costs, and (3) the conservative method in which the costs were reported. The POSCO group asserts its reported costs reflect the actual costs as recorded in its normal accounting system and reasonably reflect the cost of producing the merchandise.

Petitioners counter that the POSCO group failed to furnish the Department with any means to account for the costs associated with certain characteristics and did not, as the antidumping questionnaire requires, provide costs determined on the basis of specific CONNUMs. Petitioners state that the POSCO group's failure to account for the cost of these characteristics severely distorts the dumping calculations by understating the costs associated with these products.

The POSCO group argues the Department routinely accepts reported costs where the Department is satisfied that those costs reasonably reflect the actual costs of producing the subject merchandise. The POSCO group asserts that its reported costs are acceptable for the same reasons as stated in *Canadian Plate*. Specifically, the POSCO group states the reported costs are based on the costs as recorded in the company's normal accounting system. The POSCO group points out it does not track cost differences with respect to certain physical characteristics, which it maintains is a reasonable and conservative approach, because any costs associated with these differences have been spread over all products.

With regard to petitioners' argument that a serious distortion of costs results from combining RPGs into CONNUMs, the POSCO group responds that the cost difference between two RPGs with similar characteristics results from POSCO's ability to produce identical products using different production lines and production routes. The POSCO group states it may also produce different volumes of a given product over a specific period, resulting in varying unit costs. The POSCO group argues that deviations in actual costs for similar RPGs are not evidence of wide physical dissimilarity or an improper combination, but rather a real-world testimony to the accuracy of POSCO's RPG system where different processing conditions result in different costs.

DOC Position. We agree with petitioners and respondent in part. We agree with petitioners that the POSCO group did not appropriately account for two physical characteristics. *See* the Department's final cost analysis memo, dated April 2, 1997. For the two physical characteristics at issue, the POSCO group derived a general weighted-average cost that was applied uniformly to all merchandise that contained these characteristics. This resulted in a distortion of the COM of CONNUMs with lower sales volume but which required a costlier and higher grade of substrate. This weight-averaged cost is also contrary to POSCO's normal cost accounting system which reflects cost differences of RPGs; when RPGs were combined to create CONNUMs, differentiations were lost through averaging. For these final results, we calculated adjustment factors specific to different types within each characteristic, and recalculated the COM of the affected CONNUMs.

With regard to the remaining physical characteristics, we have determined that the POSCO group reported product-specific costs from its normal cost accounting system, which reasonably reflect the actual cost of producing the merchandise. We agree with the POSCO group that its reported costs for the other physical characteristics were reasonable, for the same reasons outlined in *Canadian Plate.* Specifically, the POSCO group reported product costs in as much detail as its normal cost accounting system provides, and any costs associated with the other physical characteristics are captured and allocated to all products.

Comment 21. Petitioners argue that if the Department persists in employing the unduly narrow reading of the statute's affiliation provision that it employed in its preliminary results, POCOS's U.S. price should be based on the price charged to AKO because, based on such a narrow reading, POCOS was not in fact affiliated with that sales entity.

The POSCO group argues that POCOS was affiliated with AKO and BUS, and that even petitioners have acknowledged this fact.

DOC Position. As discussed in the DOC Position to Comment 2, *supra,* we have determined that POCOS was affiliated with the entities in question and that, therefore, U.S. price should be based upon the prices charged to the unaffiliated U.S. customers reported by the POSCO group.

Comment 22. Petitioners argue that if the Department finds that POCOS was affiliated with the Korean and U.S. companies through which the U.S. sales of its products were made, the Department should classify POCOS's U.S. sales as CEP transactions, and make the required deductions from U.S. gross unit price. Petitioners also argue that the Department should classify POSCO's U.S. sales, which are made through POSTRADE and POSAM, as CEP transactions.

Petitioners state that the Department classifies sales as EP transactions if they satisfy three criteria: The merchandise is not inventoried in the United States, the commercial channel at issue is customary, and the U.S. selling agent functions only as a communications link and mere processor of sales-related documentation. *See, e.g., Presses from Germany* at 38171 and *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan,* 61 FR 38139, 38141 (July 23, 1996) (*''Presses from Japan''*).

Regarding the first two criteria, petitioners state that subject merchandise is almost never warehoused for sale in either the United States or Korea by manufacturers or trading companies, and the large customer that typically buys from the manufacturer or trading company would not require an alternative channel of distribution. Consequently, petitioners assert, the Department's analysis must focus on the third criterion: whether the U.S. selling agent functions as more than a communications link and mere processor of sales-related documentation.

Furthermore, for purposes of this analysis, petitioners argue that because POCOS performs virtually no selling functions in any of its markets other than actually selling the product and maintaining customer contacts, the Department's analysis of the functions of POCOS' home market and U.S. sales entities should focus primarily on their role in actually selling the product and maintaining customer contacts, which petitioners assert is significant enough to warrant classifying the U.S. sales in question as CEP sales.

Petitioners argue that several cases cited by the POSCO group in its letter of September 20, 1996, as instances where the Department treated sales as EP (formerly purchase price) sales, where the U.S. affiliates allegedly played a far more active role than did POSAM and BUS, actually involved instances where the Department indicated the U.S. affiliates did not play a substantive role in negotiating U.S. sales prices. *See, e.g., Notice of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from France,* 58 FR 37125, 37133 (July 9, 1993); *Wire Rod* at 68869; and *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland,* 56 FR 56363, 56371 (November 4, 1991). Petitioners argue that these determinations support petitioners' point that even when a sale is made prior to importation, the Department will classify that sale as a CEP transaction when the U.S. affiliate negotiates, or plays a significant role in negotiating, the selling prices in the United States.

Petitioners argue that BUS's close contact with U.S. customers (both apart from and during the sales process), its role in setting the price with the U.S. customers, and its involvement in numerous other stages of such transactions show that BUS is much more than a mere processor of sales-related documentation or a communications link in the U.S. sales process, but rather is actively involved in selling, transporting, and financing the product.

Petitioners argue that the SG&A data of BUS suggests that BUS performed even more general selling activities for POCOS' U.S. sales than POCOS does for its own home-market sales.

Petitioners also argue that the Department should treat POSCO's U.S. sales made through POSAM, a U.S. trading company owned by POSCO, as CEP transactions, because record evidence indicates that POSAM's role in the U.S. sales process for POSCO products is very similar to that of BUS.

Petitioners argue that in *Presses from Germany* the Department found similar sales activities being performed by U.S. affiliates, and the existence of substantial SG&A expenses incurred by those affiliates in the U.S. sales process, and, as a result, the Department classified sales transacted by these entities as CEP sales. Petitioners indicate that the financial statements of BUS indicate the significant extent to which it was involved in the U.S. sales process.

Petitioners argue that the Department's verification reports do not indicate that U.S. customers negotiate directly with POCOS or that BUS plays no role in establishing U.S. prices, but rather that the POSCO group had only stated these points at verification. Furthermore, petitioners argue that the presence of a POCOS official at the U.S. sales verification at the offices of BUS, and the assertion by the POSCO group that this official considers and confirms the proposed U.S. price, do not negate the fact that BUS, not POCOS, deals with the customer and negotiates the final price.

The POSCO group contests petitioners' claim that the Department should ignore the first two criteria for determining whether or not sales are classified as EP. The POSCO group argues that it is the Department's longstanding practice to consider all three criteria, and that the Department has in fact done so in prior steel cases, including the *Corrosion-Resistant Final; Wire Rod* at 68869, in regard to the other physical characteristics, and *Brass Sheet* *and Strip from The Netherlands; Final Results of Antidumping Duty Administrative Review*, 61 FR 1324, 1326 (January 19, 1996). The POSCO group asserts that the SAA and the Proposed Regulations confirm the Department's intention to continue its consistent prior practice in this area; that the Department cannot simply change its regulations and practices for each industry subject to an antidumping inquiry; and that changing Department practice on a case-by-case basis and applying different standards to respondents in different industries would be fundamentally unfair to all parties.

The POSCO group argues that petitioners' claim that BUS played an important role in setting the price to the ultimate customer is directly contradicted by the sales verification reports and the record evidence. The POSCO group notes that the petitioners state that POSAM's role in the U.S. sales process for POSCO products is very similar to the role of BUS in the U.S. sales process for POCOS products, and that the Korea sales verification report noted that the Department's review of sales documentation confirmed that POSAM served as a facilitator of the sales process, that any customer service or product specification issues were referred to POSCO, and that POSAM's function as facilitator of U.S. sales appeared to be limited to functioning as the importer of record and processing logistical arrangements such as brokerage and handling. The POSCO group also notes that the U.S. sales verification report indicates that BUS simply facilitates communications between POCOS and the U.S. customer.

The POSCO group argues that POCOS' approval of the key terms of sale was not a *pro forma* process. Rather, POCOS received its customers' requests concerning the key terms of sale, considered them, and determined the final price and quantity of each sale. The POSCO group indicates that the U.S. sales verification report states that POCOS' prices to the U.S. customers were negotiated with POCOS. The POSCO group also indicates that one sales trace at the home-market sales verification provides support that POCOS determined the quantity sold: the U.S. customer tried to change the quantity component of the purchase requisition and sent this request to BUS, but this request was refused by POCOS.

The POSCO group argues that petitioners' suggestion that POCOS's sales should be classified as CEP sales because all sales contact with the customer was made by BUS is ridiculous. The POSCO group states that the whole point of having a U.S. affiliate in such back-to-back sales transactions as those here and in every other such EP case is to have a presence in the United States to facilitate communications which, as stated in the U.S. sales verification report, was the role of BUS in POCOS's U.S. sales.

As for petitioners' argument that the Department should classify the POSCO group's U.S. sales as CEP sales because BUS and POSAM purportedly undertook numerous activities with respect to U.S. sales, the POSCO group argues that the Department has determined in scores of previous cases that a respondent's sales are properly classified as EP (formerly purchase price) sales when its U.S. affiliate undertakes activities identical to those undertaken here by BUS and POSAM. For example, in the first administrative review of this corrosion-resistant steel order, the Department found sales to be EP when the U.S. affiliate participated in sales negotiations and took title and warehoused the product. *See Corrosion-Resistant Final* at 18551, 18562. The POSCO group argues that petitioners' claim that certain others of these past cases are distinguishable because the affiliates did not negotiate sales prices is not convincing because BUS likewise did not negotiate sales prices but, rather, only communicated sales prices determined by POCOS to POCOS' U.S. customers.

The POSCO group argues that many of the responsibilities attributed by petitioners to BUS are commonly undertaken by an affiliated selling entity that acts as a communications link, while several others are typically undertaken by an entity, like BUS, that serves as the importer of record. The POSCO group argues that the record shows that BUS played a very limited role in U.S. transportation services, and the POSCO group argues that petitioners failed to mention various functions POCOS undertakes for U.S. sales, including (1) arranging and paying for freight to the Korean port, loading charges, wharfage, harbor maintenance fees, miscellaneous charges, and bank charges; (2) applying for and supplying documentation for duty drawback; (3) investigating and handling warranty claims; (4) determining the quarterly price to be charged BUS and the prices for each individual sale; and (5) obtaining market research from numerous sources.

The POSCO group indicates that BUS's overall SG&A expense figure does not accurately reflect the expenses it incurs in selling the subject merchandise because BUS'' activities extend far beyond selling the merchandise subject to this antidumping inquiry, as evidenced by relatively small value of its sales of subject merchandise compared to total sales. The POSCO group argues that petitioners' continued reliance on *Presses from Germany* is misplaced because in that case the U.S. affiliates played a far more active role than did BUS and POSAM in these cases, including identification of specific customers, handling of warranty expenses, supervision of installation of products, substantial procurement of parts, provision of technical assistance, and arrangement of post-sale warehousing.

DOC Position. We disagree with petitioners' assertion that the POSCO group's sales should be reclassified as CEP sales. When the three criteria described in the DOC Position to Comment 7 *supra* are met, we consider the exporter's selling functions to have been relocated geographically from the country of exportation to the United States, where the sales agent performs them. We also have recognized and classified as indirect EP sales certain transactions involving selling activities similar to those of BUS in other antidumping proceedings involving Korean manufacturers and their related U.S. affiliates. *See, e.g., Final Determination of Sales at Less Than Fair Value; Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 57 FR 42942, 42950–1 (September 17, 1992).

In these reviews, we determine that the selling functions of POSAM and BUS are of a kind that would normally be undertaken by the exporter in connection with these sales. The role of POSAM and BUS in the payment of cash deposits of antidumping and countervailing duties, their arrangement of certain movement-related expenses, their involvement in contracts with customers and commissionaires and in activities related to customer payment, are consistent with EP classification and are a relocation of routine selling functions from Korea to the United States.

Comment 23. Petitioners argue that, regardless of whether the POSCO group's U.S. sales are classified as EP or CEP transactions, the Department should reduce U.S. price by a portion of the revenue earned by POSTRADE, POSAM, AKO, and BUS through the purchase and re-sale of steel in the ''back-to-back'' nature of the U.S. sales. The additional deduction would reflect a portion of this markup that can be attributed to those entities' additional costs (*e.g.*, overhead) and profit that can be associated with the movement expenses reported by the POSCO group in its U.S. sales file.

Petitioners indicate that for another respondent in these proceedings, Dongbu Steel, the Department has made comparable deductions from price, involving transportation expense services provided by an affiliated party, Dongbu Express. See *Corrosion-Resistant Final* at 18554 and *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Preliminary Results of Antidumping Duty Administrative Reviews,* 61 FR 51882, 51886 (October 4, 1996) (''*Preliminary Results*''). Petitioners argue that POSTRADE, POSAM, AKO, and BUS performed functions similar to those performed by Dongbu Express, and in the case of the latter the Department deducted from home-market price the fee charged by Dongbu Express to Dongbu, which reflected a markup beyond the expenses directly incurred by Dongbu Express in the provision of the services.

Petitioners argue that the only difference between the POSCO group's scenario and that of Dongbu Express is that POSCO, POCOS, and PSI did not pay the affiliates directly for the provision of the movement expense services; rather, those affiliates were reimbursed for these, as well as other services, through the ''back-to-back'' nature of the U.S. sales transactions. Petitioners argue that these markups reflect payment for all of the services rendered for POSCO, POCOS, and PSI, and would have been incurred by POSCO, POCOS, and PSI regardless of what entities were involved in the process.

Petitioners cite an additional case where a similar adjustment was made for services provided by affiliated parties. *See Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review,* 57 FR 3167, 3178–9 (January 28, 1992) (''*Forklifts*''). Petitioners argue that, as in *Forklifts*, the Department should presume that the amounts paid by POSCO, POCOS, and PSI beyond the actual expenses directly incurred by the affiliated parties for the certain specific expenses would have been incurred by POSCO and POCOS (directly or indirectly), regardless of who provided those services. Consequently, petitioners argue that the Department should deduct from U.S. price an additional amount for those services to reflect expenses beyond those directly incurred by the affiliates.

Petitioners argue that because POSTRADE and AKO only provided movement services, it is reasonable to deduct the entire markup of those Korean affiliates in the calculation of U.S. price. For POCOS, petitioners note, the difference for each sale can be derived from the U.S. sales database; for the other U.S. sales of respondent (*i.e.,* those of POSCO and PSI), petitioners propose a specific per-ton amount, based on sales verification report exhibit 24 at 17, which concerns a particular sale.

Regarding POSAM and BUS, the petitioners concede that the deductions should not be based on the entire markup, but only the expenses and profit that can reasonably be attributed to U.S. movement expenses. Petitioners state that it is not possible, from the information provided by the POSCO group, to determine what portion is attributable to the services other than those concerning U.S. movement expenses. Petitioners argue that the Department should use the Dongbu Express markup information available from the public record as a basis for determining how to adjust the POSCO group's reported U.S. movement expenses. Petitioners argue that this is appropriate because Dongbu Express only provides services related to movement, and those services are similar to some of those provided by the affiliates of POSCO, POCOS, and PSI. Petitioners state that information submitted on the record by Dongbu indicates that Dongbu Express' markup was 30 percent; therefore, petitioners argue, the Department should increase the U.S. movement expense variables (INLFWCU, USOTREU, USDUTYU, and MARNINU) by 30 percent. *See* the public version of the letter from Morrison & Foerster to the Secretary of Commerce, dated February 29, 1996 (Exhibit B–31 at 1). As an alternative source for an adjustment factor for the U.S. affiliates, the petitioners cite estimates based upon reported markups of POSTRADE and AKO.

The POSCO group argues that petitioners' request to make adjustments for POSAM and BUS represents the rejection of years of uniform practice, and that the Department properly rejected this argument in the preliminary results of these reviews. The POSCO group argues that the affiliate revenue in question reflects the affiliates' indirect selling expenses and profit, typical of hundreds of identical transactions that the Department has examined in scores of prior cases, including numerous steel cases.

Respondent argues that section 772(c) of the Act indicates that profit and any indirect selling expenses or overhead are not to be deducted from EP. Respondent indicates that the Department has frequently examined back-to-back transactions like those involved here, and has never deducted profit or indirect selling expenses from EP, and did not do so in the *Corrosion-Resistant Final.*

The POSCO group argues that the Department's longstanding policy concerning EP sales is to utilize the price paid by the first unaffiliated U.S. customer and to deduct only *direct* selling expenses from the price. The POSCO group cites *Certain Iron Construction Castings from Canada: Final Determination of Sales at Less Than Fair Value,* 51 FR 2412 (January 16, 1986) (''*Castings Final*'') as a case where the Department rejected petitioner's request that a markup earned by a related U.S. distributor be deducted from purchase price because the law only authorizes deduction of direct expenses from purchase price (now EP).

The POSCO group indicates that even if the petitioners' claim can be limited to transportation services, the claim should still be rejected because, unlike Dongbu Express, POSAM and BUS purchased and re-sold the merchandise in typical back-to-back indirect EP transactions, and those affiliates' role in providing transportation services was very limited.

Finally, while it believes it is not necessary because no adjustment such as that proposed by petitioners is appropriate, the POSCO group notes that the petitioners' calculation of the 30 percent adjustment factor is faulty because it apparently reflects total revenue earned by Dongbu Express. The POSCO group states that this figure is irrelevant because Dongbu Express' expenses would have to be deducted from that figure so that one could calculate the relevant figure, Dongbu Express' profit as a percentage of cost of sales.

DOC Position. As indicated elsewhere in this notice, the basis for treating the U.S. sales as EP rather than CEP, for purposes of our analysis, is that the record indicates that POSAM and BUS acted as mere facilitators of the transactions in question, rather than as selling agents. Consequently, in analyzing the U.S. sales of the POSCO group, it would be inappropriate for us to treat a significant portion of the expenses incurred by the affiliates in question as selling expenses, indirect or otherwise.

In any case, petitioners only propose additional adjustments to U.S. price that can reasonably be limited to movement expenses, which are to be deducted in the calculation of U.S. price. *See* section 772(c)(2)(A) of the Act. The U.S.

expenses reported by the POSCO group were deducted from U.S. price in the preliminary results, without objection from respondent and consistent with the requirements of the statute. Any additional portion of the revenue earned by the affiliates through the ''back-to-back'' nature of the U.S. sales that can be attributed to U.S. movement should be deducted as well.

The POSCO group questions the 30 percent adjustment factor proposed by petitioners because the POSCO group claims that the profit rate would be the ''relevant figure.'' However, none of the cases cited by respondent, including the *Corrosion-Resistant Final* and *Forklifts,* provide any grounds for limiting the adjustment to just profit. In the *Corrosion-Resistant Final,* we deducted from home-market price the entire amount charged by Dongbu Express to Dongbu. In *Forklifts* the CIT found that, because the services performed were directly connected with the movement of forklift trucks from Japan to the United States, the Department correctly determined that Toyo's mark-ups were actual expenses relating to the movement of the subject imports that Toyo would have incurred regardless of the relationship of the party performing the service, and that our conclusions were reasonable and our determination was in accordance with the law. See *Toyota Motor Sales, Inc.* v. *United States,* Consol Ct. No. 92–03–00134, Slip Op. 93–154 (CIT 1993).

Furthermore, in *Forklifts* the CIT also indicated that because the parties involved were only related indirectly, no intra-company transfer was taking place. This is also the case with POCOS, because it is not directly affiliated with its U.S. selling entity; consequently, we have determined that the appropriate factor by which to increase the reported expenses for those certain specific services provided by BUS is the markup of Dongbu Express, including the portion that constitutes profit. However, because POSAM was wholly-owned by POSCO, the profit earned by POSAM that can be attributed to the movement services it provided to POSCO should be treated as an intra-company transfer, and therefore should not be deducted from U.S. price. Therefore, the appropriate adjustment factor for the U.S. sales of POSCO and PSI would be the markup, *net* of the profit rate.

We have determined, based on the Dongbu exhibit cited by petitioners and the POSCO group, the appropriate markup rate was eight percent, of which one-half reflected profit. Consequently, the appropriate adjustment factor is eight percent for POCOS and four percent for POSCO and PSI. We multiplied these factors by the variables cited by petitioners, and deducted the results in the calculation of U.S. price.

Regarding the *Castings Final,* that case actually states that the distributor's markup was not deducted from U.S. price because it did not fall into any of the categories of expenses that should be deducted from U.S. price for purchase price sales. *See Castings Final* at 2414. However, as noted above, POSAM and BUS clearly did provide services involving movement expenses, and some of the markup, beyond the portion reflected in the movement expenses reported by the POSCO group in its U.S. sales databases, can be attributed to those movement services.

Regarding POSTRADE and AKO, the POSCO group did not contest either petitioners' assertion that those affiliates only provided transportation services, or petitioners' conclusion that it is consequently reasonable to deduct from U.S. price the entire markup (or, in the case of sales through POSTRADE, a markup based on a verified sale). No information on the record indicates that those affiliates provided services other than those described by petitioners. To account for the additional unreported expenses, for POCOS's U.S. sales we have deducted from U.S. price the entire difference between the price paid by BUS to AKO and the price paid by AKO to POCOS. However, for POSCO's and PSI's U.S. sales, which were made through POSTRADE, we have only deducted from U.S. price that portion of the POSTRADE markup that is not accounted for by POSTRADE profit (*i.e.*, one-half of the markup, in accordance with the Dongbu Express information), because that profit can be considered to have been an internal transfer.

Comment 24. Petitioners argue that the Department should reverse its preliminary decision regarding duty absorption, should conduct duty absorption inquiries, and should determine that respondents have, in fact, absorbed antidumping duties on behalf of their customers. Petitioners argue that the statute provides that during any review initiated two years after publication of an antidumping duty order, the Department, if requested, will determine whether a foreign producer absorbed antidumping duties on behalf of its U.S. customers when subject merchandise is imported into the United States through an affiliate of the producer. Petitioners argue that they requested such a determination, and that reviews were initiated two years after the publication of the relevant antidumping duty order.

Petitioners argue that even if the Department continues to determine that it is not required to conduct the requested duty absorption inquiry during these reviews because it determines that these reviews are the ''first'' ones for purposes of duty absorption, the Department nevertheless retains the discretion to do so and should do so in these reviews.

Petitioners argue that the Department should not ignore absorption when it is obvious on the record. Petitioners argue that analysis of U.S. sales of POCOS indicates that the return to POCOS on certain sales was negative and, consequently, that duties were absorbed.

Petitioners argue that confining absorption inquiries to the second and fourth reviews will encourage respondents to manipulate the administrative review process to avoid duty absorption findings. Petitioners argue that if respondents know with certainty that absorption reviews will only be conducted in the second and fourth reviews, they could, and likely will, alter their absorption practices, or not export any subject merchandise to the United States for the review periods in which the absorption reviews are to be conducted.

Petitioners argue that absorption inquiries in these administrative reviews would eliminate the necessity of filing protective absorption inquiry requests that would otherwise be imposed upon petitioners. Petitioners state that limiting such inquiries to certain reviews would require petitioners to incur the additional expense of requesting a review in those years solely to check for absorption. Petitioners state that such additional requests would also consume the limited resources of the Department and impose greater burdens on respondents. Even if the Department chose to conduct such an absorption inquiry where a review was not requested, substantial information would be required which could be obtained during the normal course of reviews such as these.

The POSCO group argues that petitioners' duty absorption argument is untimely and irrelevant in this administrative review. The Department's proposed regulations indicate that for ''transition orders'' such as these, the Department will only make a duty absorption determination for administrative reviews initiated in 1996 or 1998. Furthermore, respondent argues, the SAA states that the duty absorption inquiry is only relevant in the context of a sunset review proceeding. Respondent states that the SAA indicates that ''[t]he duty absorption inquiry would not affect the calculation of margins in administrative reviews'' (SAA at 885).

DOC Position. We disagree with petitioners. As we stated in the preliminary results of these reviews and earlier in this notice in the DOC Position on Comment 3, for transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect before January 1, 1995, § 351.213(j)(2) of our *Proposed Regulations* provides that the Department will make a duty absorption determination, if requested, for any administrative review initiated in 1996 or 1998. *See Preliminary Results* at 51883. It is not the Department's intent to go beyond what the statute provided with respect to conducting duty absorption determinations in the second-and fourth-year reviews.

Comment 25. Petitioners argue that the Department should adjust NV to account for physical differences between cold-rolled products that were tension-leveled and those that were not tension-leveled. Petitioners state that this process imparts special flatness characteristics to steel products and, therefore, results in commercial distinctions among products which frequently command a price extra.

Petitioners argue that the POSCO group apparently did not provide any information during verification supporting its claim that there are no commercial differences between products that were tension-leveled and those that were not, except perhaps for products which were processed on one other specific line which could impart characteristics similar to those imparted by tension levelers. Petitioners argue that the POSCO group conceded that a large volume of products were not tension-leveled or processed on that other single line. Consequently, it is very possible that tension-leveled U.S. sales are being compared to home-market sales that were not tension-leveled.

Petitioners argue that the Department should recognize that tension-leveling does, in fact, create commercial distinctions among otherwise identical products, which are reflected in higher prices for tension-leveled products. Petitioners argue that as adverse facts available the Department should presume that all products sold in the United States were tension-leveled, and that all of these sales are being matched to home-market sales of products that have not been tension-leveled. The Department should then make an upward adjustment to normal value to account for physical differences in tension-leveling between U.S. and home-market products. Petitioners assert this adjustment should be based upon information submitted by petitioners, because the POSCO group's responses do not contain data that can be used to quantify the commercial difference between products that have been tension-leveled and those that have not.

The POSCO group argues that its methodology is reasonable, that the Department verified the products at issue are commercially indistinguishable, and that the Korea sales verification report supports this conclusion.

The POSCO group argues that petitioners are incorrect in their claim that respondent has not demonstrated that products that are not separately tension-leveled are commercially indistinguishable from other products that have been tension-leveled. The POSCO group argues that because it does not charge any extras depending on whether or not the product is tension-leveled, and because the respondent's customers, in placing the orders, did not specify whether or not the products should be tension-leveled, the products are commercially indistinguishable, and, in fact, the same price is charged whether or not the product is separately tension-leveled.

The POSCO group also argues that the petitioners are mistaken in their estimates of the quantity of steel that did not pass through any type of equipment that imparts tension-leveled characteristics.

For the above reasons, the POSCO group argues that the Department should not increase the NV of cold-rolled products to account for alleged unreported differences in physical characteristics due to differences in tension-leveling.

DOC Position. While inconsistencies exist between the explanations of this product characteristic provided by the POSCO group in (a) its February 13, 1996 submission, (b) at the sales verification in Korea, and (c) in its rebuttal brief, nothing on the record of these reviews contradicts the conclusion that a large portion of the home-market sales of cold-rolled merchandise (other than full-hard coil and electrical steel) was either tension-leveled or processed in such a way that it possessed properties very similar to steel that had been tension-leveled. Furthermore, no information on the record of these reviews indicates that the customers of the POSCO group requested that their steel be tension-leveled, or that the POSCO group charged extra for steel that was tension-leveled (or otherwise processed in a way that would impart similar properties). Furthermore, there is no information on the record of these reviews indicating that the POSCO group could actually determine from its internal records whether or not specific sales consisted of steel that was tension-leveled. Finally, there is no record evidence indicating that the POSCO group failed to report the costs associated with these processes. As a result, in these reviews we have not made any adjustments for this product characteristic.

Comment 26. Petitioners argue that POSCO's overrun sales are outside the ordinary course of trade and, therefore, if the Department should base NV on home-market sales, those overrun sales should be excluded from the Department's calculations. Petitioners argue that the factors considered previously by the Department in analysis of this issue—their volume relative to other sales, the profitability of such sales, and the types of customers purchasing them—demonstrate that the POSCO group's overrun sales were outside the ordinary course of trade. Petitioners cite *Certain Corrosion-Resistant Carbon Steel Flat Products From Australia; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 14049, 14050–51 (March 29, 1996) (''*Australian Final*''). Petitioners point out that even the POSCO group, in requesting that it be excused from reporting the downstream sales of affiliated service centers in which POSCO owned a minority-interest, acknowledged that overrun sales were not comparable to non-overrun sales through its exclusion of sales of overrun coil from its presentation of downstream sales data.

The POSCO group argues that the facts with respect to the POSCO group's overrun sales are strikingly similar to those examined by the Department in the *Australian Final* (at 14051), in which the Department determined that the overrun sales of Broken Hill Proprietary Company Ltd. (''BHP'') were in the ordinary course of trade. The POSCO group argues that, as in that case, the Department typically examines several factors, none of which is dispositive, including: (1) whether the home-market sales in question did in fact consist of production overruns; (2) whether differences in physical characteristics, product uses, or production costs existed between overruns and ordinary production; and (3) whether the price and profit differentials between sales of overruns and ordinary production were dissimilar.

The POSCO group argues that the Department verified the POSCO group's methodology for classifying overrun sales, and no discrepancies were noted in the Korea sales verification report, thereby establishing that the overrun merchandise had been properly classified for reporting purposes. The POSCO group states that, for a given CONNUM, the product characteristics and costs associated with the overrun prime merchandise were the same as those associated with non-overrun prime merchandise. The POSCO group argues that as was the case for BHP in the *Australian Final*, the POSCO group's overrun sales were more than an insignificant percentage of total home-market sales, and the profit earned on those sales was not insignificant. Finally, the POSCO group argues that overrun sales are not unusual or abnormal in the steel industry.

DOC Position. In the *Australian Final* we indicated that it is the Department's established practice to include home-market sales of such or similar merchandise unless it can be established that such sales were not made in the ordinary course of trade. In that case, we cited as an example *Final Determination of Stainless Steel Angle From Japan*, 60 FR 16608, 16614–15 (1995). As noted by the POSCO group, when evaluating whether or not sales of overrun merchandise were in the ordinary course of trade, we typically examine several factors taken together, with no one factor dispositive. *See, e.g., Certain Welded Carbon Steel Standard Pipes and Tubes From India,* 56 FR 64753, 64755 (1991). In addition to the factors cited by the POSCO group, we also stated in the *Australian Final* that we may consider whether the number of buyers of overruns in the home-market and the sales volume and quantity of overruns were similar or dissimilar in comparison to other sales. *See Australian Final* at 14051.

Neither petitioners nor the POSCO group dispute the categorization of the sales in question as production overruns.

Regarding physical characteristics, because overrun sales are made from inventory (*see* Korea sales verification report at 34), the thickness of the steel is already known at the time of sale and, therefore, any concept of ''thickness tolerance'' is irrelevant. As a default, the respondent coded the thickness tolerance variable as ''standard'' for inventory sales. *See* Korea sales verification report at 33. Consequently, overrun sales were coded in CONNUMs that consisted primarily of prime merchandise that was actually ordered to a specific thickness tolerance, contrary to overrun sales, which were made from inventory.

Given that overrun sales, unlike the overwhelming bulk of sales of prime merchandise, were made from inventory, additional expenses associated with this inventorying process would have been incurred for overrun sales.

Regarding product uses and numbers of buyers for overrun merchandise, these would have been limited in comparison to other merchandise. As indicated in the Korea sales verification report at 34, POSCO's selling practices are such that overruns would not normally be offered to certain types of customers.

The reported overrun sales constitute a relatively small portion of the home-market sales databases. In fact, they constitute a considerably smaller portion of overall sales than did the forecasted 1997 share of POSCO hot-rolled steel output at its new mini-mill, characterized by the respondent in its rebuttal brief at 30 as ''minuscule.''

Furthermore, the record indicates that excluding the sales the POSCO group reported as overruns, as requested by the petitioners, would not in fact exclude overproduced merchandise that was sold in the normal course of business. Specifically, the POSCO group, in its description of the decision to code specific steel as an overrun, noted that typically it attempted to sell merchandise made in excess quantities as ordinary prime. *See* Korea sales verification report at 34. The remainder, what the POSCO group internally classifies as overruns, would just be the portion of what it overproduced which could not be sold to customers as typical prime merchandise.

The POSCO group does not contest petitioners' assertion of differences in relative profitability of overrun sales but, rather, implies that the profits earned on overrun sales were not insignificant. However, as admitted by the POSCO group in its listing of factors we have considered in past instances, we are concerned with relative profitability, not the ''significance'' of certain levels of profitability.

As indicated by petitioners, the POSCO group did distinguish between overruns and other prime merchandise in its request to be excused from reporting downstream sales of certain affiliated service centers. This is an additional indication that the POSCO group considered sales of merchandise that had been actually recorded as overruns as outside the ordinary course of trade.

As a result of these factors, we have determined that the POSCO group's sales of overrun products were outside of the ordinary course of trade, and have excluded them from our price comparisons.

Comment 27. Petitioners state that in its preliminary calculations the Department presumed that the POSCO group had reported warranty expenses in dollars for local sales, and divided the reported warranty expenses by the dollar/won exchange rate in order to convert them to won. Petitioners argue that the POSCO group in fact appeared to have reported the warranty expenses for local sales in won. Petitioners argue that the Department should conclude that the per-unit warranty expenses for local sales were reported in won and, therefore, did not need to be converted to won. Consequently, petitioners state that the Department should correct this error by eliminating from the programming the equations that divide the reported warranty expenses by the dollar/won exchange rate.

DOC Position. We agree with petitioners, and have corrected this error for purposes of these final results.

Comment 28. Petitioners state that the Department should increase Union's reported COP for merchandise with high yield-strength characteristics because the company inappropriately reported an average cost of HRC with different yield strengths. According to petitioners, Union can trace yield strength of HRC to a specific finished product. Therefore, Union should have accounted for yield strength using a model-specific approach rather than relying on a single weighted-average cost. Petitioners also claim that Union's processing costs do not distinguish between the manufacturing cost of producing merchandise with different yield strengths, because reported conversion costs are an average between high- and low-yield-strength products.

Union contends that the petitioners' assertion is incorrect and based on their misinterpretation of the Department's findings at verification. According to Union, the verification report does not raise an issue with respect to its reported weighted-average HRC costs. Furthermore, Union identified and provided separate HRC costs based on yield strength as demonstrated in cost verification exhibit 26. As for submitted processing costs, Union asserts that there is no difference in processing costs associated with differing yield strengths because there is no significant difference in the production process of high- and low-yield-strength merchandise.

DOC Position. For the final results we have accepted Union's CONNUM-specific costs. We found that Union's cost data were allocated to a sufficient level of product detail pursuant to our instructions. We note that in assessing yield strength, the most important variable is the carbon content, and possibly any micro-alloying elements in the HRC. An HRC with a higher carbon level will result in a finished product with a higher yield strength. However, our model-match hierarchy did not require that respondents identify carbon content. Therefore, Union's HRC were weight-averaged based on other more significant industry characteristics, such as the quality of the HRC. This quality characteristic indirectly incorporates the cost of carbon, which is the driver of yield strength. As for petitioners' concern regarding processing costs, the information on the record does not indicate that high- yield-strength and low-yield-strength products require significantly different processing. Additionally, we tested Union's submitted allocation methods and confirmed that Union allocated its total costs (*i.e.*, materials, labor, overhead) to either home-market, third-country, or U.S. merchandise. We also reviewed and tested the allocation methods used by Union to assign costs to individual CONNUMs. We did not note any discrepancies in Union's allocation methods to individual CONNUMs. Respondent has answered petitioners' concerns by referencing the cost verification exhibits and demonstrating that no additional adjustments are called for to accurately reflect costs of products with different yield strengths.

Comment 29. Petitioners contend that the Department should increase Union's submitted costs to account for the difference between the 1994 and 1995 year-end adjustment figures. Petitioners claim that because Union's POR covers months in both the 1994 and 1995 calendar years, the company's submitted costs should reflect year-end accounting adjustments for both years. Petitioners further argue that the Department has a longstanding policy of accounting for year-end accounting adjustments even when the fiscal year-end occurs outside the POR. In support of their position, petitioners cite *Non-Alloy Steel Pipe* (at 42952) and *Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea,* 58 FR 37176, 37187 (July 9, 1993) (''*Flat-Rolled Final*''), in which we included these types of year-end adjustments.

Union argues that its submitted costs already reflect 1994 year-end accounting adjustments and June 30, 1995 semiannual accounting adjustments. Therefore, Union contends that there is no practical reason that in this instant review year-end adjustments for the last six months of 1995, outside the cost reporting period, should be included in the reported costs. According to Union, the adjustment the petitioners request is *de minimis* in nature and should be rejected pursuant to the Department's authority under 19 CFR § 353.59(a).

DOC Position. We agree in part with the petitioners. We normally consider year-end accounting adjustments when calculating costs during the POR. *See, e.g., Non-Alloy Steel Pipe* at 42952. In the instant case, Union reported costs for the period July 1, 1994 through June 30, 1995—a period that includes parts of two separate calendar years. Firms periodically bring their accounting records to a current status by means of updating and adjusting entries. The goal of these adjustments is to match costs in the periods in which the associated revenues are recognized. Union's submitted costs reflect only the 1994 year-end adjustments. We compared Union's 1994 and 1995 year-end accounting adjustments and noted that Union's reliance on only the 1994 year-end adjustments reasonably reflects the company's costs for the POR (*see* testing at cost verification exhibit 10). We did not find that adjustments computed on the basis of a cost-reporting period differed significantly from those computed for the calendar year 1994. In recent determinations we have accepted a respondent's reported costs where they reasonably reflected actual costs. *See, e.g., Final Results of Antidumping Administrative Review; Aramid Fiber Formed of Poly Para Phenylene Terephthalamide from the Netherlands,* 61 FR 51406, 51408 (October 2, 1996) and *Presses from Germany* at 38185.

Comment 30. Petitioners state that the Department should increase Union's reported manufacturing costs to account for differences between the company's POR costs (August 1, 1994 through July 31, 1995) and the submitted fiscal period costs (July 1, 1994 through June 30, 1995). Petitioners claim that information on the record indicates that Union's manufacturing costs for the POR (August 1, 1994 through July 31, 1995) exceed the submitted fiscal costs (July 1, 1994 through June 30, 1995). Petitioners urge the Department to include this difference in the submitted costs.

Union disagrees with petitioners and states that the Department should accept its reported manufacturing costs. Union responds that the Department permitted it to report POR costs based on the period July 1, 1994 through June 30, 1995 because the methodology did not distort costs and simplifies the administrative process.

DOC Position. We agree with Union. We generally require that respondents report a single, weighted-average COP and CV for the POR. We allow respondents to report these costs based on a fiscal year rather than the POR under certain defined conditions as explained in Section D of our questionnaire. We confirmed that the change in the cost reporting period of one month did not significantly distort costs, by comparing significant elements of the COM computed on a fiscal-year basis and on a POR basis (see testing at cost verification exhibit 17). We noted that the fiscal year figures reasonably reflect the company's POR results.

Comment 31. Petitioners claim that Union excluded its parent company G&A expenses in the submitted costs. Petitioners assert that the Department should increase Union's reported general expenses to include the identified G&A expenses incurred by its parent, DSM, that relate to the production of subject merchandise. In support of their position, petitioners cite the *Final Determination of Sales at Less Than Fair Value; Certain Steel Butt-Weld Pipe Fittings from the United Kingdom,* 60 FR 10558, 10561 (February 27, 1995) *(''Butt-Weld Pipe Fittings from the U.K.''),* in which the Department adjusted a respondent's submitted data to include an allocated portion of the parent company's G&A expenses.

Union states that, given the inconsequential amount of the adjustment, the Department should adhere to its preliminary findings and disregard the petitioners' claim pursuant to section 353.59(a) of our regulations.

DOC Position. We agree with petitioners. It is our practice to include a portion of the G&A expense incurred by the parent company on behalf of the reporting entity. *See, e.g., Butt-Weld Pipe Fittings from the U.K.* For these final results, we allocated a portion of DSM's G&A expenses to Union's general expenses.

Comment 32. Petitioners argue that the Department should treat all of Union's U.S. sales as CEP sales because of information in the response and other information discovered at verification. Petitioners draw a distinction between the present circumstances and those of the first reviews, since the record of these reviews contains additional information regarding the nature of UA's activities.

Petitioners argue that for U.S. sales to be classified as EP sales, a respondent must demonstrate that its U.S. sales satisfy three tests, as discussed in two recent final determinations, *Presses from Germany* at 38171 and *Presses* *from Japan* at 38141. According to petitioners, U.S. sales will be classified as EP only if (a) merchandise is not inventoried in the United States, (b) the commercial channel at issue is customary, and (c) the U.S. selling agent is not substantively more than a ''processor of sales-related documentation'' or a ''communications link.''

Concerning the first two aspects of the test, petitioners argue that these are not relevant to the instant case, since all merchandise is made to order in the respondent's industry, both in the United States and in the home market. However, petitioners argue, the respondent's U.S. affiliate (UA) performs significant selling functions in the United States, plays an active and substantive role in the U.S. sales process, and clearly acts as more than a mere processor of sales-related documentation. Petitioners cite respondent's February 29, 1996 letters to establish that UA performs market research and strategic and economic planning.

Petitioners argue that UA has substantial discretion and authority to determine resale prices in the United States and that its parent's approval of its price quotes is done on a *pro forma* basis.

Petitioners argue that the Department's verification report contains further evidence of UA's active involvement in the sales process, since it states that either ''Union America/ Dongkuk International (DKA) or an independent commissionaire finds a U.S. sale for Union.'' This statement, petitioners argue, demonstrates that UA acts as more than a mere processor of sales-related documentation and that, at a minimum, the Department equates UA's role with that of a commission agent.

Petitioners argue, again based on the verification report and Union's February 29, 1996 letters, that, in addition to soliciting customers, UA has responsibility for maintaining relationships with U.S. customers and for providing numerous other functions in support of Union's U.S. sales process: UA negotiates price and purchase terms with U.S. customers, performs procurement or sourcing services, acts as the importer of record, extends credit to U.S. customers, and makes arrangements with independent commission agents.

Petitioners argue that during the POR, UA's activities were taken over by DKA, and that UA thus became part of a larger organization engaged in other activities besides the representation of Union. Petitioners argue that UA thus ceased to be a part of Union, and became instead part of a larger organization. Petitioners argue that UA's increased autonomy from Union, and its involvement with other source companies, highlights the greater role played by UA in the sales process. Citing *Presses from Germany* and *Presses from Japan,* petitioners argue that the Department holds sales to be CEP when a U.S. affiliate plays an active role in the sales negotiation process, and when it performs significant additional functions in support of U.S. sales. Union's responses and the verification report demonstrate that UA played an active and substantive role in the U.S. sales process, and that all of Union's U.S. sales should therefore be classified as CEP sales.

Respondent argues that the Department has thoroughly considered and rejected these same arguments in both its first administrative review final decision and its preliminary findings in these proceedings, and argues that nothing has changed with respect to this issue from the first administrative review. Respondent argues that it is Union, not UA, who determines prices in the United States. Nothing in the record, respondent argues, indicates that UA or DKA has any discretion, let alone substantial discretion, in establishing Union's selling price in the United States.

The respondent reiterates that no new facts or law would warrant a change in the finding by the Department, in the first review of corrosion-resistant products and the preliminary results of these reviews, that Union's U.S. sales were EP sales. Respondent argues that all of petitioners' arguments were fully examined and rejected by the Department in the first review of corrosion-resistant products.

DOC Position. We disagree with petitioners. When the criteria outlined in the DOC Position to Comment 7 *supra* are met, we consider the exporter's selling functions to have been relocated geographically from the country of exportation to the United States, where the sales agent performs them. We also have recognized and classified as indirect EP sales certain transactions involving selling activities similar to UA's in other antidumping proceedings involving Korean manufacturers and their related U.S. affiliates. *See, e.g., Final Determination of Sales at Less Than Fair Value; Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,* 57 FR 42942, 42950–1 (September 17, 1992). In the present reviews, we ascertained the following with regard to sales considered as EP transactions in the preliminary review results: (1) Union's sales through UA, its related sales agent in the United States, are almost always shipped directly from Union to the unrelated buyer, and only rarely are introduced into UA's inventory; (2) Union's customary channel of distribution is direct shipment, although certain limited sales are normally introduced into UA's inventory; (3) UA performed limited liaison functions in the processing of sales-related documentation and a limited role as a communication link in connection with these sales. UA's role, for example, in extending credit to U.S. customers, processing of certain warranty claims, limited advertising, processing of import documents, and payment of cash deposits on antidumping and countervailing duties, appears to be consistent with purchase-price classification. These selling services as an agent on behalf of the foreign producer are thus a relocation of routine selling functions from Korea to the United States. In other words, we determined that UA's selling functions are of a kind that would normally be undertaken by the exporter in connection with these sales. More specifically, we regard selling functions, rather than selling prices, as the basis for classifying sales as EP or CEP. While in some cases certain merchandise sold by Union was entered into UA's inventory, this merchandise was sold prior to the importation of the merchandise, but not from UA's inventory. When all three of the factors already described for sales made prior to the date of importation through a related sales agent in the United States are met, we regard the selling functions of the exporter as having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. The substance of the transaction or the functions do not change whether these functions are performed in the United States or abroad. In this case, Union has transferred these routine selling functions to its related selling agent in the United States and the substance of the transaction is unchanged.

Comment 33. Petitioners argue that in its preliminary results the Department understated Union's per-unit CEP profit by using an incorrect base for its profit calculations. Petitioners argue that the Department should have included inventory carrying costs in indirect selling expenses when the latter were added into the factor labeled as ''INDEXUS,'' which was the sum of direct and indirect selling expenses, plus commissions. Petitioners cite section 773 of the Act as requiring the Department to attribute CEP profit to all selling expenses incurred with respect to U.S. sales, including such imputed expenses as credit, which petitioners note that the Department did properly include, and inventory carrying charges.

Respondent argues that petitioners' assumption that the Department intended to use actual interest expenses as a proxy for imputed inventory carrying costs is incorrect. Respondent cites programming language to show that the Department deliberately excluded inventory carrying costs from the profit calculation. Respondent maintains that the only correction needed in regards to CEP profit is the inconsistent treatment of credit expenses, which is addressed separately. *See* Comment 34 *infra.*

DOC Position. We agree with respondent that our programming language deliberately excluded inventory carrying costs from the profit calculation. For a further discussion of this issue, see the DOC position to Comment 34.

Comment 34. Union argues the Department erred by treating credit expenses in the CEP profit calculation inconsistently when classifying some of Union's sales as CEP. Union avers that credit expenses were not included in the denominator of the CEP profit ratio, but were among the expenses multiplied by that ratio. Union contends this inconsistency must and can be corrected by adding credit expenses to the denominator in the calculation of the CEP ratio, or by removing them from expenses multiplied by the ratio.

Petitioners counter that Union's analysis of the Department's methodology is incorrect, because credit expenses are, in fact, implicitly included in the denominator of the ratio used to calculate the CEP profit rate. The Department, petitioners state, calculates the CEP profit rate by dividing the total profit on home-market and U.S. sales by the total expenses incurred in both markets. Because the total expenses include the actual amount of interest expenses incurred in financing accounts receivable, petitioners' view is that credit expenses are included in the denominator of the CEP profit ratio. Petitioners add that, because the denominator of the CEP profit ratio includes interest expenses incurred in extending credit to customers, in accordance with the statutory requirement that CEP profit be attributed to all selling expenses incurred on U.S. sales, the Department deducts the imputed credit expenses reported for each sale from the total expenses used to calculate the CEP profit rate in order not to double-count these expenses. This does not alter, however, the fact that credit expenses are implicitly included in the denominator; for that reason, petitioners assert, the Department's methodology is appropriate and accurate.

DOC Position. We agree with petitioners that imputed credit and inventory carrying costs should be included in the definition of total United States expenses used in the allocation of profit to CEP sales, consistent with section 772(f)(1), and have revised our methodology for these final results. The SAA states that ''[t]he total U.S. expenses are all of the expenses deducted under section 772(d) (1) and (2) in determining the constructed export price.'' SAA at 154. The SAA also explains section 772(d)(1)(D) as providing for the deduction from CEP of indirect selling expenses. These typically include imputed inventory carrying costs, which represent the opportunity costs of the capital tied up in inventories of the finished merchandise. *Id.* Section 772(d)(1)(B) explicitly includes credit expenses as among the direct selling expenses to be deducted from CEP.

We disagree with respondent that imputed credit and inventory carrying costs should be added to the total expenses used in the denominator in the CEP profit allocation. In determining the amount of profit to allocate to each CEP sale, the Department first computes the total profit earned by the foreign producer. This amount is based on the producer's actual profits calculated in accordance with section 772(f)(2)(D) of the Act. It includes any below-cost sales but excludes sales made to affiliated parties at non-arm's-length prices. Because it is the ''actual'' profit, this amount reflects the actual interest expense incurred by the producer.

A portion of the total actual profit is then allocated to the U.S. expenses incurred for each CEP sale. This is done based on the applicable percentage described in section 772(f)(2)(A) of the Act. In calculating this percentage, the statute directs us to include in the numerator the CEP expenses deducted under 772(d), which includes imputed credit and inventory carrying costs. In contrast, the total expenses in the denominator are those used to compute total actual profit. See section 772(f)(2)(D). As discussed above, ''actual'' profit is calculated on the basis of ''actual'' rather than imputed expenses. Although the actual and imputed amounts may differ, if we were to account for imputed expenses in the denominator of the CEP allocation ratio, we would double count the interest expense incurred for credit and inventory carrying costs because these expenses are already included in the denominator.

Comment 35. Petitioners argue that regardless of whether the Department classifies Union's U.S. sales as EP or CEP transactions, it still must account for the role played by UA with regard to services for U.S. sales, including transportation services. Petitioners argue that UA performs functions incident to bringing the subject merchandise from the original place of shipment to the United States which are similar to those performed by Dongbu Express. Petitioners argue that although different in form, Union's transactions with UA are identical in substance to those between Dongbu and Dongbu Express. The formal structure of the transactions between Union and UA should not preclude the Department from treating them the same way it would treat them if Union were to pay UA directly for these transportation services, petitioners argue. Petitioners urge the Department to add a markup to the transportation services in question.

Because information in the record does not permit the Department to determine what portion of UA's markup is attributable to transportation-related services, the Department must use alternative information to calculate the adjustment, petitioners argue. For this purpose, petitioners suggest the Department have recourse to the publicly available ranged data from Dongbu for the same kind of transaction, where the markup is as much as 30 percent. Petitioners argue that the Department should therefore add 30 percent to all transportation services provided by UA, *i.e.*, deduct 1.3 percent of all reported transportation charges from U.S. price.

Union, citing section 772(d) of the Act, argues that the Act does not include profits as one of the possible adjustments to EP, and that there is absolutely no basis in law for deduction of CEP adjustments from USP for EP sales. Respondent states that the cost of arranging the movement-related services in question is included in the U.S. brokerage and handling charges, which are fully accounted for as adjustments to the U.S. price. Respondent also differentiates its U.S. sales process from that of Dongbu by asserting that no comparable charge is paid by Union to UA for the services involved, other than those paid by UA to customs brokers. Finally, respondent argues, since its sales were EP and not CEP, there is no basis in law or the Department's practice for the deduction of UA's profit on such sales.

DOC Position. We disagree with petitioners and their analysis of the facts at issue. We verified that UA does not directly perform for U.S. brokerage and handling services for Union but rather employs customs brokers to carry out such services, to facilitate customs clearance, and to pay any customs duties. We verified that all U.S. brokerage and handling expenses (*i.e.*, demurrage and wharfage charges) incurred by UA on behalf of Union were fully reported on a sale-by-sale basis in the computer field USOTREU. We agree with Union that there is no legal basis for deducting an amount for UA's profit on these sales, because U.S. profit deductions are allowed only in connection with CEP sales, and not EP sales. Accordingly, we have not modified our treatment of movement expenses. *See also* DOC Position in response to Comment 10, *supra.*

Comment 36. Petitioners argue that the Department should use Union's date of shipment as date of sale for all U.S. sales because, in multiple transactions, the Department found at verification that the sales quantity changed between the sale date and shipment date. Analyzing verification exhibit 14, petitioners note that the quantity shipped differed from the quantity ordered by more than the established delivery allowance of 10 percent in multiple instances. Petitioners note that similar findings arose in the first review of corrosion-resistant products, and that, as a result, the Department used date of shipment for date of sale.

Respondent maintains that the verification actually upheld its reported sale dates, since it showed that all of Unions' sales are produced to order, that Union schedules its production to meet the terms of the sale contract, that the delivery provision of the sales contract merely requires the customer to accept any shipment falling within the tolerance and does not in any way provide a party with the opportunity to void the transaction if the delivered quantity exceeds the delivery tolerance, as evidenced by the absence of any refused shipments where the quantity fell outside the tolerance. Finally, respondent argues, petitioners have exaggerated the data, and the instances of quantities falling outside the delivery tolerances were ''quite limited.''

DOC Position. We agree with respondent. It is customary in high-volume metal industries for quantities to vary slightly in unforeseen amounts, for production convenience; this practice does not amount to a renegotiation or a significant alteration in the terms of trade. Therefore, we have continued to use the actual sale date as date of sale for purposes of these final results.

Comment 37. Petitioners note that the Department discovered at verification that Union's U.S. credit expenses were based on an incorrect interest rate. Petitioners accordingly request the Department to use the revised rate in its final results. Respondent did not address this issue.

DOC Position. We agree with petitioners and have amended our program accordingly for these final results.

Comment 38. Petitioners argue that the Department should convert all data, including quantity, for U.S. and home-market sales made on the basis of theoretical weight, to actual weight; in so doing, the Department should divide the calculated per-unit net price by the reported weight conversion factor. Respondent did not address this issue.

DOC Position. We agree with petitioners and have amended our program accordingly for these final results.

Comment 39. Petitioners argue that, in the event the Department uses Union's home-market prices instead of CV, the Department should make certain adjustments to Union's reported home-market sales data.

Citing the contractual arrangements which govern Union's home-market distribution, petitioners argue that Union's distributors are under Union's effective control; as examples, petitioners cite a stipulation in one such contract prohibiting a distributor from selling other firms' products. Petitioners cite other clauses which appear to ''give Union control over its distributors.'' In light of this control, petitioners request that the Department subject Union's home-market sales to an arm's-length test, and exclude any sales made at less than arm's-length prices.

DOC Position. We disagree with petitioners. The arrangements Union has entered into with its home-market distributors are simply exclusive sales contracts which are a common commercial arrangement all over the world. These arrangements are typically made at arm's length and do not normally indicate control of one party over the other. In this case we have no evidence that Union's distributors entered into these contracts other than voluntarily and that these contracts cannot be terminated at regular intervals by either party. For these final results, therefore, we have not subjected Union's home-market sales through distributors to an arm's-length test.

Comment 40. Petitioners note that Union identifies certain home-market merchandise as ''overruns,'' which the Department typically excludes from the calculation of NV as outside the ordinary course of trade. Petitioners note that, at verification, the Department found that Union uses the term ''overrun'' to identify sales that have atypical characteristics, including sales of merchandise found to have been obsolete, thinner than planned, or priced especially low to compensate a customer for previous payments. Petitioners cite the definition of ordinary course of trade in section 771(15) of the Act and assert that the overrun sales clearly are not in the ordinary course of trade. Petitioners also cite additional evidence to this effect, such as Union's low volume of overrun sales as a percentage of home-market sales, the different profit level on such sales, and the sporadic and low-volume nature of the sales in question. Petitioners urge the Department to exclude these sales from the calculation of NV.

Union argues that it does not in fact have any overruns, but that it designated certain sales as such at the Department's direction based solely on selling price.

DOC Position. We agree with petitioners. While ''overruns'' may not be the correct term of art to describe each of these sales, since it was at our direction that Union applied that designation to certain sales, the sales bearing this designation do in fact show one of the following signs of being outside the ordinary course of trade:

• The merchandise was obsolete;
• The merchandise was defective (*e.g.*, thinner than planned); or
• The merchandise was priced especially low to compensate a customer for previous payments.

When viewed as a whole, moreover, the fact that these ''overrun'' sales were sporadic, low-volume, accounted for only a small percentage of home-market sales, and were far less profitable than was typically the case in the home market, all suggest that these sales were, in fact, outside the normal course of trade. For these final results, therefore, we have eliminated those sales from our calculations of NV.

Comment 41. Recalling their argument in their general comments that Union is affiliated with POSCO, petitioners argue that the Department should use third-country prices for the value of Union's purchases of HRC, and should use CV for NV, basing CV profit on Union's profit in its largest third-country market.

Respondent argues that it is not affiliated with POSCO, that petitioners have not demonstrated that Union is reliant upon or controlled by POSCO, that petitioners have not demonstrated that Union pays less than arm's-length prices for HRC purchased from POSCO, and that there is no basis for determining that Union is affiliated with POSCO.

DOC Position. Because the Department has determined that POSCO and Union are not affiliated (*see* DOC Position to Comment 2, *supra*), this comment is moot.

Comment 42. Petitioners note that in its preliminary results, contrary to the intent expressed in its preliminary analysis memorandum, the Department neglected to deduct brokerage and handling charges incurred in Korea by Union from U.S. price. Petitioners request the Department to correct its computer program to ensure that this charge is duly deducted from Union's U.S. price.

DOC Position. We agree with petitioners and have amended our program accordingly for these final results.

Respondents' Comments

Comments by Dongbu

Comment 43. Dongbu argues that it appropriately offset G&A expenses by the net gain from foreign currency translations of accounts payable. Dongbu asserts that these gains are associated with the production of subject merchandise because they relate to the purchase and financing of raw materials. In support of its contention, Dongbu states that this inclusion of foreign currency gains and losses from translations in COP and CV is consistent with the following Departmental determinations and judicial precedent: *Micron Technology, Inc.* v *United States,* 893 F. Supp. 21, 33 (CIT 1995) (''*Micron*''); *Pasta* at 30359; and *Final Determination of Sales at Less than Fair Value: Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea,* 58 FR 15467, 15480 (March 23, 1993) (''*DRAMS*'').

Petitioners contend that the Department should exclude Dongbu's net gains on foreign currency translations from G&A, COP, and CV calculations. The petitioners argue that the Department normally only includes foreign exchange *transactions* and not foreign exchange *translations* in the calculation of G&A expense. According to petitioners, the Department does consider certain *translation* gains and losses as a financial expense if such gains related to the cost of acquiring debt. However, petitioners claim that this approach does not apply in this instance, because the translation gains and losses are associated with raw material accounts payable and not debt related to external financing.

DOC Position. We disagree with Dongbu that the company's net gain from certain foreign-currency translations gains represents a G&A expense. In the past we have found that translation losses represent an increase in the actual amount of cash needed by respondents to retire their foreign-currency-denominated loan balances. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador,* 24 FR 7019, 7039 (February 6, 1995). Using the same reasoning, for purposes of these final results we have included Dongbu's net gains on foreign-currency translations in COP as an offset to financing cost, since the gains represent a decrease in the actual amount of cash needed by respondents to retire their foreign-currency-denominated loan balances.

Comment 44. Dongbu and Union argue that the Department erred in the preliminary determination of this review by failing to add an amount to export price to account for export subsidies, as required by section 772(c)(1)(C) of the Act. According to these respondents, article VI¶ 5 of the GATT provides that ''[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization. This provision was implemented into U.S. law by section 772(c)(1)(C) of the Act. As provided therein, EP and CEP ''shall be * * * increased by * * * the amount of any countervailing duty imposed on the merchandise * * * to offset an export subsidy.'' In light of the above, Dongbu and Union contend the Department erred by failing to add 0.05 percent (for cold-rolled) and 0.10 percent (for corrosion-resistant) to EP and CEP to account for the payment of countervailing duties offsetting export subsidies. These respondents assert that the Department itself indicated such an adjustment was warranted in the final LTFV determination and in the final results of the first administrative review of certain corrosion-resistant carbon steel flat products from Korea. *See, e.g., Flat-Rolled Final* at 37191; *Corrosion-Resistant Final* at 18568.

Petitioners argue that the Department's decision not to adjust U.S. price for CVDs offsetting export subsidies is consistent with Department practice. They contend that the statute provides for an upward adjustment to U.S. price in order to account for CVDs imposed to offset export subsidies. *See* section 772(c)(1)(C) of the Act. Petitioners state that should the Department determine not to deduct CVDs from U.S. price because these duties are not imposed, it should also not make any upward adjustment to U.S. price for CVDs offsetting export subsidies for the same reason. Furthermore, if the Department treats the CVDs as not final, and determines to makes a downward adjustment to the cash deposit rate for CVDs offsetting export subsidies, it should also make an upward adjustment to the duty deposit rate for all other CVDs. Petitioners argue that if such an adjustment is made to the cash deposit rate, the applicable CVD rate must be applied to entered value, and not reported EP.

Petitioners argue that it is the Department's practice to calculate subsidy rates by allocating the benefit received over the f.o.b. foreign port value of the respondent's sales. They state that since the export subsidy rate is calculated using f.o.b. foreign port prices, the adjustment to U.S. price for CVDs offsetting export subsidies should also be calculated in this way; and that the percentage of the CVD rate attributable to export subsidies must be applied to entered value. However, according to petitioners, because respondents failed to reported entered value to the Department in their sales submissions, the adjustment cannot be made and respondents' request must be denied.

The POSCO group retorts that the Department was correct, in accordance with section 772(c)(1)(C) of the Act, in increasing EP by the amount of the CVD imposed to offset export subsidies, and adds that petitioners' contention that the adjustment be based on the entered value of the merchandise has no basis in the statute.

DOC Position. For purposes of these final results, we agree with Dongbu and Union that they are entitled to a 0.05 percent *ad valorem* adjustment to U.S. price for cold-rolled products and to a 0.10 percent *ad valorem* adjustment to U.S. price for corrosion-resistant products, in accordance with section 772(c)(1)(C) of the Act. Moreover, we disagree with petitioners' claim that an increase to U.S. price to account for export subsidies implies that the remaining portion of the CVDs paid on those shipments must be deducted from U.S. price. Also, nothing in the statute indicates that the upward adjustment should be based on entered value rather than on U.S. price, and it is not our practice to do so.

Comments by POSCO

Comment 45. The POSCO group asserts that the Department erred in including foreign exchange gains and losses in interest expense. The POSCO group maintains that the foreign exchange gains and losses were not related to the production of the subject merchandise. The POSCO group states the gains and losses were either not realized during the POR or were amortized forward from a prior period. The POSCO group argues that these categories of exchange gains or losses do not in any way capture actual costs incurred during the POR or costs incurred to produce the subject merchandise.

The POSCO group argues that the Department erroneously overstated POSCO's interest expense by basing the denominator in its interest expense calculation on the cost of goods sold as reported in POSCO's consolidated financial statement, rather than on the higher amount that the Department calculated for POSCO's COM during the POR. The POSCO group urges the Department first to increase the cost of goods sold to reflect any adjustments the Department makes to POSCO's COM before dividing POSCO's interest expense by that amount.

Petitioners reply that the foreign-exchange translation losses are related to the cost of acquiring debt. Thus, they are related to production and are properly included in the calculation of POSCO's net interest expense. Petitioners cite *Micron*, which held that, to the extent that a respondent's translation losses resulted from debt associated with production of the subject merchandise, such losses are a legitimate component of the COP. Petitioners conclude that whether POSCO's foreign exchange gains and losses were realized during the POR is immaterial. They resulted from debt associated with production of the subject merchandise, and were, accordingly, properly included in the reported costs.

DOC Position. We agree with petitioners that including foreign-exchange translation losses in net interest expense is appropriate. The translation losses at issue are related to the cost of acquiring debt and thus are related to production and are properly included in the calculation of the POSCO group's net interest expense. The CIT has upheld this practice, stating in *Micron* that ''[t]o the extent that respondent's translation losses resulted from debt associated with production of the subject merchandise, such losses are a legitimate component of COP.'' *See Micron* at 33. Therefore, we increased POSCO's cost of goods sold to reflect our fair-value adjustments for the final results.

Comment 46. The POSCO group contends that the Department erroneously included severance benefit expenses that were attributable to years prior to the POR in our calculation of G&A. The POSCO group cites section 773(f)(1)(B) of the Act, which directs the Department to adjust the COP for those nonrecurring costs that benefit current or future production, or both. The POSCO group argues that prior-period severance benefits are nonrecurring costs that do not benefit current or future production and therefore should not be included in the COP. The POSCO group cites the *Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Germany,* 61 FR 13834, 13837 (March 28, 1996), to support its contention that the Department does not adjust actual production costs incurred during the POR to reflect severance costs related to prior periods.

Petitioners claim the severance benefits were properly included in G&A because the POSCO group's omission of this expense understated, and failed reasonably to reflect, the costs associated with the production and sale of the subject merchandise in accordance with the statute. Petitioners take issue with the POSCO group's characterization of severance benefits as non-recurring costs. Petitioners cite the *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Japan*, 58 FR 37154, 37174 (July 9, 1993), to support their position that severance benefits are not non-recurring items and should be included in G&A.

The POSCO group argues that charitable donations should be excluded from G&A since donations to charitable causes clearly do not relate to activities undertaken to manufacture and sell cold-rolled and corrosion-resistant steel products, but rather are payments to support the society at large. The POSCO group further argues that charitable donations do not fall within any other category of costs that are required to be included in the COP under the statute, such as materials, fabrication, labor, overhead, or packing costs.

Petitioners respond that the POSCO group's charitable contributions clearly benefit the POSCO group's research and development efforts which are clearly activities undertaken to manufacture and sell cold-rolled and corrosion resistant steel products. Petitioners cite the *Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong,* 55 FR 30733, 30741 (July 27, 1990), to support their position that the Department's practice is to include donations as a part of the G&A component of the COP and CV.

DOC Position. We disagree with the POSCO group that the prior-period severance benefits at issue do not relate to the current POR. In 1994, POSCO settled a lawsuit brought by current and former employees regarding severance benefits promised to employees upon departure. POSCO charged the additional severance benefits associated with prior periods directly to retained earnings in accordance with generally accepted accounting principles in Korea (''Korean GAAP''). However, we have determined that including the prior-period severance benefit as an element of COP is appropriate because the POSCO group's omission of this severance benefit understates and does not reasonably reflect the costs associated with the production and sale of the subject merchandise pursuant to U.S. GAAP. If the POSCO group had followed U.S. GAAP, it would have reported this expense currently and not as a charge to retained earnings. According to *Financial Accounting Standards Board Statement No. 16* (1977), paragraph ten, ''* * * all items of profit and loss recognized during a period, including accruals of estimated losses from loss contingencies, shall be included in the determination of net income for that period.'' Furthermore, this pronouncement requires that losses from lawsuits, income tax disputes, and similar events be included in the measurement of net income for the current period and should not be treated as prior-period adjustments. Accordingly, because we have determined that this method reasonably reflects the costs associated with the production and sale of the subject merchandise, we have included the severance benefits in general expenses.

We have included donations in G&A because contributions to charitable causes represent a general expense of the company, providing the firm with valuable commercial exposure and recognition in the marketplace. General expenses are appropriately included in the COP and CV of the merchandise under investigation according to sections 773(b)(3)(B) and 773(e)(2)(A) of the Act.

Comment 47. The POSCO group claims the Department made several cost-related clerical errors in the preliminary results. First, the POSCO group claims the Department applied the wrong factor when the Department adjusted the substrate costs to reflect fair value for corrosion-resistant products manufactured by POCOS. Second, in the sales-below-cost program, the POSCO group alleges the Department failed to increase the home-market price by interest revenue before comparing the result to the COP. Lastly, the POSCO group argues that the Department incorrectly applied the fair-value adjustment in situations where cost was higher than the transfer price. The POSCO group claims it is inappropriate to apply a percentage figure to a basis different from the data from which the percentage was calculated. Further, the POSCO group claims the adjustment was intended to increase only the value of the substrate; the Department's adjustment, however, multiplied this factor by the COM, which includes additional materials as well as labor and overhead expenses.

DOC Position. The POSCO group's contention that we used the wrong factor to adjust the substrate costs to reflect fair value for corrosion-resistant products manufactured by POCOS is moot since we have not used either the major-input or fair-value provisions for these final results. We agree that interest revenue should be included in the home-market price which we did not include in the preliminary results. We have corrected this error for the final results. The issue of whether we applied the correct adjustment factor in cases where we selected the actual cost of a CONNUM is moot, since we did not apply the major-input rule in these final results.

Comment 48. The POSCO group argues that the Department erred by reducing the post-sale warehousing expense for one warehouse because the Department mistakenly thought the expense was not at arm's length.

Petitioners argue that the Department appropriately reduced POSCO's expenses for the warehouse. Petitioners state that the POSCO group failed to indicate before verification that the warehouse was owned by an affiliated party or to provide evidence that the expenses were at arm's length, and the Department should not presume that they were.

DOC Position. During the sales verification in Korea, the POSCO group informed us that the warehouse in question was owned by an entity that was affiliated with POSCO. *See* Korea sales verification report at 71. Included in the POSCO group's proposed list of POSCO expenses associated with this warehousing, in addition to expenses directly incurred by POSCO, such as those for labor, crane operations, and maintenance (see pages 70–71 of the public version of the Korea sales verification report), is an additional payment to the affiliated party. It is not clear from the record what, if any, were the expenses to the affiliated party that were associated with this payment.

In the preliminary results we deducted from the reported expense a share of the additional payment to the affiliated party corresponding to the ownership share POSCO held in that party. Given the information on the record, we consider this portion of the payment to be an internal transfer of funds. Consequently, we have maintained the adjustment to the reported post-sale warehousing expense that we made in the preliminary results.

Comment 49. The POSCO group argues that the Department erred by failing to convert warehousing expenses to an actual-weight basis. The POSCO group notes that it indicated explicitly in its February 27, 1996, submission that POSCO reported all expenses in a manner consistent with the manner in which the product was sold. The POSCO group states that no exceptions to this rule were indicated, nor were any such exceptions found during verification and, therefore, the Department has no basis for not converting this expense to an actual-weight basis.

Petitioners argue that the per-unit warehousing expense is not unambiguously expressed on a theoretical-weight basis or an actual-weight basis according to the weight basis of the sale. Petitioners indicate that because per-unit warehousing expenses are not expressed on a theoretical-weight basis for sales made on a theoretical-weight basis, the Department's decision not to divide warehousing expenses for those sales by the weight conversion factor was appropriate.

DOC Position. We agree with petitioners. The POSCO group indicated it calculated post-sale warehousing expenses for each warehouse by dividing total aggregate expenses incurred at the warehouse by total quantity of steel at the warehouse. For sales involving specific warehouses, the POSCO group reported the same per-ton post-sale warehousing expense regardless of whether the sales were on an actual-weight basis or a theoretical-weight basis. This indicates that the POSCO group was reporting the per-ton expense on the same basis for all sales. Consequently, no further adjustment is appropriate.

It is possible that the total reported quantities for each warehouse, which were used to calculate the per-ton expense for the respective warehouses, were based on a mix of both theoretical and actual weights. However, there is no evidence on the record that the total reported quantities were based on such a mix of weight bases and, even if there were such evidence, the adjustment proposed by the POSCO group would not correct such an underlying methodological problem.

As a result of the aforementioned review of reported warehousing expenses for sales made on a theoretical-weight basis, we discovered that none of the per-ton warehousing expenses provided by the POSCO group at verification were used in the post-sale warehousing field for several home-market sales. *See* Korea sales verification exhibit 78 at 10. The value used for those sales is the last figure reported in Exhibit 7 of the POSCO group's July 31, 1996, submission. Although the POSCO group asserted in the cover letter to that July 31, 1996, submission that the information in the attached exhibits contained the ''corrections'' that ''were presented to the Department during the sales verification conducted from July 15–27, 1996,'' the figure in question was not presented to the Department at verification, and there is no explanation of its derivation on the record. Consequently, for the final results we are denying this adjustment to all home market sales for which that unverified and unexplainable figure was reported as a post-sale warehousing expense.

Furthermore, the POSCO group indicated at verification that an average per-ton expense across all warehouses had been used for sales by Kyung Ahn and POSTEEL (*see* Korea sales verification report at 69 and 70); therefore, we have limited the post-sale warehousing expense for sales by these entities to no more than the recalculated average warehousing expense. *See* Attachment A to the October 8, 1996, memorandum from Steve Bezirganian to the Files.

Comment 50. The POSCO group argues that the Department erroneously failed to increase the home-market price used in the cost test by interest revenue received by the POSCO group due to late payments by customers. Petitioners did not comment on this issue.

DOC Position. We agree with the POSCO group, and have increased the net price used in the cost test by the reported interest revenue for each sales observation.

Comments by Union

Comment 51. Union claims that the Department inadvertently omitted to add duty drawback to the U.S. gross unit price when calculating net EP and CEP, as required by statute, and requests that the Department correct its margin calculation program accordingly.

DOC Position. We agree and have corrected our margin calculation program accordingly.

Comment 52. Union argues that the Department erred in combining Union's net interest expenses with those of DSM and DKI, since (1) under Korean GAAP, Union is not considered to be a controlled subsidiary of any other company and is not required to be consolidated with any other company; and (2) the Department verified that neither DSM nor DKI has a controlling interest in Union and that Union's financial statements are not consolidated with either of the two other companies. Union submits that the Department itself answered the question of whether, or under what circumstances, the Department can unilaterally create a consolidated interest rate when the companies at issue are not in fact consolidated or required to be consolidated, in its *Notice of Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands,* 59 FR 23684, 23688 (May 6, 1994) (''*Aramid Fiber*''). In *Aramid Fiber* the Department clarified that where there are no consolidated statements, the issue is whether the parent company had ''sufficient control'' over the subsidiary, as indicated by equity ownership, to warrant consolidation under foreign GAAP. Union adds that in *Aramid Fiber* the Department cited two earlier cases in which it had found evidence of ''sufficient control.'' In both cases the parent company owned at least 50 percent of the subsidiary. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand,* 57 FR 21065 (May 18, 1992); *Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil,* 59 FR 732 (January 6, 1994). Union argues that neither of the above conditions are met since DKI's and DSM's equity ownership in Union is far less than 50 percent and Korean GAAP do not recognize the existence of a parent-subsidiary relationship between DSM or DKI and Union.

Union also states that there is no evidence on the record of DSM's or DKI's involvement in the financing activities of Union. In *Aramid Fiber,* says Union, the Department refused to create a consolidated interest expense for the respondent even though:

- A parent-subsidiary relationship clearly existed;
- The parent company owned 50 percent of the subsidiary's equity;
- The parent and subsidiary shared joint control over the subsidiary's operations;
- The parent and the subsidiary were consolidated after the POR; and
- The parent financed the subsidiary's transactions.

Even though none of these circumstances applied to Union's relationship with DKI and DSM, Union points out, the Department chose to create a consolidated interest rate for Union. Furthermore, Union states, in two recent Korean cases the Department did not consolidate interest expenses because the companies involved were not consolidated in the normal course of business. *See, e.g., DRAMs* and *Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea,* 56 FR 16305 (April 22, 1991).

For all the foregoing reasons, Union argues that the Department should reverse its preliminary decision and cease consolidating Union interest expenses with those of DSM and DKI.

Petitioners take issue with Union's contention that the Department's decision to combine Union's interest expenses with those of DSM and DKI is ''neither supported by facts nor by Department policy and precedent.'' Indeed, say petitioners, not only did Union make (and the Department reject) the same argument in the first administrative review, but Union has presented in this review no new arguments that would change this conclusion. Petitioners assert that the Department does not impose any requirement that firms be formally consolidated before combining their interest expenses, as claimed by Union Steel. Rather, the Department attempts to determine whether a control relationship exists between a respondent and its affiliates. Where there is no evidence of significant control, say petitioners, the Department will not calculate a combined interest rate, even when two firms have a parent-subsidiary relationship on the basis of equity. However, when there is a control relationship, the Department will calculate a consolidated interest rate even if the two firms did not prepare consolidated financial statements. In the first and instant reviews of cold-rolled carbon steel flat products, petitioners point out, the Department collapsed Union and DKI because they had intertwined operations, shared production facilities and board members, and were under the common control of the Chang family through its ownership in DSM. Therefore, petitioners argue, DSM's level of control over DKI and Union warrants the calculation of a consolidated interest expense for all three firms. Petitioners claim the cases of *Aramid Fiber* and *PET Film* cited by Union are inapposite, since in those cases the Department did not find sufficient control of the subsidiary by the parent. For these reasons, petitioners contend, the Department was fully justified in calculating a consolidated interest expense for Union, DSM, and DKI.

DOC Position. For the final results, we calculated a combined net interest factor using Union's, DSM's, and DKI's audited financial figures obtained from verification exhibits, respondent's submissions, and public records. This methodology of calculating a single net interest factor is consistent with our longstanding practice for computing interest expenses in cases involving parent-subsidiary corporate relationships. In contrast to *Aramid Fiber,* we have established that parental control exists. DSM's ownership interest in Union and DKI places the parent in a position to influence Union's financial borrowing and overall capital structure. We note that, contrary to Union's assertions that Union is an independent company and not controlled by DSM, the two companies share common directors and related stockholders. Based on this information, we do not see how Union's operations are independent of its parent to such an extent that we should ignore our normal practice of computing interest. *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand,* 60 FR 10552, 10557 (February 27, 1995). Additionally, we find it appropriate to combine the financing costs of these three companies in this instant review because we consider the financing costs of the parent and its subsidiaries to be fungible. Furthermore, the facts of these reviews differ from both *DRAMS* and *PET Film* with regard to combining interest expense factors. In *DRAMS* and *PET Film* the respondents requested that the Department combine limited brother-sister companies to derive a consolidated group-level interest expense factor. In those cases, however, we determined that a consolidated group-level interest factor was inappropriate because, while the respondents' own financial statements were audited, those of the sister companies and the group-level financial statements were unaudited. As we stated in *DRAMS,* absent detailed testing usually associated with an audit, the Department cannot rely on the statements as submitted. *See DRAMs,* DOC Position for Comment 24, at 15475. In the instant review, by contrast, each of the entities in question—Union, DSM, and DKI—prepared separate audited financial statements, which we could therefore combine to calculate a group-level interest expense factor based on Union's assertions that no significant inter-company transactions existed.

Comment 53. Union contends the Department erred by failing to differentiate products with disparate paint types that have different costs and commercially meaningful different physical characteristics, and arbitrarily combining them into a single category, contrary to the statutory requirement that the Department make comparisons wherever possible between products with identical physical characteristics.

Union argues the Department has unreasonably aggregated five very different paint categories of painted products: (1) Polyester; (2) silicone polyester; (3) high-polymer polyester; (4) abrasion-resistant steel (''ARS'') texture; and (5) print. Union maintains these products have significantly different:

- Uses: for example, polyester-coated products are used for roofing and siding due to their resistance to chemicals and weather, while high-polymer polyester-coated products are used in home appliances and electronics on account of their resistance to heat, abrasion, and impact;
- Material costs: The differences in physical characteristics lead to substantially different manufacturing costs;
- Values: Union's customers would not be willing to pay substantial premiums for certain painting categories such as high-polymer polyester if the differences in products were as negligible as assumed in the Department's model-match hierarchy.

Union claims the CIT has ruled that ''Commerce must adjust for physical differences between the products if satisfied that *any price differential is wholly or partly the result of such physical differences.*'' *See Hussey Copper, Ltd.* v. *United States,* 895 F. Supp. 311, 313 (1995) (''*Hussey*'') (emphasis added by Union). By treating regular polyester-coated products as identical to silicone polyester, high-polymer polyester, and other painted products, the Department, Union argues, is violating the statutory requirement of fair comparisons and the specific mandate of section 771(16)(A) of the Act for comparisons, wherever possible, between products with ''identical physical characteristics.'' Union, therefore, requests that the Department use the alternative product concordance and difference-in-COM data it has submitted.

Petitioners retort that Union's arguments do not address the criteria used by the Department to establish product categories and determine product comparisons. By focusing on the prices and costs of different painted products, petitioners argue, Union ignores the Department's longstanding practice of using physical characteristics as the primary basis for creating product categories. Petitioners contend that the Department could accept Union's proposed alternate painted categories only if Union were able to demonstrate that the various paint types are so dissimilar that they cannot be compared. According to petitioners, the record does not support Union's claims that its paint types have different physical characteristics and applications. As an example, they cite regular polyester and silicon-polyester paints, which both have weather and chemical resistance and can be used for the exterior surfaces of buildings. Petitioners contend that Union's own descriptions of its various paint types indicate that the physical similarities between paint types far outweigh any differences. Moreover, they contend that even if the costs and prices of paint types were relevant to the creation of paint categories in the Department's model-match hierarchy, which they are not, the differences in costs and prices among painted products are neither significant nor systematic, to the extent that they exist at all. Petitioners therefore urge the Department to disregard Union's proposed alternate paint categories.

DOC Position. We agree with petitioners that Union provided insufficient information to support the further differentiation of painted products in the Department's model-match hierarchy. Contrary to Union's assertions, the uses and applications of the merchandise are not dispositive in this analysis. Rather, the Department looks to physical differences and adjusts for them ''if satisfied that any price differential is wholly or partly the result of such physical differences.'' *Hussey* at 313.

Union contends that the different uses of products with distinct paint coatings demonstrate that each paint coating imparts different properties to the steel (*e.g.*, corrosion-resistance, heat resistance, etc.). Although Exhibit B–4 of Union's November 27, 1996, response to sections B and C of our antidumping questionnaire (with respect to corrosion-resistant products) purports to list the physical properties of Union's various paint types, a close examination of the data presented in that exhibit reveals that the properties listed are all extremely general in nature (*e.g.*, ''gloss,'' ''semi-gloss,'' and ''flat'') and are repeated in every paint category. Other alleged physical properties listed by Union, such as ''drying time,'' ''spreading rate,'' and ''specific gravity'' are not even physical properties at all. Union, therefore, has not demonstrated the precise nature of the respective properties of its paint categories, or the actual physical differences in the paints that impart such properties, nor has it offered any analysis of whether, or to what extent, differences in physical characteristics between its paint categories have resulted in cost differences.

As the CAFC has found, products possessing similar physical characteristics need not be ''technically substitutable, purchased by the same types of customers, or applied to the same end use'' in order to be compared as ''identical'' merchandise within the meaning of section 771(16)(A) of the Act. *See Koyo Seiko Co.* v. *United States,* 66 F.3d 1204, 1210 (Fed. Cir. 1995) (*quoting Tapered Roller Bearings, Finished and Unfinished, from Japan; Final Results of Antidumping Duty Administrative Review,* 56 FR 41508, 41511 (August 21, 1991)). Given the tremendous number of variations within carbon steel product categories, the Department may define certain products as ''identical'' even though they contain minor differences. *See, e.g., Certain Cold-Rolled Carbon Steel Flat Products from Germany; Final Results of Antidumping Administrative Review,* 60 FR 65264, 65271 (December 19, 1995) and *Final Determination of Sales at Less Than Fair Value; Gray Portland Cement and Clinker from Mexico,* 55 FR 29244, 29247–48 (July 18, 1990). Union's argument ignores the obvious fact that a product characteristic hierarchy cannot possibly account for every single possible difference between products—a result not required by *Hussey.* A range of products may thus be considered ''identical'' within the meaning of the statute. Therefore, we have disregarded the alternative product concordance and difference-in-COM data Union has submitted.

Comment 54. Union argues the Department erred by removing Union's scrap revenue from Union's COM, thereby lowering the COM denominator for general expenses and profit allocations. This would have been justified, Union says, only if scrap revenue had elsewhere been credited to costs, which is not the case. Union surmises that the Department may have based its decision on the first review of corrosion-resistant products, when scrap revenue was included in miscellaneous income, and therefore was double-counted when included as an offset to COM. In this review, however, Union contends that scrap revenue was not part of miscellaneous income, was not used to reduce Union's general expenses, and was already included in Union's COM.

Petitioners retort that Union's argument is factually inaccurate, because verification exhibits demonstrate that: (1) Scrap material costs are included among the manufacturing costs recorded in Union's COM statements, and (2) Union recorded profits from scrap sales as sales revenues, not as adjustments to manufacturing costs. The Department, they claim, found no evidence that Union reduced its COM by the amount of the scrap revenue. Rather, say petitioners, the record shows that the manufacturing costs recorded in Union's COM statements were used to determine the cost of sales in the financial statements, so that the cost of sales has not been reduced by the amount of scrap revenue, as the denominator of the allocation ratios for general expenses and interest expenses. Petitioners urge the Department to continue to deduct Union's scrap revenue from cost of sales in order to ensure that per-unit general expenses and interest expenses are calculated accurately for purposes of the final review results.

DOC Position. We agree with petitioners. Using its normal cost accounting system, Union prepares COM statements that reflect revenue from the sale of scrap credited against production costs. However, Union's cost of sales figure does not reflect this same reduction because Union reclassifies and recognizes this sale of scrap as sales revenue instead of as an offset to cost. The cost of producing the scrap remains a manufacturing cost and is included in the company's cost of sales. Union's chart of accounts (*see* cost verification exhibit 6) and Union's reconciliation of sales revenue (*see* cost verification exhibit 8) confirm this financial accounting treatment. Therefore, we reduced Union's reported cost of sales figure by the 1994 scrap revenues that Union used to offset manufacturing costs to determine the proper denominator for the G&A and financing ratios.

Comment 55. Union contends the Department erred by excluding foreign-exchange transaction gains and losses from Union's reported general expenses on the grounds that they related to accounts receivable and were therefore more appropriately treated as selling expenses than as administrative expenses. The Department's calculation of general expenses, says Union, includes indirect selling expenses as well as administrative expenses. Consequently, Union contends, the net transaction gain on currency conversion should be included in general expenses; otherwise, this expense will not be captured in the dumping calculation.

Petitioners retort that Union misstates the Department's position with regard to the gains and losses at issue. The Department, petitioners contend, never stated that these gains and losses should be classified as selling expenses; rather, the Department was concerned that Union included them in general expenses when these gains and losses do not relate to the production of subject merchandise. It is for that reason, according to petitioners, that the Department excluded these gains and losses from Union's calculated costs in the first administrative review. Petitioners urge the Department not to modify its treatment of foreign-exchange gains and losses.

DOC Position. We agree with petitioners. Union calculated its net translation gains from foreign currency gains on accounts receivable balances. However, our normal practice is to exclude exchange gains and losses on accounts receivable balances because the gains occurred after the sale date and, therefore, are not relevant to our margin calculations. *See, e.g., Final Determination of Sales at Less than Fair Value: Fresh Pasta from Turkey,* 61 FR 30309, 30324 (June 14, 1996) and *Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy*, 60 FR 31981, 31991 (June 19, 1995). For these final results we excluded Union's net translation gains from accounts receivable balances denominated in foreign currency.

Comment 56. Union argues the Department erred by treating pre-sale freight and warehousing expenses as indirect selling expenses. Union submits that the URAA for the first time establishes that home-market movement charges are to be deducted from NV in all cases, without being subject to a ''direct/indirect'' test like selling expenses, and regardless of whether they occur before or after sale. *See* section 773(a)(6)(B)(ii) of the Act. Union also submits that the SAA requires all movement charges to be deducted from normal value and does not provide for them to be calculated sale by sale or analyzed in terms of their ''direct'' or ''indirect'' nature. *See* SAA at 151. Union therefore requests that the Department deduct all home-market movement charges, including pre-sale freight and warehousing expenses, from NV.

DOC Position. We agree with Union and have deducted all home-market movement charges, including pre-sale freight and warehousing expenses, from NV for these final results.

Comment 57. Union argues that the Department, for purposes of converting certain movement charges from a gross-weight to a net-weight basis, incorrectly adjusted the field USOTREU rather than the field DBROKU.

DOC Position. We agree with Union and have made this correction for these final results.

Comment 58. Union contends the Department erred by not using the most recent data sets in applying the arm's-length test and in establishing the product concordance.

DOC Position. We agree with Union and have used the appropriate data sets in these final results.

Final Results of Review

As a result of this review, we have determined that the following margins exist for the period August 1, 1994, through July 31, 1995:

CERTAIN COLD-ROLLED CARBON STEEL FLAT PRODUCTS

Producer/Manufacturer/Exporter	Weighted-Average Margin (percent)
Dongbu	0.10
Union	0.15
POSCO	0.54

CERTAIN CORROSION-RESISTANT CARBON STEEL FLAT PRODUCTS

Producer/Manufacturer/Exporter	Weighted-Average Margin (percent)
Dongbu	0.00
Union	1.09
POSCO	0.09

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of certain cold-rolled and corrosion-resistant carbon steel flat products from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above will be the rates for those firms as stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these reviews, the cash deposit rate will continue to be 14.44 percent (for certain cold-rolled carbon steel flat products) and 17.70 percent (for certain corrosion-resistant carbon steel flat products), which were the ''all others'' rates in the LTFV investigations. *See Flat-Rolled Final* at 37191.

Article VI¶5 of the GATT (cited earlier) provides that ''[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization.'' This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations; Certain Steel Products from Korea* (58 FR 37328—July 9, 1993), which is 0.05 percent *ad valorem,* will be subtracted from the cash deposit rate for deposit purposes.

The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a final reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: April 2, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9424 Filed 4–14–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822 & A–122–823]

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On October 4, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. These reviews cover four manufacturers/exporters of the subject merchandise to the United States and the period August 1, 1994 through July 31, 1995. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

We determine that sales have been made below normal value (''NV'') by various companies subject to these reviews. Thus, we will instruct U.S. Customs to assess antidumping duties based on the difference between the export price (''EP'') or constructed export price (''CEP'') and the NV.

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Bolling (Continuous Colour Coat (''CCC'')), Eric Johnson (Dofasco Inc. and Sorevco Inc. (''Dofasco'')), Greg Weber (Algoma, Inc. (''Algoma'')), N. Gerard Zapiain (Stelco, Inc. (''Stelco'')), or Jean Kemp, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute refer to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On October 4, 1996, the Department published in the **Federal Register** (61 FR 51892) the preliminary results of its administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. We gave interested parties an opportunity to comment on our preliminary results. We received written comments on November 4, 1996 from Algoma, CCC, Dofasco/Sorevco, Stelco and from the petitioners: Bethlehem Steel Corporation, U.S. Steel Group (a Unit of USX Corporation), Inland Steel Industries Inc., Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, Geneva Steel, and Lukens Steel Company. We received rebuttal comments on November 12, 1996 from interested parties.

As we noted in the preliminary results of review, on February 28, 1996, the petitioners requested that the Department determine whether antidumping duties had been absorbed by Algoma, Dofasco, and Stelco (for corrosion-resistant only) during the POR, pursuant to section 751(a)(4) of the Act. Section 751(a)(4) provides that the Department, if requested, will determine during an administrative review initiated two years or four years after publication of the order whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) was added to the Act by the URAA.

For transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect as of January 1, 1995, § 351.213(j)(2) of the Department's proposed regulations provides that the Department will make a duty absorption determination, if requested, for any administrative review initiated in 1996 or 1998. *See, Notice of Proposed Rulemaking and Request for Public Comments*, 61 FR 7308, 7366 (February 27, 1996) (''Proposed Regulations''). The commentary to the proposed regulations explains that reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year. *Id.* at 7317. Although these proposed regulations are not yet binding upon the Department, they do constitute a public statement of how the Department expects to proceed in construing section 751(a)(4) of the amended statute. This approach assures that interested parties will have the opportunity to request a duty absorption determination on entries for which the second and fourth years following an order have already passed, prior to the time for sunset review of the order under section 751(c). Because the orders on corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate from Canada have been in effect since 1993, these are transition orders. Therefore, based on the policy stated above, the Department will first consider a request for a duty absorption determination for reviews of these orders initiated in 1996. Because these reviews were initiated in 1995, we have not considered the issue of absorption in these reviews. However, if requested, we will do so in the next reviews.

Under the Act, the Department may extend the deadline for completion of administrative reviews if it determines that it is not practicable to complete the reviews within the statutory time limit of 365 days. On April 1, 1996, the Department extended the time limits for the preliminary and final results in this case. *See, Extension of Time Limit for Antidumping Duty Administrative Reviews* 61 FR 14291 (1996).

We have now completed the administrative reviews in accordance with section 751 of the Act.

Scope of Reviews

The merchandise under review is certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate. Although the *Harmonized Tariff Schedule of the United States* (HTSUS) subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

I. Certain Corrosion-Resistant Carbon Steel Flat Products

These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel-or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

II. Certain Cut-to-Length Carbon Steel Plate

These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review is grade X–70 plate.

The period of review (POR) is August 1, 1994, through July 31, 1995.

Analysis of Comments Received

Algoma

Comment 1

Petitioners argue that Algoma's method of reporting costs is distortive and should be rejected because Algoma allocated rolling costs based on the average rolling cost of only one of its two mills that produces subject merchandise. Petitioners argue that the Department has consistently required that respondents report COP and CV based on the actual costs incurred. Petitioners point to the Department's antidumping questionnaire which states that COP and CV figures ''should be calculated based on the actual costs incurred by your company during the period of review * * * as recorded under its normal accounting system.'' Petitioners also cite *IPSCO, Inc. and IPSCO Steel, Inc.* v. *United States,* 687 F. Supp. 633, 639 (CIT 1988) which quotes *F.W. Myers & Co., Inc.* v. *United States,* 376 F. Supp. 860, 873 (CIT 1974) in stating ''value determinations made in antidumping cases 'must be based upon proof of actual costs of prices—not estimates, approximations or averages.' Petitioners argue that Algoma did not weight-average the actual rolling costs of each mill. As the Department's antidumping questionnaire at D–2 states, ''If you produce the merchandise under review at more than one facility, you must report COP and CV based on the weighted-average of costs incurred at all facilities.'' Petitioners cite *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy,* 60 FR 10959, 10962 (February 28, 1995): ''if a respondent produces subject merchandise at more than one facility, the reported COM should be the weighted-average manufacturing costs from all facilities.'' Petitioners claim that Algoma's methodology resulted in the misreporting of COP and CV.

Petitioners also claim that Algoma's methodology causes all comparisons of non-identical merchandise to be erroneous. Petitioners argue that Algoma's failure to report actual costs—whether under or overstated—means that the difference in merchandise tests are invalid. Petitioners claim that the 20-percent test, which the Department uses to determine if a non-identical home market product is sufficiently similar to the U.S. product for a price comparison, will not operate properly due to Algoma's flawed methodology. Therefore, petitioners argue that where non-identical sales are being matched, there is no way to ensure that the comparison is being made with merchandise that is comparable as required by the statute. Thus, petitioners argue that since costs are overstated, the DIFMER adjustment will always be incorrect. Petitioners cite *Certain Pasta from Turkey,* 61 FR 30309, 30311 (June 14, 1996) which states, ''Insofar as DIFMER data is based on cost information {that is flawed}, the effect of these physical differences cannot be determined by the Department.''

Petitioners also argue that Algoma's attempts to justify its allocation system must be rejected. Petitioners specifically point to Algoma's claim that its accounting system does not record costs at a sufficient level of detail that would permit direct calculation of actual costs incurred at the 106″ mill that relate only to the subject merchandise. Petitioners argue that there are few, if any, accounting systems that maintain costs in the normal course of business in a manner that mirrors the Department's reporting requirements. Petitioners point to § 351.308 of the Department's Proposed Regulations which state, ''not all information that needs to be produced during the course of a proceeding is kept in the ordinary course of business (e.g., worksheets), and failure to provide such information may be deemed to violate the 'best of ability' standard.'' Petitioners go on to say that all respondents—including Algoma—are required to construct methodologies for reporting purposes that result in the reasonable allocation of actual costs.

Finally, petitioners argue that Algoma's distortive allocation methodology leaves the Department with no alternative but to reject COP and CV and apply total facts available. Petitioners claim, pursuant to section 776(b) of the statute, that the Department should select the most adverse margin available as the final weighted-average margin for this review. However, petitioners argue, if the Department decides not to apply total adverse facts available, then it should apply facts available with regard to the comparison of non-identical merchandise. In selecting partial facts available, they argue, the Department should follow its own established practice and add an upward DIFMER adjustment equal to 20 percent of TCOMU to normal value for each comparison of non-identical products. Petitioners cite two Department decisions, *Gray Portland Cement and Clinker from Mexico,* Results of Redetermination Pursuant to Court Remand, and *Tapered Roller Bearings, and Certain Components Thereof, from Japan,* 56 FR 26054, 26057 (June 6, 1991), in which the Department added an upward DIFMER adjustment of 20 percent as best information available. Accordingly, petitioners feel the Department should apply the same remedy in this situation.

Algoma argues that although they were unable to report actual rolling costs for the 106″ mill, the Department must examine any cost allocation to determine if it is reasonable. Respondent cites *Floral Trading Council* v. *U.S.*, 822 F. Supp 766, 772 (CIT 1993) and *Welded Stainless Steel Pipe from Malaysia, Final Determination of Sales at Less Than Fair Value,* 59 FR 4023, 4027 (January 28, 1994) in which the Department accepted allocation methods as reasonable. Respondent asserts that the Department should continue to accept Algoma's rolling cost allocation method because it did so in the first review of this case, *Certain Steel Products from Canada: Final Results of Administrative Review,* 61 FR at 13817. In that decision, the Department accepted Algoma's rolling cost calculation methodology stating, ''Algoma's reporting of rolling costs incurred at only one of its manufacturing facilities is reasonable, considering (1) The nature of its cost accounting system, (2) Algoma's verified inability to determine specific rolling costs based upon the gauge of materials being manufactured at either facility, and (3) the conservative methodology adopted by Algoma.'' Respondent contends that same rationale is fully supported by the record in this review and leads to the conclusion that Algoma's method for calculating rolling costs is reasonable.

Additionally, respondent asserts that Algoma explicitly sought the Department's guidance on whether to use the same rolling cost calculation methodology as in the first administrative review and that the Department instructed Algoma to use the same methodology. Respondent argues Algoma does not track rolling costs by width and gauge in the normal course of business. In addition, a very large percentage of the products produced on the 166″ Plate Mill and a very small percentage of the products produced on the 106″ Strip Mill constitute subject merchandise. Respondents contend, in light of those two verified facts, Algoma had only three reasonable alternatives in assigning rolling costs to a particular category of subject merchandise: It could either assign the average Strip Mill rolling costs, assign the average Plate Mill rolling costs, or assign a mixture of the two. Respondents argue that since the 106″ Strip Mill average rolling costs are overwhelmingly determined by non-subject merchandise, using the average 106″ mill rolling cost, or a mixture of costs from both mills, would have caused the rolling cost calculation to be driven by the cost of rolling non-subject merchandise. Therefore, Algoma used the average rolling cost of the 166″ mill—where only products with gauges falling within the definition of subject merchandise are rolled—as a surrogate for the average rolling cost of the 106″ mill. Respondent argues that this is a conservative methodology based on the verified fact that rolling costs on the 166″ mill were higher than rolling costs on the 106″ mill. Based on the facts above, respondents argue that Algoma's rolling cost methodology should again be determined reasonable by the Department.

Concerning petitioners' argument that Algoma's methodology renders the DIFMER adjustment inaccurate, respondent argues that these arguments are based on conclusions that are untrue. Respondent provides calculations for the potentially affected matches, which they argue demonstrate that it would be mathematically impossible for the cost reporting methodology to yield a distortion in the results of the DIFMER test.

Department's Position. We agree with respondent. Consistent with the final results of the first review, *Certain Steel Products from Canada: Final Results of Administrative Review,* 61 FR at 13817, Algoma's cost reporting methodology is reasonable, considering (1) we verified its cost accounting system, (2) Algoma's verified inability to determine specific rolling costs based upon the gauge of the material being manufactured at either facility, (3) the conservative methodology adopted by Algoma and verified by the Department, and (4) respondent's compliance with Department instructions on cost reporting methodology in this review.

Petitioners state that it is the responsibility of any respondent to construct methodologies for reporting purposes that result in the reasonable allocation of costs. The Department determined that Algoma's cost accounting system computes one average rolling cost for all products rolled on the 166″ Plate Mill and one average rolling cost for all products rolled on the 106″ Strip Mill. Moreover, the Department verified that a very large percentage of the products produced on the 166″ mill and a very small percentage of the products produced on the 106″ mill are subject merchandise. Therefore it was a reasonable and non-distortive methodology for Algoma to use the average cost of the 166″ mill as a surrogate for the rolling cost of the 106″ mill. Accepting this methodology is made more reasonable by the fact that the average rolling cost of the 166″ mill is higher than the average rolling cost of the 106″ mill, thus insuring a conservative costing methodology. However, this difference in rolling costs is not so great as to cause significant distortions to the DIFMER.

Regarding petitioners' claim that the Department should reject Algoma's COP and CV data and apply total facts available, respondent has acted to the best of its ability and provided the Department with a reasonable methodology that has been verified. Moreover, the Department provided guidance on Algoma's cost reporting methodology and respondents complied with that guidance. Regarding petitioners' claim that the Department should apply facts available with regard to the comparison of non-identical goods, once again, respondent has provided a reasonable methodology and the DIFMER is, therefore, reliable. Respondent has demonstrated that for the product comparisons in question Algoma's cost methodology would not cause the 20-percent DIFMER test to yield inaccurate results. In addition, while it is possible that the allocation method could change the DIFMER adjustment amount slightly for some product comparisons, the insignificant degree of the possible difference is not enough to render the allocation method unreasonable and invalid. Based on the above arguments, the verified record, and previous Department decisions, we find that Algoma's cost allocation methodology, productivity matrices, exclusion of certain runs, and DIFMER adjustments are accurate and reasonable.

Comment 2

Petitioners argue that the record shows that Algoma sold subject merchandise at two different levels of trade. Petitioners contend that in determining whether customers are at separate levels of trade, the Department reviews the selling activities performed by the seller for each type of customer. Petitioners assert that Algoma stated that it sold subject merchandise to ''two very different types of customers'': steel service centers (SSCs) and end-users. Petitioners state that Algoma specifically stated in its July 11 supplemental response that it performed selling functions for end-users that are not ''routinely performed'' for SSCs. In addition, Algoma stated that it performed some of the selling functions identified by the Department ''mainly for end users.'' Petitioners assert that this is significant because the Department has previously found differences in these types of selling functions to be important in distinguishing separate levels of trade. *See, Antifriction Bearings from France,* 61 FR at 35720.

Petitioners argue that the Department accepted Algoma's claim that all sales are at one level of trade based on the Department's ''examin{ation} and verif{ication} of the selling functions'' identified by Algoma. Petitioners note, however, that Algoma did not report its selling functions on the record until two months after verification. Therefore, Petitioners contend, there is no possible way for the Department to have ''examined and verified'' Algoma's selling functions. Even if the Department were to rely on Algoma's unverified descriptions of selling functions, Petitioners argue that the Department must still find that Algoma sold to two levels of trade. Petitioners assert that such a conclusion is mandated because the functions undertaken by Algoma for its end-user customers are significantly different from those engaged in for the SSC customers.

Therefore, Petitioners argue that the Department must make a level of trade adjustment. Petitioners contend that the statute requires that ''to the extent practicable,'' U.S. sales should be compared to home market sales at the same level of trade, 19 U.S.C. section 1677b (a)(1)(B). When a U.S. sale is compared to a home market sale at a different level of trade, however, the Department is required to determine if a level of trade adjustment should be made, 19 U.S.C. section 1677b(a)(7)(A). Petitioners argue that an adjustment must be made under the statute where the difference in level of trade affects price comparability. Petitioners claim that the Department set forth its methodology for making this determination in *Antifriction Bearings from France,* 61 FR at 35719. Petitioners argue that the difference in level of trade between sales to SSCs and end-users does affect price comparability. Petitioners present a number of calculations that they contend demonstrate a pattern of consistent price difference between the different levels of trade in the home market based on both the number of models and the quantity of sales. Accordingly, petitioners argue that a level of trade adjustment is warranted.

Respondent contends that the Department correctly concluded in the preliminary results that Algoma sells plate products at one level of trade.

Respondent asserts that conclusion is fully supported by the verified record in this review, and the Department should reach the same conclusion in the final results of review. Respondent points to the Department's preliminary analysis memorandum, which states that the Department ''examined and verified the selling functions'' performed by Algoma for its two customer classes: end-users and steel service centers (SSCs). Based on the verified information, the Department concluded in its analysis memorandum that ''Algoma's selling activities were substantially similar for both classes of customers for sales of subject merchandise and warrant one level of trade.'' Respondent states that Algoma determined that it sold plate products at only one level of trade, by comparing the services performed for plate customers to those performed for purchasers of sheet products, its largest product line. For sheet products, Algoma engages in very different levels and types of selling functions for service centers and fabricators. Respondent states for plate products, however, those services are rarely performed. Respondent also asserts that on those rare occasions when services like just-in-time delivery are performed for plate customers, they are mainly performed for end-users. Respondent points to Algoma's July 11 supplemental questionnaire response which states that ''(w)hile Algoma does perform some selling functions for end-users in plate trade that are not routinely performed for SSCs, in Algoma's view the activity is not so significant as to cause plate end-users to be a level of trade different from SSCs.

Respondent also asserts that the Department's preliminary decision that Algoma sells plate products to only one level of trade is consistent with other recent decisions. Respondent points to the final determination in *Certain Pasta from Italy*, 61 FR 30326, 30337–39, and 30342–43 (June 14, 1996) (quoting Proposed Regulations), which states that ''small differences in the functions of the seller will not alter the level of trade.'' Respondent claims Algoma has demonstrated that the selling functions performed for various customer classes of the subject merchandise are ''sufficiently similar'' to justify a finding of one level of trade, as was the case for many of the respondents in that case. In addition, respondent asserts that the Department should disregard petitioners'' calculations that suggest that a price discrepancy exists between levels of trade. Respondent claims that petitioners'' calculations hardly constitute the ''significant correlation between prices and selling expenses on one hand, and levels of trade on the other,'' required to make a level of trade adjustment. *See, Steel Plate from Sweden*, 61 FR 15772, 15776 (April 9, 1996) (Final Review). Based on the above comments and previous Department decisions, respondent contends that the Department is correct in finding that Algoma sold plate products at one level of trade and, thus, there is no need for the Department to make a level of trade adjustment.

Department's Position. The Department agrees with respondent that Algoma sold plate products at one level of trade and, thus, no level of trade adjustment is warranted.

In order to determine whether sales in the comparison market are made at more than one level of trade, the Department must find that sales have been made at different stages in the marketing process, or the equivalent. We make this determination on the basis of a review of the distribution system, including selling functions, class of customer, and the level of selling expenses for each type of sale. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the level of trade. While customer categories such as ''distributor'' and ''wholesaler'' may be useful in identifying different levels of trade, they are insufficient in themselves to establish that there is a difference in the level of trade. *See, Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from France, et al: Final Results of Antidumping Administrative Reviews*, 62 FR 2081, 2105 (January 15, 1997).

An examination of Algoma's selling activities—the selling functions and the level of selling expenses—for Algoma's two customer classes indicates that while Algoma occasionally may perform some services for end-users that it does not perform for SSCs, these differences in terms of selling functions and level of selling expenses are not great enough to warrant a finding of different levels of trade. As respondent noted in *Certain Pasta from Italy*, 61 FR 30326, 30337–39, and 30342–43 (June 14, 1996), small differences in selling functions do not warrant a different level of trade. Petitioners' arguments on price comparability are moot because the Department has determined that only one level of trade exists.

Finally, the Department disagrees with petitioners'' contention that the Department did not review Algoma's selling activities at verification because Algoma submitted some of its selling activity information after verification. Prior to verification, there was enough information on the record concerning Algoma's selling activities for the Department to determine whether these activities were ''substantially similar'' for Algoma's two customer classes: end-users and steel service centers (SSCs). Moreover, prior to verification, petitioners notified the Department of their concerns and requested that the Department carefully analyze and test all of Algoma's selling functions and differences in these selling functions between end-users and SSCs. At verification, the Department examined the differences in selling activities between end-users and SSCs. Algoma's supplemental response concerning level of trade, requested by the Department and submitted after verification, presented no evidence to contradict this determination and does not invalidate the information which was verified.

Comment 3

Petitioners claim that Algoma's failure to provide plate qualities for certain sales warrants the application of adverse facts available. For the preliminary results, respondent identified plate quality as ''structural'', ''pressure vessel'', or ''other.'' Algoma reported ''other'' as the plate quality for a number of its prime home market sales and for some of its prime U.S. market sales as well. Petitioners argue that Algoma's incomplete reporting of plate quality has undermined the Department's model match program. For this reason, petitioners assert the Department should apply facts available to all U.S. sales where plate quality has been identified as ''other.''

Petitioners state that Algoma attempted to justify its reporting method by claiming that its method was consistent with industry standards and practices. According to Algoma, any plate not falling into either the structural or pressure vessel quality categories, is appropriately considered ''other.'' Petitioners claim, however, that there are, in fact, other plate quality categories recognized in the steel industry. Petitioners point to the Iron and Steel Society's authoritative *Steel Products Manual* which mentions four other ''quality descriptions'' for steel plate.

Petitioners contend that the Court of International Trade (CIT) has specifically stated that respondents must provide complete information regarding the physical characteristics of subject merchandise. In *Timken Co.* v. *United States*, 630 F. Supp. 1327, 1338 (CIT 1986), the CIT stated, ''It is of particular importance that the administering agency itself make the required determination of what constitutes most similar merchandise, rather than delegating that responsibility to an interested party.'' In the same case, the CIT states that ''accepting a foreign manufacturer's assertions as to what constitutes most similar merchandise without obtaining the complete data needed to determine the appropriateness of those assertions'', would ''violate the spirit of the statutory requirement.''

Petitioners contend that because of Algoma's incomplete reporting, the Department should apply adverse facts available because of the Department's repeated requests and Algoma's repeated refusals to provide this information. Petitioners assert that the Department should apply the most adverse margin to all United States sales where plate quality has been reported as ''other.''

Respondent claims that Petitioners' arguments are misplaced because Algoma has properly reported, and the Department has verified and accepted, the three categories of plate quality reported by Algoma in this review. In response to the Department's first supplemental questionnaire, Algoma explained that it:

> ''followed the Department's instructions in separating subject merchandise into the categories of 'structural,' 'pressure vessel' or 'other' in the PLQUALH/U fields. Consistent with industry standards and practices, the only 'quality' types recognized for plate products are structural and pressure vessel. Any plate not falling into one of the two categories is appropriately considered 'other,' and therefore was included by Algoma in the 'other' category. The types of plate that may not meet the structural or pressure vessel qualities, and therefore are appropriately considered 'other,' include floor plate, chemical grades, and non-prime plate.

Respondent also asserts that at verification, the Department verified the plate qualities reported by Algoma.

In response to petitioners' cite to the Iron and Steel Society publication, respondent contends that the additional plate qualities mentioned by the publication are both out of date and not applicable to Algoma. Respondent also asserts that the very same publication supports Algoma's understanding by listing as typical, in ''Typical Standard Specifications,'' only structural and pressure vessel qualities.

Respondent argues that based on the facts above and the verified record, the Department should not change its decision regarding plate quality categories in making its final determination.

Department's Position. We agree with respondent. Algoma classified all plate that did not fall within the structural or pressure vessel qualities, as ''other.'' The Department fully verified the plate qualities reported by Algoma during the period of review. The Department agrees this practice is consistent with industry standards. In addition, this classification does not undermine the Department's model match program. Petitioners' cite to *Timken Co.* v. *United States* is not relevant to this issue because the Department has accepted and verified Algoma's reporting of qualities; therefore Algoma's response cannot be considered incomplete. In addition, petitioners' mention of the Iron and Steel Society's *Steel Products Manual* is also irrelevant. That publication quotes additional plate qualities that are not relevant to this review and that in no way would affect model matches. Furthermore, since Algoma properly reported all plate qualities, there is no need to consider petitioners' argument for the use of adverse facts available. Based on the verified record and industry standards, the Department fully accepts Algoma's reporting of plate qualities.

Comment 4

Petitioners argue that the Department erred in accepting as a movement charge deductible from normal value under section 773(a)(6)(B)(ii) of the statute Algoma's reported freight expenses, which Algoma incurred in transporting merchandise to a further processor. Petitioners argue that the Department has consistently treated such expenses as a cost of manufacturing, and not a movement charge. Therefore, the Department should disallow Algoma's claim for a freight adjustment for all further processed sales.

Petitioners state that the Department requires respondents to establish that they are entitled to favorable adjustments to normal value. Petitioners cite *The Timken Company* v. *United States*, 673 F. Supp. 495, 513, (CIT 1987), in which the Court ''plac(es) the burden of establishing adjustments on a respondent that seeks the adjustments and that has access to the necessary information.'' Petitioners contend that Algoma has failed to establish that it is entitled to a favorable adjustment to normal value. Petitioners assert that Algoma defends its reporting by claiming that its freight expenses were incurred ''post-sale'' and hence should be classified as movement charges. However, petitioners claim that the freight expenses in question were incurred in transporting unfinished merchandise for further processing, and thus, they are properly classified as cost of manufacturing, and not a movement charge. Therefore, petitioners argue, whether the freight expenses were incurred pre-sale or post-sale is irrelevant. Petitioners cite *Certain Carbon Steel Flat Products from Canada*, 58 FR 37099, 37118 (comment 61) (July 9, 1993), which states ''pre-sale freight charges for unfinished merchandise should not be considered a movement charge.'' The Department decision goes on to say, ''(f)reight between a factory and the further processor of a work in progress is not a deductible adjustment . . .'' Similarly, petitioners argue, the Department has consistently treated the freight from the U.S. port to a further manufacturing plant as a cost of further manufacturing, and not a freight expense. *See, Gray Portland Cement and Clinker from Japan*, 60 FR 43761, 43768 (Aug. 23, 1995).

Therefore, based on the reasons above petitioners argue that the Department should disallow Algoma's claim for a freight adjustment for all further processed sales.

Respondent claims that petitioners' arguments are based on the incorrect assumption that these freight expenses are pre-sale freight expenses. Respondent contends that under the recently amended antidumping law, all freight expense incurred from the producer to the processor and from the processor to the customer, should be deducted from normal value. Section 773 (a)(6)(B)(ii) states that an adjustment to normal value is appropriate for ''the amount, if any, included in the price . . . attributable to any additional costs, charges, and expenses incident to bringing the foreign like product from the original place of shipment to the place of delivery to the purchaser.'' Respondent cites the Statement of Administrative Action (SAA) at 827, which also explains that under that new section movement charges are to be deducted from normal value. According to respondent, Algoma's movement charges from the plant to the processor and then to the customer fall within that statutory provision and thus are properly deducted from normal value. Respondent also claims that petitioners' citations to the decisions by the Department under the old law are irrelevant to this review in light of the change in the law and the Department's practice.

Department's Position. We agree with respondent. The freight from Algoma to the further processor is a movement charge deductible pursuant to 773 (a)(6)(B)(ii) because it is not freight incurred in the process of manufacturing subject merchandise but freight incurred in sending subject merchandise for further processing at the customer's request as part of the sale. Algoma performs this further processing on a small percentage of sales as a courtesy to the customer and is not part of its actual production of subject merchandise which is being used for comparison in this review. Moreover, it would be unfair to respondent to compare ex-factory prices in the U.S. market with home market prices that include freight. In order to insure that a proper comparison is made with ex-factory home market products and ex-factory U.S. market products, all ex-factory freight expenses need to be excluded from the price. Based on the information in the record, the Department has determined that the respondent has satisfied its burden of establishing its entitlement to the adjustment under *Timken.* Petitioners' cite to *Certain Carbon Steel Flat Products from Canada* is irrelevant because that case involved the pre-sale transfer of a work-in-process. In addition, petitioners' cite to *Gray Portland Cement and Clinker from Japan* is inappropriate because it deals with the cost of further manufacturing in the United States which is not relevant to this case.

Comment 5

Petitioners argue that Algoma should not be allowed a freight adjustment for sales in which it inadvertently reported actual freight in the accrued freight field. Throughout this review, Algoma has claimed that it had reported an accrued freight expense amount in the INLFACH field of its sales tape. Petitioners state that according to Algoma, the amount reported in this field was not based on the freight expenses actually incurred, rather it was based on the expected freight charge at the time the products were shipped. Petitioners contend that Algoma claimed, for the first time, four months after verification, that for certain sales it had ''inadvertently'' reported the actual amount for inland freight in the accrued freight field (INLFACH) and that the Department had verified this claim.

Petitioners argue that respondent's claims were untimely, unsupported by the record and must be rejected by the Department. Again petitioners point to the *Timken* case which places the burden of establishing adjustments on respondents. Petitioners claim that there is no mention whatsoever in the verification reports of the Department having verified (or even having been notified of) Algoma's claim. Moreover, petitioners assert, there is no mention of Algoma's ''inadvertent'' reporting in the Corrections Memorandum that Algoma submitted at the outset of verification. Therefore, petitioners contend, the Department has no alternative but to deny Algoma's claimed freight adjustment for all sales where freight expenses are reported in the INLFACH field of the sales database.

Respondent argues that the Department's preliminary results correctly concluded that Algoma properly reported actual freight expense. Respondent contends that as Algoma explained to Department officials during verification, due to an oversight, Algoma reported the actual amount for inland freight associated with those transactions in the accrued freight (INLFACH) field. Respondent asserts that this fact does not affect the freight expense calculation and has been fully explained to the Department.

Respondent states that at verification, Algoma demonstrated that the freight expense reported for these sales transactions was fully accounted for and properly included in Algoma's sales tape, but it merely appeared in the wrong field. Respondent claims the Department verified this by examining two of the preselected sales traces. Respondent states that in the sales verification exhibits, Algoma provided the Department with freight invoices and calculations confirming that the freight reported in INLFACH represented the actual freight expense incurred for the shipment to the customer. Respondent claims that Algoma did not identify this issue in its Corrections Memo mentioned by petitioners because no correction was necessary. Respondent asserts that whether the amounts appeared in the actual or accrued expense field had absolutely no affect on the margin calculation. Therefore, respondent argues, the Department should continue to accept Algoma's explanation for the final determination.

Department's Position. We agree with respondent. Whether the actual freight is reported in the actual freight field (INLFTCH) or the accrued freight field (INLFACH) has no effect on the margin calculation. For the preliminary and final determinations, freight expense was calculated by adding the actual freight field and the accrued freight field together. Thus, whether the actual freight expense was in the actual field or the accrued field is not important, since they are combined into one freight expense. This fact renders this argument moot as long as the actual freight amounts were reported and verified in one of the two fields. As stated in the Department's verification reports and documented by verification exhibits, the freight amounts were verified by the Department and found to be accurate.

Comment 6

Petitioners argue that a circumstance-of-sale adjustment for credit expense should not be allowed for sales where Algoma failed to report payment dates. Petitioners assert that throughout this review, Algoma made numerous revisions and corrections to its data tapes. Algoma, however, never updated its sales tape to include the payment dates that were missing from its initial sales tape. Petitioners claim that respondent failed to do this even though the missing information became available to Algoma during the course of this review. Petitioners assert that Algoma's failure to report complete payment date information has made it impossible for the Department to calculate accurately Algoma's credit expenses.

Petitioners argue that Algoma's justification for incomplete reporting must be rejected. Respondent stated that it did not provide the missing payment dates because ''at no time during this review did the Department request that Algoma update its sales tape to include payment date information.'' Petitioners cite the Department's decision in *Brass Sheet and Strip from Canada,* 61 FR 46618, 46620 (September 4, 1996). Petitioners contend, as with the respondent in *Brass Sheet and Strip,* Algoma failed to provide information that had been specifically requested by the Department and which was in respondent's possession. Petitioners argue for the reasons above, the Department must deny respondent's claim for a circumstance of sale adjustment for credit expenses for all sales with missing payment dates.

Respondent contends that Algoma reported all requested payment date information and that information was fully verified by the Department. Respondent states that as Algoma demonstrated during verification, payment dates were not reported on Algoma's sales tape for orders that were unpaid at the time Algoma created the tape. Respondent asserts that this is customary practice and at no time during the review did the Department request that Algoma update its sales tape to include payment date information. Respondent also states that the Department carefully verified and gathered supporting documentation on those transactions which petitioners requested the Department verify as ''bona fide.'' Respondent argues that since Algoma has complied with all the Department's requests for information, the Department should reject petitioners' arguments.

Department's Position. We agree with respondent. The Department never requested the updated payment dates from Algoma. In addition, the alternative methodology Algoma used of substituting in an average number of days outstanding for the unknown date is reasonable and has been verified. Based on these facts, the Department will allow the circumstance-of-sale adjustment for all sales with missing payment dates.

Comment 7

Petitioners claim that Algoma should not be allowed to use the U.S. prime rate in calculating its U.S. credit expense, but instead, Algoma should use a rate more consistent with commercial reality. Petitioners cite the case *La Metalli Industriale* v. *United States,* 912 F.2d 455 (Fed. Cir. 1990), which states the cost of credit ''must be imputed on the basis of usual and reasonable commercial behavior.'' Petitioners argue that since Algoma could not qualify for the Canadian prime rate in any of its home market borrowings, Algoma would not be able to qualify for the U.S. prime rate. Therefore, petitioners claim the U.S. prime rate does not reflect the commercial reality of borrowing in the United States for Algoma. They cite *Certain Corrosion-Resistant Carbon Steel Flat Products from Australia; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 14049, 14054 (March 29, 1996) (Steel from Australia) and *Final Results of Antidumping Duty Administrative Review; Certain Cut-to-Length Carbon Steel Plate from Sweden,* 61 FR 15772, 15780 (April 9, 1996) (*Steel from Sweden*). In *Steel from Australia* and *Steel from Sweden*, the Department stated that, in the absence of U.S. dollar borrowings, a reasonable surrogate for imputing U.S. credit expense must be used. Petitioners argue that the fact that Algoma could not qualify for the Canadian prime rate provides substantial evidence that Algoma could not qualify for the U.S. prime rate.

Therefore, petitioners suggest that the U.S. prime rate be adjusted to reflect this fact, or in the alternative, the Department could use Algoma's adjusted home market interest rate. In Canada, Algoma qualified for loans of .5%, 1.0%, and 1.5% above the Canadian prime rate. Therefore, petitioners state that 1.5% should be added to the U.S. prime rate to reflect Algoma's commercial reality of borrowing in the United States. The alternative is to adjust the home market interest rate to account for currency fluctuations. Petitioners cite *Certain Fresh Cut Flowers from Colombia,* 61 FR 42833, 42848 (August 9, 1996) in which this method was used in the absence of U.S. dollar borrowings.

Respondent argues that the use of the Federal Reserve prime short-term lending rate is consistent with Department practice. Respondent cites two cases, *Canned Pineapple Fruit from Thailand: Final Determination of Sales at Less than Fair Value,* 60 FR 29553, 29558 (June 5, 1995) and *Brass Sheet and Strip from Germany: Final Results of Antidumping Duty Administrative Review,* 60 FR 38542, 38545 (July 27, 1995), in which the U.S. prime rate was used to compute U.S. credit expense in the absence of any borrowing in U.S. dollars. Respondent also cites Section C of the Department's questionnaire which states ''if you have not borrowed in U.S. dollars, use a U.S. published commercial bank prime short-term lending rate.'' Respondent also cites *Steel from Australia* and *Steel from Sweden*. Respondent states that in both cases the Department concluded that the Federal Reserve rate in effect over the POR was a ''reasonable surrogate'' for an actual dollar interest rate. In both cases the Department chose the average short-term lending rate as calculated by the Federal Reserve. Each quarter the Federal Reserve collects data on loans made during the first full week of the mid-month of each quarter by sampling 340 commercial banks of all sizes. The sample data are used to estimate the terms of loans extended during that week to all insured commercial banks. This rate represents a reasonable surrogate for an actual dollar interest rate because it is calculated based on actual loans to a variety of actual customers.

Also, respondent states that the Department itself has recognized that the use of Aexternal ''external'' information, such as the Federal Reserve rate, is preferred over an adjusted home market interest rate in deriving computed credit costs. The Department states in its September 6, 1994 *Memorandum re: Proposed Change In Policy Regarding Interest Rates Used In Credit Calculations* that the Department's preference is to get the interest rate for both currencies concerned, rather than making an adjustment to the home market interest rate to account for exchange rate fluctuations. Therefore, respondent argues that the Federal Reserve commercial bank prime short-term interest rate should be used when calculating Algoma's credit expense.

Department's Position. We agree, in part, with respondent and petitioners that commercial reality can be more accurately reflected by a surrogate U.S. short-term interest rate. Consistent with Department practice in *Steel from Sweden* and *Steel from Australia,* we are selecting the U.S. average short-term lending rate as reported by the Federal Reserve. This ''survey rate'' reflects the average short-term lending rate of 340 U.S. banks given over the quarter. Given the absence of actual short-term borrowing in the United Stated by Algoma during the POR, this average is the best measure of the short-term cost of funds in the United States during the POR.

Comment 8

Respondent claims that the Department's model match program failed to match U.S. products of a certain grade to home market products of the same grade. Also, respondent claims that the Department's margin program incorrectly modified the billing adjustment value for an invoice on which a rounding difference was identified at Algoma's verification.

Department's Position. The Department agrees with respondent in both cases and has made the appropriate corrections for the final results.

CCC

Comment 1

Petitioners state that CCC utilized Stelco's costs of producing steel substrate in its cost of production (COP) and constructed value (CV) data because the Department treated Stelco as an affiliated supplier to CCC in the first review. Petitioners note that CCC's reported transfer prices for Stelco substrate were different than the reported costs. Petitioners, therefore, argue that under the Tariff Act, CCC would have been required to utilize Stelco's transfer prices in reporting COP and CV. Petitioners state that sections 773(f)(2) and (3) of the Act provide that major inputs purchased from affiliated parties must be valued at the higher of market value, transfer price or the affiliate's cost of production. Therefore, petitioners state that the Department must recalculate CCC's COP and CV to account for the difference between Stelco's costs of production and transfer prices for the final results.

Respondent states that the antidumping law does not require the use of the higher of transfer price or cost. It requires the use of cost whenever the prices between related parties cannot be demonstrated to be at arm's length. Respondent notes that it has always reported its cost of steel substrate at the cost of production incurred by Stelco, since the original investigation, and the Department used these costs in the last administrative review. Respondent argues that the Department has interpreted the antidumping law to require the use of cost to value inputs by related parties whenever the transfer prices between them could not be shown to have been made at arm's length. In addition, respondent states that the transfer price whether higher or lower than the cost of production is not relevant if the transfer price could not be shown to have been an arm's length price. Respondent argues that petitioners have not argued that Stelco's prices to CCC are at arm's length. Therefore, respondent states that there is no basis in the law for using's Stelco's prices to CCC to establish the cost of Stelco's substrate to CCC. Additionally, respondents states that the facts of the record do not support use of the transfer prices as the cost of production.

Department's Position. We agree with petitioners. Under section 773 (f)(2) and (3) of the Act, major inputs purchased from affiliated parties may be valued at the higher of market value, transfer price or the affiliate's cost of production. In the *Final Results of Antidumping Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom,* 62 FR 2,081, 2,115 (January 15, 1997) the Department found ''that in the case of a transaction between affiliated persons involving a major input, we will use the highest of the transfer price between the affiliated parties, the market price between unaffiliated parties, and the affiliated supplier's cost of producing the major input.'' There is no market price on the record for this input. Therefore, the Department's analysis was focused on transfer prices and cost of production. However, since CCC did not provide the Department with specific information on transfer prices by model (*i.e.*, control number), the Department could not perform the comparison on a model by model basis. Therefore, the Department compared CCC's average transfer price for all models to the average total cost of manufacture for all models. The Department found that CCC's average total cost of manufacture was higher than its average transfer price. Therefore, for the final results, the Department finds that substrate from Stelco will be valued at the cost of production. In addition, we disagree with respondent that the Department has interpreted the antidumping law to require the use of cost to value inputs by related parties only where the transfer price between the parties could not be shown to have been made at arm's length. Even where prices are demonstrated to have been made at arm's length, under section 773(f)(3) of the Act, where such prices are for major inputs and are below the cost of production, the Department may disregard such prices and base the value of the major input on its cost.

Comment 2

Petitioners argue that CCC failed to report its general and administrative (G&A) expense in the manner requested by the Department. Petitioners state that the Department's questionnaire required CCC to reconcile reported costs to the company's audited financial statements for the year that most clearly corresponds to the POR. In addition, petitioners note that CCC's fiscal year data encompasses a full nine months of the POR, and that administrative and sales expenses in CCC's financial statements can be reconciled to its audited financial statements. Petitioners state that CCC used the G&A expenses for the POR. Therefore, petitioners argue that the Department should recalculate G&A expenses using a fiscal year period and not a POR period.

Respondent states that the Department should continue to calculate G&A expenses based on the POR financial statement data rather than 1995 fiscal year data. Respondent notes that it believes that using 1995 fiscal year data would be improper for several reasons. First, the Department's past practice has been to use CCC's expenses for the POR to calculate the G&A ratio. Second, the Department requires that fiscal year G&A calculations be end-of-year adjustments which are fully incorporated in the POR costs, which respondent states it has done. Lastly, the respondent notes that all of its monthly financial statements can be reconciled with the appropriate audited financial statements and the audited financial statements are drafted using the monthly financial statements, which would negate petitioners argument that the Department should use fiscal year 1995 costs since they can be reconciled to the audited financial statement. Also, respondent states that it provided a reconciliation of G&A costs to the aggregated monthly financial statements. Therefore, the Department should continue to follow its methodology and calculate G&A costs based on the POR expenses as reported in the POR financial statement.

Department's Position. We agree with petitioners. It is the Department's normal practice to calculate G&A expenses based on full-year G&A and cost of sales figures as reported in the audited financial statement which most closely corresponds to the POR. (*See, Certain Pasta from Italy, Final Determination of Sales at Less than Fair Value,* 61 FR 30326, 30363 (June 14, 1996).) While respondent argues that the Department should continue to calculate G&A expenses based on POR financial statement data, the Department may change its position on a specific issue taken in prior proceedings as long as it provides an explanation for the change (*see, Rust* v. *Sullivan,* 500 U.S. 173, 186–187 (1991).) Although CCC submitted G&A expenses in the last administrative review based on costs from monthly financial statements for the POR, that methodology was not the Department's normal practice for calculating G&A expenses. Furthermore, there is no basis in this record to justify deviating from the Department's normal practice. Consequently, we are following our normal practice in this review, which is to calculate G&A expense based on CCC's 1995 annual audited financial statements. (*See, Furfuryl Alcohol from Thailand, Final Determination of Sales at Less Than Fair Value,* 60 FR 22557, 22560, (May 8, 1995).) However, to avoid double-counting, the Department subtracted indirect selling expenses and movement expenses from the general and administrative expenses (*i.e.*, the numerator) reported in the audited financial statements.

Comment 3

Petitioners argue that CCC incorrectly calculated interest expense and failed to reconcile that value to the amount of interest reported in its audited income statement. Petitioners note that CCC reduced its financial statement interest expense by an unexplained amount when it calculated its interest expense ratio. Petitioners state that the Department only allows an offset to interest expense for short-term interest income that is related to production operations. Moreover, petitioners argue that for the Department to allow the short-term interest income offset it is the respondent's responsibility to prove that interest income was short-term and related to production operations. Therefore, petitioners argue that the Department should recalculate CCC's interest expense using its 1995 audited financial statements.

Respondent states that it reported only the interest expense it paid during the year. Respondent notes that the interest it excluded from total interest expense was not paid during the year. Respondent argues that based on the relationship between the two parties that it is appropriate to exclude this interest expense. Therefore, CCC contends it excluded the interest in accordance with Department practice.

Department's Position. It is the Department's standard practice to calculate interest expense based on audited financial statements which most closely correspond to the POR. (*See, Notice of Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand,* 60 FR 29553, 29569 (June 5, 1995)) Only short-term interest income directly related to general operations of the company may be used as an offset to interest expense. (*See, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, Final Results of Antidumping Duty Administrative Review,* 56 FR 31734 (July 11, 1991)) The reduction CCC made to its interest expense was not interest income; rather, it was an exclusion of certain interest expenses which it had not paid. The Department calculates the interest expense based on the total interest a company incurs (accrual basis) and not simply the interest it paid (cash basis). Section 773(f)(1)(a) specifies that costs will be calculated based on records kept in accordance with generally accepted accounting principles (GAAP). Financial statements prepared on the accrual basis are GAAP, while financial statements prepared on the cash basis are not GAAP. Therefore, for the final results, we have recalculated interest expense based on CCC's 1995 interest expense from annual audited financial statements which were prepared on the accrual basis and in accordance with GAAP.

Comment 4

Petitioners argue that for one control number (CONNUM) CCC reported inconsistent cost information. Petitioners state that CCC reported its variable and total costs of manufacture differently in its sales and costs listings. Moreover, CCC's cost data was not verified, therefore it is not possible to determine which set of calculations is correct. Therefore, petitioners argue that the Department should utilize the higher of the two values for calculating COP and CV, as facts available.

Respondent states that the cost data for the one U.S. sale falling within this particular CONNUM should be corrected. Respondent states that it originally improperly reported this sale as a temper rolled product. However, during the course of verification, CCC states it discovered that this sale was a non-temper rolled product. Additionally, respondent states that it corrected the final sales database for this CONNUM, but inadvertently failed to do so in its cost database because of a computer glitch.

Respondent opposes the petitioners' argument that because the Department did not conduct a full cost verification, it should use an adverse inference and apply the higher costs for all sales falling within this CONIUM in the U.S. and home markets. Respondent notes that this would be unfair. Respondent argues that the Department reviewed two CONNUMs during verification and verified its VCOM and TCOM calculations of these two CONNUMs with no discrepancies. Respondent argues that facts available are used where the requested information is missing or cannot be used because it has not been provided, was provided late, or the Department could not verify the information. Respondent states that it provided the information in a timely manner and was able to verify the costs. Therefore, no basis exists to substitute the higher temper rolled costs for the non-temper rolled costs.

Department's Position. We agree with the respondent. At verification, the Department discovered that the control number for this sale was incorrectly reported. The Department then allowed the respondent the opportunity to correct its database (*See,* Verification Report, Pre-Selected U.S. Sale EP1 Exhibit 10). While respondent corrected the sales information for this control number, it failed to correct its cost information. In addition, the Department verified CCC's methodology for calculating the variable cost of manufacturing (VCOM) and the total cost of manufacturing (TCOM) and found that its methodology was reasonable (*see,* Verification Report, CONNUM Cost Traces). Therefore, for the final results, the Department has corrected CCC's cost information (*i.e.,* VCOM and TCOM) in the U.S. database for this CONNUM in the model match program.

Comment 5

Petitioners state that section 772(c) of the Act provides that in calculating EP or CEP, a deduction must be made to account for duties, including antidumping duties, paid by the respondent or its related party, as supported by *C.J. Tower & Sons* v. *United States,* 71 f.2d 438, 445 (C.C.P.A. 1934). Thus, conclude petitioners, the statute requires that the Department must deduct antidumping duties paid by the respondent on U.S. sales.

Petitioners state that in *Federal-Mogul Corp.* v. *United States,* the plaintiff challenged the Department's decision not to deduct estimated antidumping duty deposits under the predecessor provision to section 772(c)(2)(A). Petitioners contend that the Department argued that this provision applied only to deduction of ''normal'' import duties. Petitioners also state that, the Department argued in the alternative, not deducting estimated antidumping duties (as opposed to duties actually to be assessed) had been its longstanding practice. The CIT affirmed the Department's refusal to deduct estimated AD duties, but did not adopt the Department's reasoning that section 772 applied only to ''normal'' import duties, and that antidumping duties were not normal import duties within the meaning of the statute (813 F. Supp. 872). Thus, petitioners maintain that section 772 requires the Department to deduct any import duties (including antidumping duties) that can be accurately determined at the time the Department calculates dumping margins.

Petitioners state that the legislative history to the URAA does not suggest that Congress rejected the construction of section 772(c)(2)(A) urged by petitioners. Petitioners continue that the Senate Finance Committee recognized that the Court of International Trade was considering this issue, and directed the Department to abide by the outcome of that litigation (*see,* S. Rep. No. 412, 103d Cong., 2d Sess. 64 (1994)). Therefore, state petitioners, Congress did not intend to ratify the Department's not having treated duties as a cost in the URAA, but recognized that the issue would be resolved through the judicial process.

Petitioners state that the difference calculated between normal value and EP or CEP on each sale by the Department's margin program is equal to the AD duties to be paid by the importer. Once this difference is calculated, they argue, it should then be deducted from EP or CEP for use in calculating final margins.

Respondent asserts that the Department should once again reject petitioners' argument to deduct AD duties in its margin calculation and that the Department did not deduct AD duties from EP and CEP sales in the first administrative review. Respondents contend that petitioners failed to offer any argument as to why the Department should reach a different conclusion in this review. Respondent continues that in numerous determinations over many years, the Department has consistently refused to deduct AD duties from EP and CEP sales and should continue to do so. Respondent contends that while petitioners'' argue that section 772(c)(2)(A) requires the Department to deduct AD duties from EP and CEP sales, there are no U.S. rulings in direct support of their interpretation. Respondent states that the Department has consistently rejected petitioners'' argument and that the most succinct rationale for the Department's policy is contained in *Carbon Steel Flat Products from the Netherlands*, 61 FR 48465 (September 13, 1996)). It states, in part, ''it is the Department's longstanding position that antidumping and countervailing duties are not a cost within the meaning of 19 U.S.C. section 1677(a)(d). . . . Unlike normal duties, which are an assessment against value, antidumping duties derive from the margin of dumping or the rate of subsidization found. Logically, antidumping and countervailing duties cannot be part of the very calculation from which they are derived.''

Respondent concludes that the Department's practice is clear, and that the CIT has consistently affirmed the decision not to deduct AD duty deposits from EP and CEP sales. Additionally, respondent states that the URAA House Ways and Means Committee Report and the SAA explicitly state that the new duty absorption provision is not intended to provide for the treatment of antidumping duties as a cost. Thus, states respondent, the Department should continue to refuse to deduct AD duties from Stelco's EP and CEP sales.

Department's Position. We disagree with petitioners. As we stated in the final results of the first administrative review of this order. The Department does not deduct antidumping duties from the U.S. price, because they do not qualify for deduction as ''normal import duties, under section 772 and because such a deduction would double-count the dumping margin. *See, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Review*, 61 FR 13815 (March 28, 1996) (Comment 23): note that the applicable provision of the statute, 1677a(d)(2)(A), in that review was recodified under the URAA as 1677a(c)(2)(A). Nothing in the SAA or in the legislative history of the URAA compels the Department to reconsider that decision. Furthermore, there have been no intervening judicial interpretations suggesting that the Department reconsider its interpretation of the statute as it applies to this case.

Dofasco

Comment 1

Petitioners argue that Dofasco failed to use its normal cost accounting system to prepare the response as required by the questionnaire. Petitioners maintain that the system which Dofasco, Inc. chose to use, the PaYs system (a management system), is not audited and therefore cannot be used to report costs. Petitioners also state that the Department's questionnaire requires respondent to contact the official in charge *before* submitting the response to Section D of the questionnaire in the event that respondent does not intend to use its normal cost accounting system and cost allocation methods to compute COP and CV for the merchandise under review. The Department, therefore, should use adverse facts available.

Dofasco asserts that it submitted actual, fully-absorbed product costs. According to Dofasco, it relied on its normal cost accounting system for the POR costs, and the PaYs system was used only to calculate product costs. Dofasco further notes that the PaYs system, as an allocative system, does not require an audit opinion.

Department's Position. The Department's Questionnaire states that the ''COP and CV figures that you report in the response (to Section D of the Questionnaire) should be calculated based on the actual costs incurred by your company during the period of review as recorded under its normal accounting system.'' *See, Department's Second Administrative Review Antidumping Questionnaire* (September 14, 1995), page D–1. The Questionnaire further states that these figures must reconcile to the actual cost reported in the company's costs accounting system and to accounting records used by the company to prepare its financial statements.

Significantly, the Department verified that the COP and CV figures reported in Dofasco's response were in fact based on the actual costs incurred by Dofasco during the period of review. Furthermore, we reconciled these actual costs to Dofasco's accounting records used by the company to prepare its financial statements. Therefore, we determined that the actual costs from Dofasco's process cost accounting system formed the basis of Dofasco's response. The overriding concern, then, becomes the allocation methodologies employed by respondents.

Dofasco utilized a management cost system to perform the allocations of its actual costs. Petitioners question the integrity of such an allocation system, citing *Certain Hot-Rolled Carbon Steel Flat Products from Korea*. Specifically, petitioners note that the Department stated in that case that reliance on ''a management cost system which has not been audited and is not used for the preparation of the financial statements or for any purposed outside internal deliberations of the company does not assure the Department that such costs have been stated in accordance with generally accepted accounting principles, or that all costs have been appropriately captured by the system.'' *See, Certain Hot-Rolled Carbon Steel Flat Products from Korea*, 58 FR 37176, 37186 (July 9, 1993).

However, we note that the circumstances surrounding the Department's decision in *Hot Rolled Steel from Korea* and this case are significantly different. First, in *Hot-Rolled Steel from Korea*, the Department found at verification that respondent was unable to reconcile its reported per unit costs to company documents maintained and used in the ordinary course of business. In contrast, at verification, Dofasco reconciled its actual costs to documents maintained and used in the ordinary course of business, such as the grade code cost table (Cost Verification Report, page 4) the corporate order history database (Cost Verification Report, pp. 4–5), and therefore the PaYs system.

Second, while the respondent in *Hot-Rolled Steel from Korea* reconciled (with adjustments) the total costs of production from its management system with the total costs of production used in its financial accounting system and its audited financial statement, respondent could not support the adjustments it made to the financial statement system. Dofasco's reported production costs, in contrast, tied to its financial accounting system and to its audited financial statements (*see, e.g.*, page 3 of the Cost Verification Report), and the Department found no inappropriate adjustments to Dofasco's financial statement system.

Finally, we note that the Department's remedy in *Hot-Rolled Steel from Korea* was to upwardly revise respondent's costs by the difference between the financial accounting system total costs and the submitted management system total costs. However, the Department verified that Dofasco modified PaYs to include all costs (except for the minor discrepancies discussed at Comments 2 and 3 below). *See, e.g.*, the Department's review of Dofasco's reported costs for fixed overhead expense (page 14 of the Cost Verification Report), and for inventory change (page 15 of the Cost Verification Report).

Petitioners have also cited *Certain Carbon Steel Flat Products from Brazil,* 58 FR 37091 (July 9, 1993) and *Erasable Programmable Read Only Panels from Japan,* 51 FR 39680 (October 30, 1986) as further evidence that the Department expects respondent to base its response on its normal cost accounting system. However, because we determined that Dofasco's costs tied to its normal cost accounting system, respondents have fulfilled that expectation.

Petitioners stress that, as an unaudited system, errors in the program will remain uncorrected, and that the costs generated by the system are not necessarily formulated in accordance within generally accepted accounting principles. 19 U.S.C. section 1677b(f) states that "costs shall normally be calculated based on the costs of the exporter or producer...if such records are kept in keeping with the generally accepted accounting principles of the exporting country." In this respect, Dofasco has responded to the Department's request for information in accordance with the statute. The Department found at verification that Dofasco's costs were in fact based on audited costs, and thus were costs based on records kept in accordance with the generally accepted accounting principles of Canada. *See, e.g.,* Cost Verification Report at pp. 7–12, 14–15, 18–19. As respondent has noted in its rebuttal brief, the PaYs system allocates costs from Dofasco's cost accounting system to specific Departmentally-defined products ("control numbers"). Thus, the Department's role at verification with regard to this allocation system was to (1) ensure that the costs forming the basis of the allocation were audited costs; and (2) to examine the parameters on which the allocations were based. As discussed above, the Department verified that the reported costs were actual and audited. Furthermore, at verification we examined several allocations made by the PaYs system (*see,* pages 5 and 9 of the Cost Verification Report) to confirm that these allocations were used in Dofasco's normal course of business, have been used historically by Dofasco, and reasonably reflect and accurately capture all actual costs in producing the product under review, as required by the SAA (at 834–835).

Regarding respondent's obligation to contact the official in charge *before* submitting the response to Section D of the questionnaire in the event that respondent does not intend to use its normal cost accounting system and cost allocation methods to compute COP and CV for the merchandise under review, we note that respondent's reported costs tie to its normal cost accounting system. Furthermore, the PaYs system is a cost accounting system used by Dofasco for management accounting and cost control purposes (*see,* Cost Verification Report, page 4) which reconciles completely with the financial accounting system. Therefore, we do not find that Dofasco was obliged to notify the Department of its methodology prior to submission of its response.

Comment 2

Petitioners maintain that the PaYs system and Dofasco's normal cost accounting system have different yield loss rates, and such a difference affects the accuracy of reported costs. Petitioners also argue that the yield loss calculated for the PaYs system was in part due to the inclusion of impossible yields on certain individual orders.

Dofasco asserts that the difference in yield loss was due to three factors. First, Dofasco states that the yield loss for PaYs was based on home market orders, as requested by the Department, while the yield loss under Dofasco's normal accounting system is based on total shipments since separate inventories are not kept for the home market versus other destinations. Second, Dofasco noted that the yield loss for PaYs is based on production over the period of review, while the yield loss under Dofasco's normal accounting system is based on shipments over the period of review. Finally, Dofasco stated that PaYs tracks weights by operation, thus separating galvalume from galvanized material, while under Dofasco's normal accounting system galvalume and galvanized material are kept in common inventory accounts to the end of cold rolling.

Department's Position. At verification, the Department reviewed Dofasco's narrative explanation of the yield loss. *See,* Cost Verification Report, pg. 20. Petitioners do not contest the rationale offered by Dofasco to explain differences between the yield loss rates and the Department has accepted the rationale as reasonable. However, as petitioners have noted, an examination of the data placed on the record indicates that, in addition to the three reasons put forward by Dofasco explaining the differences in yield loss rates, inaccurate data also affected the yield loss rates generated by PaYs. As petitioners also note, Dofasco did not provide a numerical reconciliation of the difference at verification. Additionally, Dofasco has not offered an explanation of the apparently aberrational data to which petitioners have pointed in their case brief.

Section 776(a)(1) of the Act stipulates that if the necessary information is not available on the record * * * the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. Therefore, for the final results of review, the Department has calculated the difference between Dofasco's reported yield loss rate after excluding sales orders which incorporate inaccurate data. As facts otherwise available, the Department considers the error for this group of products to be representative of Dofasco's reporting of all subject merchandise. Because the effect of the error was to over-report produced weight, the corresponding yield loss rate was under-reported by the PaYs system. Thus, we have upwardly adjusted Dofasco's reported cost of manufacture on all models by the percentage difference between the reported yield loss rate and the corrected yield loss rate. *See, Memorandum to the File: Analysis Memorandum for the Final Results of Review—Second Administrative Review of Certain Corrosion-Resistant Carbon Steel Flat Products from Canada (Dofasco),* page 7.

Comment 3

Petitioners maintain that the PaYs system fails to account for changes in work-in-process inventory ("WIP"), and that Dofasco failed to include these costs in its reported costs.

Dofasco responds that, because the costs incorporated into PaYs originate from the normal process cost accounting system, changes in WIP have been included in PaYs. Further, Dofasco asserts that the Department verified that Dofasco adjusted for inventory change, both finished and in process.

Department's Position. We agree with petitioners. Contrary to respondent's assertion with regard to what the Department verified, at verification the Department reconciled WIP to Dofasco's financial statements, and verified Dofasco's reported actual costs for work-in-process and finished inventory. *See,* Cost Verification Report at page 3. There is no discussion in the verification report showing that Dofasco provided a reconciliation of WIP to the costs included in Dofasco's computer submission to the Department.

While there is no evidence that WIP has been included in Dofasco's reported costs through PaYs, the record contains evidence of Dofasco's WIP change for the POR. *See,* Exhibit 7 of the Cost Verification Report. Because inventories for all WIP rose for the POR, the effect is that Dofasco overstated its costs for the period by a small amount. *See,* Analysis Memorandum, pg. 7 and Attachment 2. We have adjusted Dofasco's cost of manufacture accordingly.

Comment 4

According to petitioners, despite the Department's repeated requests, Dofasco failed to provide an inventory cost reconciliation. Petitioners insist that Dofasco should have been able to reconcile its 10 normal cost accounting product groupings to the over-1000 Departmentally-defined ''products.'' Petitioners argue that no company is expected to maintain its costs using the Department's narrow product definition.

Petitioners allege that Dofasco failed to prepare the necessary reconciliation: specifically, multiplying the reported costs by the quantity and reconciling the total to the financial statements. Petitioners state that: (1) While individual costs used by PaYs are derived from the same source documents as the financial statements, nevertheless it does not follow that per unit costs of manufacture (COMs) calculated by PaYs will equal the per unit costs maintained for purposes of the financial statements; and (2) items presented at verification failed to demonstrate that Dofasco had submitted fully-absorbed product costs. Petitioners assert that, barring use of adverse facts available, the Department should request reconciliations again, and verify them.

Dofasco argues that the PaYs system correctly accounts for changes in inventory, and that Dofasco has reconciled its reported costs. Furthermore, the Department verified these costs, by reconciling (1) the financial statements (which include inventory values) to the normal cost accounting system, and (2) the normal cost accounting system to PaYs. In addition, Dofasco claims that for certain ''PRODUCTS'' (Departmentally defined models) selected by the Department, it provided a detailed reconciliation of the normal cost accounting system to PaYs, and a reconciliation of PaYs to PRODUCT costs.

Department's Position. In its original questionnaire and in a supplemental questionnaire, we asked for an inventory cost reconciliation, for selected models. Specifically, we asked Dofasco to perform the reconciliation from the per-unit cost of the product Dofasco records for inventory movements from work-in-process to finished goods inventory to the COM submitted in the COP/CV response. In response to this request, Dofasco provided a thorough explanation in its submission to the Department as to why such a reconciliation was not possible, explaining adequately why its ten normal, internal product categories for corrosion-resistant products do not lend themselves to a reconciliation with specific, Departmentally-defined models.

Nonetheless, at verification, the company reconciled numerous costs from the audited financial statements, to plant operating statements, to Dofasco's Section D response, to the PaYs system, and to submitted COP/CV data. Additionally, at verification, we reviewed the cost build-up for two specific models. *See,* Cost Verification Report, pp. 5–6. Petitioner cites *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Germany,* 56 FR 31692, 31707 (July 11, 1991) and the Department's statement that ''verification depends precisely on tying amounts reported in the responses to the company's internal accounting and financial statements. Failure to demonstrate such a relationship results in a failed verification.'' In this case, the Department upholds this principle. Actual cost expenditures, as reported in Dofasco's Section D response, have been tied to Dofasco's plant operating statements, financial statements, normal accounting records, and, through PaYs, to the submitted COP/CV. *See, e.g.,* the discussion of Dofasco's variable overhead expense in the Cost Verification Report, pp. 11–12. Therefore, the Department determines that costs have been accurately captured and that the cost amounts reported in the response reconcile to the company's financial statements.

Comment 5

Petitioners argue that Dofasco improperly calculated its interest expense factors. Petitioners state that Dofasco did not include certain expenses in the calculation of total interest expense. According to petitioners, Dofasco also improperly included a profit sharing figure in its cost of sales. Finally, petitioners maintain that Dofasco improperly adjusted for trade accounts receivable for the CV interest expense. Petitioners assert that Dofasco should conform the CV interest expense to its COP expense calculation.

Dofasco contends that it did include the proper expenses in its consolidated interest expense calculation, and that it properly included profit sharing in general and administrative expenses only. With regard to an adjustment for trade accounts receivable, Dofasco argues that the Department's policy on this issue was elucidated 3 1/2 months after Dofasco's submission of its Section D response. Therefore, Dofasco maintains that it was not an ''error'' by Dofasco to report the CV interest expense in the manner it did.

Department's Position. The expenses that petitioners maintain have been excluded from the interest expense calculation have in fact been included in respondent's calculation of interest. *See,* Dofasco, Inc.'s response to Section D Supplemental, Exhibit Supp. I.8, ''Calculation of Interest'' for 1995, which shows that the expenses in question have been included in one of the components of Dofasco's calculation.

With regard to the amount for profit sharing, verification exhibit 33, page B3 shows that the cost of sales figure reported on page B1 does not include profit sharing, but does include the cost of sales figure used in Dofasco's calculation shown on page A1. Furthermore, the cost of sales figure reported on page B1 indicates that it is a figure calculated before certain adjustments, including that for profit sharing.

Finally, with regard to the calculation of interest expense for CV, we agree with Dofasco that its response methodology does not constitute an ''error,'' as the Department had not made clear respondents' requirements under the new statute at the time of Dofasco Inc.'s Section D submission. Nevertheless, the Department has stated in *Certain Pasta from Italy* that the statute requires interest expense to be computed in the same way for COP and CV, and that an accounts receivable offset for CV interest expense is not permitted. Therefore, for the purposes of calculating interest expense for the final results of review, we have revised Dofasco's calculation of interest expense for CV to remove the offset for trade accounts receivable.

Comment 6

Petitioners state that Dofasco should treat sales through Dofasco's U.S. subsidiary as constructed export price sales, because Dofasco USA (DUSA) played a significant role in the sales process, incurred expenses connected with its U.S. and further manufacturing activities, and because the circumstances regarding ownership and control of the merchandise sold in the U.S. prior to delivery to customers were such that these sales should be considered CEP sales.

Petitioners argue that, in the event that the Department does not classify all DUSA sales as CEP sales, then it must at least classify those DUSA sales for which there has been further manufacturing as CEP transactions. Petitioners allege that in this same situation, the Department ruled in *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea* that such sales should be considered CEP sales.

Petitioners also maintain that, in the event that the Department does not classify all further manufactured sales as CEP sales, it must at least classify those DUSA sales for which the date of sale occurred after importation as CEP sales.

Dofasco states that the Department properly determined that U.S. sales through DUSA were export price transactions. Dofasco notes that the Department and the Court have held that sales through a U.S. affiliate are export price transactions if the merchandise is sold directly to U.S. customers without physically entering the affiliate's inventory. Dofasco goes on to state that the sales constitute a customary commercial channel of trade, and the U.S. affiliate only acted as a paper processor and communications link for those sales. Dofasco argues that the merchandise sold did not enter DUSA's physical inventory for storage awaiting sale to a customer, and that Dofasco negotiated the prices charged and was responsible for marketing and sales development. Dofasco notes that the Department has held (including in the first review of this case) that the circumstances surrounding the further processing of some of the merchandise sold through a U.S. affiliate do not indicate that those sales were CEP transactions. Dofasco also stresses that the further processing was not undertaken on the account of the producer or exporter, or the affiliated party in the United States.

Department's Position. We agree with respondent. The Department, in the first administrative review of this proceeding, noted that Dofasco's sales through DUSA were purchase price (now referred to as export price) transactions. The Department noted that ''while the Department usually finds further manufacturing of merchandise occurs in the context of ESP (now CEP) sales, and while 19 U.S.C. section 1677a(e)(3), discussing adjustments to ESP, is the only explicit reference to further manufacturing in the statute, it would clearly be a mistake to define the sale as an ESP sale simply *because* there is further manufacturing.'' *See, Memorandum for Roland MacDonald: Administrative Review of Corrosion Resistant Carbon Steel Flat Products from Canada: Categorization of sales of Dofasco, Inc. (''Memorandum for Roland MacDonald''*), page 2 (July 12, 1995) (Public Version). While this decision was made under the pre-URAA governing statute, there are no differences under the post-URAA statute with regard to the statutory basis for this determination.

Thus, in the first administrative review the Department based its decision with regard to the DUSA sales on three factors: (1) While DUSA took title to the steel, it did not take the steel into physical inventory; (2) because DUSA had no facilities in the United States, it was clear that the channel of delivery was directly from Dofasco to the customer, or to an unrelated processor of the customer's choosing; and (3) DUSA was nothing more than a processor of paper and communications link. *See, Memorandum for Roland MacDonald,* page 3 (July 12, 1995) (Public Version).

In the current administrative proceeding, the only change in circumstances is the establishment of a separate DUSA office in the United States. Hence, the Department must review the basis of its earlier decision in light of this changed circumstance. Specifically, we must determine: (1) Whether DUSA takes physical inventory of subject merchandise at the new location; (2) whether the channel of delivery is customary (*i.e.*, still from Dofasco to the customer); and (3) whether the new office performs a role more significant than that of a processor of documents and communications link.

With regard to whether DUSA takes physical inventory of subject merchandise at the new location, Dofasco has stated for the record that neither Dofasco nor DUSA own or lease any U.S. warehousing facilities. *See,* Dofasco's Supplemental Sales Response, pp. 23–24 (January 18, 1996). Petitioners do not dispute this fact. Rather, petitioners argue that the fact that DUSA does not own a warehouse has no legal significance. Instead, petitioners stress that the ''critical fact'' is that the merchandise is in the United States prior to being sent to the ultimate customer, under circumstances which warrant the Department's determination that such sales are CEP sales.

Despite petitioners' assertions, as the Department noted in the first administrative review (*Memorandum for Roland MacDonald,* page 3 (Public Version)), the Department has long required that the merchandise be taken into *physical* inventory, rather than mere *financial* (accounting) inventory. *See, Certain Steel from France,* 58 FR, 37134 (1993) (sale is PP where U.S. subsidiary takes title but does not warehouse merchandise in the ordinary course of business); *Polyethylene Terephthalate (''PET'') Film, Sheet and Strip from Japan,* 56 FR 16300, 16303 (1991) (sale is PP where subsidiary takes financial but not physical inventory). Therefore, we find no reason to reverse our decision based on this criterion.

With regard to whether the channel of delivery is customary, the Department determined in the first administrative review that because DUSA has no facilities in the United States, it is clear that the channel of delivery is directly from Dofasco to the customer, or to an unrelated processor of the customer's choosing. While DUSA now has an office in the United States, the Department has verified for the current review that Dofasco's channels of delivery through DUSA remain the same as for the prior review period. Petitioners suggest that the mere existence of this U.S. office serves to establish that the ''use of DUSA as was done during the POR is not the customary channel of trade.'' *See,* Petitioners' Case Brief at 38. However, petitioners have not shown that the channel of delivery is in any way different from the previous review period. Indeed, there is no record evidence that subject merchandise is now being shipped to the U.S. affiliate (or to a warehouse dictated by the customer) from the subsidiary location in the United States, or that the channel of shipment is otherwise different from the first administrative period. Therefore, there is no reason to reverse our decision in the last administrative review based on this criterion.

With regard to the last criterion, whether DUSA plays a role more significant than that of a processor of documents and communications link, petitioners make several arguments. First, petitioners state that, by virtue of maintaining U.S. operations, DUSA incurred significant expenses in connection with its activities, such as salaries of its personnel and general and administrative expenses to support them. Petitioners argue that deducting such expenses from the U.S. price in CEP situations is one of the statutory requirements intended to ensure fair comparisons in an antidumping analysis. Second, petitioners maintain that the record shows that DUSA was an active participant in the negotiating and selling process, citing letters with customers which are on the record of this review. Finally, petitioners state that certain other support functions performed by DUSA add to the significance of its role as a seller.

Petitioners suggest that the existence of a U.S. operation which incurs ''significant'' expenses requires the Department, by statute, to treat sales through this U.S. affiliate as CEP sales in order to deduct such expenses from the U.S. price. However, we disagree that the level of the expenses, by itself, should be a criterion. Rather, the significant consideration is whether the U.S. affiliate's function is more than acting as a communications link between the unaffiliated customer and the exporter. We have stated this in numerous other cases in which the Department has considered whether there are circumstances in which sales through U.S. affiliates should be treated as export price (or, under the pre-URAA law, purchase price) transactions. *See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products from Korea,* 61 FR 18547; *Stainless Steel Wire Rod from France* 58 FR 68865; and *New Minivans from Japan* 21 FR 21937. The Department's three criteria for determining the treatment of sales through a U.S. affiliate as EP or CEP are appropriate for making this determination.

With regard to petitioners' interpretation of DUSA's role in the negotiating and selling process, the record evidence does not prove that the terms and conditions of a specific contract (see, Attachment I.10 of the January 18, 1996 Supplemental Questionnaire Response, APO Version) were negotiated by DUSA, nor does the evidence contradict Dofasco's explanation regarding the contract's circumstances (*see,* Respondent's Rebuttal Brief (APO Version), pg. 25). Moreover, numerous documents have been placed on the record, including those taken at verification, demonstrating DUSA's role vis-a-vis Dofasco, Inc.'s role in sales negotiations. *See, e.g.,* exhibit 2 of the Sales Verification Report; and Attachments I.6, I.8, and I.9 of Dofasco's Supplemental Questionnaire Response (January 18, 1996). These documents support respondent's claim that Dofasco, Inc. was primarily responsible for conducting sales activities with U.S. clients.

Finally, concerning petitioners' assertion that certain other support functions performed by DUSA add to the significance of its role as a seller, we believe that the affiliate's status with regard to title, its involvement in warehousing and further processing, and the performance of certain selling functions do not warrant rejection of Dofasco's EP classification of these sales. First, with regard to title, these circumstances are no different than in the first review. *See, Memorandum for Roland MacDonald* at page 3. Second, petitioners have not accurately described DUSA's role with regard to warehousing and further processing. Thus, petitioners' cite to *Large Newspaper Printing Presses from Germany* does not provide an applicable precedent. Finally, because the Department verified that DUSA continued to perform the same functions as a sales facilitator as it did during the first administrative review (*see,* Dofasco Sales Verification Report, August 6, 1996, pg. 2), we do not regard the performance of the selling function cited by petitioners (*see,* Page 36 of petitioners' Case Brief) as adding to the significance of DUSA's role.

Comment 7

Petitioners claim that Dofasco failed to report freight charges for numerous U.S. sales, and that by doing so, Dofasco failed to act to the best of its ability in preparing its response. Therefore, petitioners argue that the Department should use the highest freight rate as partial facts available for these sales, citing *PVC and Polystyrene Framing Stock from the United Kingdom,* 61 FR 51411, 51415 (October 2, 1996).

Dofasco asserts that petitioners' contention that it failed to report any freight charges for U.S. sales is wrong, because the freight expense is contained in computer fields other than the ones specifying the maximum freight charge for U.S. transactions.

Department's Position We agree with respondents that, for the large majority of the sales in question, Dofasco has in fact reported freight charges as required by the Department. As noted by Dofasco in its rebuttal brief, in many instances it has reported maximum freight charges in the computer field for freight from Dofasco to the warehouse. Additionally, the Department verified that Dofasco reported actual freight in the computer fields for warehousing, further processing, and freight-out.

However, for several of these transactions, Dofasco failed to report any freight charges. See, Analysis Memorandum at page 4. For these sales, as partial facts available we have assigned the maximum freight value for that destination (consistent with Dofasco's reporting methodology of using the maximum value for each destination), or, in the event there was no maximum freight value for that destination anywhere on the database, we have assigned the highest maximum freight value for any destination.

Comment 8

Petitioners argue that the Department should deduct antidumping duties paid by Dofasco USA which were reimbursed by Dofasco. According to petitioners, the fact that Dofasco USA had more liabilities than assets is evidence that it must have been reimbursed antidumping duties paid on U.S. imports. Petitioners state that this is contrary to the statute.

Dofasco contends that no evidence exists to support petitioners' allegation that Dofasco pays antidumping duties on behalf of Dofasco USA or reimburses Dofasco USA for antidumping duties. Dofasco claims that the language of the reimbursement provision, as well as the Department's interpretation of that regulation, indicates that in order to trigger the regulation, affirmative evidence (''evidence beyond a mere allegation'') must exist. According to Dofasco, because petitioners have failed to establish a link between intracorporate transfers of funds and the reimbursement of antidumping duties, the Department should not rule that reimbursement exists.

Department's Position. We agree with respondents. In this case, petitioners have provided no evidence showing that the Dofasco directly pays antidumping duties or reimburses Dofasco USA specifically for such duties. Even if Dofasco USAs financial records could be construed to show that there has been an intracorporate transfer of funds, such a transfer is likewise insufficient evidence of reimbursement of duties. As the Department stated in *AFBs from France,* ''the antidumping law does not . . . prohibit related parties from transferring money to one another.'' *See, Final Results of Antidumping Administrative Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France,* 57 FR 28360, 28371 (June 24, 1992). The Department clarified this point before the Court of International Trade, in *Torrington Co.* v. *United States* (881 F. Supp. at 629):

Commerce states 19 CFR 353.26 mandates a deduction to USP, not when there is any transfer between related parties, but rather, when there is reimbursement of antidumping duties. Commerce asserts that it has consistently held that absent evidence of reimbursements, it has no authority to make such an adjustment to U.S. price.

Thus, we do not find that reimbursement of antidumping duties exists in this case.

Comment 9

Petitioners argue that the Department must deduct antidumping duties paid by the respondent or related parties, pursuant to section 772(c)(2)(A) of the Act. Specifically, petitioners argue that the phrase ''import'' used in this provision included antidumping and countervailing duties.

Dofasco asserts that the Department has consistently determined not to deduct antidumping duties from US price and should continue to do so for the final results.

Department's Position. We agree with respondents. *See,* CCC comment 5 supra.

Comment 10

Respondents allege certain clerical errors were made in the computer program used to calculate Dofasco's margin. Specifically, Dofasco claims that the Department made errors by: (1) Failing to follow the established product hierarchy in the model match program; (2) improperly calculating the weighted-average home market values where there are two or more most similar products in the home market; (3) failing to combine a customer category for Sorevco, Inc. in the same manner as was done for Dofasco Inc.'s customer categories (petitioners made the same claim); (4) erroneously including customer category in the model match program; (5) erroneously including sales in its model match which were excluded in the margin calculation program; (6) failing to exclude, from the margin calculation program, sales outside the ordinary course of trade, and those outside the window period (petitioners made the same claim); (7) incorrectly calculating entry value for those sales in which Dofasco was unable to provide an entry value figure; (8) including certain repetitive language in the program; (9) not eliminating sales of a given product to affiliated customers when no sales of that same product were made to unaffiliated customers in the pattern of price differences program; (10) performing an incorrect mathematical computation in calculating constructed value profit; (11) erroneously matching sales within the same month at different levels of trade before matching sales at the same level of trade within the 90/60 day window period; and (12) improperly including sales which had failed the arm's-length test in calculating indirect selling expenses and constructed value profit.

Petitioners additionally claimed that the Department made a clerical error by including the minimum freight field for expenses used to calculate cost instead of the maximum freight field.

Department's Position. We agree with all comments made by Dofasco and petitioners, and have corrected our program for the final results.

Stelco Inc.

Comment 1

Because Stelco reported the cost of painting steel coils by its affiliate Baycoat in lieu of reporting the price charged by Baycoat to Stelco, petitioners urge the Department to: (i) Draw an adverse inference based on Stelco's failure to cooperate; (ii) utilize the most adverse facts otherwise available to recalculate COP and CV; and, (iii) use an adverse adjustment to normal value with respect to the comparison of nonidentical merchandise. Petitioners state the Department was fully justified in rejecting Stelco's use of manufacturing costs as the value of painting services provided to Stelco by its affiliate Baycoat.

Petitioners cite section 773 (f)(2) and (3) of the Tariff Act of 1930 (''the Act'), as amended, which states that when valuing inputs supplied to a respondent by affiliated suppliers the value reported for a transaction must be the value of such input (*i.e.,* transfer price) provided such price reflects the price commonly charged in the market. Petitioners state that the cost of producing the input may only be used for a major input where it is greater than the market value. Petitioners assert the facts on the record of this case establish that (1) painting was a major input; (2) the prices charged to Stelco by Baycoat were at market value; and, (3) the transfer prices were higher than the cost of production.

Petitioners argue that prior determinations did not bind the Department because of a significant change in the law. Between the time of the first review and the current proceeding sections 773(f) (2) and (3) of the Act were amended and now clearly apply to both cost of production and constructed value, whereas under the old law different rules applied. Petitioners argue that Stelco's acknowledgment in their submissions that prices from Baycoat were market prices establish that the prices were at fair (*i.e.,* market) value.

Petitioners also claim Stelco had more than adequate notice of the change in the law through the new statute, the statement of administrative action, the new questionnaire, and the Department's request for transfer prices in the supplemental questionnaire.

Petitioners cite section 776(b) of the Act, as amended, to support their contention that the Department use an adverse inference. Petitioners state that the fact that transfer prices examined by the Department differed from the reported costs is compelling evidence that Stelco withheld transfer price information and failed to provide information in the form or manner requested. Petitioners argue Department practice is to use an adverse inference where a respondent has not cooperated to the best of its ability. Petitioners cite the *Preliminary Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy,* 61 FR 51266, 51267 (October 1, 1996) *(Resin from Italy)* and the *Preliminary Results of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan,* 61 FR 28,168, 28,169 (June 4, 1996) *(Roller Chain from Japan)* to support their contention the Department has used the most adverse information when choosing among alternative facts available.

Petitioners reason that applying an adjustment factor to the difference in merchandise data does not constitute an adverse inference either. Petitioners suggest the highest difference in merchandise adjustment that can be added to normal value and still result in comparable merchandise is 20 percent of the total cost of manufacturing. Petitioners cite the *Final Results of Antidumping Administrative Review: Tapered Roller Bearings, Four Inches or Less in Outside Diameter and Certain Components Thereof, from Japan,* 56 FR 26,054, 25,055, 25,058 (June 6, 1991), and *Gray Portland Cement and Clinker from Mexico,* Results of Redetermination Pursuant to Court Remand at 13 (February 1, 1996) (remand determination), *CEMEX, S.A.* v. *United States,* Slip Op. 96–132, LEXIS 147, at 10–11 (CIT, 1996) to support the use of a 20-percent difference in merchandise adjustment.

Respondent states the Department's preliminary results on this issue reverses the methodology that was specifically accepted in the original final determination and first review. Stelco argues the Department's determination is unsupported by any of the usual criteria for changing methodologies established in prior determinations. Stelco asserts there has been no change in the law and no significant mistake in the earlier determination. Stelco cites *Shikoku Chemical Corporation, et al.,* v. *United States,* 795 F.Supp. 417 (CIT 1992) which held that principles of fairness prevented Commerce from changing its methodology where key facts had not changed to justify a new approach and respondents had relied on the old method of calculating the adjustment. Stelco further contends that in this same review the Department preliminarily accepted Dofasco's use of the cost of painting by Baycoat. Stelco argues that the invoiced prices from Baycoat are inappropriate to use because they have not been shown to be indicative of market prices or arm's length prices. Stelco states that Baycoat sells only to its two shareholders, Stelco and Dofasco, and therefore no unaffiliated transactions exist with which to establish the arm's length nature of the transactions. Stelco cites the *Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany,* 54 FR 18,992, Appendix B (May 3, 1989) *(AFB's from Germany)* where the Department stated that lacking arm's length prices for components to compare to transfer prices, for CV purposes, the Department generally used the cost of the components as representative of the value reflected in the market under consideration. Stelco points out that under the shareholder agreement, each partner shares in the profit or loss from Baycoat at year-end. Stelco cites *AFB's from Germany,* to support its claim that when transfer prices from a joint venture company are used, the transfer price must be adjusted by any loss incurred by the joint venture company because the loss of the joint venture must be absorbed by the participants in the joint venture. Lastly, Stelco asserts if the Department considered paint a major input, it failed to provide Stelco with adequate notice and an opportunity to provide transfer price information.

Department's Position. The Department agrees with petitioners that sections 773(f) (2) and (3) of the Act directs Commerce to value inputs supplied by affiliated persons at the transfer price between the entities provided that such a price reflects the price commonly charged in the market and, for major inputs, is not below the cost of producing the input. In the *Final Results of Antidumping Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom,* 62 FR 2,081, 2,115 (January 15, 1997) the Department found ''that in the case of a transaction between affiliated persons involving a major input, we will use the highest of the transfer price between the affiliated parties, the market price between unaffiliated parties, and the affiliated supplier's cost of producing the major input.'' Stelco identified painting as a major input in its section D response to the antidumping questionnaire. Therefore, the Department agrees that painting services provided to Stelco by its affiliate, Baycoat, should be valued at the invoice price between the two companies provided that the invoice price represents a price commonly charged in the market. The Department agrees with petitioners that valuing this input at cost would only be appropriate where cost is higher than the transfer price. *See,* section 773(f)(3) of the Act. Our verification established that the transfer price was higher than the cost of painting services for sample transactions. Furthermore, Stelco acknowledged that Baycoat's selling prices were set at prevailing market rates and above cost in their response to the supplemental section D questionnaire response.

Since Stelco did not report transfer prices for each control number as requested, we have increased the reported cost of painting by the average difference between the transfer price from the sampled painting invoices obtained at the verification and the painting cost reported for the final results. Section 776(a) of the Act states in part that a determination may be made on the basis of facts available if necessary information is not available on the record or if any interested party fails to provide such information by the deadlines for submission of the information or in the form and manner requested.

The Department disagrees with petitioners that applying the ratio representing the difference between the cost and transfer price to the painting cost reported as part of the variable cost of manufacture does not appropriately adjust cost for the difference in merchandise calculation. The difference in merchandise calculation will account for the cost difference between paint services valued at cost and at transfer price by taking into account that the transfer price for painting exceeds the cost.

The Department disagrees with respondent's allegation that the Department's preliminary results were unsupported by any of the usual criteria for changing methodologies established in prior determinations such as a change in the law or a significant mistake made in the earlier determination. The Department is not bound by prior determinations because the law changed with the enactment of the Uruguay Round Agreements Act which amended the Act and made affiliated party transactions (*i.e.,* the transactions disregarded and major input rules) apply to both cost of production and constructed value, whereas these rules previously applied only to the calculation of constructed value.

The Department disagrees with Stelco's reference to *AFB's from Germany* which Stelco contends supports the acceptance of transfer prices with an appropriate reduction for profits on inputs transferred from the affiliated party. In *AFB's from Germany* we compared the transfer prices to the cost of production and found that the cost of production of the affiliated inputs was higher than the transfer prices. The Department used cost for the affiliated inputs in that case because the transfer prices were below the cost of production. Mathematically, this was done by adjusting the transfer price upward by the losses at the affiliate. This is consistent with our practice in this case where we compared the transfer price of painting to the cost of painting and found that the transfer price exceeded the cost. The Department used the transfer price because it is higher than the cost of production of the major input. Section 773(f)(3) of the Act allows the Department to use the cost of production of a major input where it is greater than the transfer price.

The Department has determined that Stelco had adequate notice of the change in the law through the new statute, the SAA, and through our request for transfer prices in the original questionnaire and the supplemental cost questionnaire.

Finally, in order to be consistent in our treatment of painting services Baycoat provided for its other owner, Dofasco, for these final results, we have recalculated the input value of Baycoat's painting services based on transfer price. *See,* Dofasco's Analysis Memorandum at page 7.

Comment 2

Petitioners argue Stelco's general and administrative expense (''G&A'') should be recalculated based entirely on the unconsolidated income statement. Petitioners state the Department incorrectly combined selected unconsolidated data with consolidated data (*i.e.,* sundry income and expense) in the preliminary results and consequently calculated an inaccurate G&A expense rate. Petitioners state that Stelco started with the amount of sundry expense reported in its consolidated financial statements and adjusted the consolidated amount for certain items specifically related to other consolidated entities. Petitioners take issue with a consolidating entry reducing unconsolidated sundry expense. Petitioners claim that Stelco provided no reasonable explanation for why this offset to unconsolidated sundry expense should be allowed.

Petitioners state the offset is not supported by any record evidence and must be disallowed.

Stelco responds that petitioners'' argument with regard to lack of record evidence is inconsistent with the Department's preliminary determination and verification report. Stelco asserts the methodology for calculating the sundry expense reported using the consolidated sundry income and expense figure as a starting point was fully documented in its submissions and was not identified as deficient in the Department's verification report. Stelco states the Department verified and traced all the amounts included in Stelco's G&A expense calculation and used these figures in its preliminary determination. Stelco concludes that there is no basis to resort to facts available since they have cooperated fully with the Department's requests for information.

Department's Position. Petitioners state correctly that the Department's normal practice is to use G&A expenses from the unconsolidated income statement. *See,* the *Final Results of Antidumping Administrative Duty Review: Ferrosilicon from Brazil,* 61 FR, 59,407, 59,411 (November 22, 1996) and *Final Determination of Sales at Less Than Fair Value: Certain Hot Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion Resistant Carbon Steel Flat Products from Japan,* 37154, 37166 (July 9, 1993). However, the Department disagrees with petitioners' assertion that the Department randomly combined unconsolidated and consolidated G&A data and consequently computed an incorrect G&A rate. The Department based G&A on Stelco's unconsolidated data. The Department adjusted a component of G&A, the unconsolidated sundry income/expense account, for intercompany transactions which effectively overstated the balance of this account. The Department has determined it would be inappropriate to use the unconsolidated sundry income/ expense account without adjustment because this would double count income/expenses which were subsequently eliminated during consolidation. During consolidation, profits/losses from intercompany transactions are eliminated in order to recognize profits/losses from transactions only with unaffiliated companies. For the final results, the Department has computed a G&A rate based on Stelco's unconsolidated G&A expenses and cost of sales, adjusted as noted above.

Comment 3

Petitioners contend that Stelco USA's slitting expenses must be treated as a further manufacturing cost because slitting costs represent further processing charges incurred in the United States pursuant to section 772 (d)(2) of the Act. Petitioners state that section 772 (d)(2) of the Act requires that adjustments to U.S. price be made for ''the cost of *any* further manufacture or assembly (including additional material and labor), ...''

Department's Position. The Department agrees with petitioners that certain CEP sales which were slit in the United States qualify as further manufacturing as defined section 772(d)(2) of the Act. Therefore, for all sales where the computer variable DIRSELU is greater than zero, we have designated the variable SALETYPE as ''FMG'' and have added DIRSELU to the variable FURMANU for these final results.

Comment 4

Petitioners, citing *Final Results of an Antidumping Duty Administrative Review: Gray Portland Cement and Clinker from Japan,* 58 FR 48,826, 48,829 (Comment 8) (September 20, 1993) state that the Department has held and the Court of International Trade has affirmed that freight incurred in moving merchandise from the U.S. port to a further processor should be treated as a further manufacturing cost, and that the Department did not do so in its preliminary results. Petitioners claim that this practice was affirmed in *The Ad Hoc Committee of Southern California Producers of Gray Portland Cement* v. *the United States,* 914 F. Supp. 535, 541. Petitioners conclude that for all sales with SALETYPE ''FMG'', the Department should add USOTREU, INLFTC1U and INLFTC2U to FURMANU.

Department's Position. We agree with petitioners. There is no record information with regard to movement expenses as a condition of sale. Thus, we have made appropriate computer program adjustments for all sales with SALETYPE ''FMG'' to have added USOTREU, (INLFTC1U * EXRATE) and INLFTC2U to FURMANU.

Comment 5

Stelco disagrees with the Department's decision at the preliminary results of review to exclude payments to governments other than income taxes (a component of general and administrative expenses) from their calculation of cost of sales which was used as the denominator in the financing expense ratio. Stelco objects to the assertion that the cost of sales figure it provided was not based on the actual accounting records of the company. Stelco asserts that its cost of sales figure is derived directly from its accounting records albeit in a different format from the published income statement which aggregates general ledger accounts in summary form. Stelco argues that payments to governments other than income taxes and corporate services (components of general and administrative expenses) relate directly to the cost of production and therefore should be included in the cost of sales denominator.

Department's Position. We disagree with Stelco. Stelco argues that the consolidated cost of sales used as the denominator in the financing expense rate should include corporate services and payments to governments other than income taxes. Summarized in the caption corporate services are costs of administration, legal, information system and treasury services. Summarized in the caption payments to governments other than income taxes are non-income-based levied by Canadian federal, provincial, regional and municipal governments such as property taxes, business taxes, and capital taxes. Corporate services and payments to governments other than income taxes are periodic expenses general in nature related to the company as a whole. The Department has determined these expenses are properly classified as general and administrative expense items which should be excluded from cost of sales. As explained in the *Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy,* 61 FR, 30,326, 30,349 (June 14, 1996), the financial expense rate should be calculated on a basis consistent with the cost of manufacturing (''COM'') figures to which they are applied. The reported COMs do not include general and administrative expenses so cost of sales should not include any general and administrative expenses. We have therefore recalculated the financing expense rate for the final results excluding corporate services and payments to governments other than income taxes from the denominator, cost of sales.

Comment 6

Petitioners allege the Department made several errors in the margin program utilized in the preliminary results. Petitioners state the Department omitted the variable SOTHMAT at line 294 of the margin program when calculating TOTCOM. Petitioners argue that the Department included sales which failed the related party arm's length test in the CV profit calculation which is incorrect since these sales are outside the ordinary course of trade. Petitioners urge the Department to exclude such sales in calculating CV profit. Petitioners argue that in line 1131 of the constructed value portion of the program that the Department used an ampersand instead of an asterisk in the formula. Petitioners assert the Department omitted the variable SOTHMAT at line 1140 of the constructed value portion of the program. Petitioners also state the Department added asterisks to lines 1139 and 1143 making these lines inoperable and recommend removing the asterisks. Petitioners note the Department defined Stelco's total cost of manufacture for CV purposes as TOTCOMU whereas in subsequent lines of programming, however, the Department used the term TOTCOM instead. Petitioners advocate replacing TOTCOM with TOTCOMU in lines 1145, 1146, 1148 and 1149 of the final margin program. Petitioners observe that in line 1150 the Department reduced CV by TOTCOM which was incorrect. Petitioners state the Department should correct line 1150 to read CV = TOTCV-DSELCV. Petitioners note that the Department failed to convert inland freight charges listed under ''INLFTC1U,'' which were reported in Canadian currency.

Petitioners also claim that in implementing the CEP offset, the Department failed to cap the offset by the amount of U.S. indirect selling expenses. Petitioners recommend amending the computer program. However, respondent contests petitioners' claim, stating that the Department properly capped this offset. Additionally, respondent contends that petitioners' proposed correcting language attempts to obtain a change in calculation methodology not related to the capping of the CEP offset.

Department's Position. The Department agrees with petitioners in all cases noted in the comment above, except the one pertinent to the CEP offset. The Department has thus made all appropriate corrections to its margin calculations for these final results.

Comment 7

Petitioners argue that because Stelco had neither requested nor established entitlement to a CEP offset, the Department should not have made such an adjustment. To qualify for a CEP offset, state petitioners, referring to section 773(a)(7)(B) of the statute and the Statement of Administrative Action (''SAA'') at 830, a respondent must first establish that different levels of trade exist between home market and U.S. sales. Then, if the data do not provide an adequate basis for LOT adjustment and normal value is established at a more advanced stage of distribution than the CEP, the Department is required to reduce normal value by the CEP offset. Petitioners maintain that Stelco did not demonstrate all of the conditions which would entitle it to the CEP offset granted by the Department as a surrogate for a LOT adjustment. Petitioners contend that Stelco has not established that different LOTs exist, it has not claimed an LOT adjustment, nor has it requested a CEP offset. Petitioners conclude that use of a CEP offset was unwarranted and should not be used in the final determination.

Respondent replies that the Department properly fulfilled its statutory mandate in granting Stelco a CEP offset. Respondent agrees that it must submit LOT data to demonstrate that it is entitled to a CEP offset. Once appropriate LOT data is submitted, states respondent, section 773(a)(7)(B) requires that the Department grant a CEP offset as long as two conditions are met: (1) When normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the constructed export price; and (2) the data available do not provide an appropriate basis to determine a level of trade adjustment. Respondent concludes that if the Department finds that the LOT data submitted by respondent satisfies both statutory criteria, normal value shall be adjusted accordingly.

Respondent also contests petitioners' apparent claim that a respondent must claim a LOT adjustment in order for the Department to conduct an LOT analysis. Respondent states that section 773(a)(7)(A) requires the Department to pursue an LOT analysis in all instances, and that the Department acted properly in doing so.

Respondent maintains that despite petitioners' claims, the record is replete with LOT data submitted by Stelco and that the Department had all the factual information it needed for its LOT analysis, and consequently had all the information to support its use of a CEP offset. Accordingly, respondent argues, the Department should reaffirm its decision to grant Stelco a CEP offset adjustment.

Department's Position. We agree with respondent. Section 773(a)(1)(B) requires that Commerce, to the extent practicable, establish normal value based on home market (or third country) sales at the same level of trade as the constructed export price or the starting price for the export price. If Commerce is able to compare sales at the same level of trade, it will not make any level of trade adjustment or constructed export price offset in lieu of a level of trade adjustment.

When sales in the U.S. and foreign markets cannot be compared at the same level of trade, an adjustment to normal value may be appropriate. Section 773(a)(7)(A) provides that, after making all appropriate adjustments to export price or constructed export price and normal value, Commerce shall adjust normal value to account for any differences in these prices that are demonstrated to be attributable to differences in the level of trade of the comparison sales in each market. This adjustment may either increase or decrease normal value. Commerce will grant such adjustments only where: (1) There is a difference in the level of trade (i.e., there is a difference between the actual functions performed by the sellers at the different levels of trade in the two markets); and (2) the difference affects price comparability.

In order to determine whether Stelco's sales in the comparison market are at a different level of trade than the export price or CEP, we examined whether the comparison sales were at different stages in the marketing process than the export price or CEP. We made this determination on the basis of a review of the distribution system in the comparison market, including selling functions, class of customer, and the level of selling expenses for each type of sale. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the level of trade. While customer categories such as ''distributor'' and ''wholesaler'' may be useful in identifying different levels of trade, they are insufficient in themselves to establish that there is a difference in the level of trade.

Our discussion of the specific selling functions that we examined, as well as our Stelco-specific findings in this regard, are contained in our preliminary results.

The effect on price comparability is measured by examining price differences between goods sold to different levels of trade in the foreign market where normal value is being established. Commerce measures any effect on price comparability by determining if there is a pattern of price differences between sales at the different levels of trade in the foreign market.

Any adjustment under section 773(a)(7)(A) will be calculated as the percentage by which the weighted-average prices at each of the two levels of trade differ in the market used to establish normal value. An effect on price comparability must be identified and measured by observed differences between prices at different levels of trade. The Department will isolate the price effect, if any, attributable to the sale at different levels of trade, and will ensure that expenses previously deducted from normal value are not deducted a second time through a level of trade adjustment.

Only where different functions at different levels of trade are established under section 773(a)(7)(A)(i), but the data available do not form an appropriate basis for determining a level of trade adjustment under section 773(a)(7)(A)(ii), will Commerce make a CEP offset adjustment under section 773(a)(7)(B). In the case of Stelco, there is only one home market level of trade for the subject merchandise and that level of trade is different from the level of trade of the CEP. Therefore, Stelco's home market sales do not provide an appropriate basis for determining a level-of-trade adjustment. Moreover, we have determined that data from Dofasco (the other company in this proceeding with multiple levels of trade) does not form an appropriate basis for determining whether a level of trade adjustment is appropriate because none of Dofasco's home marketlevels of trade are sufficiently similar to Stelco's CEP level of trade. *See*, Stelco Analysis Memorandum at Attachment 1. Therefore, because Stelco's home market sales are at a more advanced stage of distribution than the level of trade of the CEP and the data available do not provide an appropriate basis to determine a level-of-trade adjustment, we have made a CEP offset adjustment. This adjustment is ''capped'' by the amount of indirect expenses deducted in calculating CEP under section 772(d)(1)(D).

Comment 8

Petitioners argue that the Department improperly excluded imputed expense (*i.e.*, credit expenses and inventory carrying costs) from the calculation of total United States expenses for the purpose of determining profit on CEP sales. Petitioners state that credit expenses and inventory carrying costs are deducted under section 772(d)(1) of the Act. Accordingly, conclude petitioners, these amounts must be considered a part of ''total United States expenses'' and must be included in the allocation factor for such expenses.

Department's Position. We agree with petitioners. Section 772(d)(3) requires that we deduct an amount of profit allocated to the expenses described in sections 772(d) (1) and (2). Section 772(d)(1) (B) and (C) state that the price used to establish constructed export price shall also be reduced by expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties; (and) any selling expenses that the seller pays on behalf of the purchaser. We have thus corrected our margin calculation program to include imputed expenses in the calculation of total United States expenses for this purpose. In computing the total CEP profit for allocation, we included any below-cost sales in determining the total revenues earned by Stelco and excluded any sales to affiliated parties that were found to have been made at non-arm's-length prices.

Comment 9

Petitioners state that section 772(c) of the Act provides that in calculating EP or CEP, a deduction must be made to account for duties, including antidumping duties, paid by the respondent or its affiliated party, as supported by *C.J. Tower & Sons* v. *United States*, 71 f.2d 438, 445 (C.C.P.A. 1934). Thus, conclude petitioners, the statute requires that the Department must deduct antidumping duties paid by the respondent on U.S. sales.

Petitioners state that in *Federal-Mogul Corp*. v. *United States*, the plaintiff challenged the Department's decision not to deduct *estimated* antidumping duty deposits under the predecessor provision to section 772(c)(2)(A). Petitioners contend that the Department argued that this provision applied only to deduction of ''normal'' import duties. Alternatively, say petitioners, the Department argued that not deducting *estimated* antidumping duties (as opposed to duties actually to be assessed) had been its longstanding practice. The CIT affirmed the Department's refusal to deduct estimated AD duties, but did not adopt the Department's reasoning that section 772 applied only to ''normal'' import duties, and that antidumping duties were not normal import duties within the meaning of the statute (813 F. Supp. 872). Thus, petitioners maintain that section 772 requires the Department to deduct any import duties (including antidumping duties) that can be accurately determined at the time the Department calculated dumping margins.

Petitioners state that the legislative history to the URAA does not suggest that Congress rejected the construction of section 772(c)(2)(A) urged by petitioners. Petitioners continue that the Senate Finance Committee recognized that the Court of International Trade was considering this issue, and directed the Department to abide by the outcome of that litigation (*see*, S. Rep. No. 412, 103d Cong., 2d Sess. 64 (1994)). Therefore, state petitioners, Congress did not intend to ratify the Department's not having treated duties as a cost in the URAA, but recognized that the issue would be resolved through the judicial process.

Petitioners state that the difference calculated between normal value and EP or CEP on each sale by the Department's margin program is equal to the AD duties to be paid by the importer. Once this difference is calculated, state petitioners, it is then deducted from EP or CEP as a cost for use in calculating final margins.

Respondent asserts that the Department should once again reject petitioners'' argument to deduct AD duties in its margin calculation and that the Department did not deduct AD duties from EP and CEP sales in the first administrative review. Respondent contends that petitioners failed to offer any argument as to why the Department should reach a different conclusion in this review. Respondent continues that in numerous determinations over many years, the Department has consistently refused to deduct AD duties from EP and CEP sales and should continue to do so. Respondent continues that petitioners argument that section 772(c)(2)(A) requires the Department to deduct AD duties from EP and CEP sales notwithstanding, there are no U.S. rulings in direct support of their interpretation. Respondent states that the Department has consistently rejected petitioners argument as supported in *Carbon Steel Flat Products from the Netherlands* (61 FR 48465 (September 13, 1996)). It states, in part, ''it is the Department's longstanding position that antidumping and countervailing duties are not a cost within the meaning of 19 U.S.C. section 1677(a)(d). . . . Unlike normal duties, which are an assessment against value, antidumping duties derive from the margin of dumping or the rate of subsidization found. Logically, antidumping and countervailing duties cannot be part of the very calculation from which they are derived.''

Respondent concludes that the Department's practice is clear, and that the CIT has consistently affirmed the its decision not to deduct AD duty deposits from EP and CEP sales. Also, respondent states that the URAA House Ways and Means Committee Report and the SAA explicitly state that the new duty absorption provision is not intended to provide for the treatment of antidumping duties as a cost. Thus, states respondent, the Department should continue to refuse to deduct AD duties from Stelco's EP and CEP sales.

Department's Position. We agree with respondent. *See,* CCC comment 5, supra.

Final Results of Reviews

As a result of our review of the comments received, we have changed the results from those presented in preliminary results of review. Therefore, we determine that the following margins exist as a result of our review:

Manufacturer/exporter	Time period	Margin (percent)
Corrosion-Resistant Steel:		
Dofasco	8/1/94–7/31/95	0.56
CCC	8/1/94–7/31/95	1.58
Stelco	8/1/94–7/31/95	0.55
Cut-to-Length Plate:		
Algoma	8/1/94–7/31/95	[1] 0.37
Stelco	8/1/94–7/31/95	0

[1] This is a *de minimis* margin.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service. Furthermore, the following cash deposit requirements will be effective upon publication of these final results for all shipments of this merchandise, entered or withdrawn from warehouse for consumption on or after the publication date, as provided for by section 751(a)1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates for those firms as stated above (except that if the rate for a particular product is *de minimis* i.e., less than 0.5 percent, a cash deposit rate of zero will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the case deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the case deposit rate for all other manufacturers will be the ''all others'' rate made effective by the final results of the 1993–1994 administrative review of these orders (*see, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Steel Plate from Canada; Final Results of Antidumping Administrative Reviews*, 61 FR 13815 (March 28, 1996)). As noted in those final results, these rates are the ''all others'' rates from the relevant LTFV investigations which were 18.71 percent for corrosion-resistant steel products and 61.88 percent for plate (*see, Amended Final Determination*, 60 FR 49582 (September 26, 1995)). These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This administrative review and notice are in accordance with section 751(a)(1) of the Act 19 U.S. C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: April 2, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9425 Filed 4–14–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–802]

Certain Cut-to-Length Carbon Steel from Finland; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 4, 1996, the Department of Commerce (the Department) published the preliminary results of its 1994–95 administrative review of the antidumping duty order on certain cut-to-length carbon steel from Finland. The review covers one manufacturer/exporter, Rautaruukki Oy (''Rautaruukki''), for the period August 1, 1994 through July 31, 1995. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have made the changes described in this notice.

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Jacqueline Wimbush or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1374 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1996, the Department published in the **Federal Register** (61 FR 51901) the preliminary results of the antidumping duty order on certain cut-to-length carbon steel plate from Finland (58 FR 44165). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act.

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Scope of the Review

The products covered by this administrative review constitute one ''class or kind'' of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers, 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The period of review (''POR'') is August 1, 1994, through July 31, 1995. This review covers entries of certain cut-to-length carbon steel plate by Rautaruukki.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received briefs and rebuttal comments from Bethlehem Steel Corporation, U.S. Steel Group a unit of USX Corporation, Inland Steel Industries, Inc., LTV Steel Company, Inc., National Steel Corporation, AK Steel Corporation, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and WCI Steel Inc., collectively petitioners, and from Rautaruukki, respondent, an exporter of the subject merchandise. At the request of respondent, we held a hearing on December 2, 1996.

Comment 1

The respondent argues that the Department erred by failing to consider all subject merchandise with shipbuilding specification ''A'' as identical merchandise. Respondent states that the Department assigned new control numbers (''CONNUMs'') to shipbuilding steel for each specification and/or grade (''PLSPECH'') based on the national classification society. Consequently, respondent argues that the Department considered only the shipbuilding plate certified as ''ABA'' for sale in the Finnish home market and the U.S. market as identical merchandise, and erroneously treated shipbuilding plate which was certified by a different national classification society as non-identical merchandise.

Respondent claims that its customers sometimes demand that identical merchandise be certified in accordance with the specifications of the national classification society of the country in which the product will be used. As a result of this, respondent states that it reported multiple PLSPECH codes for the same CONNUM. Respondent argues that the administrative record shows that merchandise manufactured to the ''A'' specification is identical regardless of national classification society certification. Respondent alleges that it gave the Department a table of identical and most similar merchandise which demonstrated that the physical characteristics, including chemistry, delivery condition, elongation, yield strength and tensile strength are identical for all shipbuilding plate with the ''A'' specification (see Exhibit SUPP–17, dated December 6, 1996, as part of Rautaruukki's response to the Department's supplemental questionnaire). Respondent notes that it provided the Department with mill certificates for various shipbuilding (''A'') specifications, which indicated that the chemical and physical properties are the same for shipbuilding steel with the ''A'' specification, and the steel from the same cast or heat was used to meet orders of shipbuilding plate sold to two different classification society certifications.

Respondent claims that the Department has acknowledged that all ''A'' specification shipbuilding plate are identical products. Respondent cites the Department's verification report which states: ''We examined mill certificates for products which have identical physical characteristics but were sold to different countries with different specifications: It is clear that the products were identical based on physical characteristics.''

Respondent also contends that the Department has improperly changed its model-match program from the previous administrative review. Respondent notes that in the first review, the Department assigned identical designated values for PLSPECHs which represented subject merchandise manufactured to the ''A'' specification of shipbuilding steels. Respondent states that in the first administrative review, the Department recognized that these products are identical products with the same chemical and physical characteristics.

Respondent argues that an administrative agency must either follow existing decisions and precedents or else explain its deviation, citing *Citrosuco Paulista, S.A.* v. *United States*, 12 CIT 1196, 1209, 704 F. Supp. 1075, 1088 (1988). Respondent argues that the Department should have either conformed to, or explained the reasons for its departure from, its prior determination. Respondent claims that no new facts were presented that supported a different conclusion than that reached in the prior administrative review, citing *Shikoku Chemicals Corp.* v. *United States*, 16 CIT 382, 795 F. Supp. 417, 421 (1992).

Respondent argues that the Department never asked for information explaining in greater detail its product code system nor did it ever notify Rautaruukki regarding any change in the review. Thus, Rautaruukki claims that it was never given an opportunity to supplement or clarify the record or change its existing reporting methodology, citing *SKF USA Inc.* v. *United States*, 888 F. Supp. 152 (CIT

1995). Respondent also cites *Bowe-Passat* v. *United States*, 17 CIT 335, 343 (1993), in which its states that the Department sent out a general questionnaire and a brief deficiency letter, without disclosing other deficiencies unspecified in the letter until after ''it was too late, i.e., after preliminary determination.''

Petitioners contend that if Rautaruukki's PLSPEC matching hierarchy was accepted as accurate by the Department, the Department would be faced with insurmountable obstacles that would prevent it from correcting Rautaruukki's CONNUM and PLSPEC data. Petitioners argue that acceptance of Rautaruukki's ''explanation'' would necessitate the collapsing and ''splitting'' of CONNUMs, which the Department should not and could not do. Petitioners claim that Rautaruukki's PLSPEC matching hierarchy indicates some specifications with a given CONNUM to be identical to the PLSPEC sold in the U.S., some to be ''similar'' to that PLSPEC, and that separate CONNUMs should have been created for other PLSPECs.

Petitioners contend that Rautaruukki's database would have to be reconfigured before it could be used if Rautaruukki's submitted PLSPEC matching hierarchy were deemed accurate and dispositive. Petitioners note that it is not the Department's responsibility to make such changes, citing *Neuweg Ferrigung GmbH* v. *United States*, 797 F. Supp. 1020, 1023–24 (CIT. 1992). Petitioners argue that the Department's acceptance of Rautaruukki's matching hierarchy would necessarily render its sales and cost databases unusable for purposes of the sales-below-cost test, because Rautaruukki's reported matching hierarchy only identifies a limited number of PLSPECs. Thus, the Department would be preluded from reconfiguring the vast majority of Rautaruukki's database.

Petitioners argue that it would be impossible for the Department to correct Rautaruukki's PLSPEC and CONNUM information. Petitioners claim that the ramifications of the Department's inability to correct Rautaruukki's submitted data would affect the Department's analysis at a most fundamental level. Petitioners argue that (1) the creation of new CONNUMs would require correcting the corresponding model-specific cost information, by creating new costs for newly collapsed and split CONNUMs; and (2) that the Department's inability to correct Rautaruukki's CONNUMs prevents it from performing its sales-below-cost test. Petitioners argue that the Department's acceptance of Rautaruukki's matching hierarchy would necessarily render its sales and cost databases unusable for purposes of the arm's-length test. Petitioners claim that the fact that the arm's-length test cannot be performed is of great significance given the number of sales in the home market that were made to affiliated parties.

Petitioners argue that Rautaruukki's attempts in its case brief to focus the Department's attention on its treatment of four PLSPEC designations, and two CONNUMs under which these PLSPECs are reported in the home market database overlook the deficiencies throughout Rautaruukki's database. Petitioner argue that such a decision would set a terrible precedent, and that the respondent would only need to ensure that it report correctly certain home market sales that it predicted would match to U.S. sales, and not bother ensuring that the rest of its submitted information was correct. Petitioners state that the Department gave Rautaruukki notice of the problems inherent in its data and an opportunity to correct or clarify this information.

Petitioners argue that the statute does not, and cannot legitimately be read to, require notification of data deficiencies or failures where the department could not know the extent or particulars of the problem until verification. Petitioners state that if the Department were not allowed to reject unreliable, inaccurate, or incomplete information provided by the respondents and discovered at verification, the very basis of the Department's statutory authority would be negated, citing *Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan*, 55 FR 34,587 (Aug. 23, 1990) (Final Determination of Sales at Less Than Fair Value); and *Silicon Metal from Brazil*, 59 FR 42,806, 42,812 (Aug. 19, 1994) (Final Results of Antidumping Duty Review). To do otherwise, in petitioner's view, would require either the acceptance of unverified information or additional verification by the Department. Petitioners claim that the major deficiencies in Rautaruukki's data base were discovered and raised by the Department at the earliest opportunity at verification, and the department had no opportunity or reason to inquire into these issues prior to verification. Petitioners argue that Rautaruukki should have been aware of the deficiencies in its data base prior to verification and has had every opportunity to clarify or correct its submitted information. Petitioners state that in the original questionnaire, the Department provided clear instructions for providing specification/grade information, emphasized the importance of the specification/grade classification, and gave Rautaruukki every opportunity to request guidance from the Department regarding the assignment of specification or grade information.

Petitioners argue that Rautaruukki never requested guidance from the Department, and that the Department issued a lengthy supplemental questionnaire in this case, which requested clarification of Rautaruukki's PLSPEC and CONNUM assignments. Petitioners argue that Rautaruukki's claims in this regard are without merit and should be rejected by the Department.

Department's Position

We agree in part with petitioners. Under the Department's methodology for assigning CONNUMs, each product, based on the Department's model match criteria, should be assigned its own unique CONNUM. Based on these criteria, there should not be more than one PLSPEC in any CONNUM because different specifications have different physical, mechanical or chemical requirements. Respondent has not assigned its CONNUMs consistent with the Department's model match criteria. In certain instances, respondent reported within the same CONNUM shipbuilding ''A'' specifications, as well as non-shipbuilding specifications. In the Department's preliminary results, we created new CONNUMs for each of the shipbuilding ''A'' specifications identical or most similar to the U.S. sales. this is a change from the prior review in which this issue did not come to the Department's attention.

We relied on respondent's model match hierarchy, which indicates that all shipbuilding ''A'' PLSPECs are identical, to weight the physical characteristics for matching purposes. However, the statement in the Department's verification report, that ''based on the mill certificates it is clear that the products were identical based on physical characteristics,'' referred only to the fact that products are physically identical with respect to certain characteristics analyzed by the Department, and not that the specifications that they are meeting are identical. The PLSPEC variable is intended to identify the differences in the specification to which the product is sold. Prices can vary based on the specifications to which the product is sold, even though the product is physically identical. It is inconsistent with the Department's model matching criteria in this case to consider products sold to different specifications as identical for margin calculation purposes. We assigned one weight to ''ABA'', the only PLSPEC sold in the United States. Since all other ''A'' grade shipbuilding specifications possess different requirement from ''ABA'' but essentially are the same product, we treated them as the next most similar product, as we had no basis to distinguish among these PLSPECs from respondent's model match hierarchy. All U.S. sales were matched to shipbuilding ''A'' specification material.

While the Department did not specifically request respondent to revise its CONNUMs, we did ask Rautaruukki to explain in detail how each reported product characteristic was determined and assigned to sales of subject merchandise. Respondent never explained why it combined PLSPECs in CONNUMs as it did. Nor did Rautaruukki ask the Department to consider modifying its methodology to allow Rautaruukki to report CONNUMs as it did. We agree with petitioners that respondent has likely incorrectly assigned CONNUMs throughout the data base. The Department was able to and has revised the data base where it was necessary to do so for purpose of the margin calculation.

This effort by the Department does not impair our ability to perform the cost test in this review. As explained in Comment 3, we are using facts available and assigning a single cost for all CONNUMs. (See Comment 3, below.) Consequently, we are able to perform the cost test without obtaining additional cost data from Rautaruukki, and have done so for these final results.

With respect to the arm's length test, we are already using facts available as NV for all U.S. sales matching to these sales, making this issue moot.

Comment 2

Respondent argues that the Department has erred by comparing normal cut-to-length carbon steel plate sold to the U.S. market with the wide flats and beveled plate sold in the home market because these products are not identical or similar. Respondent asserts that the United States Customs Service has issued a number of definitional rulings concerning the classification of ''wide flats'' under the Harmonized Tariff Schedule of the United States (1996) (''HTSUS''). Respondent claims that these rulings indicate that ''wide flats'' are considered to be parts of steel structures and, therefore, classifiable under heading 7308 of the HTSUS. See, e.g., Headquarter Ruling 088116 (Feb. 27, 1991); Headquarters Ruling 084532 (July 14, 1989).

Respondent claims that beveled plate and wide flats are structural steel products which require separate handling on a different product line, and that the raw material for both is basic cut-to-length plate. Respondent claims that the Department was provided extensive information about the different and additional cost associated with both products, as well as the additional processes which are necessary to produce these products. Respondent claims that the Department has verified that wide flats and beveled products require additional processing, and that the Department erred in comparing sales of these products with those of normal plate. Respondent states that it assigned distinct CONNUMs to beveled plate and to wide flats although they may have the same physical characteristics as basic cut-to-length plate, because they are manufactured by different processes and have different end uses.

Petitioners claim that Rautaruukki's arguments regarding the Department's treatment of beveled and wide flat products are without merit. Petitioners argue that Rautaruukki raised the same arguments in the first administrative review regarding beveled plate products and the Department rejected them. Petitioners state that the Department correctly determined in the first administrative review that Rautaruukki failed to establish the relevance of the beveling as a product matching criteria, and that ''beveled plate does not possess physical characteristics which make it unique from non-beveled plate with regards to applications and uses,'' citing *Certain Cut-to-Length Carbon Steel Plate from Finland,* 61 FR 2792, 2795 (Jan. 29, 1996) (Final Results of Antidumping Duty Administrative Review). Petitioners also note that in response to a letter from the Department to interested parties on model match prior to the first administrative review, Rautaruukki commented on several issues, but did not mention the treatment of beveled plate or wide flat products in any regard.

Petitioners argue that nothing has changed with respect to this issue in the second review, and the Rautaruukki has not established on the record the relevance of beveling or wide flats as product matching criteria. Petitioners argue that Rautaruukki has simply ignored the Department's hierarchy and attempted to create its own and, therefore, the Department has correctly determined that neither beveled plate nor wide flat products possess any physical characteristics that set them apart from non-beveled or non-wide flats plate products.

Department's Position

We agree with petitioners. The Department issued clear instructions on how to construct CONNUMs. Whether or not subject merchandise is beveled or wide flat is not a model match criterion. Rautaruukki never explained that it had modified the Department's model match criteria or why it had done so. Rautaruukki did not ask the Department to consider modifying the model match criteria. As petitioners correctly note, respondent cannot modify the Department's model match criteria on its own initiative. The Department agrees with the petitioners that respondent did not submit any information on the record to establish the revelance of beveling and wide flats as a product matching criterion, nor did respondent provide information to demonstrate that the beveled and wide flats plate possess physical characteristics to make them unique from the non-beveled or non-wide flats with regard to applications and uses. Therefore, the Department continues to consider these products identical to other subject merchandise. With respect to the cited Customs Rulings, Rautaruukki did not provide any information on the record to suggest that wide flats are not subject merchandise. For the preliminary results, the Department modified Rautaruukki's submitted CONNUMs for the products identical or most similar to the U.S. sales to combine beveled, wide flat and other plate into a single CONNUM. We have not changed this for these final results.

We used facts available as NV for U.S. sales matching to home market CONNUMs that included beveled or wide flat sales as we were unable to verify cost for beveled or wide flat products. We have identified additional CONNUMs as containing beveled or wide flat material for these final results. See Comment 3 below.

Comment 3

Petitioners argue that the Department should reject Rautaruukki's submitted cost information and resort to total facts available. While petitioners support the Department's determination in the preliminary results that the cost data for beveled and wide flat products could not be verified, they claim that the Department erred by failing to recognize that other significant cost information reported by Rautaruukki could not be verified.

In petitioners' view, the product-specific cost information submitted by Rautaruukki (the ''cost extras'') could not be verified. Petitioners state that

Rautaruukki's reported COP/CV values are derived from a two-step calculation: A single weighted-average base cost for all plate products; and an adjustment to that weighted-average cost to account for dimensional cost extras and quality cost extras. Petitioners argue that these two cost extras could not be verified. Petitioners claim that these cost extras are a significant portion of Rautaruukki's total cost and the only product-specific element of the submitted product costs.

According to petitioners, Rautaruukki failed to provide accurate or relevant source documentation for the cost extras at verification, and the documentation provided by Rautaruukki at verification was insufficient to demonstrate that its reported costs were accurate, reliable, or related to the period of review. Petitioners state that the Department's verification agenda states that complete supporting documentation should be available for selected CONNUMs. It is argued by petitioners that Rautaruukki did not provide the requisite information as it pertains to the product-specific cost extras identified above. Petitioners cite the Department's cost verification report, at 4, which states that ''Rautaruukki representatives indicated to the Department at verification that they do not maintain a log or any documentation which identifies product-specific cost changes from one period to another.'' Petitioners claim that Rautaruukki did not maintain crucial supporting documentation that was required to verify the accuracy of its reported cost extras.

Petitioners question the relevance or accuracy of Rautaruukki's on-line computer system as a source document to verify cost extras. Petitioners note that Rautaruukki employs a continuously updated computer cost system (i.e., the product-specific costs the Department reviewed at verification were the costs relevant to the time of verification, and were not the costs in effect during the period of review, nor were they the costs in effect at the time the questionnaire response was prepared). Petitioners hold that reliance on such a computer system in the course of a verification does not meet a ''reasonable standard'' incumbent upon the Department. (*See Micron Technology, Inc.* v. *United States,* 893 F. Supp. 21, 39 (CIT 1995) and *Hercules, Inc.* v. *United States,* 673 F. Supp. 454, 469 (CIT 1987).) At the hearing, petitioners clarified that their objection to an on-line, live system is not the lack of a print-out, but the absence of ties to financial statements.

Petitioners state that Rautaruukki also showed the Department a cost extras book published in July 1995 to verify cost extras. Petitioners note that the book was published at the end of the POR and there is no evidence on the record indicating that the values of the extras in the book were related to the POR. Petitioners also question whether the cost extras book is a reference for costs of production for particular extras or whether the book is used to determine the charges to be paid by customers for particular extras.

Petitioners allege that when the Department attempted to verify these cost extras, it was unable to tie the cost extras values reported by respondent to source documentation and that when compared to the documentation that did exist, numerous errors were uncovered. Petitioners note that of 48 cost extras examined at verification, 38 percent of the cost extras had been misreported.

Petitioners argue that in situations where respondent has failed to retain and failed to provide the necessary supporting documentation for such key components of the cost data set, the respondent is said to have failed verification, and the Department should therefore apply total facts available, citing *Grain Oriented Electrical Sheet Steel from Italy* (59 FR 33952, (July 1, 1994)); *Certain Cut-to-Length Carbon Steel Flat Products from Sweden* (61 FR 51,898, 51,899, (Oct. 4, 1996)) (Flat Products from Sweden). Petitioners note that in *Flat Products from Sweden,* the Department applied total facts available because the respondent was unable to reconcile its submitted cost data to its normal accounting books and records and was unable to demonstrate that the submitted COP/CV data was based on the company's actual production experience. Like respondent in *Flat Products from Sweden,* in petitioners view, Rautaruukki did not provide documentation at verification that could demonstrate that the submitted COP/CV data was based on the company's actual production experience.

Rautaruukki contends that the Department conducted a ''comprehensive and proper cost verification'' and that the Department confirmed that the cost information submitted by Rautaruukki was based on Rautaruukki's normal accounting and financial records. Moreover, Rautaruukki claims that the Department verified Rautaruukki's reported base cost figures for allocation of indirect costs to direct cost centers, maintenance expenses, by-product and scrap allocations, cost of manufacturing, selling, general and administrative expenses, and reported per-unit costs. Respondent asserts that no discrepancies were noted in the course of verifying these items.

Rautaruukki distinguishes this case from *Flat Products from Sweden* by arguing that in that case the Department found that the respondent had based its AD response on a special system which was not used as part of the respondent's normal accounting system. Rautaruukki claims that the Department found that its submitted cost information was based both on its normal accounting books and records and on its actual production experience.

Rautaruukki notes that the values for quality extras were taken from data in its on-line computer system, which is constantly updated to reflect changes in costs so that Rautaruukki can make the corresponding changes in its prices. Respondent states that it ''does not maintain a log of the changes in extras costs from one period to another.'' Rautaruukki admits that the Department found at verification that some quality extras values were different from those reported by Rautaruukki, but attributed these differences to the system being updated since Rautaruukki had prepared its questionnaire response. Respondent claims that these differences were slight, about one or two FIM per cost extra. In response to a question at the hearing, Rautaruukki explained that the extras cost book is in fact a cost book, not a price extras book. In some cases, respondent noted that the discrepancies in cost extras were positive and in other cases negatives.

Department's Position

We agree, in part, with both parties. We agree with respondent that the Department was able to tie Rautaruukki's base costs to appropriate financial and accounting documentation. This represents by far the largest portion of Rautaruukki's total cost.

We agree with petitioners that the Department was unable to tie Rautaruukki's extras costs to supporting documentation at verification. With respect to beveled and wide flat products, as we stated in our preliminary results, the use of facts available is appropriate because the Department was unable to verify Rautaruukki's total COP data. This was because Rautaruukki made no attempt to provide supporting documentation with respect to its cost extras, simply indicating that these extras could not be verified.

Rautaruukki did provide some documentation to support its cost extras submission with respect to other products. This documentation consisted of its on-line computer system and a cost extras book. However, neither of these sources was for the POR—the on-line system was current as of the date of verification and the cost extras book was prepared at the end of the POR, with no indication as to the period for which the costs in the book were in effect. As stated in the Department's cost verification report concerning a particular CONNUM, ''in reviewing the extras costs associated with this product, we could not verify the accuracy of the reported cost for (a particular plate extra) * * *. Respondents were unable to provide documentation indicating that the figure was correct when the material was manufactured or when the response was prepared.''

At verification, we did compare 48 different reported cost extras to the costs listed in the cost extra book. Of these, there were discrepancies for 16, or 38 percent. The differences were extremely small, usually only one or two FIM. For all of the home market products that were matched to U.S. sales, the reported cost extras represented a small percentage of total cost. No documentation was provided to link either the cost extra book or the on-line computer system into Rautaruukki's audited financial accounting system.

Because of Rautaruukki's failure to report properly extra cost data based on the POR, failure to retain the data that it did use to prepare its questionnaire response, and the failure of Rautaruukki to provide documentation linking the reported extras costs with accounting and financial documentation, the Department has determined to use facts available for Rautaruukki's reported extras costs.

However, the Department disagrees with petitioners' suggestion that it apply total facts available in this review. The cases cited by petitioners, *Grain Oriented Electrical Sheet Steel from Italy* and *Flat Products from Sweden*, differ from this case. In both of those cases, the Department was unable to verify numerous and fundamental aspects of the respondents' responses. In this case, however, the significant problems encountered at verification were limited to cost extras. Base costs—the primary component of cost—were fully verified. The observed discrepancies with respect to cost extras for products other than wide flats and beveled plate were extremely small, and for the home market products used to match to U.S. sales, reported cost extras represented a small portion of total cost. As a result, rather than resort to total adverse facts available for these products, as advocated by petitioners, for products other than wide flats and beveled plate we are using facts available only for the cost extras in the calculation of COP and CV. As facts available, we are using the highest reported cost extras for products that are not beveled or wide flat. Due to the significant difference in cost between painted and non-painted products, we have also separately identified the highest reported extra costs for painted and non-painted plate. In calculating difference of merchandise (difmer) adjustments, we have assigned a difmer of zero to shipbuilding specification ''A'' material that same cost as the U.S. product.

For wide flats and beveled products, Rautaruukki made no attempt to provide information to verify its reported extras data. Indeed Rautaruukki admitted that this information could not be verified. As stated in the cost verification report: We also noted that the costs reported for wide flats and beveled material are incorrect. The report goes on to state that this failure to correctly report the extras cost of these products rendered moot our attempt to verify the costs. (Department's Cost Verification report at 4.) We are continuing to use facts available as NV for U.S. sales matching to CONNUMs including wide flats and beveled plate as we did in the preliminary results.

We also note that respondent improperly reported COP and CV data for two separate periods, 1994 and seven months of 1995, rather than report a single weighted average COP/CV for the entire POR. Respondent also improperly included data for all of calendar year 1994 in its COP/CV data, rather than limiting the data used to the months of the POR. For the final results of this review, we are weight averaging respondent's submitted data, with the modifications noted above.

Comment 4

Petitioners argue that the Department is compelled to reject Rautaruukki's submitted sales information and resort to total facts available. Petitioners claim that respondent has offered three inconsistent and mutually exclusive explanations of how it assigned PLSPEC and CONNUM codes to its various products:

- That whenever multiple PLSPECs are assigned to a particular CONNUM, those PLSPECs are identical to one another because they merely reflect various countries' designations of the same specification/grade;
- That respondent's PLSPEC codes each reflect different specification and grades; and
- That the various PLSPECs within a given CONNUM in some cases are identical to one another, in other cases are only similar (although not identical), and in still other cases are dissimilar.

Petitioners argue that the submitted sales information should be rejected because: (1) The PLSPEC and CONNUM codes are critical to the Department's dumping analysis; (2) the Department has no basis for selecting among Rautaruukki's various inconsistent explanations of these codes; and (3) the Department is unable to correct Rautaruukki's data. Petitioners argue that the assignment of PLSPEC and CONNUM codes directly affects almost every critical element of the Department's analysis of the existence and magnitude of dumping, including attribution and allocation of costs, model match, and application of the arm's length test.

Petitioners summarize the record evidence in support of each of the three explanations which it believes respondent has offered. Petitioners offer various cites to the record in support of the first proposition that certain different PLSPEC designations included within a single CONNUM are in fact identical and that respondent merely assigned different PLSPECs to reflect the nomenclature of different international standards for identical products. Petitioners claim that the Department verified that these PLSPECs are identical. In support of the second proposition, petitioners cite the cost verification report, which they claim indicated that respondent separately tracked and recorded costs for certain PLSPECs within the same CONNUM. Petitioners also reference the sales verification report which states that ''Rautaruukki has correctly assigned different PLSPEC codes to different specifications and grades. The specifications and grades are, indeed, different* * *.'' Petitioners also cite respondent's submitted model match hierarchy in support of their third proposition, that some PLSPECs under a CONNUM are identical, while others only similar and others are not even similar.

Petitioners argue the quantum of evidence of the record and the number of statements made by Rautaruukki consistent with each of the alternatives is roughly equivalent, and Rautaruukki has supported each of its claims with documentation, and in two of the three instances, the Department purportedly confirmed this information at verification.

Petitioners argue that if the Department were to accept the first claim, that all PLSPECs under a single CONNUM are identical, the Department would have to collapse PLSPECs within a CONNUM, and also collapse PLSPECs that are identical to each other but are assigned different CONNUMs throughout the entire database. Petitioners claim that this would entail extraordinarily complex computer programming and the Department could not be certain of making all the necessary corrections. Petitioners also note that if this claim were accepted, the Department would have to correct all corresponding cost information and revisit the issue of downstream sales. Petitioners also argue that the Department would have to reject Rautaruukki's submitted model match hierarchy and, as a result, would be precluded from performing the model match.

Petitioners argue that if the Department were to accept the second claim that all reported PLSPECs are different, the Department would have to split all the CONNUMs that contain multiple PLSPECs and determine the correct cost for each new CONNUM. However, in petitioners' view, the Department has no basis upon which to apportion the COP/CV of the original CONNUM to the newly-created CONNUMs. Petitioners claim that under this scenario the Department again would have to reject Rautaruukki's submitted model match hierarchy and, as a result, would be precluded from performing the model match.

Petitioners claim that if the Department were to accept Rautaruukki's third claim that some PLSPECS reported under a CONNUM are identical, while others are only similar and others are not similar at all, then the Department would have to collapse the PLSPECs listed in the model match hierarchy as identical and separate all of the non-identical PLSPECs listed under the same CONNUM. Petitioners also claim that the Department would have to correct the corresponding cost information. However, petitioners noted that the model match hierarchy does not list all PLSPECs and they argue the Department would be precluded from running the arm's length test.

Respondent alleges that it provided the Department with a consistent, accurate and verified explanation of its assignment of CONNUMs and PLSPECs in this administrative review. Respondent asserts that petitioners' claims are contradicted by the record, including the Department's verification of the methodology and accuracy of Rautaruukki's assignment of CONNUMs and PLSPECs. Respondent states that PLSPECs may be identical, similar or different.

Citing the Department's analysis memorandum, respondent claims that in performing the model match, the Department first identified home market sales with the same CONNUM as the U.S. sales and, then matched identical PLSPECs within that CONNUM. Respondent asserts that it has assigned separate PLSPEC codes to separate specifications or grades. Respondent notes that in some cases, these PLSPEC codes identify identical products, but the codes are different to reflect the national specification or classification standard to which the product was certified. Rautaruukki claims that it clearly identified the PLSPEC codes which it used, and the Department verified that information.

Respondent also states that it assigned different CONNUMs to products with the same physical characteristics when those products fell into different product groups which are manufactured by different processes and have different end uses. Respondent contends that the Department verified that some of these products, including wide flats and beveled plate, require additional processing.

Respondent notes that the record establishes that:

- The same CONNUM may have included two or more PLSPECs. There are some PLSPECs within a CONNUM which define identical products (e.g., the PLSPECs assigned to the certifications of shipbuilding plate ''A'' by the various national classification societies), while other PLSPECs define similar or different products.
- Different CONNUMs reflect different product groups with the same physical characteristics, i.e., normal cut-to-length plate, wide flats, and beveled plate.
- Individual PLSPECs represent separate specification or grade codes.

Respondent claims that petitioners attempt to construct a dilemma where none exists, and that Rautaruukki's ''explanations'' are not inconsistent and certainly not mutually exclusive.

Department's Position

We disagree with petitioners that Rautaruukki has offered three inconsistent and mutually-exclusive explanations of how it assigned PLSPEC and CONNUM codes and that the Department has no basis for choosing among these explanations. We believe that the third explanation cited by petitioners—that in some instances PLSPECs are identical, in other instances they are similar, and in other instances they are not similar—is consistent with the information submitted on the record. The ''evidence'' which petitioners cite in support of the other two explanations is not global in nature. For example, statements cited by petitioners in support of the first explanation—that whenever multiple PLSPECs are assigned to a particular CONNUM, those PLSPECs are identical to one another because they merely reflect various countries' designations of the same specification/grades—are referring to shipbuilding specifications only. Similarly, none of the information referenced by petitioners regarding the second explanation—that PLSPEC codes each reflect different specification and grades—indicates that this is true of all PLSPECs. Thus, we find that Rautaruukki's explanations regarding PLSPECs are consistent.

This does not mean that we find that Rautaruukki has correctly assigned CONNUMs. As indicated in response to Comment 1, we do not agree that all shipbuilding ''A'' PLSPECs should be combined in a single CONNUM. We are continuing to make the changes to Rautaruukki's data base with respect to the reconfiguration of CONNUMs that were made in the preliminary results. Petitioners' concerns with respect to cost data, the sales-below-cost test and the arm's length test have been addressed in Comment 1.

Comment 5

Petitioners state that Rautaruukki has compelled the Department to use adverse total facts available, because Rautaruukki failed to provide the Department with a response that is consistent; an explanation of how Rautaruukki's response was prepared; and the necessary information needed to verify the submitted cost information.

Petitioners argue that under the terms of the statute, the Department is compelled to reject Rautaruukki's responses, and resort to total facts available. Petitioners note that 19 U.S.C. 1677e(a)(1995) provides that if:

(1) Necessary information is not available on the record, or

(2) an interested party or any other person—

(A) withholds information that has been requested by the administering authority . . .,

(B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested . . .,

(C) significantly impedes a proceeding under this subtitle, or

(D) provides such information but the information cannot be verified . . ., the administering authority and the Commission shall . . . use the facts otherwise available in reaching the applicable determination under this subtitle.

Petitioners contend that the statute provides that any one of the above five scenarios requires the Department to reject Rautaruukki's responses and resort to facts available. Petitioners allege that despite repeated requests by the Department, Rautaruukki did not provide adequate information by which the Department could verify its reported cost information, and it did not provide the Department with a consistent and reliable explanation of how the company assigned PLSPEC and CONNUM codes to its various products. Petitioners state that section 1677m of the statute provides that the Department may still rely on submitted information that fails to meet the above criteria in certain circumstances which in petitioners' view have not been satisfied by Rautaruukki. Petitioners claim that the Department has complied with the statutory notice requirements necessary to reject Rautaruukki's deficient submissions.

Petitioners state that section 1677m (d) of the statute requires that, upon receiving a deficient submission, the Department is to, ''promptly inform * * * respondent of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of * * * reviews.'' Petitioners argue that in addition to its original questionnaire, the Department issued a lengthy supplemental questionnaire in the case, which specifically requested clarification of Rautaruukki's PLSPEC and CONNUM assignments, as well as its submitted cost information, including cost ''extras.''

Petitioners state that section 1677e(b) of the statute provides that if a respondent fails ''to cooperate by not acting to the best of its ability to comply with * * * the Department's request for information, * * * the Department in reaching its determination may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.'' Petitioners claim that Rautaruukki has not acted to the best of its ability to comply with the Department's instructions in this review; therefore, the Department should use an adverse inference when applying facts available. Petitioners assert that the Department should apply the highest rate from any prior segment of this proceeding—32.80 percent.

Respondent claims that it provided the necessary information requested by the Department during this administrative review. In Rautaruukki's view, its cooperation is confirmed by the record. Respondent argues that it provided information which was within its corporate control and sought information from other companies as well as the Government of Finland. Respondent states that it was fully cooperative and responsive during the sales and cost verifications by the Department, which extended over a period of ten days. Rautaruukki claims it responded fully and promptly to the Department's requests, and it assigned sufficient and appropriate personnel to insure the orderly and accurate progression of the verification. Respondent argues that the Department confirmed that the information submitted by Rautaruukki was accurate, complete and verifiable through its testing of Rautaruukki's responses against the company's normal accounting and financial records, and that the Department reconciled Rautaruukki's response to those records.

Department's Position

As indicated in previous comments, we disagree with petitioners that the Department should reject Rautaruukki's responses, and apply adverse total facts available. We are making the adjustments to Rautaruukki's submitted data described above and using this data to calculate Rautaruukki's antidumping duty margin. As the Department finds that the use of total facts available is not appropriate, the issue of whether or not we should apply adverse facts available is moot.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
Rautaruukki Oy	8/1/94–7/31/95	24.95

The Department shall determine, and the Customers Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and normal value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of certain cut-to-length carbon steel plate from Finland within the scope of the order entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for cash deposit for all other manufacturers or exporters will continue to be 32.80 percent, the ''all others'' rate established in the LTFV investigation. *See Antidumping Duty Order: Certain Cut-to-Length Carbon Steel Plate from Finland,* 58 FR 44165 (August 19, 1993). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are published in accordance with section 751(a)(1) of the Act and 19 CFR 353.22.

Dated: April 2, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9426 Filed 4–14–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 4, 1996, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands. This review covers one manufacturer/exporter of the subject merchandise to the United States during the period of review (POR), August 1, 1994, through July 31, 1995. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Linda Ludwig, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0405 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1996, the Department published in the **Federal Register** (61 FR 51891) the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands (58 FR 44172, August 19, 1993). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Scope of this Review

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, i.e., aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The POR is August 1, 1994, through July 31, 1995. This review covers entries of certain cold-rolled carbon steel flat products from the Netherlands by Hoogovens Staal B.V. (Hoogovens).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from the respondent (Hoogovens) and petitioners (Bethlehem Steel Corporation, U.S. Steel Company (a Unit of USX Corporation), Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company). A hearing was held on November 25, 1996, at which the parties presented their arguments.

Comment 1

Respondent argues that the Department should not have applied the reimbursement regulation, 19 CFR 353.26, to more than double Hoogovens' weighted-average margin in the preliminary results of review. Because no duties have been assessed, reimbursement could not have occurred, and the Department's determination is premature. Hoogovens claims that the reimbursement regulation may not be applied prospectively at the time of the final results, but may only be applied at the time of liquidation by Customs. Hoogovens has submitted for the record evidence demonstrating that it has revised its agency agreement with Hoogovens Steel USA, Inc. (HSUSA) to clarify that no reimbursement will occur.

Respondent argues that the Department lacks the statutory authority to deduct from U.S. price the amounts of antidumping duties paid or reimbursed by foreign exporters to affiliated importers. The Department's authority, Hoogovens alleges, does not extend to situations where transactions cannot be construed as payments by a seller to a buyer, and cannot therefore affect U.S. price. Because there is no sale between Hoogovens and HSUSA, an affiliated selling agent which neither purchases, takes title to nor resells subject merchandise, transactions between Hoogovens and HSUSA have no effect on the price of Hoogovens' U.S. sales. Respondent cites the CIT's decision in *Outokumpu Copper Rolled Products AB* v. United States, 829 F. Supp. 1371 (1993) in support of the claim that the reimbursement regulation only applies to transactions between a seller and a buyer.

Respondent argues that until recently the Department's view was that the reimbursement regulation is limited to situations in which the importers or customers are unaffiliated. Since the Department ignores transfer prices and all other financial transactions between affiliated parties, no adjustments to U.S. price are ever made as a result of these transactions. Hoogovens claims that the reimbursement regulation is therefore inapplicable in constructed export price (CEP) situations, citing *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts thereof from France, et. al.,* 58 FR 39729, 39736 (July 26, 1993). In *Color TVs,* the Department justified the extension of the reimbursement regulation to affiliated parties in CEP transactions on the basis that otherwise the remedial effect of the antidumping law could be defeated. 61 FR at 4410. In short, the reimbursement regulation is intended to prevent attempts by foreign exporters to avoid the impact of an antidumping order by reducing the effective price to U.S. customers. Hoogovens considers that the Department's application of the reimbursement regulation to CEP transactions is without statutory basis. Further, respondent argues that since transactions between Hoogovens and HSUSA are not CEP sales, and Hoogovens does not make CEP sales of subject merchandise to unaffiliated purchasers, antidumping margins cannot be calculated on transactions between Hoogovens and HSUSA, as these transactions have no bearing on the effective price to Hoogovens' unaffiliated U.S. customers.

Finally, respondent claims that in the absence of any possible effect on U.S. price, the Department's decision to make a deduction in this case can only be construed as an attempt to expand the reimbursement regulation to treat duty as a cost. Further, respondent alleges that the Department's methodology in the preliminary results of deducting the calculated margin from U.S. price, thereby more than doubling Hoogovens' dumping margin, violates Article 9.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (''WTO Antidumping Code'), which provides that the amount of any antidumping duties assessed shall not exceed the calculated dumping margin.

Petitioners support the Department's decision to apply the reimbursement regulation and to deduct from U.S. price the antidumping duties that Hoogovens has agreed to reimburse to its affiliated importer. In *Color Television Receivers from the Republic of Korea,* 61 FR 4408, 4411 (February 6, 1996), the Department determined that reimbursement takes place between affiliated parties if the evidence demonstrates that the exporter directly pays antidumping duties for the affiliated importer or reimburses the importer for such duties.

Petitioners argue that the Department's decision to apply the reimbursement regulation in the preliminary results of this review was well founded, given the verified record evidence. At verification, the Department examined HSUSA's role as the importer of record, including its payment of import duties and fees. The Department examined the notes to NVW's financial statements, credit notes and the associated bank statements, and obtained Hoogovens'' agency agreement with NVW (now known as HSUSA).

Petitioners argue further that respondent's interpretation is flatly inconsistent with the terms of the regulation and has been explicitly rejected by the Court of International Trade (CIT). The regulation provides that the adjustment for the reimbursement of antidumping duties will be made in calculating the United States price. *See* 19 CFR 353.26 (a) (1). As the Department calculates the United States price at the time of its final results, not some time after liquidation and the actual payment of antidumping duties, the regulation plainly anticipates that an adjustment for the reimbursement of antidumping duties can be made as part of the final results based on evidence of an agreement to reimburse such duties.

Petitioners cite the CIT's decision in *PQ Corp.* v. *United States,* 652 F. Supp. 724, 737 (CIT, 1987), reaffirmed in *Federal-Mogul Corp.* v. *United States,* 813 F. Supp. 856, 872 (CIT, 1993), as approving the Department's practice of making an adjustment for reimbursed antidumping duties (1) as part of its calculation of the dumping margin, (2) based on the actual amount to be assessed, and (3) based on the producer's agreement to reimburse such duties.

Petitioners argue further that in cases where there is no clear evidence of an agreement to reimburse, the CIT has looked to whether there is ''a link between intracorporate transfers and the reimbursement of antidumping duties.'' *See, e.g. Torrington Company* v. *United States,* Slip. Op. 96–163, CIT (1996). In the present case, the Department found evidence of both an agreement to reimburse antidumping duties and actual evidence of such reimbursement in the form of transfers to cover cash deposits of antidumping duties.

Petitioners urge the Department to reject the amended agency agreement filed by respondent on September 26, 1996, as untimely. Even if the Department does not reject the new information, petitioners argue that at the time the transactions took place, and at the time the merchandise was imported, respondent had agreed to reimburse antidumping duties.

Petitioners note that the test for determining whether the reimbursement regulation applies in a situation where there is an affiliated importer is not whether there has been a demonstrated impact upon the U.S. price, but whether the evidence demonstrates that the exporter directly pays or reimburses the importer for such duties. *See Color Televisions from Korea,* 61 FR at 4411; *Brass Sheet and Strip from the Netherlands,* 57 FR at 9537 (March 19, 1992); *Brass Sheet and Strip from Sweden,* 57 FR at 2708 (January 23, 1992); *Brass Sheet and Strip from Korea,* 54 FR at 33258 (August 14, 1989). Petitioners further observe that even though the regulation does not require some kind of independent showing of an effect on price, it is clear that where an exporter reimburses an importer for antidumping duties, the importer, along with the ultimate purchaser, is relieved of liability of the duties.

Petitioners argue that Hoogovens' claim that the Department's application of the reimbursement regulation in this review violates the WTO Antidumping Code is unfounded. Article 2.4 of the Code specifically provides for adjustments to be made to ensure a fair comparison between the export price and the normal value. In petitioners' view, the Department appropriately made an adjustment to account for the fact that Hoogovens was reimbursing the importer for antidumping duties, and was therefore bearing the expense of such duties.

Department's Position

We previously determined that reimbursement, within the meaning of § 353.26 of the Department's regulations, takes place between affiliated parties if the evidence demonstrates that the exporter directly pays antidumping duties for the affiliated importer or reimburses the importer for such duties. *See Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews, (''Final Results of Korean Tvs'')* (61 FR 4408, 4411, Feb. 6, 1996). This position has been upheld by the Court of International Trade in *Outukumpu Copper Rolled Products AB* v. *United States,* 829 F. Supp. 1371 (CIT 1993). However, as we also stated in the *Final Results of Korean Tvs,* application of the regulation to affiliated parties does not imply that exporters and producers automatically will be assumed to have reimbursed affiliated U.S. importers for antidumping duties by virtue of the relationship between them. While we have recognized that all transactions between affiliated parties must be scrutinized with care, the relationships between the parties are too complex to justify such an assumption. Instead we have relied upon evidence of inappropriate financial intermingling or an agreement to reimburse antidumping duties between the two affiliated parties. *Id* at 4411.

Consistent with our practice, in the first administrative review of this order we stated that an agreement to reimburse antidumping duties is sufficient to trigger the reimbursement regulation. *See Certain Cold-Rolled Steel Flat Products From the Netherlands; Final Results of Antidumping Duty Administrative Review;* 61 FR 48465, 48470 (Sept. 13, 1996). For the preliminary results of this review, as in the first review of this order, we based our determination upon evidence that an agreement was in place for the reimbursement of duties to be assessed. *See Certain Cold-Rolled Steel Flat Products From the Netherlands; Preliminary Results of Antidumping Duty Administrative Review;* 61 FR 51888, 51891 (Oct. 4, 1996). In light of the evidence now on the record, we have determined that Hoogovens and HSUSA no longer have an agreement to reimburse antidumping duties to be assessed for this review and that HSUSA is responsible for the payment of such duties. *See* Proprietary Memo to File, April 2, 1997.

Petitioners have argued that Hoogovens continues to reimburse duties. However, in the Department's view, the evidence on the record of this review indicates that the respondent has changed its practice with respect to reimbursement and has refunded cash deposits paid by Hoogovens.

Further, petitioners seek to invoke the reimbursement regulation regardless of whether an amended agreement makes HSUSA responsible for payment of all antidumping duties and requires the U.S. affiliate to refund cash deposits because, petitioners contend, at the time the transactions took place, respondent had agreed to reimburse antidumping duties. We find this argument unpersuasive. The issue is not when the arrangement to reimburse was abrogated, but rather whether there is an agreement to reimburse antidumping duties to be assessed at the time of the final results. As we stated in the first review, the payment of cash deposits does not, by itself, constitute reimbursement of, or an agreement to reimburse, antidumping duties to be assessed. In the preliminary results of this review, as in the first review, we determined that the payment of cash deposits by the parent company substantiated the existence of an agreement to reimburse duties to be assessed. For these final results, HSUSA has presented evidence that the agreement has been amended to eliminate reimbursement of antidumping duties. It has substantiated that amendment with evidence of a refund of cash deposits pertaining to entries in the first review period. Based upon this evidence, we determined that Hoogovens is no longer reimbursing, or has an agreement to reimburse, antidumping duties to HSUSA. Therefore, we have not applied the reimbursement regulation in the final results of this review.

While we find that, based upon the evidence on the record, the reimbursement regulation is inapplicable in this review, as noted above, transactions between affiliated parties must be scrutinized with care. Because Hoogovens previously had an agreement to reimburse duties, and continues to advance the funds to cover cash deposits, in future reviews we will thoroughly monitor the refund of cash deposits, scrutinize the operation of the agreement, and examine whether there is any inappropriate financial intermingling, to ensure that reimbursement does not recur. In addition, we will verify relevant information submitted on the record, where appropriate.

Comment 2

Hoogovens argues that the Department's method of calculating profit resulted in an excessive allocation of profit to constructed export price (CEP) sales. This occurred, respondent alleges, because the Department calculated the total profit on all reported sales, including export price (EP) sales and home market (HM) sales that were outside the actual period of review (POR) of August 1994 to July 1995. The extended window period for home market sales in this review was December 1993 to September 1995, whereas Hoogovens was required to report CEP sales made during the POR. The calculation of profit for a longer period on EP and HM sales than for the reported CEP sales results in an increase in the amount of profit allocated to CEP and hence deducted from U.S. price. This, in turn, artificially inflates the margins on CEP sales. Hoogovens claims that in calculating the CEP profit ratio, the Department should calculate the total profit based only on EP and home market sales made during the actual POR.

Petitioners counter that this suggestion conflicts with the plain language of section 772 (f) (2) of the Act. Under the statute, only normal value and CEP sales are considered in the calculation of CEP profit. EP sales do not enter into the calculation. The Department's program erroneously included the profit from EP sales. The statute defines total actual profit as the total profit earned by the foreign producer, exporter and affiliated parties (in the United States) for which total expenses are determined. In turn, total expenses are defined as those ''incurred with respect to the subject merchandise sold in the United States and the foreign like product sold in the exporting country if such expenses were requested by the administering authority for the purpose of establishing normal value and constructed export price.'' The Department requested home market information for the extended window period challenged by Hoogovens; therefore under the statute the Department must calculate profit using this same information.

Department's Position

We disagree with respondent. The expenses requested by the Department for the purpose of establishing the normal value of the foreign like product sold in the Netherlands were those incurred during the extended window period. Consequently, the statute provides that these expenses are to be used in the calculation of the CEP profit ratio. We disagree with petitioners' argument that EP sales should be excluded from the total profit calculation. The calculation of total actual profit under section 772(f)(2)(D) includes all revenues and expenses resulting from the respondent's EP sales, as well as from its CEP and home market sales. The basis for total actual profit is the same as the basis for total expenses under section 772(f)(2)(C). The first alternative under this section states that for purposes of determining profit, the term ''total expenses'' refers to all expenses incurred with respect to the subject merchandise, as well as home market expenses. Where the respondent makes both EP and CEP sales to the United States, sales of the subject merchandise would encompass all such transactions.

Comment 3

Petitioners argue that in the preliminary results, the Department improperly excluded imputed expenses (*i.e.*, credit expenses and inventory carrying costs) from the calculation of total United States expenses for the purpose of determining profit on CEP sales. Section 772(d) of the Act provides that the price used to establish CEP shall be reduced by an amount for profit allocated to U.S. selling expenses and costs of further manufacturing. Section 772(f) further provides that the profit shall be determined by multiplying total actual profit by the ''applicable percentage,'' *i.e.*, the percentage determined by dividing ''total United States expenses'' by the total expenses. The statute defines ''total United States expenses'' as the total expenses described in sections 772(d) (1) and (2). These sections refer to the direct and indirect selling expenses incurred in the United States and the cost of any further manufacturing in the United States.

Petitioners argue that CEP is calculated by deducting credit expenses and inventory carrying costs (''ICC'') (from the selling price to the first unaffiliated customer) under section 772(d)(1). Accordingly, these amounts must be considered a part of ''total United States expenses'' and must be included in the allocation factor for such expenses. In *Certain Stainless Wire Rods from France,* the Department indicated that this is its practice (61 FR 47874, 47882 (September 11, 1996)):

> When the Department allocates a portion of the actual profit to each U.S. CEP sale, we have included imputed credit and inventory carrying costs as part of the total U.S. expenses allocation factor. This methodology is consistent with section 772(f)(1) of the statute which defines ''total United States Expenses'' as the total expenses described under section 772(d) (1) and (2). Such expenses include both credit and inventory carrying costs.

Petitioners conclude that the Department should correct its margin program to include imputed expenses in the calculation of total United States expenses.

Respondent argues that the Department should not include imputed expenses in its allocation of profit to CEP sales. In the preliminary determination, while the Department excluded the imputed expenses from CEPSELL, it also excluded imputed expenses on EP and home market sales from both the calculation of total profit and the allocation of the profit. While petitioners argue that the Department should include the imputed expenses in the numerator for this allocation (CEPSELL), they fail to mention that these expenses should also be included in the denominator (TOTEXP) for this calculation. Hoogovens argues that the petitioners' methodology would artificially inflate the allocation ratio, which would overstate the amount of profit allocated to the CEP sale.

Hoogovens takes no position on whether the imputed expenses should be included or excluded from the CEP allocation. Its sole concern is that these expenses be treated consistently in all aspects of the CEP profit allocation. In the event that the Department decides to include the imputed expenses in the CEP selling expenses used to allocate profit, Hoogovens argues the Department should ensure consistency by including the imputed expenses in all aspects of the profit allocation. Thus, in calculating the ratio of U.S. selling expenses to total selling expenses, Hoogovens argues the Department should include the imputed expenses on CEP sales in the numerator (CEPSELL), and should include the imputed expenses on all U.S. and home market sales in the denominator (TOTEXP).

Department's Position

We agree with petitioners that imputed credit and inventory carrying costs should be included in the definition of total United States expenses used in the allocation of profit to CEP sales, consistent with section 772(f)(1), and have revised our methodology for these final results. The *Statement of Administrative Action* (SAA) of the URAA states that: ''The total U.S. expenses are all of the expenses deducted under section 772(d) (1) and (2) in determining the constructed export price.'' SAA at 154. The SAA also explains section 772(d)(1)(D) as providing for the deduction from CEP of indirect selling expenses. These typically include imputed inventory carrying costs, which represent the opportunity costs of the capital tied up in inventories of the finished merchandise. (*Id.*) Section 772(d)(1)(B) explicitly includes credit expenses as among the direct selling expenses to be deducted from CEP.

We disagree with respondent that imputed credit and inventory carrying costs should be added to the total expenses used in the denominator in the CEP profit allocation. In determining the amount of profit to allocate to each CEP sale, the Department first computes the total profit earned by the foreign producer. This amount is based on the producer's actual profits calculated in accordance with section 772(f)(2)(D) of the Act and includes any below cost sales but excludes sales made to affiliates at non-arm's length prices. Because it is the ''actual'' profit, the amount reflects the actual interest expense incurred by the producer.

A portion of the total actual profit is then allocated to the U.S. expenses incurred for each CEP sale. This is done based on the applicable percentage described in section 772(f)(2)(A) of the Act. In calculating this percentage, the statute directs us to include in the numerator the CEP expenses deducted under 772(d), which includes imputed credit and inventory carrying costs. In contrast, the total expenses in the denominator are those used to compute total actual profit. *See* section 772(f)(2)(D). As discussed above, ''actual'' profit is calculated on the basis of ''actual'' rather than imputed expenses. Although the actual and imputed amounts may differ, if we were to account for imputed expenses in the denominator of the CEP allocation ratio, we would double count the interest expense incurred for credit and inventory carrying costs because these expenses are already included in the denominator.

Comment 4

Petitioners argue that the Department should reject Hoogovens' claim that it sells to only one level of trade (LOT). In respondent's initial Section A response in this review, Hoogovens stated that it sold to two categories of customers, which constituted distinct levels of trade: service centers and end-users. However, when it submitted its Section B response, Hoogovens claimed that all its customers were at a single LOT and that it was unable to distinguish between the selling functions performed for different customers. Hoogovens did not complete the chart identifying selling functions requested in a supplemental questionnaire until verification, and petitioners argue the Department should have rejected it as untimely.

Petitioners argue the record shows that Hoogovens' customers are at two levels of trade. First, petitioners claim that service centers, which function as distributors, and end users are at different phases of marketing. *See Certain Corrosion-Resistant Carbon Steel Flat Products from Canada and Certain Cut-to-Length Carbon Steel Plate from Canada; Preliminary Results of Antidumping Administrative Reviews,* 61 FR 51891, 51896 (October 4, 1996). In its Section A response at 13 (Public Version), Hoogovens stated:

> The basis for distinguishing steel service centers from end-users is that the former do not consume the steel they purchase from Hoogovens, but rather function in a manner similar to distributors (although * * * some provide processing services). Steel service centers/distributors, in turn, sell cold-rolled steel to the same types of end-user customers

as Hoogovens. Thus, the end-user customers are further ''removed'' from Hoogovens' factory than are the steel service centers.

Petitioners argue that the differences in the selling functions performed for each group are well-documented, citing Hoogovens' statement that it provided ''far greater sales assistance, such as quality and product development support'' to its end-user customers than to its service center customers. Hoogovens also stated that it had just-in-time (JIT) delivery arrangements with many of its end-user customers, but not with service centers. (Section A response at 14.) Petitioners ask the Department to consider service centers and end-users as distinct levels of trade for the final determination, and to make LOT adjustments, as appropriate. Finally, petitioners ask the Department to deny Hoogovens the capped CEP adjustment, because Hoogovens has failed to provide complete or timely LOT data in this review.

Hoogovens responds that at the time it submitted its Section A response in this review, the Department had not yet published any determinations explaining and applying the URAA LOT provisions. Hoogovens continued to rely on the levels of trade used in the investigation and the first administrative review, which were based on the market function of the customer, rather than on selling functions performed by Hoogovens. While Hoogovens stated that it provides more ''sales assistance'' to end-user customers, the basic distinction was the nature of the customer's business rather than the selling functions performed by Hoogovens.

To the best of Hoogovens' knowledge, the supplemental questionnaire issued by the Department in the investigation of *Certain Pasta Products from Italy and Turkey*, of which Hoogovens received a copy before it submitted its Section B response, was the first time that the Department had developed a series of questions designed to assist in making determinations of LOT under the URAA LOT provisions. After reviewing the questionnaire, Hoogovens determined that it could not substantiate the previously-claimed LOT based on the selling functions it performed for sales to the two categories of customers.

Petitioners are wrong, Hoogovens argues, to say that identifying sales ''at different phases of marketing'' represents ''the first prong of the test to demonstrate two different levels of trade.'' Petitioners' Brief at 5. On the contrary, Hoogovens claims, it is well-established that under the URAA and as stated in ADDENDUM I to the Department's questionnaire, ''the selling functions that a customer performs do not establish that different LOTs exist * * * '' Although the petitioners rely on the Department's preliminary determination in the 1994/95 administrative reviews of the Canadian flat-rolled steel cases as support for their interpretation, in those results, Hoogovens argues, the Department stressed that ''even substantial'' differences in selling functions are not alone sufficient to establish different LOTs. *Certain Corrosion-Resistant Carbon Steel Flat Products from Canada and Certain Cut-to-Length Carbon Steel Plate from Canada; Preliminary Results of Antidumping Administrative Reviews*, 61 FR 51891, 51896. Respondent points out that even where it found customers at different phases of marketing, the Department did not necessarily find different LOTs.

Hoogovens argues that the petitioners have failed to point to any evidence in the record showing that Hoogovens provides different levels of selling functions to automotive versus other customers. In the investigation, the Department concluded that automotive customers did not constitute a separate LOT. At that time, petitioners argued that Hoogovens had ''totally failed to demonstrate significant differences'' between automotive and other sales. *Final Determinations of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands, 58* FR 37199, 37203 (July 9, 1993).

In its supplemental response dated January 19, 1996, Hoogovens explained (on page 5) that it had not filled out the chart on LOT, because it had determined that there were no quantifiable differences between LOTs for any of the listed selling functions. Hoogovens points out that during verification, the Department sought to verify the statement contained in the supplemental response by interviewing the Senior Sales Executive and reviewing the chart with him. For that purpose, Hoogovens prepared the chart contained in Verification Exhibit 12. Hoogovens believes that the verified evidence in the record confirms the Department's conclusion that there are no differences in LOT in either the EP or home markets resulting from differences in selling functions performed by Hoogovens. Moreover, in Hoogovens' view, this conclusion is consistent with the Department's analysis of respondents in other steel reviews.

Department's Position

Neither the statute nor the SAA defines LOT. The relevant provision in the statute, section 773(a)(7)(A), allows for a LOT adjustment where there is a difference in LOTs between the EP or CEP and normal value, if that difference involves the performance of different selling activities, and it is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different LOTs in the foreign comparison market. This adjustment may either increase or decrease normal value. SAA at 829.

Although the identity of the customer (*e.g.*, end-user or service center) is an important indicator in identifying differences in LOT, the existence of different classes of customers, as well as different functions performed by such customers, is not sufficient to establish a difference in the LOTs. Accordingly, we consider the class of customer as one factor, along with the producer/exporter's selling functions and the selling expenses associated with these functions, in determining the stage of marketing, *i.e.*, the LOT associated with the sales in question.

For CEP sales, the relevant customers in our LOT analysis are Hoogovens'' U.S. affiliates, *i.e.*, the customers at the level of the CEP. The CEP represents a price exclusive of all selling expenses and profit associated with economic activities occurring in the United States. SAA at 823. The adjustments we make to the starting price pursuant to section 772(d) of the Act normally change the LOT. Accordingly, we must determine the LOT of CEP sales exclusive of the expenses (and concomitant selling functions) that we deduct pursuant to this subsection. This approach does not result in a reliance on an ex-factory transfer price to the U.S. affiliate in our LOT analysis. Transfer prices do not enter into our analysis because the CEP is a calculated price derived from the resale price to the first unaffiliated customer. CEP is not a price exclusive of all selling expenses, because it contains the same type of selling expenses as a directly observed export price. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al., Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081, 2107 (January 15, 1997) (AFBs VI).

We agree with petitioners that end-users and service centers/distributors constitute different phases of marketing. However, as respondent notes, this is not sufficient for the Department to find that different LOTs exist. In order to determine whether sales in the comparison market are at a different level of trade than the export price or CEP, we examine whether the comparison sales were at different stages in the marketing process than the export price or CEP. We make this determination on the basis of a review of the distribution system in the foreign comparison market, including selling functions, class of customer, and the level of selling expenses for each type of sale. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the LOT. Similarly, while customer categories may be useful in identifying different levels of trade, they are insufficient in themselves to establish that there is a difference in the level of trade. *See* AFBs VI at 2105.

Initially, Hoogovens stated that there were multiple levels of trade and that it performed different selling functions for its end-user customers than for its service center customers. However, the LOT chart provided by respondent at verification indicated that the selling functions provided to all customers, in both markets, are identical. Hoogovens explained that after more in-depth examination, it was unable to distinguish among the selling functions provided to different categories of customers. *See* Verification Report, p. 10. Based upon the results of our verification, we find that there are no differences in LOT. See the comment below on CEP offsets.

Comment 5

Hoogovens argues that the Department should make a CEP offset adjustment to normal value pursuant to section 773(a)(7)(B) of the Act when comparing the reported CEP sales to normal value. Respondent claims the Department's practice is to compare the ex-factory CEP price to the price of the home market sale, including all selling functions that are provided to home market customers. Hoogovens argues that the Department has repeatedly concluded that a CEP offset is appropriate where it finds, following this comparison, that the unadjusted home market price is at a more advanced level of trade (LOT) than the adjusted CEP price. In the preliminary results, the Department concluded that there were no differences between the adjusted CEP price and the unadjusted home market price. Hoogovens claims that this results in a comparison of sales at different levels of trade, because the starting price of the home market sales allegedly reflects many selling activities not reflected in the adjusted CEP price. These include indirect selling activities, indirect technical service and warranty expenses, and inventory carrying costs incurred on home market sales. All of these types of expenses have been deducted from the net CEP used to establish the LOT for CEP sales. Accordingly, Hoogovens concludes, the home market LOT must be deemed to be at a different, more advanced LOT than the adjusted CEP LOT.

Hoogovens claims there were no sales in the home market at a LOT equivalent to the CEP LOT. Moreover, all home market sales were at the same LOT. There are no data available to quantify a LOT adjustment to account for the difference between the CEP LOT and the home market LOT. Accordingly, Hoogovens concludes, the Department should make a CEP offset adjustment to normal value for indirect selling expenses up to the amount of indirect selling expenses deducted from CEP, as required by 19 U.S.C. 1677b(a)(7)(B).

Petitioners point out that the CEP offset is not automatic. The respondent bears the burden of demonstrating that such an offset is warranted. *See Mechanical Transfer Presses from Japan*, 61 FR 52910, 52915 (October 9, 1996); *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan*, 61 FR 38139, 38143 (July 23, 1996). Petitioners argue that to qualify for a CEP offset, a respondent must first establish that there are different levels of trade between home market and U.S. sales. Then, if the data on the record do not provide an adequate basis for a LOT adjustment and normal value is established at a more advanced stage of distribution than the CEP, the Department is required to reduce normal value by the CEP offset.

Petitioners argue that Hoogovens has failed to meet the prerequisites for such an adjustment, because it has provided no evidence that its CEP sales are at a distinct LOT from its home market sales. In response to the Department's request at verification for LOT data, Hoogovens' Senior Sales Executive stated that the company ''provides the same types of services to all customers in all markets.'' (Sales Verification Report at 10 (Public Version).)

Department's Position

Respondent's claim for a CEP offset is inconsistent with its position that its sales are to only one LOT in both markets. (See Comment 4.) In submitting its LOT chart at verification, Hoogovens did not identify any differences in selling functions and selling expenses between its home market sales and CEP sales after deductions of the U.S. expenses pursuant to section 772(d) of the Act. In accordance with section 773(a)(7)(B) of the Act, a CEP offset is granted where normal value is established at a LOT which constitutes a more advanced stage of distribution than the LOT of the CEP sale and the data available do not provide an appropriate basis to determine a LOT adjustment. Hoogovens failed to meet any of these requirements under section 773(a)(7)(B). Indeed, Hoogovens failed to make a LOT claim and has failed to substantiate any claim.

The instructions regarding LOT in ADDENDUM I to the Department's questionnaire explained:

> When the U.S. sale is classified as a constructed export price (CEP) sale, the LOT for that sale is based upon the selling functions provided by the seller (i.e., the exporter and its affiliates) to the first unaffiliated party, less those selling functions related to expenses which are deducted under section 772(d) of the Act. Thus, for CEP sales, the selling functions used to establish the LOT cannot include selling functions related to expenses deducted under section 772(d). For comparison market sales, the LOT is based upon the selling functions provided by the seller (and its affiliates) to the first unaffiliated customer.

Respondent failed to respond to the Department's supplemental questionnaire on LOT by the due date. The instructions for preparing the LOT chart specifically asked respondents not to include in the chart those expenses deducted from U.S. price. These deductions include direct selling expenses (credit expense), indirect selling expenses (warranties, inventory carrying costs) and further manufacturing costs. In filling out the chart submitted at verification, Hoogovens did not distinguish between its CEP sales, which are all further manufactured, and its EP sales. Despite being given every opportunity to demonstrate on the record that its CEP sales and home market sales are at different levels of trade, Hoogovens has failed to establish that normal value is at a different LOT than CEP sales. Rather, to the contrary, Hoogovens insisted that there were no differences in the services provided to customers in the two markets. The SAA states:

> Only where different functions at different levels of trade are established under section 773(a)(7)(A)(i), but the data available do not form an appropriate basis for determining a level of trade adjustment under section 773(a)(7)(A)(ii), will Commerce make a constructed export price offset adjustment under section 773(a)(7)(B). (SAA at 160.)

Thus, the adjustment is not automatic and the burden is on the respondent to demonstrate that normal value is at a different LOT than the CEP, and that the normal value LOT is at a more advanced stage of distribution (i.e., more remote from the factory). Hoogovens has failed to establish the basis for any CEP offset. Accordingly, we have not granted a CEP offset adjustment in the final results of this review.

Comment 6

Respondent argues that the Department should not match U.S. sales of secondary merchandise (''seconds'') to constructed value (CV) for prime merchandise. The Department's policy in the steel cases is to match sales of prime merchandise to other sales of prime merchandise, and to match sales of seconds in the U.S. market to sales of seconds in the comparison market. In the preliminary results, where there were no matching home market sales of seconds within the ''90/60 window'' period, the Department matched the U.S. secondary sale to the CV of sales of prime merchandise. Hoogovens disagrees that the Department is compelled by the decision of the Court of Appeals in *IPSCO, Inc.* v. *United States,* 965 F.2d 1056, 1060 (Fed. Cir. 1992), to use this approach, and alleges that this comparison results in unfair and artificially inflated margins on U.S. sales of seconds. Hoogovens argues that this allegedly unfair approach could be avoided by the expedient of matching U.S. sales of seconds to home market sales of seconds that pass the difmer test, without considering whether they fall within the ''90/60 window'', to calculate margins for seconds.

Petitioners argue that the Department should reject Hoogovens'' proposed change in methodology, which fails to recognize that the Department's methodology is consistent with past practice and in accordance with *IPSCO,* in which the Court upheld the Department's practice of allocating production costs equally between secondary and prime merchandise. Petitioners also point out that the reason the Department uses the ''90/60 window'' is that it satisfies the statutory requirement (section 773 (a) (1) (A)) that normal value be compared with contemporaneous EP or CEP sales. *See also Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand,* 61 FR 1328, 1332 (January 19, 1996).

Department's Position

We agree with the petitioners. Seconds are merchandise which has suffered some sort of defect either in the production process or in subsequent handling, and does not meet the customer's specifications. In this review, we have continued to follow the policy with respect to comparisons of sales of seconds set forth in the first review of this order. (*See Cold-rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review,* 61 FR 48465, 48466–7 (September 13, 1996).) We only resorted to CV when there were no contemporaneous matches of seconds.

Hoogovens' suggestion that we use home market sales outside the ''90/60 window'' period is inconsistent with the requirement in section 773 that we use contemporaneous sales as the basis for normal value.

In *Decision Memorandum* from Roland L. MacDonald to Joseph A. Spetrini, Deputy Assistant Secretary for Compliance, ''Treatment of Non-Prime Merchandise for the First Administrative Review of Certain Carbon Steel Flat Products,'' (April 19, 1995) at 4, we stated: ''In past cases the Department has held that the cost of production (COP) of seconds is the same as the COP of the prime merchandise it was intended to be because seconds have undergone the same production processes as prime merchandise.'' The Department's methodology for calculating the COP for primary and secondary merchandise has been upheld by the Court of Appeals. *See IPSCO.* Similarly, there is no basis on the record for distinguishing between the CV of primary and secondary merchandise.

Comment 7

Hoogovens argues that the Department should use the Customs Service's quarterly exchange rates to make currency conversions in its final determination. At the time it made the sales under review, Hoogovens expected that their antidumping duty liability would be determined on the basis of these rates. However, on March 8, 1996, the Department published a notice that it intended to change its practice for determining the exchange rate, and would use Federal Reserve daily exchange rates for one year, and then evaluate the model computer program's performance. *Notice: Change in Policy Regarding Currency Conversions,* 61 FR 9434 (March 8, 1996). Despite the fact that the change was announced over seven months after the end of the POR, and after verification in the current review, the Department used the proposed program to make currency conversions in the preliminary results. Hoogovens argues that the effect of this change is that its margins were determined using different exchange rates than those Hoogovens had reasonably expected would be used at the time it made the sales under review, resulting in considerable increases in Hoogovens'' antidumping duty liability. Respondent further claims that the Department's change of policy created dumping margins on a considerable number of sales for which Hoogovens reasonably expected that there would be no dumping margin found, and increased margins on many other sales. Hoogovens relied on the Department's consistent prior practice of using the Customs rates to set its prices so as to avoid dumping. Respondent argues that the Department should not apply retroactively such basic changes in methodology as the proposed currency conversion policy. According to Hoogovens, the Department must, under its duty to administer the law fairly, ''be bound by its prior actions so that parties have a chance to purge themselves of antidumping liability.'' *Shikoku Chemicals Corp.* v. *United States,* 795 F. Supp. 417, 421 (CIT 1992).

Section 773A of the Uruguay Round Agreements Act (URAA) provides that the Department shall convert currencies using ''the exchange rate in effect on the date of sale of the subject merchandise.'' 19 U.S.C. 1677b—1(a). Hoogovens argues that this section does not specify which rate the Department shall use or in any way mandate or prohibit the use of exchange rates obtained from any given source. Hoogovens claims that use of the Customs rates in this review would therefore be fully consistent with the mandate of section 773A to use the exchange rate in effect on the date of sale.

Petitioners argue that the Department's use in the preliminary determination of this review of the daily exchange rates in effect on the dates of sale, as certified by the Federal Reserve, is in accordance with the plain language of section 773A. The SAA also unequivocally states that the Department must adopt a new practice of applying a daily exchange rate, in the place of its previous practice of using a quarterly rate, as follows: ''Under new section 773A, the general rule will be to convert foreign currencies based on the dollar exchange rate in effect on the date of sale.'' SAA at 172. Petitioners note that the new law has taken effect and the Department is bound by it. Petitioners argue that Hoogovens had ample warning that a change in methodology was dictated by new section 773A. Therefore, in petitioners' view, the Department should continue to apply the daily exchange rate for the final results of review.

Department's Position

We agree with petitioners. This review was conducted in accordance with the URAA. Section 773A(a) requires the Department to ''convert foreign currencies into United States dollars using the exchange rate in effect on the date of sale of the subject merchandise.'' Consequently, the Department has modified its methodology in various respects to conform to the new provisions in the law.

Comment 8

Petitioners claim that Hoogovens incorrectly calculated its inventory carrying costs (''ICC'') applicable to CEP sales. For these sales, Hoogovens reported the ICC from the time production was complete at IJmuiden until the time the merchandise cleared Customs at the U.S. port of entry in the field DINVCARU. ICC incurred by Hoogovens' U.S. affiliated companies prior to shipment to the U.S. customer were reported in the field INVCARU. In calculating both variables, petitioners allege Hoogovens failed to use the actual, product-specific cost of the merchandise. Instead Hoogovens used the price of the merchandise, deflated by the ratio of total cost of goods sold to total sales revenue to simulate the cost-based value of the merchandise in inventory. Petitioners argue that Hoogovens' methodology is flawed because it applies the ICC factor to the transfer price, rather than the cost of production. Petitioners claim that this is inconsistent with the Department's practice, which is to calculate ICC by dividing the number of days that the goods remain in inventory by 365 and then multiplying the result by the appropriate interest rate and the actual cost of the unit, i.e., the product-specific costs. Petitioners argue that the Department should recalculate Hoogovens' ICC using Hoogovens' reported constructed value (CV) according to the following formula:

DINVCARU/INVCARU = (COMCV + GNACV + INTEXCV) (interest rate) (number of days in inventory/365)

Hoogovens responds that the Department rejected the petitioners' argument with respect to the same methodology in the final results of Hoogovens' 1993/94 administrative review. *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 61 FR 48465, 48470 (September 13, 1996). Moreover, the Department also verified the reported data in the current review. Hoogovens argues that its methodology is in fact cost-based because after multiplying the ICC factor by the transfer price to its U.S. affiliates, it then multiplies the result by the ratio of Hoogovens' average cost of production to average sales price. Hoogovens states that this results in an ICC amount that is in effect based on the cost of production.

Hoogovens argues that the petitioners' proposed methodology contains several flaws. First, the petitioners propose to use the constructed value of manufacturing costs (COMCV) in their equation, which is inherently less accurate, because COMCV includes the product mix for sales to all markets of each CONNUM (*i.e.*, EP, home market and CEP), whereas Hoogovens' methodology is based solely on the costs of material actually sold by the U.S. affiliates. Second, petitioners did not convert the values used in their proposed calculation (COMCV, GNACV, AND INTEXCV) , which are reported in guilders, to U.S. dollars. This correction would substantially reduce the amount of ICC calculated under their methodology. Hoogovens argues that petitioners have failed to show that there is anything unreasonable or inaccurate in Hoogovens' ICC methodology, and that the Department should accordingly continue to use the reported ICC amounts in the final results.

Department's Position

We agree with the respondent that the methodology Hoogovens used is reasonable, and have accepted the verified reported ICC amounts. Hoogovens' accounting system used in the normal course of business is based upon standard costs. Consequently, the costs carried in the company's accounts are not product (or CONNUM)-specific. While CV is CONNUM-specific for the products sold in the United States, general, selling and administrative expenses and profit are calculated as if the merchandise were sold in the home market. Hoogovens' use of the ratio of average costs of cold-rolled carbon steel flat products to the average sales price during the POR as a deflator for the transfer price to its affiliates in the United States is therefore a reasonable approximation of a product-specific, cost-based ICC calculation.

Comment 9

Petitioners claim that Hoogovens incorrectly reported yield losses associated with its U.S. affiliate's further manufacturing operations. Hoogovens determined the yield loss per machine by dividing the total scrap generated during processing by the starting weight processed at each machine. Petitioners argue that Hoogovens omitted to take into account ''unrecovered scrap'' in the numerator of this calculation, and that the Department should resort to facts otherwise available under section 776 of the Act. Petitioners further assert that the Department should make an adverse inference in its selection of facts available, because of Hoogovens' alleged failure to comply with a request for information from the administering authority. *See* 19 U.S.C. 1677e(b).

Hoogovens replies that petitioners have simply misread or misunderstood the yield loss reports from which Hoogovens calculated its affiliate's yield loss ratios. Hoogovens argues that a proper reading of the yield loss reports reveals that there was no such ''unrecovered scrap.'' Petitioners incorrectly assumed that several headings listed on the yield reports refer to material that vanished as ''unrecovered scrap'' during or after processing. Hoogovens explains that none of these categories, however, refer to actual scrap or material otherwise lost or damaged in processing that was not accounted for in Hoogovens' calculation. Hoogovens argues that the verified evidence in the record does not support petitioners' claim that any unsalvaged material losses were omitted from Hoogovens' reported ratios. *See* RBC Verification Report at 17. Hoogovens urges the Department to use the reported yield loss ratios in the final results.

Department's Position

We agree with respondent. The Department verified the reported yield losses and found no discrepancies. Petitioners' allegations are based on a misinterpretation of certain column headings in the yield loss report. *See* RBC Verification Exhibit 27.

Comment 10

Petitioners argue that Hoogovens failed to include the costs of certain outside processing in RBC's reported cost of materials. Hoogovens instead added these costs to the further manufacturing cost reported in FURMANU. Because these outside processing costs were part of RBC's direct material costs, petitioners argue that these costs and the freight expenses for transporting these goods to RBC, should have been reported as material costs and should have been subject both to the application of yield loss and the allocation of G&A and interest expenses. The Department's questionnaire instructs respondents at page E–7 to include in the direct materials component of further manufacturing costs ''transportation charges and other expenses normally associated with obtaining the materials that become an integral part of the finished product sold in the United States.'' Petitioners calculated an amount they propose that the Department add to the relevant sales to account for additional yield loss, interest and G&A expenses.

Hoogovens replies that it added the cost of further processing paid to the outside processor, increased by the yield loss associated with outside processing, to the reported further manufacturing costs for the relevant sales. It reported G&A and interest expenses for the appropriate sales as part of the costs of processing this material at RBC. Some of RBC's overhead and administrative costs were allocated to the material processed by the outside processor. Hoogovens argues that this material does not cost more to process because of the processing it has undergone prior to arrival at RBC. Accordingly, to allocate more processing and administrative costs to these sales would appear to be double-counting. Moreover, there are two errors in the petitioners' proposed correction, one in the proposed yield loss and the other in the G&A factor.

Department's Position

We agree in part with the petitioners. The transportation charges associated with bringing the steel processed by the outside processor to RBC's plant should have been included in direct materials cost and an amount added to the relevant sales to account for additional yield loss, interest and G&A expenses. However, since we disagree with petitioners' calculation of the yield loss (as discussed in Comment 10) and petitioners used the wrong G&A factor, we have modified the petitioners' suggested programming code to correct further manufacturing costs for outside processed sales using the values for yielded outside processing costs, SG&A and interest expense shown in Exhibit 1 of respondent's rebuttal brief. (*See* the Department's margin calculation program.)

Comment 11

Petitioners argue that Hoogovens should have included U.S. port-to-plant freight costs and repacking expenses incurred in the United States in further manufacturing costs. Instead, they were reported in the Section C (CEP) data base in the fields ''INLFPWU'' and ''REPACKU.'' Petitioners cite the Department's questionnaire, which states that further manufacturing costs include ''any costs involved in moving the product from the U.S. port of entry to the further manufacturer'' and ''additional U.S. packing expenses.'' Petitioners point out that inclusion of these expenses is important because of the effect on the allocation of profit for CEP sales. To correct this error, petitioners urge the Department to add the amounts reported in INLFPWU and REPACKU to FURMANU for each CEP (further manufactured) sale.

Hoogovens notes that it followed the Department's instructions in its questionnaire in reporting these expenses in the Section C (CEP) fields, ensuring that these expenses are properly deducted from U.S. price. Hoogovens argues that the alternative methodology proposed by the petitioners is pointless, as reporting these expenses in the Section E file would achieve the same result. To the extent that the Department considers it appropriate to include these expenses in the CEP profit allocation, Hoogovens proposes that the Department do so by means of a simple correction to the program. Hoogovens urges the Department to take great care that it does not double count these expenses.

Department's Position

We agree that these expenses should be included in total United States expenses for the purpose of calculating the CEP profit allocation, and have modified the computer program for the final results. We note that the Department's questionnaire contains conflicting instructions, and will take steps to clarify them in the next administrative review.

Comment 12

Petitioners observe that the Department's computer program makes several errors with respect to the currency of U.S. packing costs. Petitioners propose programming language to make the appropriate currency conversions.

Hoogovens comments that there are several errors in the petitioners' proposed language and proposes alternative corrections. Hoogovens points out that the petitioners erred in proposing to include the costs of repacking in the United States in the calculation of constructed value (CV).

Department's Position

We agree with petitioners that there were currency conversion errors in the treatment of packing expenses in the program used for the preliminary results of review. We also agree with Hoogovens that U.S. repacking should not be included in CV, because CV includes only costs incurred in the Netherlands. We have corrected the program for the final results of review.

Comment 13

Petitioners point out that Hoogovens added an extra category (''F'') to the thickness tolerance categories laid out in the Department's questionnaire. The Department's model match program, however, does not account for sales with a thickness tolerance of ''F.'' Petitioners propose programming language to correct this oversight. Hoogovens agrees with the proposed correction.

Department's Position

We have incorporated the proposed correction in the model match program for the final results.

Comment 14

If the Department decides not to apply the reimbursement regulation in its final results, petitioners urge that the antidumping duties be deducted as ''United States import duties'' or ''additional costs, charges, or expenses'' under section 772(c)(2)(A) of the Tariff Act of 1930, as amended. Petitioners argue that the plain language of the statute requires that the Department deduct antidumping duties paid by the respondent or its related party from the price used to establish EP or CEP. Specifically, petitioners state that the phrase ''import duties,'' as used in 19 U.S.C. 1677a(c), includes AD and Countervailing duties, as such duties are plainly ''incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.'' Petitioners argue that U.S. courts and agencies charged with administering the customs and unfair trade laws have long recognized that ''Congress desired and intended that {AD/CVD} duties * * * should be considered as duties for all purposes.'' *C.J. Tower & Sons* v. *United States,* 71 F.2d 438, 445 (C.C.P.A. 1934). *See also Imbert Imports, Inc.* v. *United States,* 331 F. Supp. 1400, 1406 (Cust. Ct. 1971) and *PQ Corp.* v. *United States,* 652 F. Supp. 724, 736 n. 15 (CIT 1987). Petitioners assert that there is nothing in the language or legislative history of section 772(c) to indicate that Congress intended a meaning for the phrase ''import duties'' other than the ''natural and accepted'' meaning established by the courts. Petitioners further argue that under accepted canons of statutory construction, the items to be deducted in calculating EP and CEP pursuant to section 772(c)(2)(A) must be read to include AD/CVD duties. The cited section requires a deduction for import duties and other expenses ''except as provided in paragraph 1(C).'' This paragraph, in turn, refers to certain countervailing duties imposed to offset export subsidies. If AD/CVD duties were not intended to be included in the items deducted under section 772(c)(2)(A), petitioners claim the exception provided by Congress for certain countervailing duties would be superfluous. Petitioners hold it is a fundamental precept of statutory construction that ''a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another.'' Sutherland Stat Const § 46.06 (5th Ed).

While petitioners admit that the CIT has never explicitly held that the language of section 772(c)(2)(A) covers actual antidumping duties, they claim it has assumed so implicitly. Petitioners cite *Federal-Mogul Corp.* v. *United States,* (813 F. Supp. 856, 872 (CIT 1993)) in which the plaintiff challenged the Department's refusal to deduct estimated antidumping duty deposits. According to petitioners, the CIT affirmed the Department's refusal to deduct the estimated AD duties, relying on the fact that the duty deposits were only estimates. However, petitioners claim, the Court did not adopt the Department's reasoning that section 772 applied only to ''normal'' import duties, and that antidumping duties were not normal duties within the meaning of the statute. This case, according to petitioners, requires the Department to deduct from U.S. price any import duties that can be accurately determined at the time the Department is calculating the current dumping margins.

Petitioners insist the legislative history of the URAA in no way suggests that Congress rejected the petitioners'' construction of section 772 (c)(2)(A). Petitioners claim that the Senate Finance Committee specifically recognized that the issue of whether antidumping duties must be deducted as a cost was being considered by the CIT, and directed the Department to abide by the outcome of that litigation. Accordingly, petitioners argue it is clear that Congress did not intend to ratify the Department's failure to treat duties as a cost in the URAA, but instead recognized that the issue would be resolved through the judicial process.

Petitioners conclude by stating that treatment of antidumping duties as a cost would be accomplished in the same manner as the adjustment for reimbursement of antidumping duties in the preliminary margin program. The actual difference between normal value and EP or CEP on each sale is calculated by the margin program. This difference is equal to the antidumping duties to be paid by the importer and referred to in section 772 (c)(2)(A). Once this difference is calculated, it must then be deducted from EP or CEP for use in calculating the final margin on each transaction.

Hoogovens claims that the petitioners' argument is flatly erroneous and is based either on a failure to acknowledge or a misinterpretation of statements by all three branches of government on this issue. In past cases the Department has repeatedly rejected the argument that antidumping duties should be deducted as a cost. In fact, the Department dealt with this issue and rejected petitioners' argument in the final results of the first administrative review of the order governing Hoogovens' imports of cold-rolled carbon steel. (61 FR at 48469.) *See* also *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Antidumping Duty Administrative Review,* 60 FR 44009 (August 24, 1995) and *Certain Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Review,* 61 FR 18547, 18553 (April 26, 1996). No reviewing court has ever reversed the Department's interpretation of the statute on this point. None of the cases cited by petitioners dealt with the issue at hand. For example, *C.J. Tower* described antidumping duties as ''duties'' for the purpose of distinguishing them from ''penalties'' that would require compliance with the due process guarantees of the Fifth Amendment to the U.S. Constitution. Hoogovens claims it did not remotely consider the issue whether antidumping duties are to be included among the ''United States import duties'' referred to in 19 U.S.C. 1677a (c)(2)(A).

Hoogovens points to the petitioners' acknowledgment that the Department's position before the CIT in *Federal Mogul* was that the statute's ''import duty'' language applied to neither antidumping deposits nor actual assessed duties, and Hoogovens asserts there have been no legal developments since the Department stated its position in that case to cause it to reconsider; to the contrary, all developments have been in favor of the Department's approach.

Hoogovens argues that petitioners have misinterpreted the legislative history of this issue, citing the Final Results of the 1993/94 administrative review, in which the Department stated that Congress put to rest the issue of AD/CVD duties as a cost in arduous debates during the passage of the URAA. (61 FR. at 48469.) Hoogovens also cites the House Ways and Means Committee's Report accompanying the URAA, which stated that the new duty absorption provision ''would not affect the calculation of margins in administrative reviews. This new provision of law is not intended to provide for the treatment of antidumping duties as a cost.'' H. Rep. No. 826 (I), 103rd Cong., 2d Sess. 60–61. Hoogovens concludes by asking the Department to reaffirm its conclusion regarding duty as a cost in the final results of this review.

Department's Position

It is the Department's longstanding position that antidumping and countervailing duties are not a cost within the meaning of 19 U.S.C. 1677a(d). *See Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands,* 61 FR 48465, 48469 (September 13, 1996). Antidumping and countervailing duties are unique. Unlike normal duties, which are an assessment against value, antidumping and countervailing duties derive from the margin of dumping or the rate of subsidization found. Logically, antidumping and countervailing duties cannot be part of the very calculation from which they are derived. This logical rationale for the Department's interpretation of the statute is consistent with prior decisions of the Court of International Trade. See *Federal-Mogul* v. *United States,* 813 F. Supp. 856, 872 (1993) (deposits of antidumping duties should not be deducted from USP because such deposits are not analogous to deposits of ''normal import duties'').

In contrast, petitioners'' reasoning is circular rather than logical: in calculating the dumping margin the Department must take into account the dumping margin. Such double counting, i.e., including the same unfair trade practice twice in a single calculation, is unjustifiable, except in the limited circumstances provided for in § 353.26.

Moreover, the treatment of antidumping and countervailing duties (already paid or to be assessed) as a cost to be deducted from the export price is an issue that was arduously debated during passage of the Uruguay Round Agreements Act (URAA) and ultimately rejected by Congress. See, H.R. 2528, 103rd Cong., 1st Sess. (1993). Alternatively, Congress directed the Department to investigate, in certain circumstances, whether antidumping duties were being absorbed by affiliated U.S. importers. 19 U.S.C. 1675(a)(4). Thus, Congress put to rest the issue of antidumping and countervailing duties as a cost. URAA Statement of Administrative Action at 885 (''The duty absorption inquiry would not affect the calculation of margins in administrative reviews. This new provision of the law is not intended to provide for the treatment of antidumping duties as a cost.''); *see also* H. Rep. No. 103–826(I), 103rd Cong., 2nd Sess. (1994) at 60.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists:

Manufacturer/ exporter	Period of review	Margin (percent)
Hoogovens Staal B.V.	8/1/94–7/31/95	4.33

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of cold-rolled carbon steel flat products from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate for that firm as stated above; (2) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 19.32 percent. This is the ''all others'' rate from the amended final determination in the LTFV investigation. *See Amended Final Determination Pursuant to CIT Decision: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands,* 61 FR 47871. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under § 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with § 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: April 2, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9427 Filed 4–14–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–817]

Certain Cut-to-Length Carbon Steel Plate From Brazil: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 4, 1996, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Brazil. This review covers one manufacturer/exporter of the subject merchandise to the United States during the period of review (POR), August 1, 1994, through July 31, 1995. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Linda Ludwig, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–0405 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1996, the Department published in the **Federal Register** (61 FR 51904) the preliminary results of the administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Brazil (58 FR 44164, August 19, 1993). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Scope of This Review

The products covered by this administrative review constitute one ''class or kind'' of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

On April 2, 1997, the Department determined that ''profile slab'' produced by Companhia Siderúrgica de Tubarão (CST) constitutes a type of plate and therefore falls within the scope of the antidumping order on carbon steel plate from Brazil. Memorandum to Holly A. Kuga, Regarding the Final Scope Ruling—Antidumping and Countervailing Duty Orders on Certain Cut-to-Length Carbon Steel Plate from Brazil—Request by Wirth Limited for a Ruling on Profile Slab.

The POR is August 1, 1994, through July 31, 1995. This review covers entries of certain cut-to-length carbon steel plate by Companhia Siderúrgica de Tubarão (CST).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from the respondent (CST) and petitioners (Bethlehem Steel Corporation, U.S. Steel Company (a Unit of USX Corporation), Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company).

Comment 1

Respondent argues that the Department incorrectly excluded home market credit costs from its margin calculations. In respondent's view, the *taxa referential* (TR), is the Brazilian equivalent to a benchmark interest rate, such as the prime rate or the LIBOR rate, and the Department erred in rejecting the TR as a useful surrogate for short-term interest rates in Brazil.

Respondent notes that CST did not have any short-term Brazilian currency borrowing during the POR and in its original Section B response it proposed using CST's borrowing rate in connection with coal purchases as a surrogate for short-term interest rates. Respondent adds that the Department rejected this approach and asked CST to provide published home market prime rates, such as the rates for the Bank of Brazil or the Bank of Minas Gerais, and use these rates for the calculation of credit costs.

Respondent states that in its supplemental response it provided TR rates during the POR and provided background materials on the TR which state that the TR is a referential interest rate and not an inflation index. Respondent notes that the Department did not raise any questions about the use of the TR or any discrepancies associated with the TR during verification, in the verification report or elsewhere during the proceeding, prior to the September 25, 1996, decision memorandum. Respondent argues that the Department's conclusion in this memorandum that the TR is an inflation index, not an interest rate, was not supported and the Department did not explain its departure from past findings. CST objects on procedural grounds to the Department's decision not to make a home market credit adjustment as the Department did not inform respondents of questions it had regarding submitted information. *See Bowe-Passat* v. *United States*, 17 CIT 335, 343 (1993).

CST alleges that the TR is an appropriate rate to measure the cost of credit because it is a rate calculated and published by the Bank of Brazil similar to the prime rate. Respondent also notes that the Department, after extensive verification, used the TR as the surrogate home market interest rate in *Ferrosilicon from Brazil*, 59 FR 732, 735 (Jan. 6, 1994). Respondent attached an excerpt from a Brazilian treatise on financial markets which states that the TR was created to serve as a basic referential rate of interest to be charged in the month of issuance and ''should function as the LIBOR or prime rate.''

Petitioners support the Department's denial of CST's claimed deduction for home market credit expenses without elaboration.

Department's Position

We agree in part with respondent and have allowed a credit adjustment in the final results. We note that the original materials about the TR provided by respondent (see CST's February 29, 1996, submission) were unclear as to whether the TR is a pure short-term interest rate. These documents, taken from the provisional bill establishing the TR and the ''Collor Plan'' Manual prepared by the Economy Ministry, describe the TR as calculated by the Central Bank of Brazil from ''the average of monthly net revenue by deposits with fixed terms raised by branches of commercial banks, investment banks or multiple banks with commercial or investment divisions, and/or federal public bonds. * * *'' (CST's translation.) This takes into account all deposits with fixed terms, including those in investment banks, and federal public bonds, not just short-term deposits. However, the information submitted by respondent as an attachment to its November 4, 1996, case brief states that the TR was initially calculated based on the weighted average of the rates on 30–35 day bank deposit certificates issued by a subgroup of 20 financial institutions, and since May 1, 1993, was calculated on a daily basis.

The TR is further described in the original materials we received as ''a type of interest rate which is based on the market rate, including the expectation of economic agents with regard to the future revenue of financial assets.'' The phrase ''a type of interest rate *which is based on the market rate*,'' suggests that there is some kind of adjustment from an actual interest rate. Respondent's more recent submission states that a part of the actual interest rate is deducted in calculating the TR so as to discount the cost of taxes on the bank deposit certificates.

Finally, we note that beyond issuing a supplemental questionnaire, the Department is not required to give prior notice before disallowing a claimed adjustment. Our supplemental questionnaire clearly requested CST to use published Brazilian prime rates in its calculation of home market credit expenses. CST substituted the TR without explanation. There is no indication that the respondent in *Ferrosilicon* was asked to use a bank rate for its home market credit calculation. The Department is not obligated to make additional requests for information showing that the data respondent submits meet the requirements imposed by the Department. However, because we have determined that the TR does, in fact, appear to be a benchmark comparable to a prime rate and is published by the Bank of Brazil, we have used the submitted TR data in calculating CST's credit adjustment.

Comment 2

Respondent argues that the Department should calculate CST's home market imputed credit costs using gross price. CST claims that its liability for taxes is not contingent on customer payment. CST submitted credit costs based on net price and gross price. Respondent states that in previous decisions the Department has calculated credit costs based on a gross price inclusive of taxes. (*See Stainless Steel Angles from Japan*, 60 FR 16608, 16615 (March 31, 1995).)

Petitioners counter that if the Department were to include a deduction for home market credit expenses, it should base this deduction on net price. Petitioners argue that imputed credit costs should reflect the cost to CST of the time value of money and that in this case, there is no opportunity cost to CST of carrying the tax amounts as receivables, since they will not be paid to the Brazilian government until after the receipt of payment from the customer (*Furfuryl Alcohol from South Africa*, 61 FR 22550, 22552 (May 8, 1995)).

Department's Position

We agree with petitioners that credit expenses should be calculated on the basis of net price. *See Final Determination of Sales at Less than Fair Value; Steel Wire Rope from Korea*, 58 FR 11029, 11032 (February 23, 1993), where the Department stated:

It is not the Department's current practice to impute credit expenses related to VAT payments. We find that there is no statutory or regulatory requirement for making the proposed adjustment. While there may be a potential opportunity cost associated with the respondents' prepayment of the VAT, this fact alone is not a sufficient basis for the Department to make an adjustment in price-to-price comparisons. We note that virtually every charge or expense associated with price-to-price comparisons is either prepaid or paid for at some point after the cost is incurred. Accordingly, for each pre- or post-service payment, there may also be an opportunity cost or gain. Thus, to allow the type of credit adjustment suggested by the respondents would imply that in the future the Department would be faced with the virtually impossible task of trying to determine the potential opportunity cost or gain of every charge and expense reported in the respondents' home market and U.S. databases. This exercise would make our calculations inordinately complicated, placing an unreasonable and onerous burden on both respondents and the Department, without necessarily ensuring a more accurate dumping margin calculation.

The comment in the *Stainless Steel Angles* case cited by the respondent refers to pre-shipment advance payment for the merchandise, rather than taxes, and is not contrary to the Department's position with respect to basing credit calculations on a price net of taxes.

Comment 3

Respondent observes that the Department failed to make an upward adjustment to U.S. price for CST's duty drawback adjustment, which the Department must do under U.S. law. CST notes that it calculated and submitted and the Department verified a per-ton duty drawback adjustment. Respondent states that the Department should correct this error in its final determination.

Department's Position

We agree with respondent and have made the suggested correction in the final results.

Comment 4

Respondent argues that the Department should correct its home market tax deduction. Respondent claims that to achieve tax neutrality, the Department should deduct from normal value the full amount of the IPI tax assessed on CST's home market sales but not on export sales. Instead, the Department deducted only five percent of the IPI tax assessed, because CST is eligible for an incentive rebate of 95 percent of the IPI paid to the government. CST claims that this is not in accordance with antidumping law and that the Department has no authority in an AD proceeding to net any subsequent receipts under a fiscal incentive program against taxes imposed. Citing *Huffy Corp.* v. *United States*, 632 F. Supp. 50, 55 (CIT 1986), respondent argues that if the Department were to limit its adjustment in this case to reflect the provision of a subsequent incentive to CST, it would in effect be increasing the amount of AD duties by the amount of a possible (though not proven) subsidy, without ever determining whether such a subsidy were even countervailable. Respondent claims that in previous AD investigations involving companies entitled to the IPI fiscal incentive rebate, the Department has never reduced the IPI tax adjustment.

Petitioners argue that the Department correctly calculated the IPI deduction. Petitioners state the Department's methodology was consistent with the URAA and cite the URAA's Statement of Administrative Action (SAA):

The deduction from normal value for indirect taxes constitutes a change from the existing statute. The change is intended to ensure that dumping margins will be tax-neutral. The requirement that the home market consumption taxes in question be ''added to or included in the price'' of the foreign like product is intended to insure that such taxes actually have been charged and paid on the home market sales used to calculate normal value. * * * It would be inappropriate to reduce a foreign price by the amount of the tax, unless a tax liability had actually been incurred on the sale.

Petitioners argue that because the Department found that, although the IPI amounts were paid to the government, all but 95 percent of these amounts were immediately credited back to CST in the form of fiscal incentives, the Department correctly declined to deduct the full amount of the reported adjustment.

Petitioners reject CST's argument that the Department should make an adjustment on the full amount of the IPI because the full amount is the amount that was ''paid.'' Petitioners note that in every instance part of the IPI is immediately credited back to CST in a percentage that is known beforehand, limiting CST's real tax liability to the small portion that is paid but not credited back. Thus, they state that the Department correctly calculated CST's home market tax deduction and that were the Department to do otherwise it would violate the SAA's requirement that dumping margins ''be tax neutral.''

Petitioners also reject respondent's argument that the Department should not be investigating fiscal incentive credits in the context of an AD review because the credits may also be countervailable subsidies. Petitioners claim that *Huffy* fully supports the Department's course of action. In that case, according to petitioners, the CIT stated that the Department must refrain from making a subsidy determination in the context of a dumping investigation, and that in a dumping investigation the Department is not seeking the same information or asking the same questions as it would in a countervailing duty investigation. Petitioners conclude that whether it is possible that the IPI fiscal incentives may also be countervailable subsidies should not be considered in this proceeding.

Department's Position

Because the reported home market sales are IPI-inclusive, we agree with the respondent that, given the particular circumstances of this case, the entire amount of IPI tax paid should be deducted from normal value, rather than the amount paid minus the amount rebated. Although respondent refers to the IPI rebate only as a ''possible (though not proven) subsidy,'' the Department has already made a determination that the IPI rebate at issue, which is provided only to steel companies, is a countervailable subsidy. *See Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil*, 58 FR 37295, 37298–99, 37301 (July 9, 1993). Benefits received on respondent's sales of carbon steel plate pursuant to the IPI rebate program at issue are currently being countervailed based on the countervailing duty order issued in that companion case. *Countervailing Duty Order and Amendment to Final Affirmative Countervailing Duty Determination: Certain Steel Products from Brazil,* 58 FR 43751, 43751–52 (August 17, 1993). Section 773(a)(6)(B)(iii) of the Act, (19 U.S.C. 1677b (a)(6)(B)(iii)) provides for reducing normal value by ''the amount of any taxes imposed directly upon the foreign like product or components thereof which have been rebated, or which have not been collected, on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign like product.'' This provision embodies the principle of GATT Article VI(5) that the simultaneous implementation of companion AD and CVD orders may not result in a double remedy. If the rebate were offset, it would reduce the amount of the IPI tax deduction from normal value by the amount of the rebate, thus increasing the margin and thereby correcting a second time for the rebate, which has already been countervailed under the companion CVD order.

Huffy Corp. v. *United States,* 632 F. Supp. 50, 55 (CIT 1986), upon which both parties rely, does not govern the situation in this case. In *Huffy,* the CIT rejected a claim by petitioner that a subsidy should not be allowed to lower an AD margin and that therefore ITA improperly increased United States Price for a rebate of import duties on inputs. In reaching this decision, the *Huffy* court pointed to a specific statutory provision calling for the adjustment for the import duty rebate at issue and added that the Court should not preempt the countervailing duty statute and make determinations as to whether a subsidy exists in the context of an antidumping case. There was no companion CVD order in the administrative proceeding underlying the decision in *Huffy*. In this case, the determination that the IPI rebate constitutes a subsidy has already been made in the CVD case. The only question is therefore how to obtain a tax-neutral dumping margin and no double remedy for subsidies and dumping; this is achieved by countervailing the IPI rebate under the CVD order and deducting the full amount of IPI paid from normal value pursuant to section 773(a)(6)(B)(iii).

Comment 5

Respondent alleges that the Department incorrectly determined that CST's date of sale in the home market should be the order confirmation date. CST states that many sales had multiple order acknowledgments and that the prices and terms set forth in any given order acknowledgment could be and were changed at will. Respondent claims that the Department does not recognize an event in the sales process as a reliable date of sale if there is a chance that the terms and conditions of sale can and will change after that event. Respondent cites *Certain Cut-to-length Carbon Steel Plate from Brazil,* 58 FR 37091, 37093 (July 9, 1993) (Final), arguing that in this case the Department rejected one respondent's U.S. date of sale methodology because it found evidence of changes in the material sales terms after the reported date of sale in a small quantity of sales. Respondent also cites to *Canned Pineapple Fruit from Thailand,* 60 FR 29553 (June 5, 1995) (Final) in which respondent claims the Department asked respondents to indicate whether changes could occur after the order date.

Respondent acknowledges that CST does issue a new order acknowledgment when terms are changed, but argues that new order acknowledgments can be issued until the date of shipment and that changes can and do occur after an order acknowledgment is issued. Respondent also notes that the price in local currency is not known until the date of invoice and cites the Department's new draft regulations in support of using date of invoice.

Petitioners argue that the Department correctly determined the home market date of sale to be the order acknowledgment date. Petitioners respond to CST's argument that a sale may have multiple order acknowledgment dates, and that the terms are not definitively set until shipment, by noting that if terms were changed a new order acknowledgment would be issued. Petitioners add that the mere fact that changes might occur is irrelevant, since CST admits that if there are changes a new order acknowledgment is issued.

Petitioners distinguish this case from the cases cited by respondent. With respect to *Certain Cut-to-length Carbon Steel Plate from Brazil,* 58 FR 37091, 37093 (July 9, 1993) (Final), petitioners note that USIMINAS's reported date of sale was rejected because the Department found evidence that there were changes in the terms of sale after the respondent's date of sale. Petitioners argue that even if CST's claim that the Department selected the invoice date as the date of sale in *Pineapples* is correct, that case is distinguishable from this proceeding, because in this case there is no possibility that there were changes in material terms after respondent's reported date of sale.

Petitioners also reject CST's argument that the order acknowledgment date cannot be the date of sale because the price in local currency is not known until the date of invoice. Petitioners state that the law is clear—''the essential terms of price and quantity are firm when they are no longer within the control of the parties to alter.'' (*See Polyvinyl Alcohol from Taiwan,* 61 FR at 14067.) Petitioners, citing the Department's analysis memorandum and verification report, add that by CST's own admission, at the time of order acknowledgment the parties agree on both the price in dollars and on the exchange rate to be used on the date of invoice. Thus, in petitioners'' view, price and quantity are set on the date of order acknowledgment, as the final invoice price is outside the control of either party and is effectively fixed for purposes of determining the date of sale.

Department's Position

We agree with petitioners. CST stated at verification that if there are changes to an order acknowledgment, a new order acknowledgment always is issued. This is fully consistent with our findings at verification; we found no instances in which any terms were changed after the final order acknowledgment was issued. Thus, while respondent may not know in advance if an individual order acknowledgment will be the final one, in retrospect it can always do so. As petitioners note, this fact distinguishes the facts of this case from the cases cited by respondent.

We also reject CST's argument that the order acknowledgment date cannot be the date of sale because the price in local currency is not known until the date of invoice. We found at verification that CST and its customer agree on both the price in dollars and on the exchange rate to be used on the date of invoice at the time the order acknowledgment is issued. Thus, price and quantity are set on the date of order acknowledgment, as the final invoice price is outside the control of either party and is effectively fixed for purposes of determining the date of sale. It is immaterial if the exact price in local currency is not known at this time as long as the mechanism for determining this price is set—which it is in this case.

Comment 6

Respondent argues that the Department incorrectly determined that CST is affiliated with USIMINAS and COSIPA. Respondent notes that the Bozano Group only owned 20.3 percent of the stock of CST and 8 percent of the stock of USIMINAS. Respondent notes that with respect to CST there were two other shareholders with a percentage ownership of CST that was equal to Bozano's and there were two other shareholders which each owned almost 13 percent of CST's stock.

Respondent claims that there is no evidence to support petitioners'' claim that Bozano was part of a controlling shareholder group consisting of Bozano and CVRD. Respondent cites to the Shareholders'' Agreement in Verification exhibit 4A, which speaks of a core group, consisting of the Bozano Group, CVRD plus UNIBANCO and Kawasaki. Citing the Shareholders'' Agreement, respondent argues that no single member of the group would be in a position to exercise control, as actions must have the support of parties holding at least 60 percent of the shares. Respondent further notes that Bozano and CVRD, even together, only appoint four of the nine members of CST's Board of Directors, known in Brazil as the Administrative Council.

Respondent claims that Julio Bozano's position as president of CST's Administrative Council did not permit him to exercise restraint or control over CST. Again citing to the Shareholders'' Agreement, respondent argues that the purview of the Administrative Council is limited to large corporate and financial decisions, rather than setting product pricing or production decisions.

Respondent claims that the Department determined that CST was affiliated with COSIPA solely because of USIMINAS' stockholdings in COSIPA. Respondent does not discuss whether USIMINAS and COSIPA are affiliated because of its contention that CST is not affiliated with USIMINAS. Respondent argues if it is not affiliated with USIMINAS, it is also not affiliated with COSIPA.

Petitioners counter that the Department's determination that CST is affiliated with USIMINAS AND COSIPA is correct and fully supported by the record. Petitioners note that the Department's decision was based on the following: Julio Bozano is both President and Chairman of CST's Board and President of USIMINAS's Board; Banco Bozano provided substantial financing to all three steel producers; the Bozano Group has a significant minority shareholding interest in all three steel producers; the combination of Julio Bozano's role as President of USIMINAS, USIMINAS' ownership of almost half of COSIPA's voting stock, and the Bozano Group's minority ownership of COSIPA place Bozano in a position of influence over COSIPA. Petitioners state that CST does not challenge the Department's conclusion regarding Bozano's control over USIMINAS and COSIPA.

Petitioners argue that the legislative history of the URAA makes it clear that the statute does not require majority ownership for a finding of control, and cites to prior Department control decisions in which a party did not have the power to appoint a majority of the board (*Certain Cold-Rolled Carbon Steel Flat Products from Korea,* 60 FR 65284 (Dec. 19, 1995). Petitioners claim that in addition to its substantial ownership stake in CST and its ability to name two board members, Banco Bozano was the largest private lender to CST throughout the POR. Thus, in petitioners' view, CST's argument that Bozano did not control CST ignores ''business and economic reality,'' the standard in the SAA.

Petitioners also disagree with respondent's claims regarding the Administrative Council. They note that CST acknowledges that its Administrative Council's jurisdiction includes power over: consolidations, mergers and splitting operations involving CST, and approval of, and changes in CST's long-term business plans. Petitioners argue that these are precisely the types of power that a producer's management exercises in restructuring manufacturing priorities, such as would be involved in shifting production between CST and USIMINAS. Petitioners further argue that the Administrative Council's powers are more extensive than CST concedes. Citing CST's Bylaws, petitioners claim that additional powers of the Council include: monitoring the performance of the directors; examining the Company's books; requesting information on contracts; setting the general orientation for Company business; establishing the basic guidelines for executive actions, as well as issues relating to technical aspects of production and marketing; and authorizing the opening, transfer or closing of offices, affiliates, subsidiaries, or other Company establishments. Petitioners also explain that on a day-to-day basis the Administrative Council exercises control over CST through an executive management group called the executive directorate, selected by and responsible to the Administrative Council. Thus, petitioners conclude that the Council does have legal power to exercise restraint and direction over CST's operations.

Department's Position

We agree with petitioners that CST is affiliated with USIMINAS and COSIPA. Section 771(33) of the Act, which governs which entities shall be considered ''affiliated,'' requires the Department to base its findings of control on several factors, not merely the level of stock ownership. In commenting on this section, the SAA states that: ''The traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm 'operationally in a position to exercise restraint or direction' over another even in the absence of an equity relationship.'' SAA at 838, quoting section 771(33). Our decision regarding affiliation was based on the following: Julio Bozano is both President and Chairman of CST's Board and President of USIMINAS's Board; Banco Bozano provided substantial financing to all three steel producers; the Bozano Group has a significant minority shareholding interest in all three steel producers; the combination of Julio Bozano's role as President of USIMINAS, USIMINAS' ownership of almost half of COSIPA's voting stock, and the Bozano Group's minority ownership of COSIPA place Bozano in a position of influence over COSIPA.

Respondent's argument against affiliation focuses on: Bozano's minority shareholder role; under the terms of the Shareholders' Agreement support of 60 percent of the shareholdings is required; Bozano does not appoint a majority of the members of the board; and that Julio Bozano's position as President of CST's Administrative Council did not permit Bozano to exercise restraint or control over CST.

As petitioners state, the legislative history of the URAA makes it clear that the statute does not require majority ownership for a finding of control. Even a minority shareholder interest, examined within the context of the totality of other evidence of control, can be a factor that we consider in determining whether one party is operationally in a position to control another. In this case, the Bozano Group has a minority shareholder interest in all three steel companies in question, and this can appropriately be considered in our affiliation analysis. As respondent's only argument with respect to Bozano's control over USIMINAS and COSIPA was that Bozano's minority shareholding was not a sufficient basis for control, and respondent did not address the other factors considered by the Department, we continue to support our original decision with respect to these companies.

With respect to CST's Shareholders' Agreement, we note that despite multiple submissions from parties on the issue of affiliation and petitioners' specific allegations regarding the existence of a ''control group,'' the first time respondent even identified the existence of this agreement was at verification. It is true that this agreement is currently between the four parties identified by respondent. However, the Shareholders' Agreement indicates that it was originally an agreement between CVRD and Bozano (as of December 1, 1993). UNIBANCO became a party to the agreement on April 25, 1994. Kawasaki did not enter the agreement until May 25, 1995—close to the end of the POR.

Respondent acknowledges that its Administrative Council's jurisdiction includes power over: consolidations, mergers and splitting operations involving CST, and approval of, and changes in CST's long-term business plans. However, respondent has taken this list of functions from the Shareholders' Agreement, not CST's Bylaws. As petitioners correctly state, CST's Administrative Council has substantial additional functions under the terms of CST's Bylaws. Taken together, these are precisely the types of power that a producer's management exercises in restructuring manufacturing priorities, such as would be involved in shifting production between CST, USIMINAS and COSIPA. While it is true that the support of 60 percent of the shareholdings is required to make decisions under the terms of the Shareholders' Agreement, Julio Bozano's position as president of CST's Administrative Council allows him to chair Council meetings, help set the agenda for meetings, vote and voice his opinion on proposals before the Council. This clearly gives him the potential to influence pricing and production decisions with respect to CST. *See Certain Cold-Rolled Carbon Steel Flat Products from Korea,* 60 FR 65284, 65284–5 (December 19, 1995),

Thus, for the reasons originally enumerated in the Department's September 10, 1996, memorandum, we continue to find that CST is affiliated with USIMINAS and COSIPA.

Comment 7

Petitioners argue that the Department must apply partial facts available because CST withheld crucial information regarding its affiliates. Specifically, petitioners state that the Department was not able to obtain sufficient information to confirm that CST was affiliated with a certain Brazilian steel reseller until verification. Petitioners state that this failure was crucial, because CST's sales to this affiliated party matched a majority of its U.S. sales, but failed the arm's length test and therefore could not be used by the Department in price-to-price comparisons. Furthermore, downstream sales to unaffiliated customers had not been reported. Petitioners claim that under the Department's regulations, it must use the facts otherwise available where a party withholds information requested by the Department. Petitioners note that CST did not identify this reseller as an affiliate, report its downstream sales to unaffiliated customers or contact the Department about the reporting of these sales. In petitioners' view, the Department should apply an adverse inference in its selection of facts available and apply the highest rate from the petition to the U.S. sales which were matched to CST's sales to this affiliate before application of the arm's length test.

Respondent argues that the Department should not apply partial facts available for CST's sales to this reseller. Indeed, respondent argues that it is not affiliated with this reseller. CST argues that the Bozano Group is not in a position to exercise operational control over both CST and USIMINAS, and that even if USIMINAS and CST are affiliated, the Department would have to undertake a separate analysis with respect to the reseller in question. While noting that USIMINAS does control this reseller, respondent claims that there is no basis for finding that this company is affiliated with CST or that it is controlled by Bozano.

Respondent argues that the Department's questionnaire initially leaves it up to the respondent to identify affiliated parties. Respondent states that in this case, the affiliated issue was complex, involving multiple submissions from interested parties and extensive analysis by the Department. Respondent also notes that this is the first case addressing the issue of mutual control/affiliation under the new law. Because CST did not purposely deceive the Department, in respondent's view, there are no grounds for punishing CST with the application of facts available. Respondent argues that even if the Department determines that this reseller is affiliated with CST, the Department should simply perform the arm's length test. Respondent claims that sales to this reseller are not overly significant in terms of margin calculations, and that all U.S. sales that are potentially matched to sales to this customer also match sales to other home market customers. Respondent argues that downstream sales made by this reseller are to end-users, while U.S. sales and other home market sales are to distributors/resellers. Finally, respondent argues, because it does not control the reseller in question, it could not have obtained resale information from this party.

Department's Position

As noted in our response to comment 6 above, we continue to find that CST and USIMINAS are affiliated. Given that the reseller in question is 100 percent owned by USIMINAS, a separate affiliation analysis is not required. While it is true that affiliation is a new concept, since the issue of affiliation was raised early in this proceeding, respondent would have been well advised to seek guidance on its reporting of this reseller's downstream sales. Respondent did not do so.

The Department applied the arm's length test to CST's sales to its affiliated reseller. These sales failed the test. Consequently, we did not use these sales in the preliminary results. Because these sales were only a small portion of CST's reported home market sales, we did not ask CST to report sales made by the affiliated reseller to the first unaffiliated customer (downstream sales). There were sufficient remaining home market sales to match to U.S. sales for the purpose of determining the dumping margin. All the sales to the affiliated reseller had the same CONNUMH and date of sale. Without these sales we found identical matches for the same CONNUM and sale month. Omitting these sales did not have a distorting effect on the margin calculation. Therefore, we have determined for these final results that there is no need to use facts otherwise available.

Comment 8

Petitioners argue that the Department should use facts available for the difference in merchandise (difmer) adjustment. Petitioners argue that CST was required to provide variable and total cost on a product-specific basis to allow calculation of the difmer adjustment. However, petitioners state that CST only reported two sets of costs—one for high manganese products and another for low manganese products. Petitioners argue that for partial facts available, the Department should select a difmer adjustment of 20 percent of total cost of manufacturing in each case where similar (rather than identical) products are matched. *See Porcelain-on-Steel Cookware from Mexico,* 61 FR 54616, 54617 (October 21, 1996); *Certain Cold-Rolled Carbon Steel Flat Products from Korea,* 60 FR 65284, 65287 (December 19, 1995) and *Cemex, S.A.* v. *United States,* Slip Op. 96–132, at 9 (CIT August 13, 1996).

Respondent counters that the Department decided early in this proceeding that CST's cost system was adequate for its dumping calculations. Respondent states that it submitted cost data in accordance with its existing cost accounting system. While petitioners requested that CST provide additional data, respondent notes that the Department did not ask it to do so and did not solicit CST to develop difmers outside its cost system. Respondent notes that the Department used the difmer data submitted by CST to analyze petitioners' cost allegation and argue that the Department would not have used this data unless the Department believed that CST's existing cost system and its submitted costs were useful and adequate for the purpose of this dumping proceeding. Respondent rejects petitioners' argument that it has a ''duty'' to develop a methodology to report costs that distinguish between product characteristics and claims that petitioners have failed to cite any support in the dumping law or case precedent for the proposition that this duty exists. Respondent also notes the Department's long-standing preference for the use of respondent's existing cost systems and cites *Pineapples,* in which the Department adjusted difmer costs for respondents because they were not based strictly on respondent's cost system.

Department's Position

We disagree with petitioners. Section 773(f)(1)(A) of the Act expresses the Department's preference for using a respondent's existing cost accounting system when it is in accordance with generally accepted accounting practices (GAAP) and reasonably reflects the costs associated with the production of the subject merchandise. The approach used by CST in reporting the costs of its profile slabs, the only subject merchandise it exported during the POR, reasonably reflects CST's costs. Therefore, we did not ask CST to provide more detailed information on its variable and total costs of manufacturing. The reasons for this constitute proprietary information contained in CST's Section B response of November 13, 1995, beginning at B–37. See also the Analysis Memo of March 31, 1997. We verified CST's submitted variable and total costs of manufacturing; no discrepancies were identified. There is no basis to apply partial facts available in making a difmer adjustment under these circumstances.

Comment 9

Petitioners claim that the respondent omitted an initial cost associated with foreign exchange contracts, and argue that the Department should increase the imputed credit cost for each U.S. customer using the ratio of the alleged effective interest rate to the interest rate used in the CREDITU calculation.

Respondent claims that petitioners are confusing the concepts of an exchange rate with an interest rate. Respondent states that there is no one-time fee associated with the foreign exchange contracts, and that the proper rate to be extracted from the contract is the interest rate, which is what CST used in its credit cost calculation.

Department's Position

We agree with the respondent. The rate the petitioners misinterpreted as an additional interest cost is clearly an exchange rate used to convert the value of the foreign exchange contract in dollars into local currency. See Verification Exhibit 13.

Comment 10

Petitioners claim that an adjustment must be made for quality control costs directly associated with U.S. sales and that CST failed to report any such costs. Petitioners state that ultrasonic testing is a condition of sale for U.S. sales, but not for home market sales. Petitioners argue that the Department has consistently held that where a quality control expense is a condition of sale and can be tied to a specific market or sale, it should be deducted as a selling expense. *See Oil Country Tubular Goods from Argentina,* 60 FR 33539, 33548 (June 28, 1995); *Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Japan,* 58 FR 30018, 30024 (May 25, 1993); and *Stainless Steel Sheet and Strip Products from France,* 48 FR 19441, (April 29, 1983). As partial facts available, petitioners urge the Department to use the cost identified in USIMINAS' questionnaire response in the third administrative review.

Respondent argues that the Department should not make any deductions for ultrasonic testing. Respondent claims that petitioners' allegation that ultrasonic testing is an unreported selling expense is untimely, as it is based on inferences from CST's technical protocols that were submitted much earlier in the proceeding. Respondent notes that if this argument had been made earlier, CST would have had an opportunity to rebut them in the form of verifiable submissions.

Respondent asserts that ultrasonic testing is not a direct, separately identifiable selling expense because it is a production overhead cost that is reflected in cost of goods sold. While not all of CST's technical protocols require ultrasonic testing, CST notes that all profile slab is subject to ultrasonic testing as an internal quality control measure. Respondent also denies that ultrasonic testing was a condition of sale on U.S. sales. Respondent argues that there is no indication on the mill certificates or U.S. customers' orders indicating otherwise.

Department's Position

We agree with the respondent. Neither the U.S. purchase orders nor the mill certificates include any notations concerning ultrasonic testing as a specification.

Comment 11

Petitioners claim that the Department should correct a ministerial error in the calculation of the ICMS tax on home market sales. Petitioners argue that the Department should calculate this amount on gross price, not net price.

Respondent states that ICMS is applied on net price plus freight, not gross price. Respondent argues that to attain tax neutrality the Department is calculating the ICMS tax on the home market sale as if it had been exported and that no taxes other than the reduced ICMS tax are applied to an export sale.

Department's Position

We agree with respondent. The ICMS tax is not applied to gross price. Moreover, as respondent correctly notes, no tax other than ICMS is applied to export sales.

Final Results of Review

As a result of our review, we have determined that no margin exists for Companhia Siderúrgica de Tubarão (CST) during the period 8/1/94–7/31/95. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of plate from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed company will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 75.54 percent. This is the ''all others'' rate from the LTFV investigation. *See Antidumping Duty Order and Amendment of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate From Brazil,* 58 FR 44164 (August 19, 1993). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under § 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with § 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: April 2, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9428 Filed 4–14–97; 8:45 am]

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federal register

Tuesday
April 15, 1996

Part III

The President

Proclamation 6985—National Pay Inequity Awareness Day, 1997

Federal Register
Vol. 62, No. 72
Tuesday, April 15, 1997

Presidential Documents

Title 3—

The President

Proclamation 6985 of April 10, 1997

National Pay Inequity Awareness Day, 1997

By the President of the United States of America

A Proclamation

Although more than three decades have passed since the Equal Pay Act and Title VII of the Civil Rights Act were signed into law, women working full-time and year round in the United States, on average, still earn only 71 percent of the wages earned by men. This means that, for the 1996 calendar year, the wages of the average American female worker will not match those of the average male worker until April 11 of this year.

Although the pay gap has narrowed over the past two decades, unfair pay practices persist in many U.S. business sectors. Paying a woman less than a male co-worker with equal skills and job responsibilities hurts that woman and her family—not only in immediate material benefit, but also in her ability to invest and save for retirement. Working women deserve—and are demanding—fair and equal pay for their time spent on the job. Over a quarter of a million women surveyed by the Department of Labor indicated that ''improving pay scales'' is one of their highest priorities in bringing fairness to the workplace.

To address this problem, my Administration has moved on several fronts simultaneously: I signed the increase in the minimum wage into law, initiated a pension education campaign, strengthened equal employment law enforcement, and created a Women's Bureau Fair Pay Clearinghouse at the Department of Labor, which disseminates information on working women's wages and occupations and on organizations that are active in improving women's wages. In addition, my Administration, with over 200 private-sector partners, has formed the American Savings Education Council to educate women and men on how they can ensure their financial independence in retirement. Together with renewed attention focused on the reality of pay inequity and what it means for working women across the country, these initiatives create real opportunities for employers, working women, and organizations to develop new and effective approaches that achieve pay equity.

Strong enforcement of equal employment laws also plays a critical role in resolving unfair pay. The Equal Employment Opportunity Commission enforces laws that make it illegal to discriminate in wages, or to limit or segregate job applicants or employees in any way that would deprive them of opportunities because of sex, race, color, religion, age, national origin, or disability.

The Department of Labor's Office of Federal Contract Compliance Programs enforces nondiscrimination and affirmative action laws that apply to employers that do business with the Federal Government, ensuring that Government contractors prevent and remedy discrimination and resolve matters of pay equity.

It is vital that we aggressively enforce our pay equity laws. Women deserve to be rewarded on an equal basis for their contributions to the American work force.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States of America, do hereby proclaim April 11, 1997, as National Pay Inequity Awareness Day. I call upon Government officials, law enforcement agencies, business and industry leaders, educators, and all the people of the United States to recognize the full value of the skills and contributions of women in the labor force.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of April, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

[FR Doc. 97–9893
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Billing code 3195–01–P

federal register

Tuesday
April 15, 1997

Part IV

The President

Proclamation 6986—National Service and Volunteer Week, 1997

Proclamation 6987—Pan American Day and Pan American Week, 1997

Federal Register

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Presidential Documents

Title 3—

The President

Proclamation 6986 of April 11, 1997

National Service and Volunteer Week, 1997

By the President of the United States of America

A Proclamation

Citizen service is a vital force in American life, helping to build a stronger sense of community and citizenship and engaging Americans to meet the obligations we all share. Whether tutoring children, mentoring teens, renovating housing, restoring public parks, responding to natural disasters, or caring for aging parents and grandparents, those who serve and volunteer are strengthening our communities for America's future.

The era of big government may be over, but the era of big challenges for our Nation is surely not. Citizen service reflects one of the most basic convictions of our democracy: that we are all responsible for one another. It is a very American idea that we meet our challenges not through big government or as isolated individuals, but as members of a true community, with all of us working together.

Americans can take pride in knowing that our tradition of service is being preserved and expanded. As we recognize the devoted service of our Nation's citizens, we must continue to foster the spirit of volunteerism, making service the common expectation and experience of every American. Working together, we can respond to our shared problems and build a better future for the generations to come.

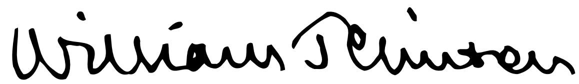
National Service and Volunteer Week is a time to celebrate the American spirit of service and volunteerism and a time to encourage citizens to use their individual talents to serve the common good. During this week and throughout the year, let us salute all those who devote their time, their talents, and their energy to improving our communities—through organizations like AmeriCorps and other programs within the Corporation for National Service; the Points of Light Foundation; Learn and Serve America; the National Senior Service Corps; and thousands of other voluntary, civic, religious, and neighborhood groups.

Later this month, at Independence Hall in Philadelphia, we will convene an historic Presidents' Summit on Service. I will be joined there by every living former president, or his representative, and other prominent Americans as we take specific steps to serve our children and to rebuild our communities. Our mission is nothing less than to spark a renewed national sense of obligation, a new sense of duty, a new season of service.

I hope that the many related activities in the days leading up to this important event will make all Americans think about our shared responsibility for one another. Citizen service can take many shapes—it can mean joining AmeriCorps as a high school student, volunteering nights or on weekends in a religious group or neighborhood association, or devoting years of one's life to service in the Peace Corps or in the Jesuit Volunteer Corps.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of April 13 through April 19, 1997, as National Service and Volunteer Week. I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities to express appreciation for all those who serve and to encourage others to continue the American legacy of service.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of April, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.



[FR Doc. 97–9914
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Presidential Documents

Proclamation 6987 of April 11, 1997

Pan American Day and Pan American Week, 1997

By the President of the United States of America

A Proclamation

Each year, we pause to reflect on how the 34 free countries of the Western Hemisphere are inextricably linked to a shared vision through the common thread of democracy, free trade, and mutual respect. This vision can be achieved by continuing our efforts to create a hemispheric free trade area and by working together to uphold democracy, defend human rights, and defeat the scourge of narcotics trafficking.

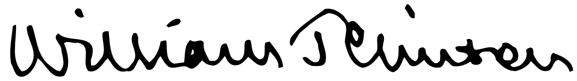
The citizens of the Americas have made remarkable progress toward the advancement of democratic values and institutions, as well as the creation of integrated markets within which goods may be exchanged freely in a common market of ideas and innovation. Today, every country in our hemisphere—with one exception—has made the promise of democracy a reality. These countries have recognized that representative democracy is essential for guaranteeing the basic human rights of their citizens. Through common effort, we can make this gift of freedom a reality for all.

The United States applauds the people of Paraguay for their great accomplishment in resolving last year's constitutional crisis, and we welcome the central role of the Organization of American States in defending democracy in Paraguay. We commend the people and government of Guatemala for their success in forging a comprehensive peace accord, and we encourage the spirit of reconciliation that has firmly taken root throughout Central America. Americans continue to maintain a special consideration for the people of Haiti as they strive to consolidate their new democracy and set the stage for economic growth. Today, all of us must work together to encourage the one country—Cuba—that has not embraced our common purpose to join the community of democracies.

As the united standard bearers of democracy in the Western Hemisphere, we now approach a new century of unprecedented possibilities. Our vision is bold, and our expectations are high. Our cooperative spirit was nurtured through the Summit of the Americas, where we committed ourselves to free trade, representative democracy, relief from poverty, and respect for the environment. We are now collaborating closely with others in the hemisphere to prepare the agenda for the next Summit of the Americas, to be held in Santiago in March 1998. Never before has there been such a window of opportunity to promote a higher standard of living through improved access to quality education and adequate health care. Working together, we can prove that democracy provides the means for improving the daily lives of all the citizens of the Americas.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Monday, April 14, 1997, as Pan American Day and April 13 through April 19, 1997, as Pan American Week. I urge the Governors of the 50 States, the Governor of the Commonwealth of Puerto Rico, and the officials of other areas under the flag of the United States of America to honor these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of April, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.



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Reader Aids

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FEDERAL REGISTER PAGES AND DATES, APRIL

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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